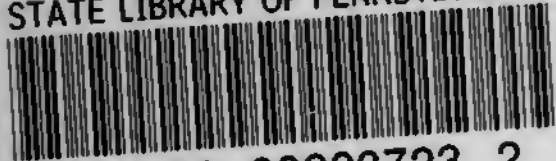


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REFERENCE



COLLECTIONS

Judicial Cases
concerning
American Slavery and the Negro

EDITED BY THE LATE
HELEN TUNNICLIFF CATTERALL
(MRS. RALPH C. H. CATTERALL)

WITH ADDITIONS BY
JAMES J. HAYDEN
Law School, Catholic University of America

VOLUME IV

Cases from the Courts of
New England, the Middle States, and the District of Columbia



WASHINGTON, D. C.

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PAPERS OF THE DIVISION OF HISTORICAL RESEARCH
MARGARET W. HARRISON, Editor

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PREFACE

The plan and purpose of the series of volumes in which the present volume stands fourth, have been fully explained in the preface to the first volume—to furnish an unbiassed picture of American slavery as an actual institution, social and economic, by drawing off from the printed reports of cases in the highest state courts and those of the United States, all factual statements and quotations illustrating slavery and the life of the negro, and accompanying these by compressed versions of the law as pronounced by the respective courts. The first of these volumes printed, with severe omission of all that is irrelevant, the important cases in the courts of England, Virginia, West Virginia, and Kentucky—for in America the law respecting slavery has usually progressed westward along parallels of latitude. The second volume exhibited in similar fashion the cases adjudged in the highest courts of North Carolina, South Carolina, and Tennessee. The third volume included the cases reported in Georgia, Florida, Alabama, Mississippi, and Louisiana. Thus, the volumes hitherto published have carried out the intentions of the series in respect to all the states south of the Potomac and east of the Mississippi, constituting, with the inclusion of Louisiana, by far the greater part, almost the whole, of the area in which slavery long flourished as a relatively permanent institution.

The present volume presents, on the same plan as that of its predecessor, the cases concerning slavery and the negro in the states north of the Potomac and east of the Ohio, beginning with Maryland, the District of Columbia, and Delaware, which would have been included in the first volume with Virginia if its dimensions had permitted, and proceeding northward through those Middle States and states of New England which are customarily classed as "free states". The fifth volume will contain similar materials for the states west of Pennsylvania, north of the Ohio, or west of the Mississippi, together with reported cases from Canada and Jamaica.

At the time of Mrs. Catterall's lamented death, November 10, 1933, she had finished, among states included in the present volume, the introduction to the Maryland material and the Maryland cases, excepting such as are in volumes published since that date—to wit, *Maryland Archives*, XLIX.-LI., and Judge Bond's *Records of the Maryland Court of Appeals*, 1695-1729, recently published by the American Historical Association. She had prepared introductions and cases for the District of Columbia, Delaware, Pennsylvania, Massachusetts (to 1840), and Vermont. The recently published Maryland cases, those reported from New Jersey and New York, with their introductions, and the Massachusetts cases since 1840, have been dealt with by Dr. James J. Hayden of the Law School of the Catholic University of America. Mr. George W. Dalzell of the

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bar of the District of Columbia has contributed the introduction respecting Connecticut and partially prepared the Connecticut cases. It has fallen to the undersigned to make the remaining preparations respecting Connecticut and all those respecting Rhode Island, and to contribute, in the case of all the states represented in this volume except New Jersey and Vermont, the brief second section of the introductions, which gives in outline the history of the judicial courts whose reports are dealt with in the volume.

It was to be expected that some unevenness of treatment might result from the attempt to complete through other hands the work for this volume which Mrs. Catterall had carried out with such remarkable ability and exactness, but the effort has been made to reduce such unevenness to a minimum by following the same procedures which she had followed. It may be well to repeat, from the preface to the first volume of the series, some sentences explanatory of her practices.

“Under each state, the cases are set in chronological order, cases in the federal courts arising in that state being incorporated in the places where their dates would bring them. The compilation has been brought to a close, in each state, at the end of the year 1875, ten years after the ending of slavery in the United States. . . In quoted passages the spelling and capitalization of the books quoted has been followed, except that, in quotations from early records, the use of *u* and *v* and of *i* and *j* has been modernized, *and* has been printed instead of the manuscript symbol &, the abbreviations for *which* and *with* and a few similar abbreviations have been expanded, and, as a matter of course, *th* in *the* and *that* and *then* has been printed *th*, and not *y*!”

Mrs. Catterall was the daughter of a judge in middle Illinois, who, having no sons, desired that one of his daughters should study law. She was admitted to the Illinois bar, and at the age of twenty-three drew up the municipal code of their small city. After her marriage to a young assistant professor of history in the University of Chicago, afterwards a brilliant and noted professor in Cornell University, she devoted herself to linguistic and other studies that might be helpful to his work, but after his death in 1915 she resumed her legal studies, was graduated from the Law School of Boston University, and was admitted to the Massachusetts bar. The last ten years of her life were devoted, as largely as her health permitted, to the important contribution to the history of American slavery and the American negro which is represented by the present series of volumes. The faithfulness and accuracy with which she worked, the acuteness of her perceptions in legal matters, and the varied learning which she bore so lightly and modestly, deserve most grateful commemoration in this place.

The index has been prepared by Mr. David M. Matteson.

J. FRANKLIN JAMESON.

MAY 7, 1936.

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LIST OF ABBREVIATIONS

- Abb. Adm. = Benjamin V. and Austin Abbott, *Reports of Cases in Admiralty, argued and determined in the District Court of the United States for the Southern District of New York.*
- Abbott U. S. = Benjamin V. Abbott, *Reports of Decisions rendered in the Circuit and District Courts of the United States.*
- Acorn Club Publications = Acorn Club of Connecticut, *Reports of Cases adjudged in the Superior Court of the State of Connecticut, from the Year 1785 to January 1789.*
- Acts and Resolves = [Acts and Resolves of the General Assembly of Rhode Island (no title-page).]
- Acts of the Prov. = *Acts and Resolves, public and private, of the Province of Massachusetts Bay.*
- Addison = Alexander Addison, *Reports of Cases in the County Courts of the Fifth Circuit, and in the High Court of Errors and Appeals, of the State of Pennsylvania.*
- Allen = Charles Allen, *Reports of Cases argued and determined in the Supreme Judicial Court of Massachusetts.*
- Am. Law J. = *American Law Journal.*
- Am. Law Reg. = *American Law Register* (Philadelphia).
- American Legal Records = Carroll T. Bond, *Proceedings of the Maryland Court of Appeals, 1695-1729* (American Legal Records, I.).
- Ancient Charters = *Charters and General Laws of the Colony and Province of Massachusetts Bay.*
- Ashmead = John W. Ashmead, *Reports of Cases adjudged in the Courts of Common Pleas, Quarter Sessions, Oyer and Terminer, and Orphans' Court of the First Judicial District of Pennsylvania with Notes and References.*
- Bailey = Henry Bailey, *Reports of Cases adjudged and determined in the Court of Appeals of South-Carolina, on Appeal from the Courts of Law.*
- Baldwin = Henry Baldwin, *Reports of Cases determined in the Circuit Court of the United States, in and for the Third Circuit, comprising the Eastern District of Pennsylvania, and the State of New Jersey.*
- Barb. Ch. = Oliver L. Barbour, *Reports of Cases argued and determined in the Court of Chancery of the State of New-York.*
- Bay = Elihu H. Bay, *Reports of Cases argued and determined in the Superior Courts of Law in the State of South-Carolina, since the Revolution.*
- Betts' Scr. Bk. = *Betts' Scrap Book* (cases in the United States Circuit and District Courts for the Southern District of New York, from 1839 to 1862, with a few cases from the other districts. Collected by Samuel R. Betts).
- Binney = Horace Binney, *Reports of Cases adjudged in the Supreme Court of Pennsylvania.*
- Black = Jeremiah S. Black, *Reports of Cases argued and determined in the Supreme Court of the United States.*
- Black Code = An Act prescribing the Rules and Conduct to be observed with respect to Negroes and other Slaves of this Territory (Orleans).
- Bland = Theodore Bland, *Reports of Cases decided in the High Court of Chancery of Maryland.*
- Blatchford = Samuel Blatchford, *Reports of Cases argued and determined in the Circuit Court of the United States for the Second Circuit.*
- Blatchf. Pr. Cas. = Samuel Blatchford, *Reports of Cases in Prize, argued and determined in the Circuit and District Courts of the United States, for the Southern District of New York.*
- Blatchf. and H. = Samuel Blatchford and Francis Howland, *Reports of Cases argued and determined in the District Court of the United States for the Southern District of New-York.*
- Brayton = William Brayton, *Reports of Cases adjudged in the Supreme Court of the State of Vermont.*
- Brightly = Frederick C. Brightly, *Reports of Cases decided by the Judges of the Supreme Court of Pennsylvania, in the Court of Pennsylvania, in the Court of Nisi Prius at Philadelphia, and also in the Supreme Court with Notes and References to recent Decisions.*

- Brightly Dig. = Frederick C. Brightly, *Digest of the Decisions of the Courts of Pennsylvania*.
- Browne = Peter A. Browne, *Reports of Cases adjudged in the Court of Common Pleas of the First Judicial District of Pennsylvania*.
- Brun. Col. Cas. = Albert Brunner, *Reports of Cases argued and determined in the Circuit Courts of the United States*.
- Caines = George Caines, *New-York Term Reports of Cases argued and determined in the Supreme Court of that State*.
- Clifford = William H. Clifford, *Reports of Cases determined in the Circuit Court of the United States for the First Circuit*.
- Col. and Cai. Cas. = William Coleman and George Caines, *Reports of Cases of Practice, determined in the Supreme Court of Judicature of the State of New-York*.
- Compilation = Josiah Harrison, *A Compilation of the Public Laws of the State of New Jersey passed since the Revision in the Year 1833*.
- Conn. = *Reports, containing Cases argued and determined in the Supreme Court of Errors of the State of Connecticut*.
- Conn. Col. Recs. = *Colonial Records of Connecticut*.
- Council Records = *Council for New England, Records*.
- Cowen = Esek Cowen, *Reports of Cases argued and determined in the Supreme Court; and in the Court for the Trial of Impeachments and the Correction of Errors, of the State of New-York*.
- Coxe = Richard S. Coxe, *Reports of Cases argued and determined in the Supreme Court of New Jersey*.
- Crabbe = William H. Crabbe, *Reports of Cases argued and adjudged in the District Court of the United States, for the Eastern District of Pennsylvania*.
- Cranch = William Cranch, *Reports of Cases argued and adjudged in the Supreme Court of the United States*.
- Cranch C. C. = William Cranch, *Reports, United States Circuit, District of Columbia*.
- Curtis = Benjamin R. Curtis, *Reports of Cases argued and determined in the Circuit Court of the United States for the First Circuit*.
- Cushing = Luther S. Cushing, *Reports of Cases argued and determined in the Supreme Judicial Court of Massachusetts*.
- Dallas = Alexander J. Dallas, *Reports of Cases ruled and adjudged in the Courts of Pennsylvania, before and since the Revolution* [title of vol. I.; vols. II.-IV. are entitled:] *Reports of Cases ruled and adjudged in the several Courts of the United States, and of Pennsylvania, held at the Seat of the Federal Government*.
- Dane = Nathan Dane, *Abridgment and Digest of American Law*.
- Davis's Col. = William A. Davis, *The Acts of Congress in relation to the District of Columbia*.
- Day = Thomas Day, *Reports of Cases, argued and determined in the Supreme Court of Errors, of the State of Connecticut*.
- Del. Ch. = *Reports, Delaware Chancery*.
- Denio = Hiram Denio, *Reports of Cases argued and determined in the Supreme Court and in the Court for the Correction of Errors of the State of New-York*.
- Digest = Lucius Q. C. Elmer, *A Digest of the Laws of New Jersey, 1838*.
- Douglas = Sylvester Douglas, baron Glenbervie, *Reports of Cases argued and determined in the Court of King's Bench*.
- Dutcher = Andrew Dutcher, *Reports of Cases argued and determined in the Supreme Court and the Court of Errors and Appeals of the State of New Jersey*.
- Fed. Cas. = *The Federal Cases comprising Cases argued and determined in the Circuit and District Courts of the United States from the earliest Times to the Beginning of the Federal Reporter*.
- Gallison = John Gallison, *Reports of Cases argued and determined in the Court of the United States for the First Circuit*.
- Gill = Richard W. Gill, *Reports of Cases argued and determined in the Court of Appeals of Maryland*.
- Gill and John. = Richard W. Gill and John Johnson, *Reports of Cases argued and determined in the Court of Appeals of Maryland*.
- Grant = Benjamin Grant, *Reports of Cases argued and adjudged in the Supreme Court of Pennsylvania*.
- Gray = Horace Gray, jr., *Reports of Cases argued and determined in the Supreme Judicial Court of Massachusetts*.
- C. E. Green = Charles E. Green, *Reports of Cases argued and determined in the Court of Chancery, the Prerogative Court, and, on Appeal, in the Court of Errors and Appeals, of the State of New Jersey*.

- H. W. Green = Henry W. Green, *Reports of Cases determined in the Court of Chancery, of the State of New-Jersey.*
- J. S. Green = John S. Green, *Reports of Cases argued and adjudicated in the Supreme Court of Judicature of the State of New Jersey.*
- Green Bag = A legal journal, monthly, Boston.
- Halsted = William Halsted, jr., *Reports of Cases argued and determined in the Supreme Court of Judicature, of the State of New Jersey.*
- Hals. Ch. = George B. Halsted, *Reports of Cases determined in the Court of Chancery, and in the Prerogative Court, and, on Appeal, in the Court of Errors and Appeals, of the State of New-Jersey.*
- Harrington = Samuel M. Harrington, *Reports of Cases argued and adjudged in the Superior Court and Court of Errors and Appeals of the State of Delaware from the Organization of those Courts under the amended Constitution.*
- Har. and Gill = Thomas Harris, jr., and Richard W. Gill, *Reports of Cases argued and determined in the Court of Appeals of Maryland.*
- Har. and John. = Thomas Harris, jr., and Reverdy Johnson, *Reports of Cases argued and determined in the General Court and Court of Appeals of the State of Maryland.*
- Har. and McH. = Thomas Harris, jr., and John McHenry, *Maryland Reports being a Series of the most important Law Cases, argued and determined in the Provincial Court and Court of Appeals of the then Province of Maryland.*
- Harrison (N. J.) = Josiah Harrison, *Reports of Cases determined in the Supreme Court of Judicature of the State of New Jersey.*
- Hayw. and H. = John A. Hayward and George C. Hazleton, *Reports of Cases Civil and Criminal argued and adjudged in the Circuit Court of the District of Columbia for the County of Washington.*
- Hening = William W. Hening, *The Statutes at Large of Virginia.*
- Hoff. Ch. = Murray Hoffman, *Reports, Court of Chancery, New York.*
- Houston = John W. Houston, *Reports of Cases decided in the Superior Court, and the Court of Errors and Appeals, of the State of Delaware.*
- Hous. Cr. Cas. = *Reports of Cases decided in the Superior Court, and the Court of Errors and Appeals [vols. 2, 3, 9], of the State of Delaware; or, John W. Houston, Reports of Cases decided in the Court of Oyer and Terminer and the Court of General Sessions of the Peace and Jail Delivery of the State of Delaware.*
- Howard = Benjamin C. Howard, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*
- Johnson = William Johnson, *Reports of Cases argued and determined in the Supreme Court of Judicature, and in the Court for the Trial of Impeachments and the Correction of Errors, in the State of New-York.*
- Johns. Cas. = William Johnson, *Reports of Cases adjudged in the Supreme Court of Judicature of the State of New-York . . . together with Cases determined in the Court for the Correction of Errors.*
- Johns. Ch. = William Johnson, *Reports of Cases adjudged in the Court of Chancery of New-York.*
- Keble = Joseph Keble, *Reports in the Court of Kings Bench at Westminster.*
- Kirby = Ephraim Kirby, *Reports of Cases adjudged in the Superior Court of the State of Connecticut . . . with some Determinations in the Supreme Court of Errors.*
- Law Rep. = *Monthly Law Reporter.*
- Leg. Int. = *Legal Intelligencer, Philadelphia.*
- Lowell = John Lowell, *Judgments delivered in the Courts of the United States for the District of Massachusetts.*
- Martin (La.) = François X. Martin, *Orleans Term Reports, or Cases argued and determined in the Superior Court of the Territory of Orleans.*
- Mason = William P. Mason, *Reports of Cases argued and determined in the Circuit Court of the United States for the First Circuit.*
- Mass. = *Reports of Cases argued and determined in the Supreme Judicial Court of Massachusetts.*
- Mass. Hist. Soc. Coll. = *Massachusetts Historical Society Collections.*
- Mass. Recs. = *Records of the Governor and Company of the Massachusetts Bay in New England.*
- Maxcy's Laws = Virgil Maxcy, *Laws of Maryland.*
- Md. = *Reports, containing Cases argued and determined in the Court of Appeals of Maryland.*
- Md. Arch. = *Archives of Maryland.*
- Md. Ch. = *Reports of Cases decided in the High Court of Chancery of Maryland.*
- Me. = *Reports of Cases determined in the Supreme Judicial Court of the State of Maine.*
- Metcalf = Theron Metcalf, *Reports of Cases argued and determined in the Supreme Judicial Court of Massachusetts.*

- Mo. = *Reports of Cases argued and determined in the Supreme Court of the State of Missouri.*
- Munford = William Munford, *Reports of Cases argued and determined in the Supreme Court of Appeals of Virginia.*
- N. H. = *Reports of Cases in the Superior Court of Judicature in New-Hampshire.*
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- N. Y. = *Reports of Cases argued and determined in the Court of Appeals of the State of New York.*
- N. Y. Hist. Soc. = *New York Historical Society Collections.*
- N. Y. Leg. Obs. = *New York Legal Observer (Owen's).*
- Olcott = Edward R. Olcott, *Reports of Cases argued and determined in the District Court of the United States for the Southern District of New-York.*
- P. and W. = Charles B. Penrose and Frederick Watts, *Reports of Cases argued and adjudged in the Supreme Court of Pennsylvania.*
- Pa. St. = *Pennsylvania State Reports.*
- Pa. Stat. at L. = *Statutes at Large of Pennsylvania.*
- Paige = Alonzo C. Paige, *Reports of Cases argued and determined in the Court of Chancery of the State of New-York.*
- Paine = Elijah Paine, jr., *Reports of Cases argued and determined in the Circuit Court of the United States, for the Second Circuit, comprising the Districts of New York, Connecticut, and Vermont.*
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- Peters = Richard Peters, jr., *Reports of Cases argued and adjudged in the Supreme Court of the United States.*
- Pet. Adm. = Richard Peters, *Admiralty Decisions in the District Court of the United States, for the Pennsylvania District.*
- Pickering = Octavius Pickering, *Reports of Cases argued and determined in the Supreme Judicial Court of Massachusetts.*
- Plym. Col. Recs. = *Records of the Colony of New Plymouth in New England.*
- P. P. = *Parliamentary Papers.*
- Proc. Mass. Hist. Soc. = *Proceedings of the Massachusetts Historical Society.*
- Public Recs. = *Public Records of the Colony of Connecticut.*
- Public Statutes = *Public Statutes of the State of Connecticut.*
- Quincy = Josiah Quincy, jr., *Reports of Cases argued and adjudged in the Superior Court of Judicature of the Province of Massachusetts Bay.*
- Randolph = Peyton Randolph, *Reports of Cases argued and determined in the Court of Appeals of Virginia.*
- Rawle = William Rawle, jr., *Reports of Cases adjudged in the Supreme Court of Pennsylvania.*
- Records of Court of Assistants = *Records of the Court of Assistants of the Colony of the Massachusetts Bay.*
- Rev. Laws = *Laws of the State of New Jersey revised and published under the Authority of the Legislature, 1821.*
- Rev. Stat. = *Revised Statutes of the United States.*
- R. I. = *Reports of Cases argued and determined in the Supreme Court of Rhode Island.*
- R. I. Acts and Resolves = *Acts and Resolves of Rhode Island.*
- R. I. Col. Recs. = *Colonial Records of Rhode Island.*
- Root = Jesse Root, *Reports of Cases adjudged in the Superior Court and Supreme Court of Errors.*
- Rothwell's Laws = Andrew Rothwell, *Laws of the Corporation of the City of Washington.*
- S. and R. = Thomas Sergeant and William Rawle, jr., *Reports of Cases adjudged in the Supreme Court of Pennsylvania.*
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- Stat. at L. = *United States Statutes at Large.*
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- Vt. = *Reports of Cases argued and determined in the Supreme Court of the State of Vermont.*
- Wallace = John W. Wallace, *Cases argued and adjudged in the Supreme Court of the United States.*
- Wallace jr. = John W. Wallace, jr., *Cases in the Circuit Court of the United States for the Third Circuit.*
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- Ware = Ashur Ware, *Reports of Cases argued and determined in the District Court of the United States for the District of Maine.*
- Wash. C. C. = Bushrod Washington, *Reports of Cases determined in the Circuit Court of the United States, for the Third Circuit, comprising the Districts of Pennsylvania and New-Jersey.*
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- Wendell = John L. Wendell, *Reports of Cases argued and determined in the Supreme Court of Judicature, and in the Court for the Trial of Impeachments and the Correction of Errors of the State of New-York.*
- Wharton = Thomas I. Wharton, *Reports of Cases adjudged in the Supreme Court of Pennsylvania, in the Eastern District.*
- Whart. St. Tr. = Francis Wharton, *State Trials of the United States during the Administrations of Washington and Adams.*
- Wheaton = Henry Wheaton, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*
- Wilson's notes = James P. Wilson, *Wilson's Red Book.*
- Wkly. Law Gaz. = *Weekly Law Gazette, 1858-1860.*
- Woodb. and M. = Charles L. Woodbury and George Minot, *Reports of Cases argued and determined in the Circuit Court of the United States for the First Circuit.*
- Yeates = Jasper Yeates, *Reports of Cases adjudged in the Supreme Court of Pennsylvania.*
- Zabriskie = Abraham O. Zabriskie, *Reports of Cases argued and determined in the Supreme Court, and in the Court of Errors and Appeals of the State of New Jersey.*

JUDICIAL CASES CONCERNING SLAVERY

MARYLAND

INTRODUCTION

I.

In 1772 England's lack of a positive law to support slavery justified Lord Mansfield in discharging Somerset.¹ Maryland took precaution a century earlier against such a dénouement. On "Munday 19th Sept. 1664 . . . came a member from the lower howse with this following paper (vizt). Itt is desired by the lower howse that the upper howse would be pleased to drawe up an Act obligeing negros to serve *durante vita* they thinking itt very necessary for the prevencion of the dammage Masters of such Slaves may susteyne by such Slaves pretending to be Christned And soe pleade the lawe of England."² Before the adjournment that day, "An Act concerning Negroes and other Slaves"³ had been drawn up, had been sent to the Lower House where it received some amendments, was returned to the Upper House, assented to, and sent again to the Lower House. The following day it was "assented to by the lower howse and after readeing itt was Ordered to be ingrosed."

The act of 1664 itself does not mention the danger of enfranchisement of slaves through baptism,⁴ as a reason for its passage, though it sets

¹ Somerset *v.* Stewart, vol. I., p. 14, of this series.

² 1 Md. Arch. 526. This was thirteen years before the first reported English case regarding negro slaves, Butts *v.* Penny (3 Keble 785), which declares that "they are by usage *tanquam bona*, and go to Administrator untill they become Christians; and thereby they are Infranchised;" vol. I., p. 9, of this series.

³ 1 Md. Arch. 533.

⁴ The Maryland act of Apr. 19, 1671, "for the Encourageing the Importacion of Negroes and slaves into this Province," deals explicitly with the question of their baptism. After declaring that "Severall of the good people of this Province have been discouraged to import into or purchase within this Province any Negroes or other Slaves and such as have Imported or purchased . . . have to the great displeasure of Almighty God and the prejudice of the Soules of those poore people Neglected to instruct them in the Christian faith or to Endure . . . them to Receive the holy Sacrament of Baptisme . . . upon a mistake and ungrounded apprehension that by becomeing Christians they . . . are actually manumited," it enacts "That where any Negro or Negroes Slave or Slaves being in Servitude . . . is are or shall become Christian or Christians and hath or have Received or shall att any time Receive the Holy Sacrament of Babtizme before or after his or her or their Importacion into this Province the same is not . . . taken to . . . amount unto a manumicion." 2 Md. Arch. 272.

Nevertheless, in December 1684 (seven years after the case of Butts *v.* Penny had given a concrete example of the working of "the lawe of England"), a complaint was brought "At the Court at Whitehall," which shows that baptism was still withheld in Maryland, if the master of a slave anticipated taking him to England; for though the Maryland act of 1671 insured his slavery in Maryland in spite of baptism, the decision in Butts *v.* Penny insured his freedom in England, because of it. A Mrs. Beale charged Captain Eaton with selling her brother William Goodwin, Eaton's apprentice, "as a Slave" at "Captain Slyes

out in full why the latter part of the act was enacted. Maryland had a slavery problem in the first years of her existence as a colony, which probably troubled the other colonies,⁵ but in regard to which their law reports⁶ are silent. The problem was that of the marriage of indentured white servants, "freeborne English women," with slaves.⁷ "For deterring such free borne women from such shamefull Matches," the act of 1664 provided "That whatsoever free borne woman shall inter marry with any slave . . . shall Serve the master of such slave dureing the life of her husband And that all the Issue of such freeborne woemen soe married shall be Slaves as their fathers were."⁸

In 1681 Lord Baltimore returned to the province after a four years' sojourn in England, bringing with him as a domestic servant "a free white woman, named Eleanor, commonly called Irish Nell,"⁹ who proceeded that very year to marry¹⁰ a negro slave. The law of 1664 was repealed "in the month of August, immediately after the marriage, and his Lordship interested himself in procuring the repeal with a view to this particular case. The act of 1663 [1664] was repealed also, to prevent persons from purchasing white women and marrying them to their slaves for the purpose of making slaves of them."¹¹ After this act was repealed, Nell had children in consequence of this marriage, and in 1770 her grandchildren, William and Mary Butler (first cousins), petitioned for freedom "as being descended from a free white woman," the civil law doctrine, *partus sequitur ventrem*, then prevailing in Maryland,³ as it did in all the other American colonies and in the West Indies. The Provincial Court adjudged that the petitioners were free, but the Court of Appeals in 1771 reversed the judgment, agreeing with the counsel for the defendant: "There is no circumstance appearing, to shew that the Legislature meant to discriminate or distinguish between the issue born before the act and those born after."

house in Maryland . . . so can be testified by one Peter Harris, a Servant to Captain Sly of London merchant," and "the complainants . . . the more to strengthen their alligations . . . tempered" with the "Negro boy belonging to . . . Slye . . . which boy was never in England till within this three or foure months. and consequently can truly testify nothing in this matter," for "understanding the black to be no cristian and by that means incapable of being evidence in their behalfe, . . . [they] caused him contrary to the knowledge of his master in some unknown place to be christianed." 5 Md. Arch. 420.

⁵ See Virginia act of April 1691, ch. 16. 3 Hening 87.

⁶ So far as they are printed.

⁷ The gulf between indentured white servants and slaves is shown by the petition of the father of a girl apprentice in 1661, in which "he Craves that his daughter may not be made a Slave a terme soe Scandalous that if admitted to be the Condicion or tytle the Apprentices in this Province will be soe destructive as noe free borne Christians will ever be induced to come over servants." 1 Md. Arch. 464.

⁸ This is the common law doctrine.

⁹ Butler *v.* Boarman, p. 49, *infra*.

¹⁰ Later, marriages of slaves were not recognized; but in 1681 the Upper House made it a condition of their assent to the act, that the Lower House "rase out the Clause for Dissolution of any Such Marriage if any shall (Notwithstanding all the Care and industry that may be used) happen to be, which Lyes not without either or both the two houses to Dissolve," 7 Md. Arch. 177.

¹¹ Butler *v.* Boarman, p. 49, *infra*.

Sixteen years later, Mary Butler, the daughter of William and Mary Butler, and great-granddaughter of Irish Nell, petitioned for freedom and was successful in obtaining it.¹² The General Court held "That without a conviction in a Court of Record of Irish Nell's having intermarried with a slave, she could not become a slave, nor could her issue become slaves by virtue of such intermarriage. That no presumption of such conviction arises from the petitioner and her ancestors having been always held in slavery." Also that the record, proceedings, and judgment on the petition of William and Mary Butler (her father and mother) against Boarman "were no bar to prevent the petitioner from claiming and having her freedom." The defendant appealed to the Court of Appeals. In that court, the counsel for the appellee argued convincingly that "Irish Nell was an English subject, and as such entitled to all the privileges of an English subject in an equal degree with any other English subject, however possessed with wealth, and exalted in station or rank. If she committed the crime of marrying a negro slave, she would by law be subject to no punishment before conviction in some mode, and she was entitled to the common law mode of trial by jury, as no other mode was prescribed by law. . . Parol evidence is not admissible, to prove that Irish Nell married a negro slave during the existence of the act of 1663 [1664]. Hearsay or tradition is not sufficient to prove any crime." The judgment of the General Court in favor of Mary Butler's freedom, was affirmed in 1791.

In like manner Eleanor Toogood¹³ gained her freedom in 1783, when the Court of Appeals affirmed the judgment of the General Court: that the judgment of the County Court in 1734, that her mother, Ann Fisher, was a slave for life (by virtue of the Act of 1664), was not conclusive against Eleanor. Ann's mother, Mary Fisher, was the daughter of a free white indentured servant, "by an East-India Indian." Mary Fisher "became a free mulatto after serving some time¹⁴ to Major Beale" and "was lawfully married¹⁵ by a priest of the Romish Church . . . to a negro man named Dick, a slave." The Court of Appeals "were also unanimously of opinion, that the act of 1664 does not extend to Mary Fisher, . . . a free mulatto woman."

In 1793 the court discharged Anthony Boston "from all further servitude," as they were of the opinion that his great-grandmother "Maria, or Marea, was not a slave, but free," being "a Spanish woman," whose "daughter Linah [Anthony's grandmother] was born before she came into Maryland, and was of yellow colour or complexion, with long black hair."

¹² Butler v. Craig, p. 50, *infra*.

¹³ Toogood v. Scott, p. 49, *infra*.

¹⁴ Act of 1664: "all the Issues of English or other freeborne woemen that have already married Negroes shall serve the Masters of their Parents till they be Thirty years of age and noe longer."

¹⁵ Evidently before the repealing act of 1681. See Toogood v. Scott, p. 49, note 5, *infra*.

In 1794 Basil Shorter was adjudged free, being a lineal descendant (great-grandson) in the female line of Elizabeth Shorter, a free white woman, whom "in the year 1681, or near about that time . . . Nicholas Geulick, priest . . . did join . . . in the holy estate of matrimony, according to the then law" with "a negro man named . . . Little Robin . . . both servants unto Mr. William Roswell."¹⁶ In 1795 another descendant of Elizabeth Shorter "recovered his freedom;"¹⁷ and in 1808 the great-great-great-granddaughter of Elizabeth Shorter was adjudged to be entitled to her freedom.¹⁸

In 1794 Robert Thomas recovered his freedom from the Reverend Henry Pile, on the ground of descent from a free white woman.

In 1796 Nathaniel Allen, great-grandson of Hannah Allen, "a white Scotch woman," petitioned for freedom. Hannah Allen "had, by a negro, a daughter named Hannah Allen" who "had, by a negro, a daughter named Jane Allen" who "had the petitioner by a negro, and she was adjudged . . . 1772, to serve seven years for having the petitioner, and the petitioner, being then five months old, was sold till he arrive to the age of thirty-one years."¹⁹ Nathaniel was only 22 years old when he petitioned for freedom, and was remanded to servitude to finish his term.

But the laws of evidence had to be stretched in all these cases.²⁰ The fact that the ancestress was free could be proved only by hearsay, and while hearsay evidence or the reputation of the neighborhood is admitted to prove pedigree, it is not received to prove other facts concerning individuals on the genealogical tree—that they were white or free or came from England. Such was the decision of the Supreme Court of the United States in the case of *Mima Queen and child*²¹—a case arising in that part of the District of Columbia—Washington County—which had belonged to Maryland and in which the laws of Maryland were still in force.²² Mr. Justice Duvall, formerly on the bench of Maryland, dissented: "In Maryland the law has been for many years settled that on a petition for freedom where the petitioner claims from an ancestor who has been dead for a great length of time, the issue may be proved by hearsay evidence, if the fact is of such antiquity that living testimony

¹⁶ Paper, dated June 15, 1702, p. 52, *infra*.

¹⁷ *Sprigg v. Negro Mary*, p. 62, *infra*. One or more members of a family would bring a test case, and if successful, court proceedings would not be necessary in case of the rest.

¹⁸ *Shorter v. Boswell*, p. 61, *infra*.

¹⁹ Act of 1715, ch. 44, sects. 26, 27; 1728, ch. 4.

²⁰ "In the cases of . . . the Shorters, the Thomas's, the Queens, the Bostons, and the Toogoods, . . . the reputation of the neighborhood, as to the fact of freedom [of the ancestress], was admitted in evidence" (Counsel for the petitioner in *Mahoney v. Ashton*, p. 53, *infra*). Attorney General Martin scornfully replied: "In all these, and in many other similar cases, hundreds of negroes have been let loose upon community by the hearsay testimony of an obscure illiterate individual."

²¹ Opinion of Chief Justice Marshall, 7 Cranch 290 (1813), followed in Maryland thereafter. *Walls v. Hemsley*, p. 64, *infra*; *Walkup v. Pratt*, p. 68, *infra*.

²² Act of Congress, Feb. 27, 1801. 2 Stat. at L. 103.

cannot be procured. . . The reason for admitting hearsay evidence upon a question of freedom is much stronger than in cases of pedigree or in controversies relative to the boundaries of land. . . The right to freedom is more important than the right of property."

Though hearsay was admitted in 1797 in the lower court and in 1802 in the Court of Appeals, the petition of Mahoney²³ for freedom was not granted. The petitioner, who was the son of Nelly, who was the daughter of "Carroll's Sue," who was the daughter of "Digges's Sue," who was the daughter of Ann Joice, offered evidence "that it was the report of the neighbourhood that if she (meaning Joice) had justice done her, she ought to have been free," for "Joice, the ancestor of the petitioner, was a negro woman carried with her owner, claiming her as a slave, from the island of Barbadoes to England, and afterwards brought into this country by Lord Baltimore, claiming her as a slave, between the years 1678 and 1681." Even admitting the hearsay evidence that Joice had set her foot on English soil, she did not become free²⁴ and Somerset did, because there were two vital differences in their cases: Somerset was brought before an English court and was judicially discharged from servitude; Joice was not. Somerset remained in England; Joice, like the slave Grace 140 years later, returned to a slave country. And the Court of Appeals of Maryland decided in 1802, as Lord Stowell did in 1827.²⁵ "By a positive law in this state in 1715,²⁶ then the province of Maryland, the relation of master and slave is recognized as then existing. . . Upon the bringing Ann Joice into this state, . . . the relation of master and slave continued in its extent as authorized by the laws of this state."

It remains to mention a few peculiarities in the Maryland law of slavery. As early as 1749²⁷ the Court of Appeals held that the legatee for life of a female slave is entitled to her issue born during the continuance of the life estate. "The two principal reasons which governed the Court of Appeals [in *Scott v. Dobson*] were, 1. That the issue ought to go to the person to whom the use was limited; otherwise, having no interest worth regarding, he might not take care of the issue. That it would only be a reasonable satisfaction for the expenses of maintenance, and for the time lost by the parent. 2. That when the use is given, a bounty at all events is intended; but instead of a benefit, if the issue should go over there might be a loss."²⁸ This doctrine was followed by Delaware, but the other slaveholding states reasoned differently.

The early reports are full of cases involving the famous "rule against perpetuities," the courts having to decide whether wills bequeathing prop-

²³ Mahoney *v.* Ashton, vol. I., p. 2n., of this series; also p. 53, *infra*.

²⁴ Attorney General Martin sarcastically attacks the English maxim: "The British air is supposed to electrify the flesh—putting a foot on the island, the nature is instantly changed, and if a slave before, becomes thereby free."

²⁵ P. 53, *infra*.

²⁶ Also in 1664 (ch. 30) and in 1681 (ch. 4).

²⁷ *Scott v. Dobson*, p. 38, *infra*.

²⁸ Opinion of Daniel Dulany, 1 Har. and McH. 348 (353).

erty to A, and, if A died without issue, then to B, contained any restrictive words, words restricting the taking of the gift within a life in being and twenty-one years and ten months thereafter. For if the question of A's dying without issue had to be suspended till the crack of doom for solution—to discover if all A's descendants to the nth degree had perished off the face of the earth—it would obviously be very inconvenient. Therefore the courts held that if a will contained no restrictive words, the testator intended to give to B, after “an indefinite failure of issue” of A; and to carry out such an intention was against the policy of the law. B could never take; the property belonged absolutely to A and his heirs forever. In *Biscoe v. Biscoe*²⁹ the court decided that the gift of a negro man to B after the death of A and the failure of A's issue, was not too remote: “the subject of the bequest . . . is a negro man, a life in being, and the limitation over could never by possibility take effect, but in his life-time,” distinguishing it from the case of a similar bequest of a negro woman “and all her increase,”³⁰ “which looks to an indefinite failure of issue, as the issue of the negro woman might continue as long as the issue of the first taker.”

A decided novelty in the law of slavery is the doctrine of emancipation by implication, enunciated in 1821, in the case of *Hall v. Mullin*.³¹ Henry L. Hall, by his will, in 1817, had bequeathed “to Dolly Mullin one hundred and forty-one acres of land” and “two young negroes, one called Joan and the other Aaron.” After bequeathing other negroes by name to other persons, he bequeathed “all the remainder part of my negroes free.” He had supposed that Dolly was already free, for he had sold her in 1810 to her father, Basil, who a month later had executed a deed of manumission to her. Hall also supposed Basil to be free and therefore capable of contracting; for his owner, Benjamin Hall (Henry's father) had in his will (executed in 1803) declared: “I hereby manumit and set free from the time of my decease, my carpenter, called old Basil.” But Basil was more than forty-five years old when Benjamin Hall died, and no slave could be set free in Maryland when above that age.³² Therefore Basil, being a slave, could not buy his daughter Dolly; nor could he emancipate her. The Maryland Court of Appeals held that the will of Henry L. Hall set Dolly free “by implication; . . . it was the intention of the testator that none of his slaves should remain slaves after his death, other than those he named and bequeathed as slaves; . . . without the aid of the residuary clause she would have a right to freedom, under those parts of the will by which property was given to her; her freedom by implication is indispensably necessary to give efficacy to those clauses of the will.” (Johnson, J.) “The testator imagined Dolly was free; she was not free, but

²⁹ P. 81, *infra*.

³⁰ *Johnson v. Negro Lish*, p. 66, *infra*.

³¹ P. 69, *infra*.

³² Act of 1796, ch. 67.

a slave, at the time the will was made, and being a slave, the will operated to give her freedom, and the lands devised to her.”³³ (Chase, C. J.)

II.

In 1642, the date of the first of the cases noted in the following pages, there was already established a Provincial Court which, besides being a court of first instance for all matters civil, criminal, and testamentary for the city and county of St. Mary's, had also appellate jurisdiction over the county courts which were one by one instituted in the province. It consisted of the governor as presiding judge, and one or more members of his council as associate judges. Appeals were heard by the council, often the same men, until, in 1694, a Court of Appeals was created, in which the governor presided ordinarily, and of which the membership differed little from that of the Provincial Court. A High Court of Chancery existed as a separate entity from 1661, presided over by the chancellor or by the governor sitting as chancellor, with, as a rule, some judges of the Provincial Court. This court continued in existence till 1854. The Provincial Court also sat as a court of admiralty. From 1776 on the name Provincial was dropped, and the tribunal previously so called was known as the General Court.

The constitution of 1776 established a Court of Appeals distinct from the governor and council, to hear appeals from the General Court, the Court of Chancery, and the Admiralty Court. Presently a statute provided that it should consist of five judges, three of them judges of this higher court exclusively, the other two to be taken from the chief judges of the three courts just named, with elimination of that one of the three from whose court the appeal had been brought. An amendment of 1805 abolished the General Court, and constituted the Court of Appeals of the six chief judges of the six district courts then instituted. Its sessions were held on the Eastern Shore and on the Western Shore. The constitution of 1851 provided one appeal court of four judges, sitting at Annapolis. That of 1864 gave it a chief judge and four associate judges. That of 1868 gave it a membership of eight, namely, the chief judges of the eight circuit courts among which the judicial functions were then partitioned geographically.

³³ This was a far cry from Maryland's attitude in 1752, when a statute (ch. 1, sect. 3) was passed which made a manumission void that was executed in the last illness. See *Negroes Peter and others v. Elliott*, p. 51, *infra*. The act of 1752 was repealed in 1796.

MARYLAND CASES

Calvert's Covenant, 4 Md. Arch. 189, March 1642. "Leonard Calvert Esq. etc. acknowledged that he hath conveyed and sold unto John Skinner mariner, all those his 3. Mannors of St Michael, St Gabriel, and Trinity Mannor, . . . And that he hath further covenanted to finish the dwelling house at Pinie neck, . . . In consideration whereof the said John Skinner covenanted and bargained to deliver unto the said Leonard Calvert, fourteene negro men-slaves, and three women slaves, of between 16. and 26. yeare old able and sound in body and limbs, at some time before the first of march come twelve-month, at St Maries, if he bring so many within the Capes, . . . betweene this and the said first of march, or afterward within the said yeare, . . . And in case he shall not so doe, then he willeth and granteth that foure and twenty thousand weight of tobacco, be leavied upon any the lands goods or chattells of . . . Skinner: . . . to the use of . . . Calvert and his assignes." ¹

Cornwaleys' Purchase,² 4 Md. Arch. 304, July 1644. "Received of Capt. Tho: Cornwaleys by the hands of S'r Wm. Berkeley Knt. nine pounds sterl: and by the hands of Mr. Cutbert Fennick ninety seven pounds and halfe of beaver, and is for or towards satisfaction of a debt of fifty pounds sterl: for two negroes d'd³ the aforesaid Capt. Cornwaleys."

Duke's Deposition, 4 Md. Arch. 392, June 1648. "Mr Sowth⁴ . . . desyred him to sell him an Indian. This Dep't answered him, he had none to sell. And then he desyred this Dep't to goe with him up to Wicocomoco, and gett him an Indian [girl], and hee would give him content. And upon these speeches they went with the Sloop." "And for what truck they had aboard the sloop . . . they had shooes, and one peice of Broad-cloth." ⁵

Indian Slaves, 4 Md. Arch. 399, July 1648. Bond of Tompson: "The condicion of this obligacion is such, that if Leift Will'm Sowth of Kecoughtan in Virginia, and Rich: Torney of Virg: and eyther of them, shall not within these five next ensuing yeares after date hereof, attempt to take, or carry away any Indian or Indians, out of the precincts of this province, without leave of the Govr. thereof, . . . that then this obligacion to bee voyd,"

¹ Note by Dr. W. H. Browne, editor of *Archives of Maryland*: [vii] "This seems to be the first reference to the importation of negroes into the Province. In this particular case it seems that the slaves were not furnished."

² "First instance noted of a sale of negroes into the Province." Note by Dr. Browne, p. viii.

³ Delivered.

⁴ Probably "Leift Will'm Sowth of Kecoughtan in Virginia," p. 399.

⁵ Lancelett's deposition. *Ibid.*

Paul Simpson v. Hill, 4 Md. Arch. 444, December 1648. "Capt. Edw. Hill covenanted with the compl't to deliver unto him 2 Indian boys . . which he . . hath not delivered, whereby the Compl't is damnified to the valew of 2000 *l.* Tob. and cask "

Mrs. Jane Fenwick's Joynture, 41 Md. Arch. 261, August 1649. [262] "Three negro servants (*Vis.*) Two negro men, and One negro woman, to say, William Allington and Tom: Payne: and Nan: and all their issue both male and Female, . . And for the true and reall performance of this Deed . . I the sd. Cuthbert Fenwick doe bind over . . The sayd Three Negros, and Three other Negros: "

Simpson's Purchase, 4 Md. Arch. 512, October 1649. "Paul Simpson Marriner maketh oath that hee having a Bill from Capt. Edward Hill for the paym't and delivery of two Indians to this depon't . . hee this depon't . . sould the said Bill to George Manners for 500 *l.* of Tob. in Caske "

Meredith v. Daynes, 10 Md. Arch. 114, December 1651. "an action of Defamacion, for that the Def'd reported here that he had heard one Thomas Gutridge in Virginia Say, that the pl't had got one of his Negroes with Child and that he had a black bastard in Virginia, which Report the Complayn't Saith tends much to his disgrace and defamacion which he values at twenty thousand pounds Sterling."

Deposition of Mary Clocker, 10 Md. Arch. 171, June 1652. "about a fortnight before her delivery She . . Said, that her Child was dead within her, and that She did believe It was by the means of a Fright taken by Mr. Fenwick's Negroes "

Re John Babtist, 41 Md. Arch. 499, March 1653.¹ "Whereas John Babtista a moore of Barbary hath pet. for his freedome and hath made it appeare by sufficient prooffe that Mr. Overzee that brought him in did not sell him for his life tyme and having already served Major Thomas Lumbert five yeares The Cort doth order that he shall yett serve two yeares more and then be free or otherwise produce two thousand pounds of tobacco and Caske is to be forthwith payd at the Buck river at Kequotan or Newport News "

Lord Proprietary v. Skigh-tam-Mongh, 10 Md. Arch. 293, September 1653. [294] "two piscataway Indian prisoners" were indicted for the murder of "one Jacob Warrowe a Negro Servant of . . Capt. Gookins and a Child of the Said Negroes about Seven Yeares of age, and alsoe . . Grievously wounded the Said Negroes wife Leaving her for Dead, . . and Stole . . divers Gunns . . [295] the prisoners were Arraigned . . by Interpreters being confronted by Mary Warrow the Negro woman that escaped, . . Sentence passed upon the prisoners; . . to be hanged by the Neck till they were Dead, . . which Execucion was performed the Same Evening accordingly."

Bill of Colonel Yardley, 41 Md. Arch. 254, December 1653. "the Bill of Coll. Francis Yardley and Nathaniell Batts for 5000 *l.* Tob. or Two Indian Slaves" ²

¹ See same, p. 10, *infra*, and *John Babtist v. Colclough*, p. 13, *infra*.

² See *Cornewalleys v. Chandler*, p. 10, *infra*.

Deposition of Cuthbert Fenwick, 10 Md. Arch. 372, April 1654. "during the time of the Said plundering¹ he had not in the house of the Said Tho: Cornwallis any of his Servants Except Negros and one Richard Harvy a Taylor all the rest being either prisoners with Ingle, fled to the Governour or in Armes as Associates to the Said Ingle,"

Re John Babtist, 41 Md. Arch. 499, March 1655.² "This bill bindeth me John Babtista my heirs Ex'rs or Adm'rs to pay or cause to be payd unto Symon Overzee or his Assigns the Sume of Eighteene hund'd pounds of tobacco and Caske this tobacco to be payd at Portoback Creek in the Province of Maryland as Wittnes my hand this 5th March 1655. The m'ke of John Babtista "

Cornwaleys v. Chandler, 41 Md. Arch. 82, May 1655.³ "whereas Coll. Francis Yardley and Nathaniel Batt both of Virginia for a good and valuable consideracion to them in hand payd . . . became bownd unto . . . Cornwaleys . . . in the penalty of five thousand weight of Tob., with cask, for the delivery of Two Indian yowths,"

Deposition of Richard Garford, 10 Md. Arch. 484, March 1656. "that first he was Imployed by John Little to fetch home his Servant Billsberry, and his Indian from the Indian Cabbin, and they would not Come Saying that they had rather live with the Pagans then Come home to be Starved for want of food, Cloathing and have their Brains beaten out,"

Deposition of Elizabeth Potter, 10 Md. Arch. 461, September 1656. "Six yeares ago or thereabouts Mrs. Eltonhead and Mr. Scarbrough made a bargaine for Six Oxen . . . and Mr. Scarbrough was to give Mrs. Eltonhead three Servants for the Said Oxen, two of the Said Servants to be about the age of fifteen or Sixteen yeares and the other a boy the age of him not nominated and her [*sic*] negro "

Testimony of Jacobson, 10 Md. Arch. 560, November 1657. Action of slander. "he heard John Little Say . . . that if Mr. Fran: Stockley were alive he would Justifie that . . . was dishonest with him the Said Littles Indian Boy, . . . And . . . heard Mrs. Little . . . Say, that if the Indian could be Sufferred to take his Oath, he could Say more then any one hath Spoken, and would Justifie "

Attorney General v. Naughnongis, 41 Md. Arch. 186, December 1658. "Naughnongis charged with felonious taking away of One shirt, . . . halfe a Matchcoate, a new payre of Irish stockins, and breaking the Locke of Edmund Phillpotts doare. . . his owne confession evidenced to the Board That hee was Guilty of the fact, Therefore Ordered that the sd. naughnongis be sold, And that out of the price the Country and Edmund Phillpott be satisfyed:" [191] "It is ordered by the Board that Henry Moore have the Indian Naughnongis (he paying for him One Thousand pownds of Tob.) to him the sd. Henry Moore his heyres of assignes for ever,"

Cornewalleys v. Chandler, 41 Md. Arch. 186, December 1658. "whereas Coll. Francis Yardley of Virginia came into this Province and tooke

¹ February 1644.

² See p. 9, *supra*, and *John Babtist v. Colclough*, p. 13, *infra*.

³ See p. 8, *supra*.

up a great Tract of Land att Portoback, whereon he seated divers Negro's to plant: . . . yo'r Pet'r dealt with him, and one Nathaniel Batt for Two Indian Slaves for a valuable consideration in hand payd, to be delivered to yo'r Pet'r in Aprill or May 1654 under the penalty of 5000 *l.* weight of Tob: . . . yo'r Pet'r sent att the day appoynted a Boate and Three men as far as James River to receive the sd. Indians, . . . But received none, . . . [187] my Attorney fearing the exportacion of the sd. negro's, which was then all the visible Estate of the sd. Yardley within this province, who was then allso Deceased in Virginia, Tooke out a new Attatchm't from that power:" The widow of Yardley exported part of the negroes to Virginia.¹

Attorney General v. Overzee, 41 Md. Arch. 190, December 1658. " The Examination of Hannah Littleworth . . . before Philip Calvert Esqr. . . That sometime . . . in September was two yeares, Mr. Overzee commanded a negro (commonly called Tony) formerly chayned up for some misdeamenors by the command of Mrs. Overzee (Mr. Overzee himselfe being then abroad) to be lett loose, and ordered him to goe to worke, But instead of goeing to worke the sd. negro layd himselfe downe and would not stirre, Whereuppon Mr. Overzee beate him with some Peare Tree wands . . . And uppon the stubbornes of the negro caused his Dublett to bee taken of, and whip'd him uppon his bare back, And the negro still remayned in his stubbornes and feyned himselfe in fitts, as hee used att former times to doe, Whereuppon Mr. Overzee commanded this Exam'r to heate a fyre shovel, and bring him some Lard, which shee did, And sayth that the sd. fyre shovel was hott enough to melt the Lard, but not soe hott as to blister any one, and that it did not blister the negro, on whom Mr. Overzee powr'd it. Immediately thereuppon the negro rose up, and Mr. Overzee commanded him to be tyed to a Ladder standing on the foreside of the dwelling howse, which was accordingly done by an Indian Slave, who tyed him by the wrists, with a peice of a dryed hide, And (as shee remembers but cannot justly say) That hee did stand uppon the grownd. And still the negro remayned mute or stubborne, and made noe signes of conforming himselfe to his Masters will or command. And about a quarter of an howre after, or lesse, Mr. Overzee and Mrs. Overzee went from home, . . . there was nobody by, save only Mr. Mathew Stone, and Mrs. Overzee now deceased. And that from the time of Mr. Overzees and his Wifes goeing from home, till the negro was dead, there was nobody about the howse but only the sd. Mr. Mathew Stone, Will'm Hewes, and this Exam'r, and a negro woman in the quartering howse, who never stird out. And that after Mr. Overzee was gone, uppon the relacion of Mr. Mathew Stone, in the presence of Will'm Hewes that the negro was dying, this Exam'n't desyred Mr. Mathew Stone to cutt the negro downe, and hee refused to doe it, Will'm Hewes allso bidding him lett him alone and within lesse than halfe a howre after the negro dyed, the wind comming up att northwest soone after hee was soe tyed up, And hee was tyed up betweene three and fowre o'Clock in the after-noone, and dyed about six or seaven, and was kept till next morning

¹ See pp. 9, 10, *supra*.

before he was buried." Hewes "saw noe blood drawne of the negro, And . . . being willing to help the negro from the grownd, Mr. Overzee having his knife in his hand, cutting the twiggs, threatned him to runne his knife in him (or words to that effect) if he molested him, And that the negro (as he thinks but cannot justly say) stood uppon the grownd, And sayth further That the negro did commonly use to runne away, and absent himselfe from his Mr. Overzees service. . . It is agreed by the Board, And Ordered that Mr. Overzee putt in Bond of One hund'd Thowsand pownds of Tob, to the Ld. Proprietary for his appearance att the next Provinciaall Court, and there to attend the finall determinacion of the same."

Testimony of Job Chandler, February 1659: [205] "the sd. negro runne away, and they complayned to mee that hee lay lurking about the Plantacion, and tooke his opportunity when they were in the feild att worke, or when they were att the Cow pen milking, then would he gett into the howse and into the loft, and steale soe much bread and meate as he thought good and begone. After hee had run this course about three weeks or a month, one of my mayd servants fownd him in an inward roome in my quartering howse Eating hominy out of a Pott, and came running in to acquaint mee with it: But he perceiving that he was discovered, sought to make an Escape, and was got amongst high weeds creeping on his hands and knees But the dogs finding him out, I brought him into my howse, and fownd one of his hands extreame sore, and that one of his fingers was mortified, that it must be cutt of to save his hand and arm from a Gangreene. I examined him how it came, but could not with all the words and signes I could imagine understand from him how it came, For of all humane Creatures that ever I saw, I never knew such a Brute: for I could not perceive any speech, or language hee had, only an ugly yelling Brute beast like. I drest his hand with the best meanes I had, And gave him Victualls to eate, which hee eate as Ravenous as an hungry starved Dog, and after hee had eaten good part of what I gave him hee made signes that hee would begone, But I made signes to him to sitt downe againe. Att length hee gott to the doore, with an intent to be running; but I took a Dog-whip and gave him one lash with it, after which hee came in and sate downe and did not make more profers to be gone. But fearing he might make an escape I sent for a Roape, and tyed one end to the barre of a window and the other end close up under his armes with the knott behind, soe sure and fast, that I did not thinke with both my hands I could sodenly undoe it, and left one of my mayd servants to looke after him having sent for my Brothers Overseer to fetch him home, for I was very unwilling hee should gett away againe, fearing least hee might take some fitt opportunity to doe mee, or mine, a mischeife, for I lookd uppon [him] as a dangerous Rogue, But my mayd not well looking after him, hee with the hand hee could use (or the Divell for him) undid the knott, and hee gott away, which did seeme very strange to mee, having but one hand to doe it; for the other hee could not stirre one finger of it. Some time after, a Pangayò Indian came to my Brother Overseer's Overseer and told him that the Negro was there, and uppon his infor-

macion he went and fetcht him, and brought him to my howse, asking my advice what he should doe with him. I tould him it would bee best to carry him downe to St. Maries, that his finger might bee cutt of, or else hee might loose his arme, or his life, and lent him my wherry to carry him downe advising the Overseer, if hee putt to any shoare, to bind him least hee made an escape. After some time spent, The Jury returned their Verdict Endorsed on the writt, Ignoramus. . . The Prisoner acquitted by Proclamacion.”

Re Bateman, 41 Md. Arch. 269, December 1658. Letter of William Backhouse to “Mr. John Bateman Mercht. in Patux’t River:” “You will find by writings and letters to you of the Sale of the Negros. Pray doe what you can in itt. Mr. Lees Agents if you and they can agree for what Negros are lyving as they were appraysed.”

Cornwaleys v. Fereira, 41 Md. Arch. 223, February 1659. “Some fowle that were shott by an Indian belonging to the sd. Packer,”

Overzee v. Lewis’s Estate, 41 Md. Arch. 230, February 1659. “Capt. Will’m Lewis . . . was indebted to yo’r Pet’r by bill one Indian Slave 2d Novemb’r 1653,” Chandler testified [231] “that the sd. Slave was never delivered or received:”

Freeman v. Meares, 41 Md. Arch. 317, August 1659. Meares, step-father of the plaintiff, “keepeth her Brother as a Servant or slave,”

Burdett v. Morris, 41 Md. Arch. 433, February 1661. “I . . . did see the said bottle of sack in the said Burdett’s pockett . . . but not being able to gett it from him I went to acquaynte the Master and in that tyme he had given it to a negro, whoe called the said Burdett Master, and then I gott it from him thre said negro”

Receipt, 41 Md. Arch. 580, May 1661. “Recd. of Capt. William Batting foure thousand pounds of Tobacco . . . for Mr. Augustine Herman and for all debts or demands Concerning his Negros bought by the sd. Batting”

John Babtist v. Colclough, 41 Md. Arch. 499, July 1661. “The humble petition of John Babtista Showeth That whereas yo’r pet’r hath been dayly troubled by the Attorneys of Mr. Symon Overzee deceased . . . prays . . . that at length he may have some Redress”

Deposition of Thomas Prichard, June 17, 1661: “when this depon’t was Mr. Overzees Overseer at Portoback Mr. Overzee brought one John Babtist up to him in or about the moneth of May 1651 And tould this depon’t whether he would take him in for a Share and he replied noe, his Crop was pitcht And the said Mr. Overzee sayd that John Babtist was his Servant for two yeares or to pay him two thousand pounds of tobacco for his Freedom whereupon . . . Mr. Overzee left him with this depon’t at all Commands as Servant”¹

[500] “Archball Wayhope sworne in open Cort Sayth That he doth Knowe John Babtist to be Symon Overzees servant and that he served him two yeares within a Fortnight

¹ See *Re John Babtist*, pp. 9, 10, *supra*.

“ Ordered that the pl't have his freedome Bill of 1800 *l.* tobacco together with Corne and Cloaths and the def't Costs of Suite ”

Moore v. Fendall, 41 Md. Arch. 471, October 1661. “ The pl't demands an Indian of the def't promist him in Sattisfaccion of another Indian belonging to the pl't sould by order of the def't unto the Queene of Portoback,”

Mackane v. Gerrard, 41 Md. Arch. 476, October 1661. “ Served Mr. Gerrard Six yeares and a halfe and is now one and twenty yeares of age by the aforesaid Indenture hath Eight yeares and a half more to serve which is contrary to the lawes of God and man that a Christian Subject should be made a Slave ”

Nicholls v. Nuttall, 41 Md. Arch. 515, February 1662. Nicholls “ humbly craves an order of this hono'ble Cort for her ¹ freedome soe that yo'r poore pet'rs daughter may not be made a slave ”

Fendall v. Haggett, 49 Md. Arch. 57, February 1662. “ Know all men by these presents that I . . . Haggett . . . do hereby bind my selfe, . . . to deliver unto . . . Fendall . . . Bills of Exchange for the sum of Twenty pownds . . . Being in Consideration for a Servant and other things all-ready in hand received.”

Bill of Exchange, 49 Md. Arch. 136, April 1662. “ This Bill bindeth mee Richard Wraith . . . to deliver . . . unto Mr. George Bradshaw or his order one man servant betweene seventeen and Thirty yeares of age . . . Uppon condition that the said George Bradshaws Bills of Exchange bee payd unto the said Richard Wraith . . . Contayning Twenty five pounds sterling.”

Young v. Slye, 41 Md. Arch. 586, October 1662. “ Ordered that the def't as Adm'r to Samuell Smith pay two thousand foure hundred and forty pounds of tobacco, and that Nicholas Young doe give unto Mr. Robert Slye a bill of Sale for a Negro which was in Consideracion for the aforesd. deb't.”

Abington v. Whyte, 49 Md. Arch. 98, January 1663. “ Jerome Whyte . . . is indebted and hath obliged himselfe to deliver to your Petitioner one able man Servant, and one that your Petitioner shall like of, and doth acknowledge to have received a valuable Consideration for such a Servant, to bee delivered by or before the last day of November . . . [99] Therefore your Petitioner humbly craveth an order of this . . . Court for his servant . . . with the damages . . . susteyned . . . for want of the said servant ”

Abington v. Whyte,² 49 Md. Arch. 142, February 1663. “ The plaintiff, sueth as in his Petition for a Servant as hee shall like of according to the words in his Bill . . . To which the defendant answeres that hee hath already tendred him an able man servant, . . . The vote of the Councill is required Whither or noe it bee thought fitt to Leave the plaintiff to that

¹ “ his daughter Easter Nicholls.”

² See preceding case.

unlimited power . . . to deliver a servant as the plaintiff shall like . . . The major Vote of the Board is, noe. Then the defendant Craves a Jury, to Enquire Whither the man by him tendered bee an able servant, . . . Which was granted. . . John Nutthall . . . sayth that . . . Abington requested him . . . to receive a servant from . . . Whyte . . . And Whyte did send a servant to him by Mr. Powick. And . . . after the servant was in his house, hee enquired of him, what hee was? and how he came into the Country? And the man replied and sayd that he came into this Country to wayte on some Gentlemen . . . And thereupon . . . he told Mr. Powick . . . that he would not accept . . . and give a discharge for him, . . . because he . . . had noe power of Attorney from Mr. Abington to that purpose. . . [143] Then the Jury delivered in their Verdict . . . Wee find the man tendred by the defendant, for the use of the plaintiff, a Likelye man servant to outward appearance. Ordered . . . that the plaintiff bee nonsuited, and pay Costs of suite and Dammages susteyned."

Deed, 49 Md. Arch. 162, February 1663. "I William Greene . . . doe bind my selfe . . . to pay . . . unto John Biskoe and Henry Pennington, . . . Three hundred pownds of good sownd . . . Tob and cask . . . upon the Tenth of November next ensuing . . . And . . . I the said Greene doe bind . . . the whole Estate . . . All cattle, all servants, . . . I the said William Greene have hereunto sett my hand and Seale"

James v. Woolchurch, 49 Md. Arch. 164, April 1663. "The plaintiff declares against the defendant in an action of the Case, for that whereas the defendant by condition dated the 18th day of March . . . was . . . obliged to bee accountable unto the plaintiff for the one halfe part of the profitt, which one man servant of the plaintiffs, . . . left . . . in the defendant's hands . . . for a certaine tearme, . . . should at his calling gett. . . defendant . . . the said servant att other worke . . . than the usuall . . . Trade . . . did . . . the said servant constraine to work att . . . of purpose . . . to defraude . . . his servant without all question, att his owne profession might have far more advantaged his time. . . the plaintiff sayth . . . he is damnified, for his servants being . . . otherwise employed . . . and prayeth Judgment."

Hasley v. Wilde, 49 Md. Arch. 173, April 1663. "plaintiff Sues the defendant . . . the plaintiffe . . . bought of James Eluer a certaine man Servant named Samuell Griffin which Servant the defendant Clandestinely inticed away from the Plaintiffe and the said Servant unjustly does de-tayne from the plaintiffe though the plaintiffe hath . . . demanded . . . his said Servant . . . plaintiff sayeth . . . he is dampnified . . . and . . . Craves . . . to have his said Servant with damages and Costs of suite."

Chysick v. Beckwith, 49 Md. Arch. 174, April 1663. "whereas George Bickwith did Condition with your petitioner for three men Servants and One woman Servant to make a Cropp and . . . Bickwith to finde howsing and dyet . . . For the Servants . . . your petitioner hath performed his Conditions . . . Beckwith hath disposed of your petitioners Crop of tobacco and Seventy barrills of Corne that was wholly due to your peti-

tioner and . . Beckwith . . hath deprived . . petitioner . . both of Corne and tobaccoe . . the humble request . . is . . to Order . . Beckwith to returne the whole Cropp.”

Deed: Bennitt to Brasseur, 49 Md. Arch. 178, April 1663. “I Richard Bennitt . . doe . . Sell and Conveigh unto Mary Brasseur . . eleaven hundred and fifty acres . . together with all the Stock of Servants Cattle hoggs . . [179]The Servants name are . . Thomas Smyth Geo: Davison William Whitehead Thomas Frast and Sarah a negro Woman—”

Hammond v. Veitch, 49 Md. Arch. 51, May 1663. “James Veitch is indebted unto your Petitioner the sum of 2000 lb. of Tobacco and cask, for a woman servant bought by the said Veitch of your Petitioner’s Deceased husband, . . The defendand owneth that he had a woman servant of John Hammond . . before his decease, But sayth that he has allready payd for her, and produced an account in Court intending . . att least to cutt or stop most . . of the . . demand, . . John Jarbo, . . sayth uppon Oath That . . Veitch bought a mayd . . of her. Hammond, And . . Veitch promised . . Hammond goods . . And this Deponent understood that those goods . . were towards the payment for the mayd servant.”

Deed: Calvert and wife to Trueman, 49 Md. Arch. 40, August 1663. “And the agreement is such that the said William Calvert and Elizabeth his wife have acknowledged the foresaid seven hundred Acres of Land . . to bee the Right of the said Thomas Trueman . . [41] And for this Recognition, . . the said Thomas hath given unto the said William and Elizabeth Six men servants.”

Hollingworth v. Wynne, 49 Md. Arch. 395, 1664. “the def’t is Ordered to put in his objections, which are as followeth— . . Walter Pakes and William Price were Evidence as well as Hannah Lee— . . Price was not then Concern’d being Mrs. Lees Servant—”

Indictment of John Holmwood,¹ 49 Md. Arch. 394, 1664. “John Holmwood Called to answer the Grand Jury . . the Board told him that they do not accuse him for the death of his serv’t, but that he did not fulfill the law by Causing a Jury of Inquest to view the Corps, whereupon he delivers in his Answer in writeing on the back side of the Inditm’t . . and saith that he did send to the next Comm’r to informe him of the death of his said servant, . . no p’rson appearing ags’t the said Holmewood It is ordered he be Clear’d *sine die*—”

Estate of John Bateman, 49 Md. Arch. 363, January 1664. “An Appraysm’t of the Estate of John Bateman Esq Late of this province— . . Two Nigro man 5000 lb. tobacco One Nigro woman a childe and a Girle 4000 lb. tobacco”

D’hynoyossa v. Utie,² 49 Md. Arch. 398, January 1664. “Alexand’r D’hynoyossa late Governor of New Amstell aged 35 yeares . . maketh

¹ See Affidavit of Richard Pettybone, p. 17, *infra*.

² See p. 19, *infra*.

Oath— . . That he was in the howse of Coll Nathaniell Utie and told him it would doe better for hime to deliver this deponant his tobacco againe, which he had disposed off, after hee this depon't had received and marked it wth his owne proper marke, which was Contrary to the law of this Country, . . he answered laughing . . what he had done was by Order from the King and that he had past his bill of sale to Abraham Morgan for the Negro in the name of his Ma'tie and as his Ma'ties Attorney he was forct to looke after his Interest and that he knew the Nigro was stole . . I answered him that it would never be prov'd this negro was in the Forte, but that he was a Negro properly belonging to mee the Depon't ”

Hawkins v. Jolley, 49 Md. Arch. 97, February 1664. [98] “ The humble Petition of John Hawkins Sheweth That . . Jolley is indebted to your Petitioner in the sume of forty five Thousand four hundred Thirty and six pounds of Tobacco and Cask, . . That the said Jolley may bee ordered . . to pay . . or uppon default that this honorable Court bee pleased to . . order . . that your Petitioner may bee possessed and enter uppon all his Estate both moveables and immovables, cattle and servants and all other goods . . with Costs of suite.”

Wade and Johnson v. Bachiler, 49 Md. Arch. 128, February 1664. “ whereas Francis Bachiler . . did confesse Judgment . . against one Thousand Acres of Land, . . Twelve head of Cattle, one man servant,”

Deposition of Elizabeth Freeman, 49 Md. Arch. 379, February 1664. “ Elizabeth Freeman . . Saith—That when Mr. Bayley was at St Marys Mr Stapleford being in his Bed in the morning and hearing . . a tap dropt in Mr. Bayleys room hee called one of his servants named Humphery Jones and bid him goe in at the window and open the door . . and further she saith that the night before her mistris Calling her to come in she did not goe presently but when she did goe the doore was shutt and endeavouring to open the doore her mistris held the doore ”

Williams v. Dunch, 49 Md. Arch. 352, February 1664. “ The humble pet'n of Rob't Williams Sheweth That yo'r pet'n hath had Six Servants One Chest . . shipped on board the *Baltemore* John Dunch Command'r which Servants and Goodes were shipped in England by Mr. Rob't Townesend and Consigned to yo'r pet'r and the passages for the Servants and the freight for the Goodes there paid, Wherefore yo'r pet'r humbly Craves Order of this hono'ble Court for the said Goodes and Servants amounting unto two hundred poundes Sterling with damages and Cost of suite ”

Affidavit of Richard Pettybone, 49 Md. Arch. 374, February 1664. “ That concerning Charles Hodges then servt. to John Holmwood who was at the landing of the said Holmwood drowned doth declare that goeing to the meeting and coming to John Holmwoods landing for a passage the abovesaid Serv't sott under the banck with his shirte and his drawers and this depon't desired him to shuffe of the Connue the w'ch hee did and this deponant heard before he came to John Holmwoods howse by a

mile and a halfe that the said servant . . was drowned . . this depon't . . did Chide the rest of the servants to let this servant be drowned ”

Halfhead v. Nicculgutt, 49 Md. Arch. 380, March 1664. “ This Cause being last Court respited . . then being demanded of James Thompson the defend'ts Attorney what he had to say . . that the said Jone Nicculgutt should not serve the pl't one yeare's service more as . . is Claimed, . . his Answere . . is as followeth . . Wee affirme that we have Served twelve yeares And are able to prove it by Evidence. John Boage Sworne in Open Court saith All that I can say . . is that Come May or June next will be 13 yeares agoe since I say . . Jone at the howse of Phillip Lands doeing the worke of a servant att St Marys being that yeare after the Genny Frygott Came in Andrew Robinson sworne in Open Court saith I was a servant in the howse with this wench . . and my Mr. Fox bought her and there was Mast'r Cowrsey Capt. Gwyther and others att Mr. Hattons howse upon the appraysm't of Mr Lands Estate and there was some dispute about me and this wenches service and she was ordered to live w'th Philip Land . . and this wench came over in a new England vessell [381] and last Candlemas day past was 13 yeares since this depon't came into this province and that she came in that same yeare ”

Inquest on Ann Beetle, 49 Md. Arch. 215, March 1664. “ We the Jurors of Inquest being impanel'd by Samuel Chew high Sheriffe . . to view the body of Ann Beetle Servant to Will'm Hunt of the aforesaid County doe find a wound upon her left eye browe and having had it Searched by a Chirurgeon doe find it not mortall but doe . . Judge that she drowned her selfe wherefore wee the Jurors of Inquest Doe indite the said Ann Beetle she not having the feare of God before her eyes of willfully murthuring her selfe and soe give up Our Verdict with One Consent by Our Foreman ”

Robbins v. Dodd, 49 Md. Arch. 196, April 1664. [198] “ This Deponant sayth that about 2 yeares and a halfe agoe hee Came to Mr Gerrards plantacion att West Wood to looke after a Mare that went away from Mr Fowkes and the Servants and Overseere there told Deponant that they saw this Deponants Mare ”

Hawkins v. Jolly, 49 Md. Arch. 205, April 1664. “ Executed by Vertue of an Ord'r of Court . . execution granted . . Executed and apprayed . . One negro Serv't man One ditto woman two ditto Children . . 4 negroes . . 12000 lb. tob: ”

Testimony of Richard Wroth, 49 Md. Arch. 210, April 1664. “ about January 1662, Jno Sheppard Marriner did sell unto Thomas Bennitt One maide Servant by name Sarah Jones for which he past his bill for 1700 lb tob: ”

Testimony of William Bretton, 49 Md. Arch. 274, October 1664. “ William Bretton being called to the Board . . to answere to the Attorney of Robert Ellison of Virgenia, and being demanded by what power hee received a man servant in sattisfaccion of a runaway Servant (by

name James Courtney) belonging to the said Ellison, hee replied he had a power formerly by letter of Attorney from the said Ellison but since lost it, . . . [275] Whereupon Ordered that James Courtney alias Mudge be forthwith sent down to Mr Robert Ellisons in Virgenia, the said Courtney being now resident att the house of Capt Thomas Mannings ”

Re Stephen Cannon, 49 Md. Arch. 275, October 1664. “ Stephen Cannon servant to Mr John Pate apprehended by Wm Nodin att Francis Barnes upon Kent and afterwards run away from Nodin and entertained by the said Barnes, as Mr Richards can testifye one of the Comm’rs of Kent— . . . Whereupon Ordered that an Ord’r be sent up to Kent to Francis Barnes for the apprehending the said Stephen Cannon serv’t to Mr Jno Pate ”

Appraisment of Goods of Thomas Gerrard, 49 Md. Arch. 517, November 1664. [518] “ One serv’t *viz* John Dyatt . . . [£] 14.”

D’hynyosa v. Utye, 49 Md. Arch. 342, December 1664. “ The humble pet’n of Alexander D’hynyosa sheweth That yo’r pet’r for a valuable sume of Tobacco sold Abra: Morgan One Negro to be paid upon the sd Morgans plantacion,”

Grand Jury Actions, 49 Md. Arch. 481, October 1665. “ The Grand Jury came into Court, being agreed upon severall Bills, . . . [485] The other now brought are Whetstons negro, not pr’sentable. . . [486] Jacob Negro Inditem’t for murther, Billa Vera . . . [489] Jacob, negro, presentm’t.”

Trial of Jacob, the Negro, 49 Md. Arch. 489, October 1665. “ Called to the Bar Jacob the negro. The pr’sentm’t Read, wch is as followeth/ The Jury for the Rt hon’ble the Ld Proprietary doe present That Jacob a negro slave and servant to Nathaniel Utye of Spesutia in Baltemore County and to Mary his Wife the 30th of Septembr 1665 in the howse of the sd Nathaniel Utye . . . wth a drawne knife . . . Uppon the afore-named Mary, . . . [490] of his malice . . . an assault did make, . . . wth the sd knife feloniously . . . uppon her right arme strongly did strike and stabb, Gyving her a mortall wound Fowre fingers broad, in the upper part of her right arme, Of wch . . . shee . . . did dye, . . . Anthony Brispo aged 20 years . . . sayth That hee see Jacob the negro stab Mrs Mary Utye uppon Saturday the 30th of Septembr last, about Ten of the Clock in the night, That hee stabbed her wth a knife here produced in Court, That in outward appearance shee was in p’rfect health before hee wounded her, That hee the sd Jacob gave her Two wounds in the Right arme, One whereof was Fowre fingers wide, and tht shee dyed uppon the Wednesday att night following, And further that hee doth beleive that she dyed of those wounds having bled a day and a night. . . Francis Stockett aged 31 yeares or thereabouts sworne and examined this 11th of Octobr 1665 sayth That hee dressed the wounds gyven by Jacob the negro to Mrs Mary Utye . . . Two wounds in her arme, whereof one was fowre fingers wide, And that hee doth verily beleive shee dyed of those wounds . . . The names of the Jury men . . . sworne to view the Corps of Mrs Mary Utye . . . as

is here . . . gyven in their verdict of the cause of her Death . . . That the wounds wch shee received in her arme was the cause of her Death. . . The foregoing Oaths being Read, and that Verdict of the Jury shewen in Court, and Demanded whether Guilty or not Guilty, Hee stands in a manner mute. . . Uppon this matter, . . . the Court fully understood it was Considered That the sd Jacob is Guilty of Petite Treason. [491] Then the Governor gave sentence in these words, You shall bee drawne to the Gallowes att St Maries and there bee hanged by the neck 'till yow are dead."

Calvert v. Wynne et al., 49 Md. Arch. 495, October 1665. "Philip Calvert exhibitts Bill agst Thomas Wynne and Elizabeth his wife . . . Philip Calvert . . . gives the Court . . . to understand . . . That . . . It stands enacted . . . that noe person . . . shall trade barter, commerce, or game, wth any servant, except hyred servants, wthin this Province without Lycence first had and obteyned from his or her Master, Mistresse, Dame, or Overseers, under the Penalty of Two Thows'd pounds of Tob. To bee payd The one halfe to the Ld Prop'r and the other halfe unto the master of such servants or true owners of such goods soe purloyned, gamed, and bartered for, when proved by sufficient wittness, or Confession of the party, To bee recovered by Accion of Debt, bill, . . . Wherein Noe Essoyne Protection or Wager of Law to bee allowed, Yett the aforesd Thomas Wyn and Elizabeth his Wife very little weighing the Act . . . nor in any way fearing the punishm't . . . and before the day of exhibiting this Information . . . wth Frank Indian and dyvers others of the slaves of Philip Calvert . . . bartered traded commerced for Ten poultry or Henns, agst the forme of the sd Act in that Case made and provided, By wch the sd Thomas Wyn and Elizabeth his wife forfeited and lost Two Thows'd pounds of Tob. whereuppon the aforesd Philip Calvert, who followes as well for the Ld Prop'r as for himselfe prays the advizem't of the Court in the premises, And that hee the sd Philip Calvert may have the moiety of the forfeiture aforesd according to the . . . Act . . . As allso that the foresd Thomas Wyn and Elizabeth his wife may come here into Court to answeare in and uppon the premises . . . Writt issued to the sheriffe to have the sd Thomas Wyn, and Elizabeth his wife to the Court tomorrow morning."

Complaint of Balley v. Staplefort,¹ 49 Md. Arch. 498, October 1665. "whilst John Balley was att S't Maries to assist att a Jury, Raymond Staplefort att night caused a Boy his servant called Humphrey Jones to enter att a window, . . . where the sd Boy having entered, opened the Doore, . . . unto the s'd Staplefort, who . . . tooke out . . . goods belonging unto the s'd Balley . . . John Balleys . . . sworne sayth, That himselfe and Raymond Staplefort bought . . . their Plantacion together, That They were to pay equally for it, That the howse was divided, that . . . this Depon't had one Chamber and Two shedds, and Staplefort the other part of the howse/ . . . [501] Elizabeth Freeman . . . sworne sayth, . . . when Mr Balley was att St Maries, Mr Staplefort . . . called one of his servants

¹ See deposition of Elizabeth Freeman, p. 17, *supra*.

named Humphrey Jones and bid him goe in att the window and open the Doore w'ch hee did. Then Mr Staplefort went in . . Mr Staplefort in Mr Balley's Clossett th't shutts w'th a key . . att night she did see Mr Staplefort rip up and breake open the packs of goods w'ch were in the s'd Balleys Hall, shee then looking in att the window of the s'd Hall; . . Thomas Sprigg . . sworne sayth . . Mr Balley come to mee with a warr't . . to make search for . . Balleys goods, . . [503] The Jury went out, . . Not guilty of the Felony whereof hee stands indited."

Woodbury v. Warner, 51 Md. Arch. 338, January 1669. "A writt of Error issued . . directed . . in the plaint between Andrew Woodbury on the behalf of Cap't George Carwen pl't Thomas Warner def't after Judgm't obtained . . and Execution issued and one Jacob a man Servant of . . Warner taken in Execution towards Satisfaction of the debt and damages in the writt . . Thereupon a Writt of Supersedeas the Same day issued . . to Supersede . . Execution and to Restore the said Jacob to . . Warner "

Writ of Ne Exeat, 51 Md. Arch. 329, May 1669. "To the Sheriff . . Compl't is made . . that John Stokes, John Hunt and John Mott do keep and detain divers Servants belonging to John Runnings by him Shipped on the Shipp *W'm and Ann* . . to be transported into this Province and them doth refuse to deliver according to Agreem't by them made wch the sd John Runnings . . hath Exhibited his Bill . . and they . . being strangers and foreigners . . These are therefore to Re[330]-quire . . that you take the Bodys of them . . if found within your Bailywick and them safely keep till they Enter into a Recognizance . . not to depart . . till they . . have Answered perfectly . . to the Said Bill and . . to perform what our . . Court Shall determine . ."

Willson v. Cook, et al., 51 Md. Arch. 22, April 1670. [23] "it appearing . . the defend'ts were ordered not to deliver their Servants or goods to the said Steele but to the said Willson . . that contrary to the said order . . Cooke and Hughes had Sent them away out of the Jurisdiction of this province It is . . decreed that . . Willson do pay . . the full freight due for the said Servants and goods . . with what other Charges is due . . for Necessaries and Cloaths for . . said Servant And . . decreed that . . Cooke and . . Hughes do pay . . Willson . . for the said Servants and goods . . the Ballance . . the sume of Twenty Six Thousand nine hundred and twelve pounds of . . Tobacco and Cask . ."

Order to the Sheriff of Charles County, 51 Md. Arch. 81, June 1672. "Whereas Verlinda Stone widd'w hath come . . in our Cort of Chan'ry . . to p'secute as for her servant to witt Henry Dorman wch Edmund Lindsey took and unJustly detains . . to be returned if the return of him be adjudged Therefore We Charge and Com'd you that y'e Serv't af'd to the sd Velinda Stone Replevyed to be and delivered you Cause and put by Surety . . to answ'r . . Velinda Stone of a plea of . . unjustly detaining of her Serv't . ."

Order to the Sheriff of St maries County, 51 Md. Arch. 103, September 1673. "Whereas John Wahob . . hath . . sufficient Security . . to p'secute as for his Servant George Mills w'ch Abell James . . unjustly detains . . we . . Command you that the Servant afores'd to the Said John Wahob Replevyed . . [104] to answ'r . . John Wahob of a plea of . . unjustly detaining of his Servant . ."

Beedle v. Wells, 51 Md. Arch. 427, November 1673. "That your Pett'rs did . . bring their accion against the defend't to have him come to an account as receiv'r of . . [428] Richard Wells in his life time for . . goods . . and for sev'rall servents sent in also at the same time, which . . goods and servants were . . Delivered by Dunch to the Defend't or his order . . defend't . . pleaded he was never receiv'r of . . Rich'd . . But for want of the Testimony of . . Dunch . . to prove the bills of Lading . . and receipts given for the servants shipped . . and to prove the Deliv'ry of . . goods and servants . . your pett'rs durst not goe to tryall . . Dunch is now arrived and will goe out of this Country before the Tryall . . yo'r pett'rs . . pray . . a spa against . . Dunch to appeare . . to Testefy . . in the said Accion . ."

Penry v. Wells et al., 51 Md. Arch. 438, April 1674. "Chew and . . Taylor . . being appointed Auditors . . of the estate of Francis Wright deceased . . The Said Samuel Chew and Thomas Tailor made their report as follows . . We . . thought fitt . . to meete at the house of John Larkin . . and did give timely notice . . unto the said Compl't and the said def'ts that Wee should be then and there ready to audite their said accompts. . . Thomas Howell did appeare . . with One Wittnesse named John Claver who being examined by Us did take his Corporall Oath that two Negro Servants to the said Wright that is to say One man named Robert and One woman called Mary did dye upon the plantation in the year 1669. . . [440] The Court adjourned until the 12th of May next"

Hatton v. Dent et al., 51 Md. Arch. 445, December 1674. "This cause Standing in the paper of causes ready for heareing upon bill and answer . . This Court . . Doe . . Order . . That . . defendants . . pay . . to . . Richard [446] and Ann Hatton . . twenty thousand five hundred and fifty pounds of tobacco . . and upon payment . . the said bond . . to be cancelled . . This Indenture . . in Consideracion of . . One hundred pounds . . doth grant . . Resurreccion Mannor . . [447] And also all and every the Servants Negroes and all Merchandize Stocks howsehold goods . . and all her estate . . in or to the Said Mannor . . or to all or any the Servants Negroes . . goods . . Rents . . and every part thereof . . [448] to the only use and behoofe of the Said Richard Perry . . And to have hold and enjoy the Servants Negroes . . Stocks and . . goods . . aforesaid . ."

Wells v. Wright, 51 Md. Arch. 165, August 1675. "Whereas by a decree . . in a cause . . Between Tobias Wells . . and John Wright and Mary his wife . . the Co'rt was Clearly Satisfied . . the Court did thereby . . decree that . . Wright and mary his wife do pay . . the

sum of Eight thousand Six hundred Sixty Six pounds of Tobacco . . . Yet . . . Wright and mary his wife had refused to pay . . . whereupon Severall process of Contempt issued . . . [166] But before the said John Wright could be taken . . . he dyed after whose death an attachm't iss'd . . . ag't . . . Mary . . . Whereupon the Justices . . . did order that a Sequestracion Sho'd issue ag't the Estate . . . of . . . Glevin and . . . Wright . . . as also the Goods and Chattells merchandizes Sums of money or Tob'o Servants Slaves Cattle hogs . . . in the possession of her the said mary . . . [167] And that you return Such . . . Certificate to us in our Court of Chan'ry . . . and hereof fail not . . . at our City of St. maries the 29th day of December . . . 1675."

Peighin v. Fulford, 51 Md. Arch. 465, December 1675. [472] "that on the tenth instant Mr Thomas Dade . . . doe goe . . . to the late dwelling house of . . . Fulford, . . . did demand the Freight . . . and there being a man Servant in Fulfords . . . house answered . . . Dade . . . that Fulford and his whole family were gone from thence,"

Edward v. Athey, 51 Md. Arch. 176, March 1676. "Edward writt of Replevin for a man Servant by name of Jno Tosse Calvert ag't Jno Athey"

Parker v. Tilly, 51 Md. Arch. 212, February 1677. "George Parker Replevin . . . ag't Joseph Tilly for one man Servant named Thomas Norris one Woman Servant named Eliza moore all the horses . . . upon the plantacion of the S'd Joseph . . . Came Charles Boteler and Thomas Clegatt who undertooke for George Parker in the Sume of Eighty pounds Sterl . . . the s'd Geo: Parker p'secute his Replevin ag't Joseph Tilly for the unjust detaining of one man Servant named Thomas Norris one Woman Servant named Eliza moore . . . upon the plantacion of the sd Joseph . . . and to make restitution to the sd Tilly if to him Shall be adjudged with damages"

Bowdle v. Boteler, 51 Md. Arch. 204, April 1677. "Thomas Bowdle writt of Replevin ad vic Com Cal ag't Charles Boteler . . . one man Servant by name Jno Tassell"

Wells v. Wright,¹ 51 Md. Arch. 215, May 1677. "To the Sheriff . . . Whereas by a Decree . . . in our Court of [216] Chancery in a Cause . . . between Tobias Wells . . . and John Wright and mary his wife . . . The Court did thereby order . . . John Wright and mary his wife do pay . . . Eight thousand Six hundred Sixty and Six pounds of Tobacco . . . Whereupon the Justices . . . did order that a Sequestracion Should issue ag't the Estate . . . in the possession of the Said mary . . . as all the Goods and Chattells merchandizes Sums of money or Tobacco Servants Slaves . . . [217] and . . . the Said Mary Wright is also Dead and the Said Tobias Wells is Likewise Since dead having left Mary his relict his full and Sole Executrix who is Since Married to Lewis Blangy . . . And the Said Lewis Blangy and mary . . . haveing humbly Supplicated us . . . to Receive the . . . Benefit of the . . . Sequestracion . . . And we being Informed that . . .

¹ See *Wells v. Wright*, p. 22, *supra*.

Mary Wright . . to defeat the Said Decree hath Devised or Given . . the . . Estate to Thomas Francis and Phillip Conner . . We . . appoint you to Enter into Seize and . . Sequester . . also the Goods and Chattels merchandizes Sums of money or Tobacco Servants or Slaves . . or other . . Estate . . [218] And hereof fail not at your peril . .”

Sprigg v. Trueman, 51 Md. Arch. 488, October 1677. [489] “the Compl’t . . shewed that . . he was . . put into the possession of . . lands . . and was att great Charges an Expences in Removeing of his goods Stock of hogs Cattle and servants thither to Seat the same, . . [492] the Compl’t Repayred to . . Def’t . . and earnestly importuned him . . to accomodate the Compl’t wth a seate of Land whereon to employ his Servants . . [495] this Court doth . . order that a writt of Inquiry of Damages doe Issue . .”

Waghob v. Loton, 51 Md. Arch. 213, March 1678. “Tho: Waghob Replevin . . ag’t Jacobus Loton . . one man Servant named Wm. Simpson . . Came William Williams . . who undertook for Tho: Waghob in the sune of 8000 lb. . . the sd Thomas Waghob prosecute his Replevin ag’t Jacob Loton for unjust detaining of one man Servant named Wm. Sympson . . and to make Restitution to the Said Jacob Loton if to him Shall be adjudged with damages”

Sprigg v. Trueman,¹ 51 Md. Arch. 484, April 1678. [486] “the Compl’t Relyeing did not reduce the Articles into writeing but tooke a . . letter from the Defend’t . . whereupon the Compl’t was put into possession by . . Dep’t . . and was att great Charge in building Cleering and Removeing Cattle and Servants thither . . [487] this Court . . Thought not fitt to receede from their former order . . [488] and that the Compl’t proceed . . as . . is directed”

Bland v. Dorsey, 51 Md. Arch. 225, July 1678. “Came Michael Offley . . who became surety for Tho: Bland in the Sume of Six thousand pounds of Tob’o y’t the s’d Tho: Bland prosecute his Replevin ag’t Edwd. Dorsey for the unjust detaining of one man Servant Called Joseph Fletcher . . and to make Restitution to the sd Dorsey if to him Shall be adjudged with damages”

Blomfield v. Vansweringen, 51 Md. Arch. 226, July 1678. “Came Henry Exon . . who undertook for Jno Blomfield in the Sume of four thousand pounds of Tobacco . . the sd Jno Blomfield prosecute his Replevin ag’t Garrett Vansweringen for the unjust detaining of one Servant named James Wilkins . . and to make Restitution to the Sd. Vansweringen if to him Shall be adjudged with damages . . John Blomfield Replevin . . ag’t Garrett Vansweringen for one Serv’t named James Wilkin . .”

Davenport v. Hothud, 51 Md. Arch. 224, August 1678. “Humphrey Davenport Replevin . . ag’t Thos. Hothud for one Woman Servant Called Sheely Donnoughway . . Came Richard Royston . . who undertooke for Humphrey Davenport in the Sume of four thousand pounds

¹ See *supra*.

Tob: that the Sd Humphrey Davenport Should prosecute his Replevin ag't Thomas Hothud for the unjust detaining of one woman Serv't [225] named Sheely . . and to make Restitution to the Sd Hothud if to him Shall be adjudged wth Damages "

Estate of John Deery, 51 Md. Arch. 510, October 1678. " Interrogatories . . First: Did you know John Deery deceased, how long did you know him, what time did he dye, were you a servant to him at the time of his death, or did you live in the house with him."

Haslewood v. Granger, 51 Md. Arch. 526, October 1678. [527] " the Substance of the Compl'ts Bill . . That . . John Avery the former husband . . intending a voyage for England about his then urgent affairs there . . his intencions . . Knowne to . . Benja: Granger who had married the daughter of . . Avery . . Granger became an earnest . . Solicit'r to . . Avery that he and his wife might accompany . . Avery . . And that . . Granger and his wife . . would be very Serviceable to him in assisting him . . aboard the Shipp as alsoe in England . . And that . . Avery . . lent him money to buy himselfe and wife and Serv't and Clothes and for the paying of his passage for him and his wife and two servants and entrusted him with . . Goods of a Considerable value . . [528] Avery dyed before he came on shore Leaving all his money and Goods in the possession of . . Granger . . [529] Said John Avery . . paid Attorneys Fees had remaining Sixty pounds . . and paid for the passage of himself and one serv't maid . . [530] Def't . . agreed with Capt. Walter Dunch for the passage of himself wife and one woeman serv't And . . Avery for himself and one woeman serv't . . Def't Denies . . Avery Lent him money to buy Cloths for himselfe wife and Serv't or for the paying of his owne his wives and two Serv'ts passages . . [531] this Court . . doth . . decree that . . Granger . . pay . . Twenty and foure pounds . . together with . . Tobacco "

Re Burdett, 15 Md. Arch. 227, March 1679. " his Lspps [Lordships] Negro Boy Peter was sent away in all haste to St. Maries who was seene to ride very hard being sent as was supposed for his Honor the Chancellor that the Chancellor was seene to goe back with the said negro " [230] " the Lord Prop'ry had thereupon taken his Negro Peter and was gone up to the Governor's house,"

Haselwood v. Granger,¹ 51 Md. Arch. 235, March 1679. [236] " John Haselwood maketh oath that . . he . . did . . deliver unto Mary Granger wife of the defend't Benjamin Granger . . a Writt of Execution . . directed to . . defend't . . that . . about three Weeks after the . . decree . . the sd . . Granger did privately . . to defeat the p'lt of the benefit of the Said Decree by Some Deed . . Sell unto Jo[hn Pol]lard . . all his . . cattle . . household Stuff Land and Tenements . . and the Sd John Pollard is now in possession . . and Carryed away the Corn and Tobacco privately by night . . And . . the Said Pollard Long before he bought either Land or Goods was privy to a maid acquainted with the

¹ See *supra*.

Said decree and when he heard thereof . . he Sent for Granger and his wife to Lye in thereat his house and . . they made their bargain and Granger . . did not Stay . . but made Phineas Blackwood a person Servant or Retainer to Pollard his Attorney to acknowledge the Deed and went [237] his way for Virginia,”

Bland v. Dorsey, 51 Md. Arch. 544, October 1679. “ Bland and . . his wife exhitted their bill . . [545] against . . Dorsey and . . his wife and others . . That Dorsey and his wife Entered upon the plantacion awarded to the plaintiffs and there possessed themselves of the proper personall Estate of the said Thomas [Bland] of the Value of one hundred pounds sterling with Two servants, . . [546] That the Defendant Edward [Dorsey] and Compl’t Thomas did submit all differences to the award of the Chancellor who not onely as Arbitrator but as Judge Testamentary declared the Will void . . That . . Edward was attorney to the Compl’ts . . that . . Edward was ordered to pay unto . . Thomas Tenn Thousand pounds of tobacco . . That . . Defend’ts and the plaintiffes entered into bonds of arbitracion . . That the arbitrators made such award as in the said bill, . . That these Defendants allowe of Eighteene thousand . . pounds of tobacco for goods delivered and for a servant named Fletcher Eight hundred pounds of tobacco . . [547] That the Defendant gave her bond for sixty thousand pounds of tobacco . . and deneye they possessed themselves of any the p’sonall Estate of . . Thomas or carryed away servants belonging to the said Thomas, But confesse the arbitrators delivered . . bonds . . That these Defend’ts entered upon the plantacion . . and upon the servants stock and Cropp, . . And deneye . . That the Compl’ts Wanting a Woman servant did Exchange a man servant named Booth to work for these Defendants soe long as the Woman servant should stay and work with Compl’ts, and the said Woman servant belonging to . . Thomas, . . [548] and deneye that they deliver the servant named Fletcher in Lieu of the Servant named Wallet . . and deneye . . that the Defendants have Cutt down the Timber from of the plantacion awarded burned up the fencing . . and the Defendants with Two Children and foure servants were main[549]tained . . and denyes that he . . Thomas detained anything . . That the Cropp upon the Plantacion . . By award belongs to . . Thomas hee haveing built and fitted the houses found the sarvants Cloths and p’vission for that yeare, . . And deny they Exchange Booth for a woman servant but that the Defend’ts Kept the said servant with the sarvant named Spize against the will of this Compl’t, as also one other servant named Fletcher for wch this Compl’t brought a replevin . . and . . said Cause . . comeing to a hearing . . This Court . . doe . . Decree, . . [550] that . . Thomas bee possessed of all and singular the pr’mises . . and that the accompt of . . Thomas and all other matters betweene . . Bland and Dorsey . . hereby referred . . to . . Darnall and . . Jowles to . . state the same, and to . . report to this hono’ble Court . . att Saint Maryes the Tenth day of February next, . . And that Commission Issue out of this Court to impower them accordingly.”

Re Barree, 15 Md. Arch. 271, February 1680. Barree "called to Capt. Coodes Negro for the Knife which they had caused to be taken from him over night,"

Re Indians, 15 Md. Arch. 400, August 1681. Letter of Rand. Brandt: "The Forreigne Indians hath a Fort above the Eastern branch neere the Falls of Pottomock, and that four of Mr. George Brents negros Runn-aways was taken by them and gives relation thereof haveing made their Escape."

Re Indians, 17 Md. Arch. 23, September 1681. Letter of Francis and Gassaway: "at a Plantation of Major Welch's the Indians have killed a negro and wounded with Tomohawkes two English men," Letter of Francis: "five Indians appeared and . . . runn after a negro man and killed him and wounded another,"

Trial of Capt. Josias Fendall, 5 Md. Arch. 312, November 1681. Deposition of Gard: [324] "Why said I if a man Killed a Negro he will be hanged."

Petition of Edward English, 17 Md. Arch. 96, May 1682. Petition for freedom. "Came Edward English negro and exhibited this his *foll* petition . . . Mr. Henry Johnson after the decease of Coll. Nathaniel Uty did marry with the widow of the Sd. Uty, and haveing the Estate of the sd. Uty in his possession at disposeing, your poore Petitioner being still a Servant to the Estate of Coll. Uty and under servitude to Henry Johnson; the said Johnson did voluntarily give your Petitioner from under his hand in writeing . . . on the Tenth of Aprill 1677: which sd. writeing . . . did specifye the tyme which was five yeares from the tenth day of Aprill 1677: to the tenth Day of Aprill 1682: which your Petitioner hath fully Completed, and duely served to the Tenor of his writeing which he gave me freely in token of his love he bore me, for which your poore Petitioner being borne and baptized in your Province in the feare of God and doe learne to read the Gospell hopeth your honor will be pleased to consider your poore Petitioner and that he may have his freedome according to his Masters will."

"Ordered that the Commissioners of Baltemore County Court, in Court sitting take the petition into their Consideration, and doe therein as to Justice appertaineth with due regard had to the Orphan to whom the Pet'r (as this Board is informed) of right belongeth."

Re Makeele, 17 Md. Arch. 350, January 1685. "in the close of Evening came 4 men (*viz.*) One Roger Makeele, one called Mr. Smith, one other white man, and One negro came to the boate, . . . all the 4 men being visibly well armed with gunns and swords," [351] "Roger Makeele late an Inhabitant of the Collony of Virginia with severall others his confederates and Accomplices . . . infest this Province as Pirates and Robbers,"

Cassock's Petition, 17 Md. Arch. 459, March 1686. "That whereas your Honors humble pet'r at a Court held . . . 1685: was presented by the grand Inquest for the body of the County . . . for dealeing with some

negros (belonging to the hon'ble Coll. William Digges Esqr.) for two bushells of Indian pease, for which your pet'r did honestly satisfie and pay the said negros, And whereas . . . Digges . . . did remit and discharge your pet'r yett your Honors humble Pet'r was prosecuted in the said Court . . . and . . . was Fined one thousand pounds of tobacco," [460] "The fine . . . wholly remitted as to his Lsps [Lordship's] part thereof,"

Order of Council, 8 Md. Arch. 48, October 1688. "That the severall Negroes this last provinciall Court tryed and condemned and (upon the happy news of the birth of the young prince) lately pardoned be returned to their severall masters, Their masters paying and discharging their just Fees, and the said Negroes to serve their said masters as slaves and as if they had never beene condemned and pardoned as aforesaid." [49] "That the two Negroe men lately condemned have their pardon in due forme as others have had."

Lewis's Case, 8 Md. Arch. 306, April 1692. "as to one other Prisoner named Lewis a Mulatto convict for breaking open a House Chest etc. and stealing from thence several Goods etc. for which he also lyes under a Sentence of Death, Resolved also that his Execution be at present suspended and referred to further Consideration, with such Time as the Attorney General may have thoroughly perused and considered the Indictments and other Process against him," [310] "The Attorney General . . . finds the Charge to be mean, and but for a very small Matter whereupon . . . It is . . . ordered that the said Mulatto remain in Custody of the Sheriff of St. Marys County until the first safe convenient Opportunity shall present for his Transportation, and then to be transported to some Other of their Majestys Plantations as an Exile and there to be sold and disposed off [*sic*] to the most Advantage, and Returns Thereof to be made to the said Sheriff for the Satisfaction and Discharge of the Charges accruing by his Imprisonment "

[314] "Ordered that Lewis the Mulatto Convict be safely conveyed . . . into the hands and Possession of Captain Robert Mansell bound for Barbadoes by him to be sold and disposed of there to the most advantage "

Darnall's Petition, 8 Md. Arch. 311, April 1692. "as to his Complaint concerning his Negro woman set free by the County Court of St. Marys County, . . . this Board does not think it proper to intermeddle therewith, but leave him to this Remedy at Law if he have been aggrieved: "

Plummer's Petition, 8 Md. Arch. 352, August 1692. "whereas your Petitioner almost two Years since hath had one Daughter, who unfortunately having too much Familiarity and Commerce with a Certain Negro Man was supposed by him to have a Child, . . . now since her supposed delivery the Justices . . . have laid on him [your petitioner] a Fine of six thousand pound of Tobacco the like President was never known of before," [356] "The Petitioners fine is remitted to five hundred Pounds of Tobacco,"

Re Kemble, 8 Md. Arch. 366, September 1692. "Luffman carried away of Robert Kembles Estate . . . three Slaves." Letter to the Governor of

Virginia: [367] "a horrid murder some time since committed upon the Body of one Robt Kemble . . . by Abigall his wife, one William Luffman (who hath since intermarried the said Abigall) and Jack a Negro Man slave belonging to the said Kemble with other confederates, . . . and being . . . informed that the said Luffman, his wife and the Negro aforesaid the principal Actors therein, together with a Negro woman named Sue and a Negro Child, . . . are apprehended . . . in the custody of . . . high Sheriff of Princes Anns County in Virginia . . . I have sent thither a Boat and four able Hands . . . under the conduct of John Kemble . . . to receive and convey hither the said Criminalls "

Re Collins, 8 Md. Arch. 382, October 1692. "A Servant Boy . . . accused for the murder of two Negroes but cleared "

Carse's Petition, 8 Md. Arch. 427, November 1692. "Carse Gent. late high Sheriff . . . having . . . seized and taken in Execution a Negro Man of Madam Elizabeth Calverts upon a Judgment obtained by Mr. John Rogers Merchant in Plymouth against the said Elizabeth Calvert, the said Negro by instigation and Advice of some Persons made his Escape . . . and is harboured and lyeth lurking about the plantation of the said Calvert . . . Ordered that Robert Mason Gent. now high Sheriff . . . do with such Force . . . as he shall think most fit . . . forthwith . . . take into his custody the said Negro "

Re Blackiston, 20 Md. Arch. 184, November 1694. "The said Accountant chargeth herself with . . . the third part of the condemnation of the ship *Margaret* . . . Parcell of Negro's Appraised at 103 *lb.*"

Willy's Petition, 20 Md. Arch. 227, March 1695. "one Thomas Jones had knowingly bought of Capt. Thomas Hill Commander of the Ketch *Adventure*, a couple of Negro's which the said Hill had brought clandestinely away from Barbado's contrary to Law, therefore prayed that the same might be again restored to the Right owner, . . . Jones in Answer to the said Petition . . . signified that he did purchase of the said Hill two Negro's one for 7600 l. of tob. and the other for ten Thousand p'ds of tob: which was by him duely paid, withall Setting forth that after his purchase of the same made, he understood the said Negro's did belong to a Plantacion in Barbado's and had a hand in the Plot, therefore were sent on Board the said Hills Vessel to be hid by two of the Seamen and were Accordingly hid, Unknown to the said Hill untill two days after his departure from Barbado's, as the said Hill told the said Jones, And further said that to secure himself of the hazard of their Lives, he would dispose of them, And that if the said Jones would not keep them he the said Hill had Chapmen enough for to take them off his hands."

Tench v. Chew, garnishee of Chappell, 1 American Legal Records (Md.) 4, May 1695. "Command was given the Sheireffe of Ann Arrundell County that he Should attach any the Goods Chattels or Creditts of Alexander Chappell if they should be found in his Balewick to the Value of Nine thousand Four Hundred and Ninety pounds of Tobacco . . . to satisf[i]e Unto Thomas Tench . . . a certaine Debt . . . the said Shriffe

. . made Returne of his Said Writt Endorsed *Vizt* Attached [5] in the hands of Joseph Chew Two Negroes Per me. . . Thereupon the Same day the Said Joseph Chew being called to Shew cause why the Said Negroes attached in his hands as afore Said ought not to be condemned for Satisfaction of the Judgment afore Said according to Law. And the said Joseph Chew . . ma[de] his appearance and by Kenelme Cheseldyne his Attorney Saith that the said Thomas Tench his attachment afore Said, nor any Condemnation ther[e] upon not to have for that he Saith that the Said two Negroes are the proper Negroes of him the Said Joseph and by him Bought for a Valuable consideration and *Bonâfide* paid For—and this he is ready to Verifie and thereupon Prays Judgment. And the said Thomas . . Saith that the goods . . were the proper Estate [of] the said . . Chappell and were not bonâfide and without fraud bought and paid for by the Said Joseph and this he prays may be enquired of by the Court. And the Said Joseph Saith that the Said Negroes ought not to be condemned as afore Said for that they are the proper negroes of . . Joseph an[d] bought for a Valuable consideration and *bonâfide* paid For—and of this he p[uts] himself upon the Country:—And the Plaintiff also. . . and the Jurors impannelled being called likewise Came . . who being elected tryed an[d] Sworne to Say the truth in the premises upon their Oath's doe Say, Wee . . doe find for the Plaintiffe. . . [6] It is therefore Considered by the Justices here the Same day and Year . . that . . Said Negroes . . be condemned for and in Satisfaction of the Debt and Cost in the Attachment aforse Said Specified according to the Act of Assembly . . And the Said Joseph Chew . . cometh into Court here and Saith that . . in the rendring of the Judgment . . it is . . Erred . . That . . the Said Thomas Tench . . Sued out an Attachment . . to the Value of Nine thousand Four hundred and Ninety pounds of Tobacco which is 2372 lb. of Tobacco more then the Summ recovered on the Judgment . . [7] For if an Execution doe issue out for more then the Judgment the Same is Void and Erronio[us] in Law . . Command was given . . to argue . . the Same . . and . . it is the Judgment of this Cour[t] . . that the Said Error . . is a Sufficient Error in Law: . . that the Judgment of the Provinciall Court . . be Set a Side and Reversed, and that the Said Joseph Chew Garnishee . . be unto all things . . restored; And . . that . . Chew recover against . . Tench . . Seaven Thousand Nine hundred and Twenty Four pounds of Tobacco by the Court here adjudge[d] for his Costs and Charges in this behalfe laid out and Expended, and tha[t] the said Joseph Chew may have thereof Execution.”

Hawkins v. Lynes, 1 American Legal Records (Md.) 17, August 1695. [20] “Henry Hawkins . . levyed . . his plaint against Philip Lynes . . That he render unto him . . Thirteene Thousand two hundred Eighty and one pounds of good Sound Merchantable leafe Tobacco and Cash . . And the Sheriffe now returneth that . . Philip Lynes is not to be found . . [21] It is Commanded the Sheriffe that of the goods . . of . . Philip Lynes he Attach the Summe of Fifteen thousand five hundred thirty and four pounds of Tobacco . . for . . Henry Hawkins . . And the

Sheriffe now returneth that he . . . attached . . . one Negro Woman appraised at Six Thousand five hundred pounds of Tobacco . . . [22] Whereupon . . . Henry Hawkins prayeth Condemnation and Execution against . . . Henry Thompson of the Said Negro Woman . . . Therefore it is Considered that the Said Negro Woman . . . be condemned . . . And that the Said Henry Hawkins have Execution against . . . Hen: Thompson [23] of the Said Negro Woman . . . And Whereupon . . . Henry Hawkins . . . under take to make restitution to . . . Philip Lynes of the Said Negro Woman . . . [24] Soe . . . Attached and Condemned If he . . . Philip Lynes Shall . . . within one year and a day Come here . . . and make it appear that . . . Henry Hawkins . . . is Satisfied his Demand . . . or Shall otherwise . . . barr . . . Henry Hawkins of the Same . . . Upon a writt of Error brought by the Def't to correct Errors . . . Upon an Attachm't . . . [25] Which Attachm't illegally . . . issued . . . for these reasons. The Act of Assembly . . . Did Enact that . . . no attachment Should issue . . . before a Writt . . . be first made out . . . and in case any Writt . . . shall issue . . . against any person . . . absent out of this Province in Such Case . . . then the pltt: leaving a Cobby of the Said declaration . . . at the house where the Defend't absent did last reside . . . [26] The Said Plantiffe hath failed in his Duty . . . The Judgm't is only for . . . 13281 lb of Tobacco . . . and the Attachm't is for 15534 lb of Tobacco . . . and So . . . Void in Law. . . [28] the Errors . . . being fully argued . . . it is . . . Considered that . . . Philip Lynes Recover ag't . . . Henry Hawkins . . . two thousand and twenty pounds of Tob'o . . . for his Costs and Charges."

Re Abington, 20 Md. Arch. 355, December 1695. Abington's administrator had "in his hands, Effects in Debts, Mortgages Negros', Servants and Cattle etca. to the Value of above 2000 *l.* sterl."

Reprieve of Ann Smith, 20 Md. Arch. 461, July 1696. "Ann Smith Spinster . . . who was lately Indicted tryed and Convicted for murdering a Negro Boy;" [460] "Reprieved, but that the thing be kept private . . . untill She has made her Speach at the place of Execution, understanding She has Something which burthens her Conscience to discover, which she deferrs till then."

Blockiston v. Jeoffrey a Malatta, 1 American Legal Records (Md.) 43, November 1696. "It being signified that the Defendant is Run away, therefore this Cause is dismissed;"

Re Indians, 23 Md. Arch. 145, June 1697. "the Emperor [of the Piscataway Indians] . . . Signified that tho they were not Guilty of the murder of the Negro,¹ yet for peace and out of their affection to the English they would give reasonable Satisfaction, . . . Eighty Buck Skins, . . . induced us . . . to abate them Twenty Skins. they paying Sixty in two Years,"

Blakiston's Administrator v. Copley's Administrator, 1 American Legal Records (Md.) 82, October 1697. [84] "Thomas Tench Esqr. Adm'r

¹ Perhaps "Mr. Stodarts Negro boye." *Ibid.* 261.

of all the goods and Chattells of Lyonel Copy Esqr. dec'd was Attached to Answer unto Elizabeth Blakiston Adm'r . . of Nehemiah Blackiston Esqr. . . [85] The Estate of Lyonel Copley Esqr. deceased to the Estate of Col Nehemiah Blackiston Dec'd is Dr . . [86] To the Kings 3d of Negroes and 25 Per Cent Advance 42 *ll* 15 *s* . . [87] By 2 Negroes of Coll Copleys Estate 45 *ll* . . The Estate is Dr in Tobb'a . . To paid for Lancaster Betty 4000 *ll*”

Denton v. Mason, 23 Md. Arch. 508, August 1698. “Mason had sold her late husband . . one Negro man slave a white Woman and Mulatto Child which said Child by the Law of this Province then was and now is a Servant belonging to the Ministry of King William and Queen Mary parish . . until it should arrive at the Age of thirty one years and that she the said Mrs. Denton was threatned by the principal Vestryman of that Parish to be Sued for the same”

Re Panquas, 25 Md. Arch. 150, May 1703. “Came Panquas an Eastern Shore Indian at Nanticoke and Commander there and Complained that his Cabbin had been broken open by a certain Negro . . from whence the said Negro had Stolen divers goods of a considerable value which the said Panquass mentioned part whereof were found upon him and were restored the other having been made away by the said Negro for which he demands sixty nine Drest deer Skins but . . [151] he being Offered Sixty Doe Skins says if they be good ones he will be Satisfied.”

It was ordered that the owner of the negro “pay the said Sixty drest Doe Skins to the said Panquass . . and is hereby Ordered to punish the Negro by whipping or otherwise in case of Refusal he is to Commit the Negroe to Goal to be prosecuted in the Provs. Court for that Offence”

Round v. Macklure, 1 American Legal Records (Md.) 115, March 1709. “Command was given the Sheriff . . that he should take William Macklure . . so that he have his body before the . . Court . . to answer unto William Round of Somerset County . . William Round . . complains that . . William Macklure . . stood indebted unto him . . in the full Sume of Two hundred Fifty three pounds one Shilling and three pence sterling . . and other dues as by A perticular Account . . [116] To overcharged for his two Negroes that we had no occasion for but thirty days and desired by the Master to take them on shoar for which he charges Sixty five days at 1 *s*: 3 *d* per day each . . 04 £ 01 *s* 3 *d* To the dyet of those two negroes We having no business for them 35 days . . 02 £ 6 *s* 8 *d* . . [117] To the dyet of Six Negroes 3 Months and Eight days as per the Masters oath at 20 each per Month is . . 22 £ 10 *s* 0 *d* To the freight of his Negroes Rum Sugar Mollasses and Salt he forcing the Ma'r to his own prizes which power ought to be paid there according to the custom and usage of the place comes to 71 £ 14 *s* 2 *d* which if laid out there according to my possitive orders to him and the risqs being equally mine and if so done I reasonably charge double but referr to better Judgments . . 143 £ 08 *s* 04 *d* . . [118] Command was given to the Sheriff . . that he should attach . . the goods . . of Will'm Macklure . . the Sheriff . . makes returne that he has Attached . . to

the Vallue . . . [119] It is therefore Considered by the Court . . . that there be condemned . . . the Summe of Two hundred And twelve pounds Nineteen Shillings and One half penny Sterling . . . Afterwards . . . came . . . Will'm Macklure . . . and files his Reasons for Reversall of the Judgment . . . No Security . . . appears to be given for restitution Adjudging the Condemnation . . . [120] And now . . . the whole proceedings . . . being read and heard . . . It is . . . considered that the Judgment . . . be . . . set aside . . . And that Writt for Restitution Issue."

Re Greenfield, 25 Md. Arch. 382, February 1722. "your Declarator serv'd a writt of *Retorno habendo* . . . upon six Negroes . . . which Negroes were appraised . . . at one hundred fifty nine Pounds"

Re Andrews, 25 Md. Arch. 390, July 1722. "a Complaint made against him for having sold or otherwise disposed of an Indian Boy a Son of one of our Friend Indians . . . confesses that an Indian Boy named James did in Consideration of five Pounds in hand paid a Horse Bridle and Saddle and two Suits of Cloaths, indent to live with him the said Andrews as a Servant for the term of thirty years and that he sold the said James to a Gentleman in Philadelphia . . . for the sum of fifteen pounds, the said Andrews further says that it is a Customary thing in Ackamack . . . in Virginia for the Indians to work among the Inhabitants and to indent with them for a Time or Term of years, and that he had indented with the said James in Virginia not in Maryland, . . . And it appearing . . . that . . . Andrews since his Commitment had not only Satisfied the said Indian Congee but also the King and chief men of the nation to whom the said Indian Boy did Belong and also that he had already suffered upwards of three Months Imprisonment . . . Resolved . . . that the said Marcus Andrews be fined . . . five hundred pounds of Tobacco . . . and imprisoned in the publick prison at Annapolis for the space of one day"

Parker v. Mackall, 2 Bland 62 n., January 1734. [63 n.] "Got into his possession . . . slaves, one of whom was an expert carpenter and cooper," Defendant's answer: [64 n.] "that the mulatto fellow Ned . . . was an ordinary carpenter and cooper, from whom the defendant received no other benefit then from an ordinary slave;" Report of the master in chancery: [66 n.] "I likewise find that the value of the profits which might have been made of the mulatto man called Ned, . . . for five years and one quarter, which time the defendant had the said Ned in his possession, did amount unto the sum of £105 gold currency, . . . which I have estimated at the rate of twenty pound, gold currency, per annum; . . . I have allowed the defendant for maintaining a negro girl . . . at the rate of 300 pounds of tobacco per annum; which, for the first five years therein mentioned, does amount unto the sum of 1500 pounds of tobacco; the said girl not being able then to work for her maintenance."

Young v. Williamson, 1 Har. and McH. 145, May 1738. "Elizabeth Bourne, by her deed-poll dated the 28th March, 1707, gave to the plaintiff the negro in question. . . [146] the defendant purchased him for . . . forty pounds, on the 3d of November, 1727,"

Re Negro Bess, 28 Md. Arch. 137, May 1738. "a Certain Negro named Bess the Slave of . . . John Beale" was convicted "for feloniously attempting to murder with poyson . . . her Master" and was sentenced to death.

Re Negro Sampson, 28 Md. Arch. 137, May 1738. The council advise that "Negro Sampson a Slave . . . now under sentence of Death" be pardoned.

Re Chew, 28 Md. Arch. 156, January 1739. "Norris made a Complaint to your Complainant as a Magistrate against a Negro of Mr. Samuel Chews . . . that the said Negro did in a most violent inhumane and barbarous Manner assault wound and beat, a Negro Woman of his the said Norris's so that of her Life it was despaired: Upon which Complaint your Compl't issued his Warrant against the said Negro, notwithstanding which the said Chew stood in Contempt and skreened his Negro from Justice until the said Norris applied himself unto Mr. Dulany, . . . [157] In some short Time after . . . Plummer made another Complaint . . . agt. three of the said Chews Negroes, . . . that they had stolen a Parcel of Turkeys from him, whereupon Your Complainant issued his Warrant against the said Negroes," but Chew "demanded a Sight" of the warrant, "and immediately he put it in his Pockett, and would not . . . suffer the Constable to apprehend his Negro's." Chew answered that he told the constable: [158] "I would take Care they should appear before Mr. Smith the Ensuing Tuesday at the Church . . . and accordingly I caused the Negroes to go thither, but Mr. Smith happened not to be there, and it was almost night and very cold and One of the Negroes barefoot, and the rest very thinly clad, and therefore I ordered them home; . . . the same Constable afterwards apprehended the Slaves and carryed them before Mr. Smith, who ordered them to be corrected according to Law."

Re Jones and Negro Isaac, 28 Md. Arch. 155, February 1739. "a special Commission of Oyer and Terminer . . . had passed Sentence of Death upon . . . Jones and Negro Isaac the Slave of . . . Mouall for a Burglary and Robbery by them committed; and that they also passed Sentence of Death upon Negro Jack the slave of . . . Norris for a Murder by him committed; and it appearing . . . that the said Negro Isaac had bore a good Character and was a real Object of Compassion . . . It is therefore the humble Advice of this Board to his Excellency, that he would be pleased to grant a Pardon to the said Negro Isaac; . . . which Pardon . . . his Excell'y ordered accordingly."

Re Negro Pompey, 28 Md. Arch. 161, March 1739. "Negro Pompey and Negro Indey two Slaves belonging to . . . Plater" had been convicted "for conspiring to poyson the Overseer Clerk and Gardiner of the said Mr. Plater;" The Board advises "his Excellency that he be pleased to order Warrants to issue for their Execution"

Re Negro Robin, 28 Md. Arch. 181, August 1739. "a Report . . . by the Justices . . . of their having passed Sentence of Death upon a Negro Man named Robin the slave of Mrs. Eliz. Beale Widow, convicted of

Burglary, and also of their having passed Sentence of Death upon a Negro Man named Robin the Slave of Mr. John Walmesley convicted for ravishing a White Woman;" The Board advises "His Excellency that he be pleased to order Warrants to issue for their Execution . . . and forasmuch as the Slave of Mr. Walmesley has been a most notorious Offender that he be hung in Chains 60 yards from the Gallows to the Westward of the Old Orchard."

Re Negro Conspiracy, 28 Md. Arch. 188, January 1740. "Depositions of several Negroes in Prince Georges County relating to a most wicked and dangerous Conspiracy having been formed by them to destroy his Majestys Subjects within this Province, and to possess themselves of the whole Country;" The Board advises "his Excellency that he be pleased to issue a special Commission of Oyer and Terminer for the speedy Tryal of the said Offenders; and he would be pleased likewise to order the Colonel of the said County to keep a Guard of 12 Men, . . . at the Prison . . . until the Time of their Tryal, and if any of them should be convicted, until the Day of their Execution,"

Re Negroes, 28 Md. Arch. 257, April 1742. "a Report made . . . by the Justices . . . of their having passed Sentence of Death . . . upon Negroes Seamore, Cesar, Charles, Ben, Cooper, Mol and Marlborough on clear Evidence for the Murder of Jeremiah Pattison their Master, It is the humble Advice of this Board to his Excellency that he be pleased to order Warrants to issue for their Execution"

Re Negro James, 28 Md. Arch. 283, August 1742. "a Report . . . by the Justices . . . of their having passed Sentence of Death upon two Negro Men, named James and Zeno belonging to Mr. Henry Hawkins for Felony, and also a Recommendation . . . that the abovementioned Negroes are Objects of Mercy, they not having before this Instance been charged with any Felony; . . . Pardons . . . issued accordingly"

Woodward v. Chapman, 2 Bland 68 n., December 1742. [69 n.] "the administratrix did sell . . . several negroes . . . Sarah and her sucking child, Jacob, Boson, Betty, Boson [*sic*], ailing, and Beck, for £162 sterling; which were appraised to £140 current paper money."

Re Negro Jack, 28 Md. Arch. 302, June 29, 1743. Sentence of death had been passed "on two Negroes One named Jack, the Other Harry convicted . . . upon very clear Evidence of wilfully murdering an Indian Man; . . . Advice of this Board to his Excellency . . . that they be hung in Chains, . . . ordered accordingly. . . Sentence of Death . . . upon a Mulatto Boy named Jack the slave of Mr. Daniel Carrol for breaking a Stable and Stealing a Mare; . . . Advice . . . to grant a Pardon to Mulatto Jack . . . ordered accordingly."

Re Negro Ishmael, 28 Md. Arch. 386, April 1747. "Record . . . of the Conviction of a Certain Negro Ishmael and Negro Benjamin . . . for Horse stealing, . . . Pardons issued"

Re Lamb, 28 Md. Arch. 388, April 1747. "Report . . . by the Justices . . . of their having passed Sentence of Death . . . on Lamb a Servant to

Dr. Andrew Scott . . for the murder of a mulatto Slave called Nacey, and that It appeared . . to be a murder of a very barbarous Nature, without any Provocation being given by the unhappy Slave who lost his Life; . . Advice of the Board to his Excellency that he be pleased to order a Warrant to issue for the Execution ”

Re Negro York, 28 Md. Arch. 399, December 1747. “ Report . . by the Justices . . of their having passed Sentence of Death . . on a certain Negro Man name York for Horse stealing and It appearing . . that the sd. Negro bears a very ill Character, . . Advice . . to order a Warrant to issue for the Execution ”

Re Negro Tom, 28 Md. Arch. 431, October 1748. “ Report . . by the Judges . . that They had passed Sentence of Death upon Negro Tom a Boy belonging to Col. Thomas Lee, and on Negro Cheshire a Boy belonging to John Lee, and on Mullato James a Slave belonging to . . Smallwood, for House breaking and Felony . . [432] And It also appearing . . that the Negro Boys Tom and Cheshire were not above Twelve or fourteen years old and were Objects of Mercy, but that Mullato James bore a very ill Character and had been a notorious Rogue for some years; . . Advice . . Pardon to . . Negro Tom and Negro Cheshire, . . Execution of the said Mulatto James; which Pardons and Warrant issued accordingly ”

Re Ignatius, 28 Md. Arch. 447, May 1749. The justices “ had passed Sentence of Death upon three white men . . and on One Negro man called Ignatius the Slave of the Reverend Mr. Hugh Deans . . for breaking open the Store house . . stealing Goods . . and also . . upon Negro Phill the Slave of Mr. Thomas Baldwyn . . for breaking open the Storehouse . . and stealing . . and . . on Benjamin Tucker and a Negro Man named Roger for breaking the Storehouse . . and taking . . And it also appearing . . that Negro Ignatius was an Object of Mercy, . . Advice . . to grant a pardon . . to Negro Ignatius . . And It appearing that . . upon Application of Mr. Thomas Baldwyn to spare the Life of his Negro called Phill upon Condition of his being immediately transported out of the Province It is ordered . . that a Pardon issue . . And . . that a Pardon issue for Negro Roger,”

Re Davison, 28 Md. Arch. 453, June 1749. “ The Examination of Thomas Davison Master of the Ship *Mary* now at Anchor in Patuxent River . . he went to the Island of St. Jago¹ to water where he staid two days . . Lope a Black Man and his son made an Offer of Selling to him Six Negroes or Blacks which he understood to be Slaves . . And in the Evening . . Lope brought three Negroes . . and this Examinants Doctor returned with the said Lope in his Boat and fetched the other three Negroes for which . . this Examinant Paid the said Lope . . in Money and Goods ”

Robert Lusk, mate: [454] “ the said Ship . . proved very leaky on her Voyage, and that the Six Negroes worked willingly at the Pump untill

¹ Cape Verde Islands.

the Ship Came within One hundred Leagues of the Capes of Virginia, and that then they were not so forward to worke as before ”

Charles Menzies, surgeon: “ That on the 5th [of March last] . . this Examinant went with the said Captain on Shoar . . and was entertained by . . Captain More being the Commanding Officer of that Port, and . . Captain Davison seeing two young Negro boy Slaves waiting or serving wine asked Captain More if he would sell either one or both of the boys to which Captain More by his Interpreter answered that he would not sell any to the English, That after . . the said Interpreter took Captain Davison aside and had some discourse . . that the said Interpreter had some Negroes . . there was some Law . . of the Church as well at the Isle of May as St. Iago against selling any Slave to Hereticks . . [456] the said Interpreter . . by repeated Solemn asseverations assured Captain Davison they [the six negroes] did belong to him, after which Capt. Davison Proceeded to Value each Negro . . saw the Money paid and Goods delivered . . for the Purchase And this Examinant . . Observing One of the said Negroes was better Cloathed than the Others the Interpreter said He could sound a Trumpet Play on the Fiddle and was a Weaver ”

William Ahier, [457] “ Master of the Ship *two Brothers* . . about the 22d Day of April last past he was with the Commanding Officer of Port of Pra¹ whose Title was Captain More Overall and was acquainted by . . his Interpreter that a Certain Captain Davison . . had stole five Negro Slaves and One free Man from the said Islands Two of which belonged to the said Captain More Overall, and that one of the said Negroes was a Trumpeter and the other a Fiddler and also at the same time two Letters were delivered to this Examinant, One . . to the Governor of Maryland and the Other to the Governor of Virginia.”

William Cook, apprentice: “ heard Lope and the Captain make a Bargain for the said Negroes that he saw the Captain turn them about and examine them that the Captain gave Lope a Cheese and a Shirt for one of the Negroes being an old Man, and that he gave Money and Goods for the Rest of them, . . and that he saw the said Lope shake hands with all the Negroes when he went a Shoar . . that he did not see one of the Negroes handcuffed nor tyed when they were brought on board nor at any time during their Voyage.”

[459] “ Ordered that Warrant issue directed to the Sheriff . . to bring . . the . . five Negroes and one freeman ” “ they were by the best Interpreter that could be got here Examined, . . Ordered . . that . . Davison enter into Bond . . in the Sum of two hundred Pounds Sterling ” that the negroes shall be transported back to Santiago at his expense.

Re Negro Sharper, 28 Md. Arch. 501, February 1751. “ the Commissioners [of Oyer and Terminer] had passed Sentence of Death . . on Negro Sharper the Slave of . . Potter for ravishing a white Woman ” The Board advised that a warrant issue for his execution, but Governor Ogle did not send down the “ Dead ” warrant as [502] “ all the Proceed-

¹ Porto Praya.

ings under the said Commission are erroneous " because the commissioners had adjourned for ten days instead of from day to day. He ordered a new trial.

Re Negro Tangio, 28 Md. Arch. 504, April 1751. "Justices . . . had passed Sentence of Death . . . upon Negro Tangio the Slave of . . . Heighe . . . for a Felony and Burglary by him committed . . . ordered . . . that Warrant issue for his Execution . . . also . . . Sentence of Death upon Negro Jenny and Negro Grace the Slaves of . . . Galloway . . . for wilfully burning a Tobacco House belonging to the said Galloway; It is ordered . . . that Warrants issue for their Execution "

Scott v. Dobson, 1 Har. and McH. 160, February 1752. "action of replevin for two negro boys named Lewis and Sampson, and two negro girls named Kate and Phoebe." Will of Benjamin Parrott, 1724: "I leave unto my wife four negroes during her natural life; that is to say, Kate, Alice, Moreah and Rose, and after her death to be divided between my seven children," Scott "intermarried with Jane, the widow . . . and lived married to her till . . . 1746, when she died. That negroes Sampson and Phoebe . . . are the issues of negro Moreah, . . . and were born after the death of the said Benjamin and in the life-time of Jane, widow of said Benjamin, and during the marriage of the plaintiff and said Jane. That negro Lewis . . . is the issue of negro Alice . . . and negro Kate . . . is the issue of negro Rose, . . . and both Lewis and Kate were born after the death of the said Benjamin, and during the life-time of the said Jane, his widow, and during the marriage of the plaintiff with her. . . The Provincial Court gave judgment for the defendant [a child of Benjamin Parrott]. . . The Court of Appeals . . . reversed the judgment of the Provincial Court."

Opinion of Daniel Dulany: "The two principal reasons which governed the Court of Appeals [in *Scott v. Dobson*] were, 1. That the issue ought to go to the person to whom the use was limited; otherwise, having no interest worth regarding, he might not take care of the issue. That it would only be a reasonable satisfaction for the expenses of maintenance, and for the time lost by the parent. 2. That when the use is given, a bounty at all events is intended; but instead of a benefit, if the issue should go over there might be a loss,"¹

Re Mulatto Jones, 28 Md. Arch. 565, July 1752. Detailed account of burglaries by "John Jones a Mulatto man," with white men and negroes, pp. 565-572. Jones seems to have been the leading spirit and shows much intelligence in carrying out his designs.

Re Negro Joe, 28 Md. Arch. 576, September 1752. "Sentence of Death . . . on Negro Joe a Slave of . . . Perkins for Burglary and Felony, . . . Ordered . . . that Dead" warrant issue for the execution.

Re Negro Harry, 28 Md. Arch. 577, November 1752. "Justices . . . having passed Sentence of Death upon a Certain Negro Harry the Slave

¹ 1 Har. and McH. 348 (353). Dulany "was a member of the Proprietary's Council, and no doubt was universally consulted by the Governor in all important cases coming before the Governor, who acted as Chancellor." *Ibid.* 352n.

of . . . Ridgeley . . . for ravishing . . . a Widow Woman . . . and It appearing . . . that the Negro had been always an orderly Fellow, . . . and that in their Judgment the Evidence was not sufficient to convict him, . . . Pardon . . . to the said Negro Harry . . . issued ”

Re Mulatto James, 31 Md. Arch. 30, April 1754. “Justices . . . having passed Sentence of Death . . . on Mulatto James the Slave of . . . Millard for a Rape committed on the Body of . . . and also for the wilful Murder of the said . . . Ordered that Dead Warrant issue for the said Mulatto James to be hung in Chains . . . upon the publick Road as near as conveniently can be to the Place where the fact was committed.”

Re Yellow Dick, 31 Md. Arch. 32, May 1754. “Justices . . . having passed Sentence of Death . . . on . . . Yellow Dick (the Slave of William Dent) for Store braking and Stealing . . . Ordered that Dead Warrant issue ” Pardoned because [33] “very Young and that this is the first Offence . . . (signed by Sundry Gentlemen)”

Re Negro Cesar, 31 Md. Arch. 34, June 1754. “Justices . . . having passed Sentence of Death against Negro Cesar the Slave of Walter Dulany and Tom the Slave of Margaret Gaither for assaulting Duncan Robertson and Mary Suttor . . . in the Night . . . and . . . Carrying away . . . Sundry Effects . . . Ordered that Death Warrants issue ”

Re Mulatto Toney, 31 Md. Arch. 46, August 1754. “A Report . . . by the Justices especially appointed for the Tryals of John Wright and Mulatto Toney for the Murder of Captain William Curtis . . . Sentence of Death . . . Ordered that Dead Warrants be made out . . . to be hung in Chains ”

Re Three Negroes, 31 Md. Arch. 49, September 1754. “having passed Sentence of Death upon Three Negroes named Pompey Sambo and Jack for feloniously breaking and entering an Outhouse . . . and stealing from thence fifty Pounds of Bacon and Ten Gallons of Rum, and It appearing . . . that Negro Sambo is a youth and the Son of Negro Pompey and might be influenced by the Authority of his Father . . . Advice . . . that a Pardon should issue for Negro Sambo and Negro Jack, and that Dead Warrant should issue for the Execution of Negro Pompey ”

Re Negro Anthony, 31 Md. Arch. 69, June 1755. “Sentence of Death upon Negro Anthony and Negro Jenny for Consulting, Conspiring and advising to Poison their late Master Jeremiah Chase and also one William Stretton for Poisoning his said Master Jeremiah Chase. Ordered that Death Warrant issue . . . and also . . . Sentence of Death on Negro Jack for Attempting to Poison his Master Francis Clements. Ordered that Dead Warrant issue . . . and likewise upon Negro Dick the Slave of . . . Courts for breaking and Entering the Out house . . . and Stealing therefrom Thirty pounds of Bacon, and it appearing . . . that he had been a Notorious offender and lately Pardoned for an offence of the same kind Ordered that Dead Warrant issue for his Execution ”

Re Negro Harry, 31 Md. Arch. 79, October 1755. “having passed Sentence of Death . . . upon Negro Harry the Slave of Philip Key the

younger and Negro Cork, the Slave of Philip Key Esqr. for Feloniously consulting, advising, conspiring and Attempting to Poison . . . John Key, and also . . . upon Negro Thomas the Slave of John Prather for Feloniously consulting, . . . [80] and Attempting to Poison . . . Richard Duckett . . . Ordered that Negro Harry . . . be hung at Choptico . . . and afterwards to be hung in Chains at the same Place And that Negro Cork . . . be hung at Choptico . . . and afterwards to be hung in Chains at Budds Creek . . . and that Pardon issue to Negro Thomas ”

Re Negro Joe, 31 Md. Arch. 90, December 1755. “the Justices appointed by Special Commission for the Tryal of some Negroes . . . for breaking open Mr. Edens Store house and Stealing from thence Sundry Goods, . . . had passed Sentence of Death upon Negro Joe . . . ordered that Dead Warrant issue . . . the Justices . . . having Passed Sentence of Death on a Certain Negroe Harry a boy about Twelve years old . . . for Burglary . . . Pardon issued ”

Re Negro Simon, 31 Md. Arch. 115, April 1756. A death warrant had been ordered for the execution of negro Simon, who had been convicted “for the Offence of store breaking. . . he had been guilty of some little pilferings, but never accused of any Offence like to that for which he is now condemned: he is very young I believe not more than twenty years of Age,” A pardon issued.

Re Mulatto Charles,¹ 31 Md. Arch. 119, May 1756. “the Justices . . . had passed Sentence of Death upon Mulatto Charles, late of Prince Georges County Labourer, the Slave of . . . Campbell, otherwise called young Charles Butler, for feloniously taking and leading away one black Mare of the Price of five Pounds, . . . and also . . . Sentence of Death, upon one Negro Jack, Slave . . . for breaking the Store House of . . . in the night, and . . . taking a Piece of corded Dimothy:” Ordered that a warrant issue for the execution of negro Jack, “but forasmuch as it appears by the Representations of several Persons in favour of Mulatto Charles, and . . . that they are Objects of Mercy, . . . Advice . . . to order Pardons . . . which issued accordingly.”

Re Negro Ben, 31 Md. Arch. 157, August 1756. “the Justices . . . having passed Sentence of Death upon Negro Ben the Slave . . . for a certain Felony by him committed, and no favourable Circumstance appearing for him, it is ordered that Dead Warrant accordingly issue.”

Re Negro Forester, 31 Md. Arch. 160, October 1756. “Sentence of Death upon Negroes Forester and Sambo, the Slaves of . . . for Felony, and it appearing to this Board they are Objects of Mercy advise . . . to grant them . . . pardons.”

Re Negro Tida, 31 Md. Arch. 182, March 1757. “sentence of Death, upon Negro Tida the Slave of Ephraim Gover, for feloniously attempting to poison her said Master, ordered that dead Warrant issue . . . Sentence of death upon three Negroes for Felony and House breaking (to wit)

¹ See *Re Charles Butler*, p. 41, *infra*.

Negro Sampson the Slave of Denwood Hicks, Negro Booze the Slave of the said Hicks, and Negro Siladdy the Slave of Elizabeth Trippe Widow, but forasmuch as it appears by the Representation of several persons in favour of . . . Sampson and Siladdy that they are Objects of Mercy, . . . Advice . . . to order pardons for the said Negroes, . . . and dead Warrant was ordered to issue for the Execution of Negro Booz ”

Re Charles Butler, 31 Md. Arch. 291, July 1758. Letter from Governor Sharpe to Tasker: “if you and the other Gentlemen [of the council] approve thereof I would have Mr. Ross make out a Warrant for the Execution of Charles Butler the Slave and Criminal” [292] “Upon reading and considering the Indictment against Charles Butler junior¹ of Charles County whereon he was convicted of a Felony of Death, it is the opinion of this Board that the Indictment is such a one, as they cannot advise a Warrant for his Execution.”

[298] “Ordered [October 1758] with the Advice of this Board that Pardon with Transportation issue for Charles Butler of Charles County, the Slave of Mr. Campbell . . . who was convicted of a Felony of Death ”

Re Molatto, 31 Md. Arch. 398, February 1760. “Ordered that Pardon issue for Molatto . . . the Slave of ”

Re Cousins, 31 Md. Arch. 409, September 1760. Letter to Weems, “Chief Justice of Calvert County:” “It having been . . . represented to the Governor and Council, that a Negroe called Capt. Gray and three or four more of the Negroes who were lately imported into Patuxent River in the Brigantine *Edward* of which one John Cousins is Master have declared that they are not Slaves but Freemen, that the Negro called Capt. Gray in particular is the son of a person of some Consequence and Power on the African Coast, and that the said Cousins Treacherously stole and brought them away, I am Ordered by his Excellency and their Honours . . . to Desire that . . . you will send for, and examine the Surgeon Mates and Boatswain ”

[411] “Deposition of Elias Glover Chief Mate . . . as to the Negro called Capt. Gray he was taken in a Theft on board . . . and for that detained, that he afterwards was principally concerned in cutting the Cable and endangering the Loss of the Vessel; that as to the negroe called Capt. Buck, and the eleven other Negroes they were brought on board the Vessel by the Traders, and there left as Pledges, and that . . . there was as much Goods given for them as for the other Slaves, that they had been on board of the Vessel for seven or eight weeks before the Vessel Sailed, and that the Traders never offered to redeem them ”

“The Deposition of Eneas Loughrig . . . that he Sailed from Liverpool along with . . . Cousins before the Mast on a Voyage to the Coast of Guinea to purchase Slaves, . . . [412] and never heard to the Contrary but that all the negroes brought in by Captain Cousins were Slaves; unless a negroe who calls himself Capt. Gray should be Free . . . he Gray was a Servant to a Freeman upon the Coast of Guinea and that he used to be employed by his Master to go in a Cannoo to carry Slaves on Board of

¹ See *Re Mulatto Charles*, p. 40, *supra*.

Trading Vessels and as a Plavvrer [Palaverer] that he carried some on board of the Brigantine *Edward* whilst he was in that Vessel he stole a Scarlet Jacket from Capt. Cousins who never permitted him (Gray) to go on Shore afterwards, but offered to return him if he could get another Slave for him which was refused by those to whom the Offer was made they said he was a Scandal to his Country and they would not give a Slave of four feet high for him, and this Deponent has heard that it was usual to punish Thieves after than [that] manner in that Country."

"Advised by this Board that the Captain be Discharged It being their Opinion that the Complaint is groundless. . . Discharged accordingly."

Re Negro Tom, 31 Md. Arch. 424, January 1761. "Read the conviction of Negro Tom and Negro Nace . . . Slaves of . . . Mitchell . . . whereby it appears Sentence of Death had been passed upon them for breaking open the Meat-House of . . . Catharine Price and stealing . . . and also the Petition of the Reverend Theophilus Swift and some of the Justices . . . recommending the said Negroes as Objects of Mercy. Ordered . . . that Pardon issue "

Re Negro Bett Pone, 31 Md. Arch. 438, March 1761. "Read the Conviction of Negro Bett Pone Slave of Mrs. Goldsborough . . . for attempting to poyson a certain David Robinson her Overseer; and the Justices Report thereon recommending her the said Slave as a proper Object of his Excellency's Mercy, and ordered Pardon "

Re Negro Peter, 32 Md. Arch. 3, April 1761. "the Justices of a special Court . . . had passed Sentence of Death upon Negro Peter Slave of John Booth for the Murder of — Booth Wife of the said John and a Child of him . . . and it appearing . . . that it was a barbarous and cruel Murder, ordered he be hanged in Chains on the main Road as near the Place where the Fact was committed as possible "

Re Mulatto Roger, 32 Md. Arch. 15, July 1761. "Read the Conviction of Mulatto Roger for a Burglary . . . in breaking open the Store-House . . . and stealing . . . Ordered Dead Warrant "

Re Negro Samuel, 32 Md. Arch. 16, September 1761. "Read the Report of the Convictions of Negroes Samuel, Abigail, and Rachel . . . for attempting to poyson Mrs. Smith, . . . Ordered that Dead Warrant issue " [17] "Ordered [October 1761] Pardon to be made out for Negro Abigail . . . for attempting to poyson Mrs. Smith,"

Re Negro Tony, 32 Md. Arch. 17, October 1761. "Conviction of Negro Tony . . . Slave . . . for feloniously breaking and entering the Store House . . . and stealing . . . Ordered Dead Warrant "

Re Negro Ben, 32 Md. Arch. 18, December 1761. "Read the Conviction of Negro Ben Slave of Elizabeth Oldham . . . for . . . Burglary . . . in breaking open the Store House . . . and stealing therefrom one stock, and Stock-Buckle, . . . Object of Mercy; Ordered that a Pardon be made out "

Re Negro James, 32 Md. Arch. 36, April 1762. "sentence of Death against Negro James the Slave of Thomas Howell . . . for Felony, and

also Read the Petition of . . . Howell on behalf of the said Negro James whereby It appears by a Recommendation of the . . . Justices that the said Negro James is an Object of His Excellency's Mercy. . . Pardon . . . Ordered " " Sentence of Death against Negro Coffee the Slave . . . for murder Ordered Death Warrant "

Re Negro Jonathan, 32 Md. Arch. 41, August 1762. " Sentence of Death against Negro Jonathan Slave . . . for a Felony Ordered Reprieve for a Month . . . and the Clerk is directed to write to the Sheriff to set him at Liberty and acquaint him that unless he behaves well he will be called to his former Sentence."

Re Negro Abraham, 32 Md. Arch. 47, December 1762. " Sentence of Death upon Negro Abraham Slave . . . for Felony in attempting to burn the Kitchen . . . Ordered Pardon issue . . . Sentence of Death upon Negro George Slave . . . for feloniously breaking and entering the Storehouse . . . and stealing . . . Sentence of Death upon Negro Stephen the Slave . . . for feloniously breaking and entering the Dwelling House . . . and Stealing therefrom four Gallons of Brandy . . . Sentence of Death upon Negro Coffee the Slave . . . for breaking and entering the Meathouse . . . and Stealing therefrom twenty five pounds of Bacon. Ordered Reprieve for the said Negro Coffee "

Re Negro Adam, 32 Md. Arch. 55, March 1763. " Sentence of Death upon Negro Adam Slave of Captain Robert Chesley upon two Indictments One for advising and Consulting to Murder his Master . . . the Other for advising consulting and attempting to burn his Storehouse Ordered Dead Warrant "

Re Negro Charles, 32 Md. Arch. 62, July 1763. " the Justices . . . had passed sentence of Death upon Negro Charles Slave of One Margaret Brown . . . for a Felony, . . . a Letter from the Justices recommending him . . . for Mercy, Ordered pardon issue "

Re Negro Hannah, 32 Md. Arch. 90, December 1763. " Conviction of Negro Hannah Slave . . . for feloniously breaking open the House . . . and stealing . . . Report of the Justices . . . that this was the first Crime she has ever Committed, worth notice, was very sorry for her Offence, and Promises if she can be pardoned she will be truly honest and faithful for the future, . . . and is a very young wench, . . . recommend her to your Excellency's Mercy. Ordered Pardon issue "

Re Negro Toe, 32 Md. Arch. 91, April 1764. " Conviction of three Negroes . . . *Vizt.* Toe, Sambo, and Betty for attempting to poison Mr. Smith and his wife . . . Ordered to be Returned to the Clerk to procure a Report from the Justices of their Behaviour." Two days later " The Report of the Justices . . . being laid before this Board whereby it appears that the said Negroes were condemned upon the Evidence of several others, And likewise an Answer of . . . one of the Justices . . . to a Letter sent him by the Governor's Order desiring him to enquire of the Owners . . . if they will chuse to export them out of this Province . . . [92] say they are desirous the afsd. Negroes may be executed agreeable to their Sentence Ordered Dead Warrant "

Re Negro Toby, 32 Md. Arch. 91, April 1764. "Conviction of Negro Toby Slave . . . for the Murder of Ely Lynthicumb and that the Negro was a Boy of nine years Old and . . . an Object of Mercy. Ordered Pardon issue" "Sentence of Death upon Negro Jacob the Slave . . . for feloniously breaking and entering the Store House . . . and Stealing . . . Ordered Dead Warrant"

Re Negro Ned, 32 Md. Arch. 96, July 1764. "Conviction of Negro Ned Slave of The Reverend John Urquahrt [*sic*] . . . Sentence of Death . . . for a . . . Burglary . . . in breaking and entering the House of the said John Urquahrt and Stealing therefrom a considerable Sum of Money, . . . that the said Negro Ned was by the advice and Pursuasion of some white Persons prevailed on to commit the said Fact and [the Justices] therefore recommend the said Slave as a proper object of his Excellency's Mercy."

"Ordered Dead Warrant for the Execution" of "Negro Stephen Slave" convicted of breaking and entering the house of his master and stealing two barrels of gunpowder; and also one for the execution of "Negro Davy Slave," convicted of murder.

Re Negro Jack, 32 Md. Arch. 101, December 1764. "Conviction of Negro Jack Slave of Jno. Selby . . . Sentence of Death . . . for Poisoning Negro Clair Slave of Thomas Holliday and likewise the Petitions of John Selby Master of the said Negro Jack. Ordered Reprieve issue . . . on Condition of his not continuing in Prince Georges County for the space of five days from the date"

Re Ireland, 32 Md. Arch. 106, August 1765. "His Excellency having Read the Letters and Depositions relating to Capt. John Ireland's Shooting of Negro Frank Slave of Charles Carroll Esqr. was pleased to Order a *Nolle Prosequi* and Pardon"

Re Negro Charles, 32 Md. Arch. 107, September 1765. Sentence of death had been passed on Negroes Charles and James, slaves, "for feloniously breaking open the Meat House . . . and Stealing . . . a large Quantity of Bacon . . . [108] Ordered that Pardons issue . . . recommending . . . to bind the said Negroes to their Good Behaviour it appearing from their Conviction that they are Persons of ill Fame."

Soaper v. Negro Tom, 1 Har. and McH. 227, October 1765. An appeal of murder. "Negro Tom, late of Frederick County, labourer, formerly the slave of John Gantt, of Prince George's County, gentleman, but now the slave of Samuel Swearingen, of Frederick County, inn-holder, was attached by his body to answer unto Sarah Soaper, widow, who was the wife of Thomas Soaper, of the death of the aforesaid Thomas Soaper, formerly her husband, whereof she appeals him, the said Negro Tom; and John Cooke and Joseph Sim, of Prince George's County, are pledges of prosecuting." Negro Tom was found guilty by a jury and sentenced to be hanged. [229] "In case the public should pay for the said Negro Tom, the Court value him at 53 *l.* 6 *s.* 8 *d.* Maryland currency."

Re Negro Cesar, 32 Md. Arch. 144, December 1765. "Conviction of Negro Cesar, Slave . . . Sentence of Death . . . for setting fire to the Barn . . . [145] Ordered Dead Warrant"

Re Negro Beck, 32 Md. Arch. 125, March 1766. "Conviction of Negro Beck . . . Sentence of Death . . . for setting fire to and burning the Tobacco House and Tobacco . . . belonging to . . . Joseph Smith [her master] . . . [126] The Consideration of this Matter is postponed until some further Information can be had of her Character." May 1766, letter from Charles Grahame, Esq.: [141] "her youth, and Confession of the Fact appearing to be the only Circumstances in her favour. . . the negro drew some Cyder out of a Cask . . . and left it runing, . . . her Mistress threatened to tell her Master and have her whipped, The Wench . . . applied several times to her Mistress begging forgiveness . . . and praying she would conceal it . . . but she refused. . . the Negro went into the Kitchen took a live Coal from the fire, carried it between two Chips to The Tobacco House, . . . and the Wind . . . blew up the Coal . . . the Tobacco together with the House, the Dwelling House and some other Out-houses were entirely consumed. . . Mrs. Smith came to my House and begged I would apply . . . for his Excellency's Pardon for the Wench, telling me if the Negro is Executed she can never forgive herself for obstinately Persisting in her Threats of having her punished . . . that she has heretofore behaved herself as well as negroes in Common do, Mr. Smith too is willing that His Excellency shew her Mercy. . . I must not Omitt to mention that there have been two other Tobacco Houses full of Tobacco burnt in this County this Winter. One of them . . . there is great Reason to Suspect was set on fire by her Negro Man Jack now in Prince George's County Goal, he lately escaped out of the Prison of this County to which he had been committed for a Theft,"

At the next meeting of the council, [144] "Ordered . . . that Dead Warrant issue for the Execution of Negro Beck,"

Re Negro Jack, 32 Md. Arch. 126, March 1766. "Conviction of Negroes Jack and Sue Condemned for the Murder of . . . Garner . . . [127] Ordered that Pardon issue for Negro Sue" as the evidence against her "was too Vague and uncertain to Convict her" At the next meeting of the council [130] "Ordered Dead Warrant issue for the Execution of Negro Jack Slave"

Re Negro Robin, 32 Md. Arch. 130, April 1766. Recommendation of the Justices: "Negro Robin the Slave . . . stands Convicted for the Aiding . . . a certain Negro David in the Murder of . . . Selby, . . . it appeared in Evidence . . . that he was only present but disavowed the Act, and endeavoured to Stop the other Negro from entering the House before he Shot the Gun, yet the Jury found him Guilty, . . . recommend him to your Mercy." A pardon was issued.

Re Negro Jack, 32 Md. Arch. 157, August 1766. Letter of Jack's master: "a Man Slave named Jack Now under Sentence of Death . . . for making use of a false Key, and thereby Stealing Goods from my Store to the value of £2 . 10 . 0 Current Money, he was Convicted on his own Confession of the Act to me . . . and is the first Crime he has been guilty of" [158] "Ordered that a Pardon issue"

Re Negro Jonathan, 32 Md. Arch. 158, August 1766. Negro Jonathan and negro George had been convicted of robbing houses. Further information was sought. The justices replied: [163] "we sincerely wish it was in Our Power to say any thing in favour of these unhappy People, they have broke Goal" "Ordered that Death Warrants issue"

Rench v. Hile, 4 Har. and McH. 495, October 1766. "Action on the case for a deceit in the sale of a negro woman, slave, warranting her to be sound."

Re Negro Nero, 32 Md. Arch. 178, December 1766. "Sentence of Death . . . passed upon Nero . . . for Burglary . . . Negro David was Indicted . . . for attempting to Poison and Murder his Master, and found Guilty upon the clearest Evidence *Vizt.* his Confession . . . and the Testimony of a female Slave who was Privy to his preparing a Dose Composed of Ground Puppies and other Ingredients which he supposed Poisonous with intent to give it to his Master." [179] "Ordered . . . that Death Warrants issue"

Re Negro Toby, 32 Md. Arch. 188, April 1767. "Conviction of Negro Toby¹ . . . for a certain Burglary . . . Conviction of Negro Glasgow . . . for attempting to Poison a certain Negro Man . . . Order that Death Warrants issue"

Re Negro George, 32 Md. Arch. 197, April 1767. Negro George was found guilty of breaking open a meat house and stealing bacon therefrom. "The Negro by his Master's Account is valuable and it Seems has Supported a Tolerable good Character till this matter happened" The master applied for a pardon, and the owner of the meat house writes: [198] "If your Excellency is inclinable to extend your Mercy unto the poor wretch I humbly submit" "Ordered . . . that Pardon issue"

Re Thompson, 32 Md. Arch. 200, June 1767. Thompson was "Condemned . . . for the Murder of . . . Aires and Negro Scipio . . . Death Warrant . . . issued"

Opinion of Daniel Dulany, 1 Har. and McH. 559, December 1767. "A, mulatto slave, born of a negro slave B. after having arrived at the state of manhood, obtained his freedom, and thereafter purchased certain lands in fee-simple, of which he died seised, intestate and without issue. C. another mulatto slave, the eldest brother of the aforesaid A. afterwards obtained his freedom. C. is also dead, leaving several children, begotten on a woman slave, whose freedom he purchased. Some of these children were born whilst the woman was a slave, and some after she became free; but the father obtained the freedom of the children born in slavery. It is not stated whether the father and mother of A. and C. were joined together before the birth of A. and C. according to the formal celebration of the marriage rites, and though it has been represented that A. and C. were mulattoes, it is not stated whether their parents were both negroes or not. . . [563] I adopt the rule of the civil law . . . that slaves are incapable of marriage, . . . slaves are bound by our criminal laws generally,

¹ Toby received a reprieve but was later ordered executed. *Ibid.* 200.

yet we do not consider them as the objects of such laws as relate to the commerce between the sexes. A slave has never maintained an action against the violator of his bed. A slave is not admonished for incontinence, or punished for fornication or adultery; never prosecuted for bigamy or petty treason, for killing a husband being a slave, . . . In consequence of my opinion, that slaves are incapable of civil marriage, I consider A. and C. in the light of bastards, and therefore conclude that the lands of A. are escheatable; . . . A. and C. had no civil capacities to take by purchase, or to take or transmit by descent, whilst in their original state of slavery. Their capacity sprung from the manumission; it cannot be pretended that the manumission could have a retrospect to their births:”

Re Negro Lem, 32 Md. Arch. 246, August 1768. Petition for the pardon of “Negro Lad Lem . . . under Sentence of Death for a Burglary . . . being not quite eighteen years of Age,” His master “would be a great sufferer at this Time, if his Negro must suffer Death.” [247] “Order that a Pardon should issue” Death warrants issued for the execution of negro Daniel, convicted of burglary, and of negro Sam.

Re Negro Scipio, 32 Md. Arch. 268, March 1769. “Negro Scipio . . . Condemned . . . for breaking open and Robbing the Meat House” [272] “Pardon was issued”

Re Negro Ben, 32 Md. Arch. 270, April 1769. “Sentence of Death . . . passed upon Negro Ben . . . for assaulting with Intent to Ravish . . . As the Evidence . . . [271] had such uncertainty in it, that it was neither clear the said Ben was the Felon, (the attempt having been made in the Night and in an House without Light, where Objects could not well be discovered,) nor (if he was the Person) that his Intention was to Ravish” the justices recommend him for pardon. Pardon issued. Pardon issued also for negroes George and Sam, “Condemned . . . for breaking open and Robbing the Meat House”

Proprietary v. Lee, 32 Md. Arch. 342, June 1769. Lee, sheriff, was fined “the Sum of Forty Pounds Current Money” “for a Breach of the Peace on the Body of William Wright [‘a Languishing Prisoner’] by causing Negro Roger Slave [‘belonging to the Family’] to tye up and Whip the said Wright” Lee [340] “threatned me that he would have me in Irons and sent a Negro and took Measure of my Wrists”

Re Negro David, 32 Md. Arch. 306, July 1769. “Negro David . . . Condemned . . . for having Committed a Rape . . . Ordered . . . that a Death Warrant issue”

Re Mulatto Jack, 32 Md. Arch. 312, August 1769. “Conviction . . . for a Burglary, and . . . for a Rape,” [313] “Ordered . . . that a Death Warrant issue”

Re Negro Pompey, 32 Md. Arch. 313, September 1769. “Negro Pompey . . . Condemned . . . for having attempted to Poison . . . Ordered . . . that a Death Warrant Issue”

Re Negro George, 32 Md. Arch. 331, November 1769. “Condemned . . . for breaking into the House . . . and Stealing” The justices wrote

that he had been “found Guilty of Burglary at two different Times and Sentence of Death has been passed. . . The Evidence against him on his Tryal was clear and full and coroborated by his own Confession.” [332] “Ordered that a Pardon issue”

Somerville v. Johnson, 1 Har. and McH. 348, February 1770. Will of William Deacon: “reserving to Mrs. Mary Johnson, during her natural life, . . the use of four negroes, . . Ben, Priscilla, Jem, and Ignatius; after her death the Said negroes . . to be my said nephew’s, and to his heirs for ever.” After Deacon’s death, “the said negro wench Priscilla . . had two children called Rachel and Catharine.”

Held: the life tenant, Mary Johnson, has absolute property in the issue proceeding, or that have proceeded or shall proceed from the negro woman called Priscilla.”

Re Negro Tom, 32 Md. Arch. 333, February 1770. A death warrant issued for the execution of negro Tom “Condemned . . for the Murder of Negro Job.” The next day a reprieve was petitioned for, by sixteen petitioners including the owner of Tom, [334] “forasmuch as . . Negro Tom . . was much Intoxicated with Liquor and that the aforesaid Act was done immediately after the said Tom’s being thrown into a Bunch of Briars by the Slain in the Heat of Passion,” “Ordered . . that a Reprieve issue during Pleasure.” Three days later, eighty-three other petitioners “humbly hope that your Excellency will not extend your Clemency to said Negro Tom as it is Notorious his Character has always been that of a Villain of the blackest dye.” “the Granting a Pardon to said Negro will have a bad Tendency and Endanger in future the Lives and Properties of the said Inhabitants.” “Ordered . . that a Death Warrant Issue”

Re Negro Abraham, 32 Md. Arch. 368, June 1770. Negro Abraham had been convicted “of having broke open the House” of E. S. and stealing; and “of having attempted to Ravish” E. B. The latter petitioned in his behalf for a pardon “upon his Master’s Transporting him out of the Province,” as he was [369] “Convicted upon . . a Confession extorted from him upon a Whipping inflicted on him by his said Master as I could not Swear to the Identity . . and as I am not willing said Negro should be Executed” E. S. and Abraham’s master also petitioned for his pardon, which issued [370] “Conditioned that he shall leave the Province within ten days . . and never return again,”

Re Negro Jack Wood, 32 Md. Arch. 370, July 1770. “Negroes Jack Wood, Davy and Jack Crane, Condemned . . for having Murdered . . Ellson” [371] “Order a Death Warrant to issue for the Execution of Negro Jack Wood . . pursuant to his Sentence . . and also . . for . . Negroes Davy and Jack Crain . . pursuant to the Sentence passed on them except that part thereof which directs their Right Hands to be Cut off,” [377] “Ordered . . that a Pardon issue for Negro James”

Re Negro Jacob, 32 Md. Arch. 377, August 1770. Pardons issued for negroes Jacob and Nacey, “and also . . for Negro David on Condition of

his leaving the Province within Ten Days . . . and never to return again," and for Negro Dick, "Condemned . . . for feloniously Breaking and Entering the Meat House . . . and Stealing . . . Bacon."

William and Mary Butler v. Boarman, 1 Har. and McH. 371, September 1770. "The petitioners¹ claimed their freedom as being descended from a free white woman, named Eleanor, Commonly called Irish Nell, who had been brought into Maryland, by Lord Baltimore, as a domestic servant," when [376] "in 1681 he returned to this Province, . . . In 1681 she married" a negro slave. The act of 1663 (1664), then in force, "for deterring such free-born women from such shameful matches," provided "that whatsoever free-born woman shall intermarry with any slave . . . shall serve the master of such slave, during the life of her husband; and that all the issue of such free-born women, so married, shall be slaves as their fathers were."² "the repealing law"³ was passed in the month of August, immediately after the marriage, and his Lordship interested himself in procuring the repeal with a view to this particular case. The act of 1663 [1664] was repealed also, to prevent persons from purchasing white women and marrying them to their slaves for the purpose of making slaves of them." The children of Irish Nell were born after the repealing act. Counsel for the defendant argued: "There is no circumstance appearing, to shew that the Legislature meant to discriminate or distinguish between the issue born before the act and those born after." The Provincial Court adjudged that the petitioners were free, but the Court of Appeals in 1771 reversed the judgment.

Johnson v. Howard, 1 Har. and McH. 281, May 1771. [283] "during the time that he [Howard] so possessed the land, in the month of February, 1748, Thomas Johnson's negroes cut logs on Howard's Range."

Toogood v. Scott, 2 Har. and McH. 26, May 1783. Eleanor Toogood "claimed her freedom by reason of her being a descendant from a free white woman." Her great-grandmother "was a white woman, who served her time in Saint Mary's County, who had" a daughter, Mary Fisher, "by an East-India Indian, who became a free mulatto after serving some time to Major Beale"⁴ Mary "was lawfully married"⁵ by a priest of the Romish Church . . . to a negro man named Dick, a slave" [38] "Mary Fisher was free during the life of Dick." Their child, Ann Fisher, petitioned for freedom in 1734 (when she was about twenty-two

¹ They were first cousins and the parents of Mary Butler. *Butler v. Craig*, p. 50, *infra*.

² This is the common law doctrine, *partus sequitur patrem*. The act of 1715 "restored the maxim of the civil law, *partus sequitur ventrem*," which prevailed in all the other slaveholding states and in the West Indies. Wheeler, *Law of Slavery*, p. 3n.

³ Act of 1681, ch. 4.

⁴ Act of 1664.

⁵ Evidently before the act of 1681; otherwise the act of 1664 could not have been invoked against her daughter Ann. Furthermore, the act of 1681 provides that "any priest, . . . that shall, from and after the publication hereof, join in marriage any negro . . . slave, to any . . . white woman servant, free-born as aforesaid, shall forfeit and pay the sum of ten thousand pounds of tobacco," and although Mary Fisher [38] "appeared, by the proof, to have been a free mulatto woman," a priest might have been reluctant to marry her to a slave after the passage of that act.

years old), but was adjudged a slave during life, by virtue of the act of 1664. In the case of Ann's daughter Eleanor [27] "the Court (Hanson, J.) was of opinion, and so determined, that the said judgment was only conclusive against the said Ann Fisher, and was not conclusive evidence against the said Eleanor Toogood:" and "gave judgment for the petitioner for freedom;" [37] "1783, the Court of Appeals affirmed the judgment of the General Court. . . [38] The Court were also unanimously of opinion, that the act of 1664 does not extend to Mary Fisher, who appeared, by the proof, to have been a free mulatto woman."

Negro Jack v. Hopewell, 6 Har. and John. 20 n., May 1784. Will of William Cole, dated 1732: "I . . . bequeath unto my dear beloved wife, Elizabeth Cole, all my negroes, *viz.* Sam, Moll, Tom, Sarah, Job, and their increase, during her natural life; . . . and after her decease, I leave all my above negroes free and for themselves; and also my lands, after her death, I leave to be equally divided amongst them." "negroes Nan and Frank or Frances, petitioners for freedom in another case, were the children of negro Moll, . . . and that they were born in the life-time of Elizabeth Cole, . . . and after the death of the testator, . . . and that negro Jack, the petitioner in this case, was the descendant of said negro Nan or Frank, and had been held in slavery from the time of his birth." On November 2, 1732, Cole executed an instrument in writing whereby he gave his wife the "negroes, *viz.* Sam, Moll, Tom and Sarah, . . . to have to the said Elizabeth, her heirs and assigns forever, and . . . did deliver the negro woman, named Moll, in the name of the whole. . . It was recorded . . . The county court gave judgment against the petitioner." [21 n.] "The General Court reversed the judgment of the County Court. . . 1784, the judgment of reversal was affirmed in the Court of Appeals."

Pue v. Dorsey, 1 Bland 139 n., June 1784. Will, dated 1772: "I give to my two sons . . . and their heirs forever . . . all . . . negroes, white servants, horses, cattle, . . . and all . . . negroes, white servants, horses, cattle, . . . which I have lately purchased"

Butler v. Craig, 2 Har. and McH. 214, June 1791. "Petition for freedom by Mary Butler, claiming her freedom as a descendant from a free white woman," Irish Nell, her great-grandmother.¹

Held: I. "That without a conviction in a Court of Record of Irish Nell's having intermarried with a slave, she could not become a slave, nor could her issue become slaves by virtue of such intermarriage. That no presumption of such conviction arises from the petitioner and her ancestors having been always held in slavery." II. "that the . . . record, proceedings and judgment [in *Butler v. Boarman*], were no bar to prevent the petitioner from claiming and having her freedom."

Negro Adam v. Leverton, 2 Har. and McH. 382, June 1792. The widow and executrix of the slave's master, who had bequeathed to her and to two of his daughters the whole of his personal estate, after the

¹ *Butler v. Boarman*, p. 49, *supra*. Mary Butler was the daughter of the petitioners in that case.

payment of his just debts, etc., removed to Delaware in 1785, taking the slave with her and keeping him there for one year and nine months. She then brought him back to Maryland to reside. The estate of her husband was not yet settled and his personal property was not sufficient to pay his debts. "The General Court dismissed the petition [of negro Adam for freedom] and ordered the said negro Adam to service," Affirmed.

Rawlings v. Boston, 3 Har. and McH. 139, May 1793. "The petitioner claimed his freedom as being a descendant from a yellow woman, being a Portuguese, named Catharine Boston."

Held: "It being admitted that the said Anthony Boston is a descendant of Violet, the daughter of Linah, the daughter of Maria, or Marea, and it appearing to the court . . . that Maria, or Marea, was a Spanish woman, and that her daughter Linah was born before she came into Maryland, and was of yellow colour or complexion, with long black hair, the court are of opinion that the said Maria, or Marea, was not a slave, but free; therefore, it is considered by the court, that the said Anthony Boston be free and discharged from all further servitude,"

Mulatto Joan v. Shield, 3 Har. and McH. 7, June 1793. "Ejectment for a tract of land . . . 1786, a verdict was found for the plaintiff, and judgment for possession. . . a writ of inquiry of damages was ordered, which was . . . returned March, 1787, awarding damages to the plaintiff 125 l. current money." [8] "the jury . . . were so well satisfied that the entry and ouster was so violent as to deserve exemplary damages, that they gave such as should deter others from such proceedings;"

Negroes Peter and others v. Elliott, 2 Har. and McH. 199, November 1793. "a petition for freedom, founded on a deed of manumission . . . bearing date on the 23d of October, 1784, . . . the several negro-slaves . . . were to have their liberty, freedom and manumission on the ensuing 25th of December." Their master executed "the said deed of manumission . . . in his last sickness of which he died, on the 8th November, 1784." It was his "opinion for the last five years of his life, that his negroes ought to be set free, but he declined doing it because it was against the interest of the public. . . That a fortnight before he executed the deed, he said if all the negroes could be sent away he would very cheerfully set his own free, but thought it could not be done without prejudicing the public. When he sent for the magistrate, he informed him he wanted to manumit his slaves, and had sent for him to have it done. The magistrate observed to him, that it was a matter of consequence and deserved consideration, and asked the testator if he had considered it well. He informed the magistrate he had, gave him a list of the negroes, and the deed was drawn and approved of by the testator. That upon application being made to Mr. Erickson, to witness the deed, he at first refused, saying that he could not think Mr. Elliott to be in his senses, as he had expressed great abhorrence to the measure a few days before, and conceived it to be highly injurious to the country. Upon this being communicated to Elliott, he in a fretful manner answered, that such changes could be done in an instant, signifying, that it was an act of divine providence. That his

conscience was extremely uneasy, and that he could not rest until he had set his negroes free. That in the opinion of the magistrate Mr. Elliott, from his conduct and conversation, appeared to be perfectly in his senses at the time of the execution of the deed, and did not discover any symptoms of a speedy death. . . The deed of manumission was objected to, as being contrary to the act of assembly of June 1752, c. 1. s. 3.¹ . . . The Court dismissed the petition," Judgment affirmed by the Court of Appeals.

Shorter v. Rozier, 3 Har. and McH. 238, October 1794. "the petitioner claimed his freedom as being lineally descended in the female line from Elizabeth Shorter, a free white woman." He offered in evidence the following papers, dated June 15, 1702: "These are to certify, that in the year 1681, or near about that time, I Nicholas Geulick, priest, . . . did join together in the holy estate of matrimony, according to the then law, a negro man named . . . Little Robin, to a white woman, whose name was Elizabeth Shorter, which couple all that time were both servants unto Mr. William Roswell, deceased," "Emma Roswell . . . declareth upon her oath, that she . . . was present at the marriage of the above said couple, . . . and that after the marriage of the said negro man and white woman, the said white woman had three mulatto girl children, named Mary, Jane and Martha,"² The petitioner "was the son of a mulatto woman named Linda," who was the daughter of Mary. "Verdict for the petitioner, and judgment for freedom."

Robert Thomas v. the Reverend Henry Pile, 3 Har. and McH. 241, October 1794. "the petitioner claimed his freedom as being descended in the female line, from a free white woman, whose name was Elizabeth Thomas." He "offered in evidence the declarations of a certain Mrs. Smith, to prove the petitioner was descended from a free white woman; and the defendant . . . offered to impeach the credit of the said Mrs. Smith, by proving to the jury that the said Mrs. Smith . . . associated and kept company with negroes. To which evidence the petitioner, by his counsel, objected; and the court . . . refused to allow the same to be offered to the jury. . . Verdict for the petitioner, and judgment for freedom."

Porter v. Butler, 3 Har. and McH. 168, November 1795. "James Brook[s], of Frederick county, in June 1781, (being then under age,) hired Butler, the petitioner, for one year, to one Patrick Rogers, who then resided in the state of Pennsylvania; that the petitioner continued with the said Rogers, in Pennsylvania, until August, 1781; that Rogers paid Brooks for the hire of the petitioner, and that Brooks, at the time of hiring the petitioner, knew that Rogers resided in Pennsylvania."

Held: the petitioner is not free because his master, being an infant at the time of hiring, "can do no act to his prejudice, during his minority."

De Kerlegand v. Negro Hector, 3 Har. and McH. 185, June 1796. Hector, on his petition to the county court, "obtained judgment of freedom, in November, 1793." He "was a slave to the appellant in the island

¹ This act, which made void a manumission executed by a person during his last sickness, was later repealed.

² See *Shorter v. Boswell*, p. 61, *infra*.

of Saint Domingo, and as such was brought into the United States, by the appellant, after the disturbances in France and the islands, *viz.* in or about the year 1791. That the appellant came to Frederick Town, in this state, to reside, in . . . 1791, . . . and has always since resided there with the petitioner in his service. . . . That the appellant was duly naturalized . . . September, 1792.¹ The general court reversed the judgment of the county court," In 1796, "the court of appeals affirmed the judgment of the general court."

Negro Mary v. Vestry of William and Mary's Parish, 3 Har. and McH. 501, October 1796. Petitioner for freedom "was descended from Negro Mary, imported many years ago into this country from Madagascar."

Petition dismissed: "Madagascar being a country where the slave trade is practised, and this being a country where slavery is tolerated, it is incumbent on the petitioner to show her ancestor was free in her own country to entitle her to freedom."

Negro Peter v. State, 4 Har. and McH. 3, May 1797. The indictment charged, "that negro Peter . . . labourer, the slave of Lucy James, . . . one game cock of the value of fifty pounds of tobacco, of the goods and chattels of a certain Daniel Burkhart, . . . feloniously did steal." The judgment of the County Court was: "that negro Peter be whipped on his bare back with ten stripes, and stand in the pillory five minutes; and also 'that Lucy James, to whom negro Peter is a slave, pay unto Daniel Burkhart . . . the quantity of forty-eight pounds of tobacco, and the costs.'" The General Court reversed the judgment of the County Court.

Mahoney v. Ashton, 4 Har. and McH. 63, October 1797; *ibid.* 295, June 1802. Petitioner claimed "to be descended from a free woman named Ann Joice. . . . [64] It was admitted at the trial by the parties, . . . that William Digges's Sue, a mulatto woman, David, a carpenter, Frank Herbert, Jack Wood, and Tom Crane, all four mulatto men, were the children of Joice, who died at the Wood Yard, and who, together with her children above named, were in the possession of Henry Darnall, of Anne-Arundel county. That the above named Sue was the mother of Warren's Polly, Hill's Nelly and Carroll's Sue. That Carroll's Sue was the mother of Nelly, who was the mother of Charles and Patrick Mahoney." [305] "Joice, the ancestor of the petitioner, was a negro woman carried with her owner, claiming her as a slave, from the island of Barbadoes to England, and afterwards brought into this country by Lord Baltimore, claiming her as a slave, between the years 1678 and 1681, and that she during her life was held, used and treated, as a slave, and that her issue have been held as slaves ever since," Henry Davis deposed: [64] "he has heard his uncle David Davis (who is deceased) say, that it was the report of the neighbourhood that if she (meaning Joice) had justice done her, she ought to have been free;" The defendant objected to the reading of the deposition, but the court overruled the objection. The defendant objected to the following part of Ann Hurdle's deposition: that her mother-in-law [295] "said just so they served Ann Joice's

¹ Acts of 1783, ch. 23, and 1792, ch. 56.

family; that by all accounts they are in confinement now, and they ought to have been free long ago;” as “containing the declaration of opinions as to a right, and not a declaration as to any fact; and therefore improper . . . to go to the jury.” [296] “The Court are of opinion that the part . . . is admissible to be read in evidence to the jury, the same being general reputation of the fact that Ann Joice’s family were free.” [306] “The verdict and judgment being for the petitioner, the defendant appealed to the court of appeals. The case was argued in that court . . . 1802.”

Counsel for the petitioner: [309] “Whether or not the petitioner is entitled to his freedom, is a fact; and in all cases of petitions for freedom hearsay evidence has been admitted in evidence to prove the petitioner entitled to freedom; for instance, in the cases of the Savoys, the Shorters, the Thomas’s, the Queens, the Bostons, and the Toogoods, (all tried and determined in the general court, and most of them decided on in this court;) the reputation of the neighbourhood, as to the fact of freedom, was admitted in evidence.” Attorney General Martin replied: [312] “Our courts have determined that general reputation, that such persons are descended from white women, or that they have exercised the right of freedom, is evidence to the jury. It is giving the power to ignorant persons to judge of rights. In the case of the Butler’s, reputation was given in evidence that they were descended from a white woman; so also in the case of the Toogood’s. In the case of the Queen’s, that they were descended from a native Indian of South America. In all these, and in many other similar cases, hundreds of negroes have been let loose upon community by the hearsay testimony of an obscure illiterate individual.” He reviews the English statutes and cases concerning slaves. [320] “The common law, at the time Joice was in England, was that trover would lie for a negro slave; and the case of *Somerset*¹ was afterwards, and therefore is not applicable. Lord Mansfield may be charged with bending to the policy of the times—Wilks and Liberty; of which the young heated brain of Hargraves, who argued the case, was full; . . . [321] The British air is supposed to electrify the flesh—putting a foot on the island, the nature is instantly changed, and if a slave before, becomes thereby free.”

The Court of Appeals concurred² with the General Court in admitting the hearsay evidence that Ann Joice’s family was free; but disagreed with the General Court³ on its refusal⁴ to direct the jury to find a verdict for the defendant, because Joice had been in England: [323] “It is not stated that her case was ever before a British or any other tribunal, or had received a judicial decision. . . [324] Lord Mansfield, in *Somerset*’s case, says, that the state of slavery is so odious that nothing can be suffered to support it but positive law. . . [325] By a positive law of this state in 1715,⁵ then the province of Maryland, the relation of master and slave is recognized as then existing, and all negro and other slaves, . . . imported . . . and all children . . . of such negroes or slaves, are declared to be slaves

¹ *Somerset v. Stewart*, vol. I., p. 14, of this series.

² P. 325.

³ P. 323.

⁴ P. 306.

⁵ Also in 1664 and in 1681.

during their natural lives. This case, being brought before the court by original proceeding, we are of opinion that it must be governed by the law of this state; and that in this case, however the laws of Great Britain in such instances operating upon such persons there, might interpose so as to prevent the exercise of certain acts by the master, not permitted, as in the case of Somerset; yet upon the bringing Ann Joice into this state, then the Province of Maryland, the relation of master and slave continued in its extent as authorized by the laws of this state; . . . Judgment [in favor of the petitioner for freedom] reversed, and *procedendo* awarded."

Higgins v. Allen, 3 Har. and McH. 504, June 1798. In January 1794 Allen, then about twenty-two years old, filed a petition for freedom in the county court, on the ground that he was descended from a free white woman. His great-grandmother was Hannah Allen, "a white Scotch woman, . . . and she had, by a negro, a daughter named Hannah Allen, . . . The last-mentioned Hannah had, by a negro, a daughter named Jane Allen, . . . Jane had the petitioner by a negro, and she was adjudged . . . 1772, to serve seven years for having the petitioner,¹ and the petitioner, being then five months old, was sold till he arrive to the age of thirty-one years, unto Richard Higgins. The record of conviction for having a mulatto bastard is stated in the record,"

A judgment was "rendered for freedom, at September term, 1794." [510] "The general court reversed the judgment of the county court, and remanded the petitioner to servitude," Affirmed in 1798.

Lowe v. Boteler, 4 Har. and McH. 346, May 1799. "at the time the bill was executed, the plaintiff . . . agreed, that if the negro man, who was then runaway, should not be taken by the said Boteler, that the bill aforesaid should be void."

Whetcroft v. Christie, 4 Har. and McH. 385, June 1799. [387] "On the 5th of May 1775, [defendant] sold 31 servants to the complainant . . . at 9 l. 10 s. 0 d. sterling Each. . . That one of the servants, a doctor, was not delivered, for which he abated fourteen guineas."

Davidge v. Chaney, 4 Har. and McH. 393, September 1799. Will, 1769: "I give . . . unto Joshua Yates, . . . during his natural life, one negro woman named Moll, and her daughter Fanny; but in case the said Joshua Yates should die without lawful issue, my will is that the said two negroes with all their issue, shall be the property of my son, John Davidge, and his heirs."

Held: the bequest over to John Davidge is void, as there are no restrictive [398] "expressions . . . in the will indicative of an intention that the first estate should cease on the first taker's dying without leaving issue at the time of his death."

Boisneuf v. Lewis, 4 Har. and McH. 414, October 1799. Boisneuf, who [415] "was [in 1789] a deputy from the province of Touraine to the . . . constituent assembly," left France in 1793 to go to Saint Domingo

¹ Act of 1715, ch. 44, sects. 26, 27; act of 1728, ch. 4.

by way of America. On landing in America he heard of the disturbances in the island, and decided to take up his residence in Maryland. He "caused the petitioner [the slave of his deceased brother], to be brought from Saint Domingo to George-Town, . . . where he was landed on the 4th of November 1793," Boisneuf delivered to the clerk of the county court "a list of the slaves by him so imported, . . . 'I . . . an inhabitant of the French part of the island of Saint Domingo, at this time a resident of Frederick-Town in Maryland, and in conformity to the law of this state of the 23d of December 1792,¹ declare, that three negro slaves, sent from Saint Domingo, arrived the 4th of November last . . . to wit: Pierre Lewis, aged about thirty-five; Lambert, aged about five years; and the negro girl Fillette, aged about eight years; which domestics I keep in my service, conformable to the authorization granted me by the aforesaid law. Done at Frederick-Town, . . . 24th of December, 1793.' . . . Pierre Lewis never was used as a domestic or house slave by the defendant, before he was brought to America. . . . [416] The County Court [Potts, C. J.] . . . directed the jury, that if they believed the evidence . . . the petitioner was entitled to his freedom." Affirmed by the General Court.

Negro Plato v. Bainbridge, 4 Har. and McH. 416, October 1799. "Peter Bainbridge, . . . a resident of . . . South Carolina, long before, and until . . . April 1791, . . . removed . . . into this state, with a *bona fide* intention of settling here; and . . . brought with him" "his own proper slave, negro Plato, the petitioner, now of the age of sixteen years," In November 1791 Bainbridge sold Plato to the defendant. In 1795 he [417] "did by his own oath, fully prove to the satisfaction of . . . collector and naval officer . . . the residence of the said negro Plato in some one of the United States for the space of three whole years . . . antecedent to his coming into this state."² In 1796 Peter Bainbridge proved the same to the tax collector of Frederick County, where he had resided "for two whole years after his . . . removal into this state . . . The County Court . . . gave judgment that the petitioner was not entitled to his freedom," Affirmed by the General Court.

Negro David v. Porter, 4 Har. and McH. 418, October 1799. "the petitioner stated his claim to freedom to arise under the laws of . . . Pennsylvania for the abolition of slavery." He had been the property of Coate, a resident of Maryland, who "hired the petitioner to one McLean, who resided in . . . Pennsylvania. . . . petitioner was seen in the possession of . . . McLean, in . . . Pennsylvania, in . . . 1788. . . . The General Court gave judgment that the petitioner is free,"

Confute v. Dale, 1 Har. and John. 4, April 1800. "action of trespass for an assault and battery committed by the defendant on the plaintiff's slave." Held: [5] "without an injury or wrong to the master, no action could be sustained."

Claggett v. Speake, 4 Har. and McH. 162, June 1800. "the plaintiff, with four of his negro slaves, had been at work on a ship in Alexandria.

¹ Ch. 56.

² Act of 1783, ch. 23.

of which the defendant was captain; . . the plaintiff was about to quit the ship before she was done, . . the defendant . . requested the plaintiff to suffer his negroes to stay and finish the work; and . . promised . . to carry up the said negroes . . to George-Town, in the ship's yawl, on the Saturday following, and deliver them safe to the plaintiff. . . on the Saturday, the mate . . having asked the captain if they had any thing more to do, and being answered no, discharged the . . negroes [who] . . went off in a pilot boat, which was going . . to George-Town; . . the pilot boat overset in her passage, and the two negro slaves . . were drowned. . . the defendant offered in evidence, that the plaintiff, as he was leaving the ship . . [163] when the defendant was not present, ordered the said negroes, that on Saturday they must leave the said ship, the work done or not, and make the best of their way home, and take care of their tools. . . Verdict and judgment for the plaintiff." Affirmed.

Negro Harry v. Lyles, 4 Har. and McH. 215, June 1800. Petition for freedom. "The petitioner . . in 1790 . . was brought into . . Maryland by the defendant, from . . Virginia. . . the defendant . . hath even since resided in . . Maryland;" Certificate signed at the time of the importation of the petitioner: [216] "This day came William Lyles, before me, Robert Bowie, one of the collectors of the tax for . . Maryland, and made oath upon the Holy Evangely of Almighty God, that he . . is about to remove from . . Virginia, and to become a resident of . . Maryland, for at least one year; and that the said Lyle did not bring . . with him any slave . . other than was conformable to the act of assembly made to prevent the further importation of slaves into this state; and in every respect fully complied with the said act."¹ "petitioner had been an inhabitant . . of Virginia, for . . three whole years next preceding his importation into Maryland . . defendant did not reside in Maryland for one year antecedent to his importing the petitioner . . [217] judgment for the defendant . . affirmed"

State v. Negro Ben, 1 Har. and John. 99, September 1800. Ben was found guilty of murder, and it was "adjudged, that he should labour on the public roads of Baltimore county for the term of fourteen years."

McDonough v. Templeman, 1 Har. and John. 156, October 1801. Contract of hire: "It is agreed this 10th day of January 1797, between Edward Burrows of the city of Washington, in behalf of Maurice James M'Donough of Charles county, of the one part, and John Templeman in behalf of the George Town Bridge Company, of the other part, that the said Edward Burrows doth hire unto the said John Templeman, for the use [157] of the said Bridge Company, seven slaves, . . belonging to the said M'Donough, from the date hereof until the 25th of December next ensuing; and the said John Templeman doth agree to pay for each of the said slaves, from the date hereof until the said 25th of December next ensuing, sixty dollars, together with giving them sufficient board, lodging, clothing, and necessary medicine, and other attendance during sickness. The said John Templeman doth further agree to send off the

¹ Act of 1783, ch. 23.

said slaves at the expiration of the said term, in good clothing, and to allow Bob two and a half days four times in the year, to go to see his wife; the said sum of 420 dollars to be paid by the said John Templeman unto the said Maurice James M'Donough, or his order, on the said 25th of December next, without any deduction for board or other articles, or for lost time, etc."

Jenings v. Higgins, 1 Har. and John. 344, October 1802. Higgins brought an action of *assumpsit* for work performed by his "servant man . . . Nathan Allen," who "left his service in December 1794, and went into the service of" Jenings, after a judgment had been rendered in September 1794 by the County Court, "that the said Nathan Allen was entitled to his freedom, and that he be discharged from the service of the said Higgins."¹ Higgins appealed and the judgment was reversed by the General Court, at its October term 1796. In November Higgins's manager [345] "claimed and took possession of the said negro"

Verdict and judgment for the plaintiff in the County Court: [346] "The General Court reversed the judgment . . . observing, that: upon the appearance of the master to a petition for freedom by his slave, in order to retain the services of the petitioner, he must enter into a recognizance in the usual form, for suffering the petitioner to prosecute his petition, to use him well, etc., and that if judgment be given for the petitioner, and the master appeals, he must, to retain the service of the petitioner, enter into bond with security, to prosecute the appeal—neither of which in this case was done,"

Berry v. Berry, 1 Har. and John. 417, May 1803. Will of Thomas Berry, dated 1778: [419] "I . . . give unto the said Samuel Berry Atchison the following negroes, etc. them and their increase . . .; and if he should die without issue, it is my will that my said negroes should be sold at public vendue, and the money or tobacco arising therefrom to be distributed amongst the poor"

United States v. Vickery, 1 Har. and John. 427, May 1803. "Vickery voluntarily served on board a certain schooner belonging to a citizen of the United States, as master, which schooner was employed in transporting nine negro slaves from one foreign place to another," from Nevis to Cumaná in South America. [429] "the jury found a verdict of guilty without retiring. The court were satisfied, from all the circumstances of the case, that the prisoner was ignorant that he was committing a violation of any law, and therefore fined him only ten dollars, and imprisoned him 24 hours. The court were disposed only to have imposed the fine, but upon looking at the law they were of opinion that they were obliged to inflict Cost."²

Mason v. Ship Blaireau, 2 Cranch 240, February 1804. Salvage of the ship *Blaireau*. She was "found and boarded by the ship *Firm*, bound on a voyage from Lisbon to Baltimore. . . [242] The persons who went on board the *Blaireau* from the *Firm* were, . . . and Negro Tom." [241]

¹ *Higgins v. Allen*, p. 55, *supra*.

² Act of Congress, May 10, 1800.

“a slave of the Rev. Mr. Ireland.” It appeared to the court [243] “that the apprentices, cook, and negro slave should not be classed with seamen,” Decreed [244] “that there be retained a like sum of eleven hundred and thirty-four dollars and fifty-four and three quarter cents in this court, to and for the benefit of such person or persons as may hereafter make title to the same as owner or owners of the said Negro Tom.”

On appeal to the circuit court, it was decreed: [247] “That the salvage money adjudged . . . to be retained for the owner of Negro Tom, be paid to the Rev. John Ireland, (late of this state, but now of the United Kingdom of Great Britain and Ireland) who appears to this court to be the owner of the said Negro Tom,” or to his attorneys in fact “who have expressed in writing to this court, that they, being duly authorized by the said John Ireland, will immediately on the receipt of the said salvage money, manumit the said Negro Tom, according to the law of the state of Maryland, and will pay the said Negro Tom one fifth part of the said salvage money, and have consented that the same may be retained by the clerk of this court for the use of the said Negro Tom.”

Standiford v. Amoss, 1 Har. and John. 526, October 1804. Will of William Standiford, dated 1775: “I give . . . unto my beloved wife Elizabeth, one negro woman named Rachel, . . . during her natural life, and at her decease to be equally divided between her children, and which are now alive.” The widow married Amoss, and she is now dead. Held: Rachel’s children, “born during the life of the legatee for life, and after her marriage with the defendant,” are the property of the defendant.

U. S. v. Schooner Sally, 2 Cranch 406, February 1805. The collector of the port of Nottingham seized the schooner “as forfeited under the act of congress prohibiting the slave trade.¹ In the district court the vessel and cargo were acquitted on the merits,” Affirmed: the cause is “of admiralty and maritime jurisdiction.”

Scrivener v. Scrivener, 1 Har. and John. 743, June 1805. [744] “the said Francis, taking advantage of his brother’s weakness and imbecility of mind, kept him in an out-house, clothed, fed, and worked him as a negro, and with his negroes, . . . [746] That since the death of the said William and Francis, the said negro Hagar has been permitted to go at large . . . That the said two negroes are about 60 years of age, and of course rather an expense than profit.” The appellant was [749] “allowed ten years hire of the following negroes, from the 4th of April 1772, to the 4th of April 1782, and at the following prices, to wit: Tim at £15 per annum; Jim at £15 per annum; and Hagar at 7 l. 10 s. 0 d. per annum;”

Boarman’s Case, 2 Bland 89, June 1805. [90] “negro James, the property of the lunatic, had frequently absconded from service, and had several times nearly effected his escape; and by so doing had become of little use, and was in great danger of being totally lost.” Ordered: that the slave be sold.

State v. Fisher, 1 Har. and John. 750, July 1805. “Rebecca Syntha, a mulatto woman, born free of a manumitted negro mother, was offered

¹ Act of Mar. 22, 1794.

as a witness—but who was objected to by the counsel of the prisoner as incompetent to testify against him, he being a free born white christian man.” The question of the witness’s competency¹ “was laid before the court of appeals . . . But . . . the court could not agree in opinion upon the question.”

Negro James v. Gaither, 2 Har. and John. 176, December 1807. “A deed of manumission, dated the 13th of September 1784, was executed by B. Gaither, deceased, . . . giving freedom, after his death, to sundry of his negro slaves, among whom was the petitioner, Negro James. The deed was signed and sealed by him in the presence of . . . Boyd, one of the justices of the peace . . . and recorded . . . November 1784. . . [177] Gaither asked Boyd if it was necessary that any one else should sign it, and Boyd replied it was not. . . Gaither requested the persons who were present . . . all to take notice that he had signed an instrument of writing to set all his negroes free.” Will of Gaither, dated 1791: [176] “My will and desire is, that all my young negroes, born since my negroes were recorded, shall be absolutely free at my death.” [177] “Gaither died about the year 1793, and the negroes mentioned in the deed have been at large ever since. . . The County Court . . . 1802, gave judgment for the petitioner. . . 1804, the General Court Reversed the judgment of the county court, and gave judgment that the . . . petitioner, was a slave.”² Judgment affirmed.

Chaplin v. Cruikshanks, 2 Har. and John. 247, June 1808. Action of slander. The words charged were: “My horse is poisoned, and will die, and Robert Cruikshanks had done it, and that he had furnished a certain negro Charles with oil of vitriol, which the said negro Charles had rubbed upon him,”

Negro Cato v. Howard, 2 Har. and John. 323, June 1808. Petition for freedom. In January 1793 Nathan Harris sold his slave Cato to Jesse Harris, for seven years, for £65, it being agreed by parol and as a part of the bargain “that Jesse should at the end of seven years, from the time of the sale, or sooner if he pleased to do so, manumit and set the petitioner free.” Cato served Jesse until about January 1799. “In February 1799 Nathan, without the consent of Jesse, sold the petitioner as a slave to Howard, who soon after took the petitioner into his custody as a slave, and still holds him as such. On the 2d of March 1799, Jesse executed a deed of manumission of the petitioner, which was duly acknowledged and recorded. . . [324] the verdict and judgment being against . . . [the petitioner], he appealed. . . Judgment reversed, and *procedendo* awarded.”

Hay v. Conner, 2 Har. and John. 347, December 1808. Action of trover. Martha Hay hired the mulatto slave James Perry to Captain Conner [348] “for the wages of 20 dollars per month,” to perform a voyage from Baltimore to Hamburg, and thence back to Baltimore, on board his ship *Mary*. “The slave’s name was signed under the ship’s

¹ Act of May 1717, ch. 8, sect. 1.

² Act of 1752, ch. 1, sect. 5.

articles . . . as a cook;" Conner promising "that he would bring back the negro, or pay her a generous price for him, in case he should not." The ship *Mary* was sold at Hamburg, and the slave was put by Captain Conner on board the *Fidelity* bound for Baltimore, Conner furnishing the slave with provisions for the voyage. [349] "by the act of God the vessel was driven out of her course, and compelled to go to one of the Islands." The slave escaped. Judgment for the defendant, reversed, and *procedendo* awarded.

Drury v. Negro Grace, 2 Har. and John. 356, December 1808. Will of Lebedee Wood, dated 1788: "the whole of my property . . . to . . . Mary Ann Wood, to her and her heirs for ever, and in case she dies without lawful issue, then" to "my dear wife Ann, during her widowhood, and no longer, and at her death or marriage" to X. Mary Ann obtained possession of negro Grace, and the widow Ann married again. In 1800 Mary Ann made her last will: [357] "My will and desire is, that all my negroes shall be free." She died a few months later in the seventeenth year of her age, unmarried, and survived by her mother. Grace petitioned for her freedom, and the county court gave judgment for her.

Judgment reversed by the Court of Appeals: [359] "The limitation over to Ann, during her widowhood, constitutes a good executory devise, . . . the remainder over [to X], after the death or marriage of Ann, did take effect immediately on the death of Mary Ann,"

Shorter v. Boswell, 2 Har. and John. 359, December 1808. Petition for freedom. Mary Lancaster deposed "that she knew [Martha or] Patt [the ancestress of the petitioner], and always understood she came from Raphael Neale, but did not know it of her own knowledge, and heard that she went by the name of Patt Shorter." The county court [360] "were of opinion that the same was not . . . admissible evidence, and refused to let it go to the jury. The petitioner excepted. The petitioner then . . . gave in evidence, that she was the daughter of a woman named Betty, who was the daughter of a woman named Sarah, who was the daughter of a woman named Betty, who was the daughter of a woman named Martha, or Patt, who was held in servitude by John Lancaster, . . . and that Patt was called Patt Shorter, and had two sisters, namely Mary, . . . and Jane, who belonged to . . . the sons of Anthony Neale . . . who died about the year 1723. . . Lancaster married . . . the daughter of Raphael Neale, who was also the son of Anthony Neale, and that Martha, or Patt, was given to John Lancaster by Raphael Neale; that John Lancaster gave Sarah . . . to Henry Digges," his son-in-law; "that Digges sold Betty, the daughter of Sarah, to . . . Boswell; and that the petitioner was born of Betty, after the sale of her mother to the defendant. The petitioner then produced one of the record books of Charles county court, and offered to read in evidence an entry¹ . . . [361] to prove the existence of a free white woman Elizabeth Shorter, in the family of a certain William Roswell, . . . and that she married a black man named Little Robin, the servant of Roswell, and had by him three daughters, namely Mary, Jane

¹ This entry is given in *Shorter v. Rozier*, p. 52, *supra*.

and Martha, and that Elizabeth Shorter, and her husband, were given by Roswell to Anthony Neale," his son-in-law. [362] "verdict and judgment for the defendant; and the petitioner appealed" Judgment reversed: the hearsay evidence (in the deposition of Mary Lancaster) is admissible.

Negro George v. Dennis, 2 Har. and John. 454, December 1809. Petitioner was sold in 1792 by the administrator of a resident of Maryland to another resident of Maryland, "who immediately afterwards removed to the state of Virginia, and took the petitioner with him." Held: the petitioner is not entitled to freedom.

Rusk v. Sowerwine, 3 Har. and John. 97, June 1810. "the plaintiff offered as a witness . . . a black woman named Minta; and on the defendant's objecting to her, as an incompetent witness, the plaintiff offered evidence that the witness, and the late Benjamin Bannaker, a black man of Baltimore county, were born of the same parents, and that the witness and Bannaker were always reputed to be free; and that their mother was also reputed to be free, and to be descended of free parentage, and did actually enjoy freedom. That Bannaker exercised in his life the rights of a free man in holding real property, in voting at elections, and being allowed and permitted to give evidence in courts of justice in cases in which free white citizens were concerned;" Held: Minta is "an incompetent witness, the plaintiff and defendant being free white christian persons."

Queen v. Neale, 3 Har. and John. 158, December 1810. Petitioner for freedom exhibited her affidavit under the act of 1804, ch. 55, sect. 2, "stating that she believed she could not have a fair and impartial trial in that court," Held: "a negro, petitioning for his freedom, is not competent to make such an affidavit—his slavery or freedom being then *sub judice*, and if a slave, he is excluded by the act of 1717, ch. 13."

Stewart v. Oakes, 5 Har. and John. 107 n. December 1813. Defendant, a citizen of Maryland, "owns a stone quarry in . . . Virginia, where he has been in the habit of taking the petitioner, for the purpose of working in the quarry, for a number of years past, four or five weeks in the spring of every year, making the time of the petitioner's being in Virginia, in the whole, upwards of one year." Held: petitioner is entitled to his freedom under the laws of Virginia.¹

Sprigg v. Negro Mary, 3 Har. and John. 491, December 1814. I. The petitioner "produced a mulatto man named R. Shorter as a witness, whose mother was a black woman." It was proved "that Shorter was sworn as a witness . . . in a cause of Nelly Shorter against Jason Phillips, a white christian man. . . the mother of R. Shorter was a black woman, but that she was free, having been one of the Shorter family who had claimed their freedom, and obtained it, on the ground of their being descended from a white woman."² . . . [492] The petitioner also produced to the court a certificate given by the clerk of Frederick county to the said R. Shorter, certifying that he had recovered his freedom, in that court, of

¹ Act of Va., Dec. 17, 1792, ch. 103, sect. 2.

² See *Shorter v. Rozier*, p. 52, and *Shorter v. Boswell*, p. 61, *supra*.

T. Sprigg, . . . 1795. . . The defendant still objected to the competency, as a witness, of R. Shorter. The defendant was a free white christian man. But the court overruled the objection, and R. Shorter was examined as a witness." The Court of Appeals concurred in the opinion of the county court.

II. In 1804 "T. Sprigg [a resident of Maryland] came to the house of C. Herstons in Frederick town, and said to him, I have given Esther and her children, to M. Herstons,¹ who was then an infant of about five years of age. That Esther, and her Children, were then at the house of the said C. Herstons, the father . . . of the said M. Herstons,² and were then left in his possession by the said Sprigg as the property of M. Herstons. That C. Herstons held and possessed the said negro woman, and her children, for M. Herstons, as her guardian, from the time of said gift, and as her guardian carried the said Esther, and her children, to George town, in the district of Columbia, and continued to hold her there . . . for about two years, when he returned her, and her child, the petitioner [who was born in the District of Columbia], to the said Sprigg," in Maryland. "M. Herstons is still an infant under the age of 16 years." Judgment for the petitioner reversed, and *procedendo* awarded.

Sprigg v. Negro Presly, 3 Har. and John. 493, December 1814. Presley was the child of Esther³ and [494] "was about three years old" when he was carried to the District of Columbia in 1804. In 1807 C. Herstons,⁴ [495] "finding Esther troublesome and disagreeable [*sic*] to him, . . . sent her and her children" back to Maryland to his father-in-law, Sprigg. "That Sprigg kept her and her children at his house until 1810, when he hired her out" to Mrs. Hall. When Mrs. Hall advised him [494] "to hire her to her husband, who was a free man, Sprigg said no, he would not, for that she was good for nothing enough already, and if he hired her to her husband she would make all her family as worthless as herself." He let Mrs. Hall "have Esther for \$24 per year."

Verdict and judgment for the petitioner in the county court, "reversed, and *procedendo* awarded." [496] "the verbal gift was sufficient to transfer the property in the petitioner to M. Herstons, without any other delivery."

Pye v. Wood, 3 Har. and John. 504, December 1814. [505] "in order to show by the declarations of the plaintiffs, that the said negroes were of little or no value, [defendant] offered to ask the witness the following questions: 'Did you hear the plaintiffs at any time in October 1809, say that they knew where the negroes were, that they had left their possession by their orders, and that they would take no steps to regain the possession of them, and that they did not wish, and would not allow them to return?' To the answering of these questions by the witness, the plaintiffs objected."

¹ "the granddaughter of the said Sprigg." *Sprigg v. Negro Presly*, *infra*.

² Esther was sent to the house of Herstons a few days after he married Sprigg's daughter, in 1797. *Ibid.* 494.

³ See *Sprigg v. Negro Mary*, p. 62, *supra*.

⁴ [495] "the father and guardian by nature of M. Herstons," who owned Esther and her children.

Haney v. Waddle, 3 Har. and John. 557, March 1815. The petitioner was the slave of Samuel Haney, a minor, and had been sent in February 1810 from Virginia, "where he was born and raised," to Baltimore, and hired "to Joseph Nevitt, the captain and owner of the Alexandria packet, which sailed between Alexandria and Baltimore; . . . December 1810, . . . he deserted and ran away from him, and shortly after filed this petition for his freedom." Verdict and judgment for the petitioner reversed: [558] "a minor could do no act to affect his rights, nor could his guardian for him."

Fulton v. Lewis, 3 Har. and John. 564, May 1815. The owner of the petitioner arrived at Baltimore in August 1793 from Santo Domingo, "flying from disturbances which then existed there, . . . and brought with him into the state three negroes, of whom the petitioner . . . is one." In May 1794 he sold the petitioner as a slave, and returned to the West Indies in 1796. Held: the petitioner is free.¹

Duwall v. Medtart, 4 Har. and John. 14, December 1815. "the plaintiff offered in evidence, that the negro man . . . was sold to him by the defendant for \$400, . . . That he was ruptured and diseased . . . [15] and afflicted with the consumption, and was unable to do ordinary and usual labour from the time of said sale," "The defendant then offered evidence . . . that about four months after the negro was so sold, the plaintiff wrote to a certain Christian Kemp, by the negro, offering him the said negro, for the sum of \$400 cash, or \$450 credit. The plaintiff then offered evidence, that the negro had a wife at Kemp's, and wished to go to him. . . . at the time the said letter was written, that he, the plaintiff, said . . . that he would fix a price, which he knew would prevent a purchase by Kemp, and that he only wrote the letter in order to deceive the negro, and to prevent him from absconding, through fear of being returned to the defendant."

Chilton v. Jones, 4 Har. and John. 62, December 1815. [64] "Davis said . . . that they were motherless children, and he parted with them on that account; . . . the mother had died with the King's evil, or scrophula." Held: "the circumstance of the mother of the children . . . having died with the King's evil . . . is not of itself sufficient evidence of the unsoundness of any of her children, to entitle the plaintiff to recover"

Walls v. Hemsley, 4 Har. and John. 243, June 1817. "some time before the surrender of York Town to the American army, the witness had gone to James River, with one captain J. Sweat; that he was afterwards transferred to the *Baltimore* Galley, and after the surrender of the British he again went on board captain Sweat's vessel and went into York River. That about two or three weeks after the said surrender, he left York Town; that before he left there he had been on shore at Gosport, where he had seen negro Suck, the mother of Henny, one of the petitioners, selling cakes and beer without control; and that he saw her repeatedly afterwards selling cakes and beer at the shore of the river at York Town, until the day before captain Sweat sailed, when Suck was brought on board

¹ Act of 1783, ch. 23.

his vessel by five or six men at about 9 o'clock at night, and purchased by Sweat. That another black woman was brought on board captain Sweat's vessel by the same persons, who was released and set on shore in consequence of her cries and screams. That Sweat had informed Suck that he would make her his wife. That Suck had said, during her passage to Maryland, that she was sorry she had come away, as she was free in Virginia, and had a white husband there. . . [244] Denny . . heard a conversation between Suck and the mother of the witness, in which Suck stated herself to have been free in Virginia, and to have been stolen from thence by captain Sweat. . . the Court . . permitted the witness . . to testify as to the reputation of the neighbourhood in relation to Suck's freedom." Verdict and judgment for the petitioners " Judgment reversed, and *procedendo* awarded."

Burroughs v. Negro Anna, 4 Har. and John. 262, June 1817. Will of L. Burroughs, dated 1811: " I give and bequeath unto my negro woman called Anna, her liberty, and the advantages of her son as a labourer, so long as she lives, and a young bay mare three years old next spring, and four barrels of Indian corn, and three hundred weight of pork, and one black cow about six years old, and a hoe and an axe, and a spinning wheel, and cards, cotton cards, and one iron pot, holding three gallons or thereabouts, and half a dozen pewter plates, and the balance of the wool after clothing the family, and one young white sow, and all the dunghill fowls, and half a barrel of wheat; also it is my will and desire that my man Josias, her son, be the entire right and property of her the said Anna." When the testator died, in 1815, Anna " was above the age of forty-five years. . . The county court [Johnson, C. J.] gave judgment for the petitioner, . . Judgment reversed."¹

Henderson v. Negro Tom, 4 Har. and John. 282, June 1817. " Cole, a citizen . . of New-York, removed . . into Harford county, in . . 1793, and brought with him from New-York . . sundry negro slaves, of which the petitioner Tom is one; . . the petitioner was born in . . New-York, in the family of . . Cole, to whom the petitioner and his mother belonged as slaves," Cole did not comply with the provisions of the act of April 1783, ch. 23. [283] " The County Court gave judgment . . that the petitioner was entitled to his freedom," Affirmed.

Negro Hannah and Children v. Sparkes, 4 Har. and John. 310, June 1818. Petition for freedom based on the will of Charles Barniclow, dated 1811: " My will is, that my negro woman Hannah, and her child Elijah, shall be free after my death." In 1786 Barniclow married the daughter of J. Ireland, in whose family they lived till August or September 1787. In January 1787 they had a child named Anna. " in March 1787 the child of Barniclow and wife being in the cradle, . . Hannah, then a girl [the slave of Ireland], was rocking the cradle, and that J. Ireland called her up and put his hand on her, and requested the witness, Trew and Downing, to take notice that he then gave Hannah to Anna the child of Barniclow and wife; that he declared at the time that Hannah, and her posterity,

¹ Act of 1796, ch. 67.

should be the property of Anna, except the first child which she might have, which child, if it lived, should be the property of his daughter A. Ireland. That Hannah was then about seven years of age. That immediately after this ceremony, Hannah returned to rocking the cradle. That from that time Hannah continued to sleep in the room of Barniclow and wife, and to attend to the child, which was also done by another girl about the house." Hannah remained in the possession of Barniclow, though Anna [311] "went to live with her grand-mother," In 1792 J. Ireland was at Barniclow's house on a visit and, calling two witnesses into the house, "said he had given Hannah to his grand-daughter Anna before, and to make the thing firm, as they were young, said, now take notice Holding [one of the witnesses], if any claim should come against Barniclow, that Hannah is not Barniclow's property, but the property of his daughter, striking the witness on the back with a whip, and saying, now take notice you remember this in a coming day."

Judgment against the petitioners, affirmed: [312] "the gift as proved . . . was . . . sufficient in law to transfer the property" in Hannah to Anna.

Fishwick v. Sewell, 4 Har. and John. 393, June 1818. Will of Ann Loockerman, dated 1755: [400] "bequeathing to her niece Jane Fishwick, the child her negro wench Dido went with, be it boy or girl, to her and her heirs forever."

Extract from Darnall's account against the estate of J. Fishwick: [401] "Cr. 1775. By one mulatto wench called Dinah, with a child at her breast, value, [£] 80. 0. 0." Letter by Darnall, June 28, 1782: [400] "God be praised, we can do very well without Dinah; her work has not been equal to the charge of maintaining four small children."

De Fontaine v. De Fontaine, 5 Har. and John. 99 n., June 1818. "M. and Madame De Fontaine . . . were driven from their estate in the island of St. Domingo, by an insurrection of the negroes; and being in different parts of the island at the moment of insurrection, the husband fled to St. Jago, in the island of Cuba, carrying with him his two slaves, the present petitioners, whilst the wife fled to Baltimore with their only child and heir, the present defendant. . . 1805 . . . the father . . . shipped the petitioners to his wife and child, in Baltimore," In 1808 Madame de Fontaine returned to St. Domingo, leaving the slaves with her agent as a pledge for money lent. Held: the slaves are not emancipated by the law of Maryland.¹

Johnson v. Negro Lish, 4 Har. and John. 441, June 1819. Petition for freedom. A bill of sale or deed of gift, dated 1793, was offered in evidence: "he gave and granted unto her [Sarah Bradshaw], and to her lawful issue forever, a negro girl called Lish, about Eight years old, with a proviso, that if Sarah should die without issue as aforesaid, Lish, and all her increase, should devolve and return to the donor's estate to all intents and purposes, as although the deed of gift had never taken place." Sarah Bradshaw married J. Melvin and died without issue. Will of Melvin, 1810: "the negro children Eliza and Mehala, together with any

¹ Act of 1796, ch. 67.

further or more children that the negro woman Lisha may have during the life of my wife, shall all be free at the death of my wife." Will of Sarah, who died in 1816: "I give to Moses W. Jones my negro woman Letisha, my negro girl Eliza, and my negro girl Sinah, to serve him six months after my death, and then to be free from all servitude whatever." Verdict and judgment for the petitioner: [442] "the gift to Sarah Bradshaw passed the absolute property to her in negro Lish,"

Wicks v. Chew, 4 Har. and John. 543, December 1819. Richard Darnall, "on the 10th of May 1805, executed and acknowledged a deed of manumission, whereby the petitioners were manumitted from slavery. That Darnall died soon after the execution of this deed, and that it has been omitted to be recorded within the time prescribed by law, without any fraudulent design or intention whatever." In 1817 Chancellor Kilty authorized the recording of the deed of manumission, which had not been enrolled within the time prescribed by law. The Court of Appeals reversed his decree, holding that the chancellor had erred in his construction of the acts of assembly.¹

Moore v. White, 4 Har. and John. 548, December 1819. The trustee of a lunatic, "in passing his final account charged, among other things, for the raising of sundry negro children belonging to the estate of the lunatic, and which were born after his trusteeship, and also for the mid-wife's fees. Jonathan Moore . . . filed objections against the said account, alleging that there are negro men to hire out to the amount of \$400 at least, and negroes enough left to cultivate the land." Held: [550] "the expenses attending the birth and raising of the young negroes" are "incidental to the trust, and the possession of the property under it," and cannot be allowed.

Adams v. Anderson, 4 Har. and John. 558, December 1819. In 1816 Adams (defendant, now appellant) brought a stranger, Nixon, to Anderson's house and said he, Adams, wished to buy a negro woman. Anderson asked if he desired her for his own use, Adams living about a mile distant, and he replied that he did. The price, \$300, seemed too high to the defendant. "The plaintiff then said he had another, with a child about six years old, . . . and would sell for \$400." He asked \$700 for all three. "Upon the defendant's objecting to the price, the plaintiff said as the defendant would take them for his own use, and the negroes were willing to go with him for that purpose, (the negroes having expressed their willingness,) he would sell them lower on that account, and would take \$675." Defendant said his friend Nixon "wanted one of them for his own use," and that he would take one, and himself the other, . . . at that price. That Nixon then offered to give his bond, obliging himself to keep the woman for his own use, and from being removed from the city of Washington, where he lived. The plaintiff replied that a bond was not necessary, . . . if the defendant would be responsible, and engage to that effect, . . . [559] That he abhorred the practice of selling to slave-dealers, and would not so sell the negroes for any consideration, nor dispose of

¹ Acts of 1792, ch. 41, and 1796, ch. 67.

them except with the understanding that they were to be kept in the neighbourhood. The defendant then declared that he did so engage, . . . Upon this the bargain was made, the money paid, and the negroes delivered . . . They were all immediately carried off out of the state by Nixon, and removed to Carolina," Nixon being known by Adams to be "a slave-dealer from South Carolina," Defendant "boasted of the manner he had managed the affair for Nixon, whose agent he was, and from whom he had received \$40 for his agency; that when they saw the negroes, Nixon fixed a price on them, and told the defendant that he might get as much lower as he could, and he would allow him the difference. . . . These negroes (one of them about 16 and the other 20 years old,) were born and raised in his [plaintiff's] family, and one of them had a father and mother belonging to him, and then in his service. . . . A few days after the sale he called on the defendant, and reproaching him for his conduct, said he would return the money, and demanded the negroes, which the defendant said the plaintiff might get, but they had been then removed from the city of Washington. That the father and mother of the girl so sold, when they heard she had been carried off, were in great distress and trouble, and for sometime unable to do their usual work in the plaintiff's service, though they were not confined by sickness." Held: [560] "a palpable cheat and fraud on the part of the appellant, for which the appellee is entitled to damages."

Walkup v. Pratt, 5 Har. and John 51, June 1820. The petitioner [58] "claims his freedom as being the son of Tansey, who was the daughter of Violet, a free Indian woman;" Will of P. Feddeman, 1733: [53] "bequeathed two mulatto slaves, namely Violet and Davy, to the child his wife was then big with, to be delivered when the said child came of age." The petitioner asked a witness, "if he had ever heard in the neighbourhood, of C. C. Ruth, that Violet, and her children, were entitled to freedom?" The court did not admit this testimony. [54] "The petitioner proved by a witness, that . . . Mrs. Ruth made complaints of Violet's conduct. Mr. Ruth . . . said, Becky, no one can please you; but I cannot beat Violet, for she is as free as you or I. . . . that after the death of Mr. Ruth, she heard Mrs. Ruth say, . . . that she refused to take [one of Violet's children, as part of her thirds] . . . and told Henry Pratt that she would not, for that he, Pratt, knew that Violet's children were free." A witness for the defendant testified that she [55] "had a conversation with Violet, and that she then acknowledged herself to be a slave—that her mother was a black woman, and her father a white man."

Verdict and judgment against the petitioner, affirmed: [56] "general reputation of the neighbourhood, that the petitioner, or his . . . maternal ancestors, were free negroes," is not admissible in evidence. "In the cases referred to in the reports of Harris and McHenry, such evidence was received by the court. It was however refused by the Supreme Court of the United States, in the case of *Mima Queen*¹ . . . and in the case of *Henry Helmsley* [Hemsley] . . . against Walls, decided by this court . . .

¹ 7 Cranch 290 (1813).

1817,¹ such testimony was rejected . . . and the court have no reason to be dissatisfied with that decision." [Martin, J.]

Negro William v. Kelly, 5 Har. and John. 59, June 1820. Will of L. Goslee, 1808: "I give and bequeath to all my negroes their freedom; that my heirs, executors, nor administrators, shall have no right nor title to them after they arrive at the ages hereafter mentioned—the males at twenty-eight years of age, and the females at twenty-five years of age, according to the ages in my book." The widow renounced the devises and bequests in the will, and agreed to take her thirds of the estate, as allowed by law. The testator "left personal estate, exclusive of his negroes, more than sufficient" to pay his debts; but not sufficient to compensate the widow for her thirds. The petitioner in 1819 had "arrived to the age of 28 years, . . . and is of a sound healthy constitution, and able to get his living, and to support himself by labour." Held: he is not entitled to his freedom.

Baptiste v. De Volunbrun, 5 Har. and John. 86, June 1820. Madame de Volunbrun fled from St. Domingo, arriving in New York in 1797, "but finding the climate unfavourable to her health, removed to the city of Baltimore, with the petitioners as part of her family, in 1802. That she has constantly and uniformly declared her intention to return to her own country . . . and for this reason never became a citizen of the United States, or of this state. That the petitioners having attempted to escape to Saint Domingo, she caused them to be sent to New-Orleans, as her property, subject to her future orders."

Judgment against the petitioners, affirmed: Madame de Volunbrun was a sojourner within this state (1802-1818), driven here by necessity, and not within the prohibition of the act of 1796, ch. 67.

Davis v. Jacquin, 5 Har. and John. 100, June 1820. Miss Davidson, when seventeen years of age, took her slave, the petitioner, with her to Pennsylvania. The Maryland act of 1798, ch. 101, provides that the guardianship of female infants shall cease when they attain the age of sixteen. Verdict and judgment against the petitioner. Affirmed: [110] "the law conferred on her a new capacity; but this capacity does not destroy the state of legal minority,"

Negro Clara v. Meagher, 5 Har. and John. 111, June 1820. Deed of manumission, executed in Delaware, October 12, 1801, and signed, sealed, and delivered, in the presence of two witnesses. One of them, on November 18, 1801, "made oath, in due form of law, that he saw the grantor sign, seal and deliver, the deed; that he subscribed his name to it as a witness, and saw Daniel Baker subscribe his name as another witness." Act of Delaware, 1797, ch. 124, requires witness to a deed of manumission to subscribe in the presence of the grantor. Petition for freedom dismissed: [113] "The proof made by the subscribing witness . . . does not establish the point that the witness did attest the deed in the presence of the grantor."

Hall v. Mullin, 5 Har. and John. 190, June 1821. Action of "trespass *quare clausum fregit*, brought . . . by Dolly Mullin . . . against . . . Hall."

¹ *Walls v. Hemsley*, p. 64, *supra*.

Will of Benjamin Hall, executed 1803: [191] "I hereby manumit and set free, from the time of my decease, my carpenter, called old Basil." At the time of Hall's death Basil was "upwards of forty-five years of age. . . Dolly Mullin, the plaintiff below, was the slave of Henry L. Hall [the son of Benjamin], and the daughter of Basil, to whom Henry L. Hall, (if practicable,) sold her, and in the month of April 1810, executed to him a bill of sale of her; and on the 26th of May 1810, Basil, as far as he was competent so to do, executed a deed of manumission to Dolly Mullin."

Will of Henry L. Hall, dated 1817: "I give and bequeath to Dolly Mullin one hundred and forty-one acres of land . . . for the use and benefit of Dolly Mullin, and her son Henry Mullin, during the life of the said Dolly Mullin, and after her decease to be the right of the aforesaid Henry Mullin, his heirs and assigns for ever. . . I give and bequeath to Dolly Mullin two young negroes, one called Joan and the other Aaron . . . [Bequests of other negroes to others] . . . I leave and bequeath all the remainder part of my negroes free."

"Judgment for the plaintiff affirmed: I. As Basil [192] "was upwards of 45 years of age, when . . . his master, died, he was not manumitted by his will, because of the positive provision of the act of 1796, ch. 67." II. [195] "Basil, being a slave, was incapable of taking and acquiring any property in Dolly Mullin, under the bill of sale . . . and that the said bill of sale was void." III. The will of Henry L. Hall set Dolly free [194] "by implication, or by the true construction of his will, taking all its parts together . . . it was the intention of the testator that none of his slaves should remain slaves after his death, other than those he named and bequeathed as slaves; . . . without the aid of the residuary clause she would have a right to freedom, under those parts of the will by which property was given to her; her freedom by implication, is indispensably necessary to give efficacy to those clauses of the will." [Johnson, J.] [195] "The testator imagined Dolly was free; she was not free, but a slave, at the time the will was made, and being a slave, the will operated to give her freedom, and the lands devised to her." [Chase, C. J.]

Hepburn v. Sewell, 5 Har. and John. 211, June 1821. "After the commencement of the action of trover,¹ in which the verdict was rendered [for Hepburn], the slaves Sall, Patt and Phillis, each had a child, and the present action of trover was instituted to recover the value of the said children." Held: the action cannot be maintained. If the property increases in value between the conversion and the satisfaction of the judgment, the defendant is entitled to the benefit of such increase.

Queen v. State, 5 Har. and John. 232, June 1821. The indictment charged that Queen "did assist a negro woman named Nelly . . . in eloping and running away from [her master] . . . by accompanying her a considerable distance, and showing her the road by which she might escape," He was found guilty and the county court [233] "rendered judgment upon the verdict . . . for the penalty prescribed by the act of 1796, ch. 67."

¹ *Fishwick v. Sewell*, p. 66, *supra*.

Hughes v. Negro Milly, 5 Har. and John 310, June 1821. Will of Margaret Coale, dated 1776: "I give and bequeath unto my son, Philip Coale, my negro girl named Prina, until she arrives to the age of twenty-one years, being at this time about fifteen years of age, and I do order him, that immediately after my decease he manumit her, and her posterity, so that their freedom may be secured to them at the age of twenty-one years." The testatrix died in 1786. Philip Coale neglected to execute the deed of manumission, and Samuel Coale, her administrator and residuary legatee, executed a deed of manumission to them March 3, 1819. Held: they are entitled to freedom.

Fenwick v. Forrest, 5 Har. and John. 414, June 1822. See same *v.* same, p. 72, *infra*.

Law v. Scott, 5 Har. and John. 438, June 1822. Action of slander. Defendant had said to United States senators that the plaintiff, who had been nominated by the President to the Senate, for the office of commissioner of claims, [439] "had forcibly and fraudulently transported from the district of Columbia, and the state of Maryland, and sold to the south, negroes entitled to their freedom, he (meaning the plaintiff,) well knowing that the negroes were entitled to their freedom, and had suits depending . . . for establishing their freedom; . . . [440] by reason thereof the aforesaid senators . . . wholly and entirely refused to concur with the president of the U. S. in appointing the plaintiff "

Duvall v. State, 6 Har. and John. 9, June 1823. "The indictment . . . charges nothing more than that the party prosecuted gave a pass to a slave, the property of . . . Withers, contrary to the act¹ . . . without averring any loss of service by the master . . . [10] The court are therefore of opinion, that the offence contemplated by the law, is not charged in the indictment, and that the judgment of the court below must be reversed."

Hamilton v. Cragg, 6 Har. and John. 16, June 1823. Will of Rachel Turner, dated 1801: "I give and bequeath unto my loving sister Sarah Turner, five negroes, by name, Frank, Joe, Lille, Mill and Lin, to possess and enjoy during her natural life, them and their increase, and my will is, that after my said sister's death, the above named negroes be free." James Cragg, the petitioner, is the son of Mill, and was born in 1805 or 1806, after the death of the testatrix, and in the lifetime of Sarah Turner, who died in 1807.

Judgment for the petitioner, reversed: [18] "the above named negroes" are "words of description, . . . applying to all who were the subject of the bequest, the issue as well as their mothers." But James Cragg was not more than two years old [19] "at the time that the freedom intended to be given was to commence;" and "consequently was not . . . able to work and gain a sufficient maintenance and livelihood."²

Scott v. Burch, 6 Har. and John. 67, June 1823. Public auction, October 1818: [68] "Sydney for \$540, Louisa for \$525, Eliza for \$755, and Rachel and her two children for \$1030."

¹ Act of 1796, ch. 67, sect. 19.

² Act of 1796, ch. 67.

The St. Jago de Cuba, 9 Wheaton 409, February 1824. John Gunn built the vessel in the port of Norfolk, and needing money, mortgaged her to Maher of Baltimore. [411] “instead of an hypothecation in ordinary form, Gunn executed a bill of sale to Maher, admitted, on all hands, to have been intended to serve only as the means of enabling Maher to expedite the vessel on a voyage to Cuba, there to be sold, and to account with Gunn for the proceeds, as well of freight as of sale. This purpose Maher appears soon to have abandoned, for an enterprise of a very different nature. . . For no sooner does she arrive at St. Jago, than she is colourably conveyed to Vinente, . . [412] and she is completely equipped, colourably a Spaniard, but really an American, for the African trade. On her voyage thence to the coast of Africa, she is pursued by hostile vessels, and in the chase sustains damage, which compels her to put into Baltimore to refit. There she encounters Gunn, her original and equitable owner, but who finds in her nothing of her original character, but what served to identify his vessel, and expose to him how his confidence had been abused, and his property forfeited, through his own indiscretion, in conveying her to Maher.” Decreed: the vessel and cargo are forfeited to the United States.¹

Fenwick v. Forrest, 6 Har. and John. 415, June 1825. Sall, the slave of Nicholas Sewall, married David Sommerville, and Sewall [416] “agreed that she should attend her husband in Baltimore, And that if he would pay him . . a sum of money . . , that Sall should be the property of her husband. . . between 1809 and 1813, David Sommerville and Nicholas Sewall . . had an interview, in which Sommerville expressed his fears that his wife might be interfered with as a slave and runaway; and that it was then understood between the said Sommerville and Sewall, that the contract, in relation to the said negro woman, was affirmed, in consideration of having raised two children which he was either to send home, or had sent home to the said Sewall, and a sum of money which was then paid.” Lynch testified that in May 1817 “six negroes were brought on board his vessel lying at Baltimore, and were brought by him” to the house of Fenwick, guardian of Sewall’s children. Fenwick, in July 1817, sold four of them to Forrest for \$750, and warranted “said negroes to the plaintiff [Forrest] against all persons whatsoever, to be slaves for life, and the property of the plaintiff,”² They were taken out of Forrest’s possession by virtue of a writ of replevin issued against Fenwick by David Sommerville. Fenwick did not defend the action of replevin. Held: he is liable to Forrest in an action of covenant.

Key v. Parnham, 6 Har. and John. 418, June 1825. On January 9, 1817, Key hired of Parnham [419] “six negro men, for the use of . . Heath, . . and for and during the present year, and agree . . to give eighty dollars as wages for each of the said negroes, and to furnish them with all necessary clothing and food,”

Letter dated January 12, 1817: “Dear Sir, Mrs. Key is anxious I should hire your sister’s woman for Mrs. Heath. If then she will take

¹ Act of 1794, sect. 1; act of 1818, sect. 2.

² *Fenwick v. Forrest*, p. 71, *supra*.

no less than \$25, and the woman can go up with the other hands, you will send her up, and I will be answerable for the wages, clothing and food. The woman will have a tender, good mistress; and indeed I know that great care will be taken of the whole of them. P. Key."

Chew v. Gary, 6 Har. and John. 526, June 1825. Will of Mary Ann Wood, dated 1800: "My will and desire is, that all my negroes shall be free, except my negro woman Nanny; and my will is that she shall serve my mother, Ann Brown, during her life, and at her death my said negro woman Nanny to enjoy her freedom." The petitioner, who is the daughter of Nanny, was born after the death of the testatrix, but during the life of Ann Brown. Held: the petitioner is a slave.

Winder v. Diffenderffer, 2 Bland 166, August 1825. Will of Charles Rogers, dated 1805: "I . . . bequeath to my said wife all my negro slaves to be by her manumitted, when she may think prudent and advisable. . . [170] my slaves are to be manumitted, notwithstanding my personal property be insufficient to pay my debts; it being my intention, that the same be charged on . . . my real estate, . . . [171] in order to enable them to be manumitted at all events,"

Crapster v. Griffith, 2 Bland 5, September 1825. [20] "Alfred, about fifteen years of age, and of the value of \$280; Cuffee, about thirteen years of age, and worth \$250; and Eliza, aged thirteen years, and of the value of \$175."

Coale v. Harrington, 7 Har. and John. 147, June 1826. "Trover for three slaves names Julian, Alexander and Commodore." In 1806 John Deford sold to his father Thomas L. Deford "all his personal estate," which included "a negro woman named Henny . . . and her child named Julian," In 1812 Thomas L. Deford executed a bill of sale of Henny and Julian to his granddaughter (John's daughter, who married Harrington in 1820). [149] "after such transfer Henny had two children, Alick and Commodore. Alick . . . was yellow, and Commodore black." [148] "John Deford was opposed to Mr. Harrington marrying his daughter, and said Harrington should not have the negroes if he could keep them from him. . . [149] Alick lived with Harrington some weeks . . . Alick did not like to stay, and deponent believes he run away. . . [150] Henny, . . . about the year 1812, and for some years after, lived in Centreville, and hired herself about, in different places, as a free woman. That some persons threatened to enforce the law against masters who suffered their slaves to go at large as free. That John Deford reclaimed Henny," and hired her out. Harrington went to Baltimore in search of Henny and soon after finding her, [150] "sold her to a Georgia negro trader." John Deford, claiming to be the owner of the children, "brought them with him in the steam boat to Baltimore, a few days before this action was brought;" and requested the defendant, Coale, "to take possession of the said negroes, . . . that the plaintiff was attempting to get possession of them for the purpose of selling them;" Harrington demanded the children but "the defendant refused to give them up . . . saying he should not have them without legal process, for he would punish Harrington for

selling the mother of said negro children to Georgia. . . [151] The defendant then offered in evidence a deed of manumission, executed by John Deford, . . dated the 18th of September 1821, whereby the said Deford . . manumitted and set free his negro girl Julian, aged about ten years, his negro boy Alexander, aged about eight years, and his negro boy Philip Commodore, aged about four years, and giving them immediate freedom. The deed was acknowledged . . before the defendant, being a justice of the peace . . and recorded the same day . . the defendant . . put one of them into the possession of a Mr. Tyson, another into the possession of an uncle of the child, and the third into the possession of one Cowman;” These persons “have never claimed any right or title to them, but have always . . declared them to be free.” Verdict and judgment against the defendant. Affirmed.

Bohn v. Headley, 7 Har. and John. 257, June 1826. In 1796 Thomas Tucker executed a deed whereby he granted unto his three daughters “three negro slaves, as follows: Unto his daughter M. T. Tucker his negro boy Ben, unto his daughter R. F. Tucker his negro boy Charles, and unto his daughter Harriet Tucker his negro girl Dorcas, . . to . . receive the said negroes at his death, and not before, . . [the grantor] to have the use and labour of them during his natural life. The deed was acknowledged . . and recorded . . At the time of making the said bill of sale, Dorcas was an infant of the age of seven years, and Harriet, the plaintiff, . . an infant of the age of ten years.” In 1810 “Tucker brought Dorcas with the boy George, her child, then an infant, to Baltimore, and sold . . her by the name of Darkee, and also the said George, to the defendant, as slaves for life to him, for . . \$280 then paid . . The defendant has ever since continued to hold Dorcas and George as his slaves, . . together with the other negroes in the declaration mentioned, all of whom are the children of Dorcas, and who . . were all born during the life of Tucker, . . [259] Tucker died in . . 1818,” Held: [263] “the children, born during the life of Tucker, belonged to him and his assignee,”

U. S. v. Gooding, 12 Wheaton 460, January 1827. Prosecution under the Slave Trade Act of April 20, 1818, ch. 373. Gooding [464] “purchased of one McElderry the vessel called the *General Winder*, . . and that said vessel was built in the port of Baltimore, . . that at the time said purchase was made, the said vessel was not completely finished, and that the same was finished under the superintendence of a certain Captain John Hill, who was appointed by the defendant master of said vessel on her then intended voyage. . . the said Hill ordered various fitments for the said vessel at . . Baltimore, which said fitments were furnished for said vessel, and afterwards, . . were paid for by the defendant. . . that some of these fitments were peculiarly adapted for the slave trade, and are never put on board any other vessels than those intended for such trade; a part of such fitments so ordered by captain Hill and paid for by the defendant, to wit, three dozen of brooms, eighteen scrapers, and two trumpets, were actually put on board the *General Winder* in the port of Baltimore, . . And the rest of such fitments, peculiar to the slave trade as aforesaid, were shipped at . . [465] Baltimore, on board another

vessel called the *Pocahontas*, chartered by the defendant: That the said vessel called the *General Winder*, sailed from . . . Baltimore, fitted as aforesaid, . . . on or about the twenty-first day of August, eighteen hundred and twenty-four, having cleared for the island of St. Thomas in the West Indies."

The *Pocahontas* sailed the next month, and on her arrival at St. Thomas "the said peculiar fitments shipped as aforesaid in the *Pocahontas*, were there transhipped from said vessel to the *General Winder*, . . . the defendant, about six or seven months after the sailing of the *General Winder* from Baltimore, declared . . . that the *General Winder* had made him a good voyage, having arrived with a cargo of slaves, the witness thought he said 290."

At St. Thomas, Captain Hill proposed to "Captain Coit, to engage on board the *General Winder* as mate for the voyage then in progress, and described the same to be a voyage to the coast of Africa for slaves, and thence back to Trinidad de Cuba. That he offered to the said witness [Coit] 70 dollars per month, and five dollars per head for every prime slave which should be brought to Cuba. That on the witness inquiring who would see the crew paid in the event of a disaster attending the voyage, Captain Hill replied, 'uncle John,' meaning . . . John Goding the defendant."

Held: [473] "any preparations for a slave voyage, which clearly manifest or accompany the illegal intent, even though incomplete and imperfect, and before the departure of the vessel from port, do yet constitute a fitting out within the purview of the statute." [Story, J.]

Murphey v. Barron, 1 Har. and Gill 258, June 1827. Action of *assumpsit*. On April 10, 1818, Barron sold Murphey a negro slave named Isaac for \$404.61, as Barron owed Murphey that amount. Barron [260] "complained to the defendant that the sum . . . was less than he was worth. Whereupon the defendant promised the plaintiff, that if he wanted the said negro for his own use, and would not sell him out of the state, if he would . . . within four months . . . pay . . . him the amount of the consideration money, . . . he would relinquish to the plaintiff all the right of said negro" On July 7 Barron paid the amount of the consideration to Murphey, and [261] "did exonerate him from the delivery of the said negro; that he knew where he was hired; that he would take him where he was, and as he was." Isaac had been hired to C. G. Hall, and when Barron [260] "went into the harvest field, where the labourers of the said C. G. Hall were at work, he found that the said negro had absconded, about an hour before his arrival, and left his cradle in the harvest field; and that he never gained possession of said negro, who since then, has not been found." Murphey had understood that Barron intended selling Isaac out of the state, and had directed "one of his female slaves to go to and inform the said Isaac that the plaintiff intended to see him out of the state;" Verdict and judgment against Murphey.

Reversed: [266] "he was expressly discharged by the plaintiff himself" from the duty of delivering the slave. Barron's [267] "proper remedy . . . would have been a special action on the case against Murphey for enticing or persuading his slave to abscond from his service."

Negro George v. Corse, 2 Har. and Gill 1, June 1827. Will of James Corse, dated 1824: [2] “*Imprimis*. I hereby set free all my negroes of every description, . . . the men . . . at my death; also the women . . . with their issue, . . . and the boys as they severally arrive to the age of twenty-one, . . . and the girls at the age of eighteen, with their issue, . . . And it is hereby expressly provided, that if my personal estate, exclusive of the negroes, should not be sufficient to discharge all my just debts, then my will is that my executor . . . may sell so much of my real estate as will pay my debts, so as to have my negroes free as before stated.” The testator left land and personal estate, exclusive of negroes, sufficient to pay his debts; but his personal estate, “either including or excluding his negroes,” was not sufficient. Verdict and judgment against the petitioners.

Judgment affirmed by the Court of Appeals. “The judges delivered their opinions *seriatim*.”¹ [8] “The creditors are the first objects . . . It is not in his [testator’s] power to confine them to a particular fund for the satisfaction of their debts, . . . to turn them over from the natural fund, to one more uncertain, and less accessible.” [Earle, J.]

Laidler v. State, 2 Har. and Gill 277, June 1828. [278] “charging him in 1805 and 1806, with the hire of a negro slave for two years, amounting to 1924 lbs. of net tobacco, of new inspection,”

Price v. Read, 2 Har. and Gill 291, June 1828. Read had a “woman slave . . . who had been brought up in [his] . . . family and service, but for whose services he had no further use,” and was willing to dispose of her “for a sum far less than her real value [\$400], to a master who resided and would keep her in the neighborhood, and would engage that she would not be sold away to the southern negro traders;” On this condition he sold her to Price for two hundred dollars, and he [294] “sold the said negro to a person residing in a state south of the Potomac river, for the sum of \$225.” [295] “Verdict for the plaintiff [Read], and damages assessed to \$133.33”

Le Grand v. Darnall, 2 Peters 664, January 1829. [667] “Bennett Darnall . . . 1810 . . . executed his last will . . . and thereby devised to his son [Nicholas], the appellee, several tracts of land in fee, one of which was called Portland Manor, . . . The mother of Nicholas Darnall was the slave of the testator, and Nicholas was born the slave of his father, and was between ten and eleven years old at . . . the death of the testator. Bennett Darnall, in his will, . . . confirms two deeds of manumission executed by him; one . . . in 1805, and the other in 1810.” [665] (“By some omission, neither of these deeds are exhibited.”) [667] “In both of those deeds, Nicholas Darnall and a number of other slaves were included, and emancipated after his decease. The testator died in . . . 1814. Nicholas Darnall, on his arrival to full age, took possession of the property devised to him, and . . . 1826 he entered into a contract with Le Grand . . . for the sale of . . . Portland Manor”

¹ Criticized in *Fenwick v. Chapman*, 9 Peters 461 (1835): [477] “With all respect for the judges deciding that cause, these opinions cannot command our assent.” [Wayne, J.]

Held: Nicholas Darnall's [669] "title to the land sold was unquestionable," for he was, "at the time of the death of the testator, . . . entitled to his freedom under the will . . . His claim to freedom under the [will] . . . depends upon a just construction" of the Maryland act of 1796.¹ Was he, when only ten or eleven years old (the time of his freedom commencing immediately after the death of the testator), "able to work and gain a sufficient maintenance and livelihood?" "Four respectable witnesses of the neighbourhood . . . all agree in their testimony, that Nicholas was well grown, healthy and intelligent, and of good bodily and mental capacity: that he and his brother Henry could readily have found employment, either as house servant boys, or on a farm, or as apprentices; and that they were able to work and gain a livelihood. The testator devised to each of them real and personal estate to a considerable amount. They had guardians appointed, were well educated and Nicholas is now living in affluence. . . [670] The court of appeals of Maryland, in the case of *Hall vs. Mullin*,² decided, that a devise of property real or personal by a master to his slave, entitles the slave to his freedom by necessary implication. This court entertains the same opinion." [Duvall, J.]

Addison v. Bowie, 2 Bland 606, April 1829. Will of Baruck Duckett, dated 1809: [607] "I give and bequeath to my son-in-law, William Bowie, of Walter, one-third of my negroes. The whole of my negroes to be valued by two impartial men, not related to either side, and divided into three classes, as equal in value, considering age and sex, as can be, and then each class to be distributed by lot; the first number giving the first choice; the second number giving the second choice; and the third number giving the third choice."

Hammond v. Hammond, 2 Bland 306, December 1829. [314] "There can be no doubt, that every devise, and every bequest, including the emancipation of his slaves, for the gift of freedom to a slave, is a most precious specific legacy, are all of them specific legacies which can, in no manner, be made abateable or reducible by any deficiency of the testator's personal estate;" [Bland, Ch.]

Miller v. Negro Charles, 1 Gill and John. 390, December 1829. Will of John W. Beard, 1825: "my negro man Charles to be free, on the first day of January one thousand eight hundred and twenty-seven, on condition that he the said Charles, pay the sum of ten dollars annually to my before named sister, Mary Glover, so long as he lives." At the death of the testator and on January 1, 1827, Charles was under 45 years of age and "able to gain a sufficient livelihood and maintenance." Held: the petitioner is free. The condition is not a condition precedent.

Gibbs v. Clagett, 2 Gill and John. 14, December 1829. [27] "received the wages of two sawyers, and one plantation hand, for eight years; . . . at the time he took from the estate the two sawyers, . . . he said their wages would pay all the debts;"

¹ Ch. 47, sect. 13.

² P. 69, *supra*.

Stockett v. Watkins, 2 Gill and John. 326, June 1830. Mrs. Stockett declared, about March 1818, [332] "that she was much attached to the negroes she had brought up, and intended to have set them free at her death. . . Mr. W, assured her . . that she had a dower right in the land, which if she would consent to sell . . she might have the negroes, and do what she pleased with them;" She died in 1818, and her executor took possession. In 1822 Watkins "hired Sam the elder . . [328] And . . 1825, settled . . for his hire, at thirty dollars per annum; that he objected to the amount,"

Waring v. Waring, 2 Bland 673, September 1830. "a large proportion of the personal property of the deceased had been sold for the payment of his debts; and that if any more of it, especially negroes, should be sold, there would not be enough left for the purpose of carrying on and working to advantage the real estate which had been left to descend to the children and heirs at law of the deceased." Decreed: that real estate be sold to save the personalty.

Williams' Case, 3 Bland 186, March 1831. [251] "The African race, in our country, are, in many respects, materially different from the European. The negro constitution has in it something peculiarly calculated to resist that malaria which is so deadly to the whites. A negro, it is well known, will enjoy good health during some seasons and in many situations in which the white man can scarcely exist. In all that concerns the probable or average duration of human life, as being in any way involved in a judicial determination upon a right of property, it would seem to be wholly unnecessary to extend our inquiries beyond the class of free whites; because free negroes have little property, and negroes held as slaves can have none. But although slaves are incompetent themselves to hold property; yet considered as property they have always been valued, assessed, and taxed in proportion to their ability of body, age, and sex; and there is no legal reason why an estate may not be held during the life of a negro slave. It is by no means uncommon for negroes to have legacies given to them for their support by way of an annuity for life, or to have small pieces of land given to them for life. Where slaves are given by a parent to his child as an advancement, if, after the death of the parent, the child brings such advancement into hotchpot, in order to be let in as a distributee, the advancement, here as in England, must be valued as of the day when it was made, and, consequently, slaves so given, must be valued as of that day, exclusive of their subsequent increase. And so too in all other cases where slaves are to be valued it must be with reference to their peculiar expectation of life as well as to their bodily ability, skill and other qualities."

Arnold v. Cost, 3 Gill and John. 219, December 1831. Forged paper given to slave Jerry to facilitate his escape: "Know all man by this present that the said negro boy was the property of my onkle, Richard Johnson, living near the mouth of Monocosa. He deceased 1821. He died without any heirs. He never was married. Therefore he made all his negroes free by his will and testament. This boy name is Sam Waker. He always behaved onest, and industrust, and is a good hand about horses,

and a good wagoner. The farmers in our part has for common all slaves or hands of their own, therefor he wants to dry some other part, the Commostry offis ad Frederick town will proof his freedom, herewith I haf sat my hand and seal, Thomas Johnson (seal) near the mouth of Monocosa, Frederick County, Maryland, date 25th September, 1826."

Berry v. Harper, 4 Gill and John. 467, December 1832. [468] "he was authorized [1827] . . . to ascertain the price in Alexandria, and when he ascertained it, (the negro then being in the Alexandria jail,) to take him out of jail, and deliver him to the plaintiff. . . the highest price was \$200."

Davis v. Calvert, 5 Gill and John. 269, June 1833. Thomas Cramphin, by his will, 1824, and codicils, 1824 and 1825, left the whole of his large estate to Caroline Calvert [308] "and her children named in the will, with a contingent devise to George Calvert, to the exclusion of all others." [306] "Caroline Calvert, who is the reputed illegitimate daughter of George Calvert by a female slave, was not the wife of Thomas Cramphin [the testator], but his kept mistress: that at the time of his forming that illicit connexion with her, he was about seventy-five years of age." Two days before Cramphin (then about eighty-five years old) made his will, Calvert, "the confidential friend of the testator," emancipated Caroline and her seven children (born "between the time when the connexion was formed, and the date of the will"), and executed a bill of sale to Caroline of the seven children till they should reach the age specified for their manumission. Calvert was made sole executor of the will, trustee and contingent devisee of the whole estate. Caroline continued to live with Cramphin till his death in his ninety-second year and had three more children. Calvert "declared, that though he had promised . . . Cramphin to provide for said children, yet he did not consider himself bound to do so, because he was convinced they were not the children of said Cramphin."

Slemaker v. Marriott, 5 Gill and John. 406, December 1833. A slave worth \$375 "ran away, was apprehended, and confined in Harford County jail." The owner had the slave brought to Annapolis and carried before a justice of the peace, who committed him to the custody of the sheriff of Anne Arundel County. The slave was delivered "with the following commitment to the jailer, in the jail. The sheriff of Anne Arundel County will receive into his custody, the body of negro Bill Philips, the property of Jacob H. Slemaker, and him safe keep, until released by his said master. Given under my hand and seal, this 26th October 1830. James Hunter. (seal.)" The slave escaped from the jail. Held: the sheriff is responsible for his safe keeping. [411] "It has been the constant practice . . . for owners of slaves in the State, to have them committed to the jails of the respective counties, for real or supposed offences committed against their owners. But a great abuse of the public jails having grown up, in making them the receptacles of slaves for persons engaged in the traffic of buying and selling them, the act of 1818, ch. 208, was passed to correct that abuse." That act however authorizes the commitments of slaves [412] "at the instance of owners not . . . engaged in the [slave] traffic."

Plater v. Scott, 6 Gill and John. 116, June 1834. "Plater . . . received from the board of commissioners, appointed to distribute the fund paid to the United States, by virtue of the provisions of the convention of 1826, commonly called Gallatin's Convention, the sum of about \$3000, in the year 1828, as compensation paid by the British government for certain captured and deported negroes, . . . deported . . . by the naval officers of Great Britain in the year 1814, in the late war,"

Burke v. Negro Joe, 6 Gill and John. 136, June 1834. Petition for freedom. "about the year 1784, negro Dinah the grand-mother of the petitioner, and negro Lavy or Lavinia, the mother of the petitioner, and the only child of said Dinah, were the slaves of a certain William Mackubin. That in the year 1797, the said Dinah and Lavy, were going at large as free-women, living, acting, and passing in all respects as such, in the neighborhood of the said William, and within three miles of his residence, and with his knowledge, . . . renting small tenements, owning property, contracting debts, being distrained on for rent, and supporting themselves and children." Neither Mackubin, until his death in 1805, nor his wife till her death in 1824, nor [138] "their children after her death, until the year 1832, ever set up any claim to any of them, but treated them as free persons." They "were sometimes hired by the family in which she [the widow of Mackubin] lived, and received wages as free persons." In 1832 one of the heirs of Mackubin "seized and took possession of the petitioner, and all the issue of the said Dinah and Lavy, claiming them as slaves for life." The court [139] "instructed the jury, that from the evidence . . . they might presume that the said Dinah was legally manumitted" Verdict and judgment against the defendant [Burke], affirmed.

Evans v. Iglehart, 6 Gill and John. 171, December 1834. Will of James P. Soper, who died in 1826, left the slave Nick free, and bequeathed "Soper Hall" and other land to his wife for life; and after her death "the tract of land called 'Soper Hall,' together with all the personal property which may belong thereto, . . . to Elizabeth Evans, . . . I . . . give unto my dear wife, . . . during her natural life, all my personal property . . . which is not herein before disposed of,"

Held: [195] "the widow of James P. Soper ought to enjoy his personal estate specifically, . . . A considerable portion of our personalty consists of slaves, born in our families, humanely treated, faithfully serving us, and warmly attached to their masters and their connexions. To part with such property, even when under the influence of pressing necessity, is a severe trial to the feelings of the master. But voluntarily, and uninfluenced by any such necessity, to subject them by will to sale under the hammer, perhaps in foreign bondage, whilst his farms, to which they belonged, were distributed amongst his connexions and relatives, is conduct, the idea of which rarely if ever entered into the imagination of a Maryland land-holder. We cannot therefore for one moment suppose" that the testator intended [176] "that his executors should sell and invest the same and pay to her its annual income for life." [Dorsey, J.]

Biscoe v. Biscoe, 6 Gill and John. 232, December 1834. Will of Anna Biscoe, 1824: "I give and bequeath to my nephew John McKay Biscoe, my slave Samuel; in case the said John McKay Biscoe should die without lawful heir of his body, I then give the said slave Samuel to my nephew Thomas Kayton Biscoe," John died in 1831 "without ever having had a child." Thomas brought an action of replevin, "and the verdict and judgment being against him, he appealed"

[242] "Judgment reversed and *procedendo* awarded." The limitation over is not too remote: [239] "the subject of the bequest . . . is a negro man, a life in being, and the limitation over could never by possibility take effect, but in his life-time. . . [242] "the case of *Johnson vs. Negro Lish*¹ . . . is a materially different case. . . the limitation was of a woman and her issue, after a dying without issue, . . . which looks to an indefinite failure of issue, as the issue of the negro woman might continue as long as the issue of the first taker." [Buchanan, C. J.]

Steam Navigation Co. v. Hungerford, 6 Gill and John. 291, December 1834. William Hungerford bought negro Henny, "a valuable house servant," "in 1819 . . . of Richard Batturs for \$250." and "afterwards conveyed her to his brother, the plaintiff, who gave him liberty to use her free of all wages, until he should be married, . . . That on the 18th of March, 1828, a young gentleman came to the house of witness [in Baltimore] to inquire about this negro, and on the following morning a carriage came to his door, and drove off with her. That witness pursued, and saw her go on board the steam boat, and went down, and told Captain Pearce of that steam boat, that he suspected she was on board. That Pearce then told witness to search for her every where but in the ladies' cabin, which witness did, but could not find her, and having stated this to the captain, he promised witness, if she was on board to bring her back from Frenchtown. That the negro was carried to Philadelphia, and has never been returned. That when the steam boat returned, the witness saw Captain Pearce, who informed him the slave was on board, and claimed by Batturs and his daughter at Frenchtown. That Batturs paid her passage and took her on." Captain Pearce testified that he "pointed to a police officer, and directed him, Hungerford, to go and take the officer and search all parts of the boat for the negro. . . That officers are always placed on board these boats before their departure, to prevent runaways from escaping." Held: it was the duty of the master of the boat to make such a search as would have prevented the escape of the slave, and not doing this, the owners of the boat are responsible.

Allein v. Negro Jim Sharp, 7 Gill and John. 96, June 1835. Hutton manumitted the petitioner by [103] "deed dated 9th November 1819, the said manumission to commence and take effect, on the 1st of January 1827. The petitioner also proved, that at the time his freedom commenced, according to the provisions of the deed, he was under the age of 45 years, and able to gain a sufficient livelihood, and maintenance, and was going at large and acting as a free man, until . . . the administrator of . . . Hut-

¹ P. 66, *supra*.

ton took possession of him, and returned an inventory in which he was included as a part of Hutton's personal estate." Hutton was insolvent from before 1819 till his death in 1832.

Held: [106] "the deed is operative and effectual to give freedom to the slave, unless the rights of creditors are injured by it, and that it is not incumbent on the slave to prove, as a condition precedent to effective manumission, that the residue of his master's property was sufficient for the payment of his debts. . . [107] the act of 1796, ch. 67 . . . charges the whole of the manumitter's property with the payment of his debts, in favor of his manumitted slaves, . . . [108] the proper remedy of a creditor . . . is by a bill in equity, where the manumitted slaves, and all proper parties, can be brought before the court, and where an account may be taken of all the property of the deceased, . . . and if that should be found inadequate to the payment of his debts, the manumitted slaves may be decreed to be sold for that purpose, either for life, or for a term of years, as circumstances . . . might require." [Stephen, J.]

Negro Cesar v. Chew, 7 Gill and John. 127, June 1835. Petition for freedom. Will of Nathaniel Chew, 1828: "I give to my nephew Nathaniel Chew . . . all my personal property . . . and negroes upon the terms herein mentioned, to wit—my woman Nanny, to serve two years after my death, then to be free—and her child Rachel, now six years old, to serve until she is twenty-eight years old, then to be free—Nanny's youngest child named Susan, to be the property of its mother, to serve her until it is eighteen years of age, then to be free. I also give to my nephew Nathaniel Chew, my woman Rachel, now twenty-three years old, to serve four years after my death, also her children, to serve until they are twenty-three years old—also my men, Will, Cesar, and Allen, to serve five years after my death; and it is my will that my men Jim, and Tom, and my woman Suke shall be free at my death,"

Verdict and judgment against the petitioner reversed: [131] "The legatee . . . had the absolute interest in Cesar, 'upon the terms,' . . . that he was to serve for five years. After this period, he could not be the property of the legatee, . . . nor could he be the property of any other, because the whole interest was passed away by the will from the representatives. The apparent intent of the testator was to manumit all his negroes, at the periods, and ages respectively given," [Chambers, J.]

Allein v. Sharp, 7 Gill and John. 96, June 1835. See *Allein v. Hutton*, p. 97, *infra*.

Franklin v. Long, 7 Gill and John. 407, June 1836. "Received, July 5th, 1833, of John Ware, four hundred and sixty dollars, in full payment for a negro man named John, aged 27 years, which negro I warrant and defend to be sound in body and mind, and a slave for life . . . John Long." Long gave Ware at the same time a paper directed to the sheriff of the county, in whose custody the slave was confined for safe keeping: "You will please to deliver my man John, to John Ware, and oblige yours, John Long." Ware [415] "on the same day proceeded with the order to the jail, and residence of the sheriff, and required of him to deliver the negro

man. That a short time after his arrival, and on going to the jail it was ascertained, that the negro man had cut his throat, and soon after died, and that after he was dead, and not before, the sheriff offered to deliver him to the agent [Ware], who declined to receive him."

Held: [420] "the plaintiffs are entitled to recover back the money paid, which *ex aequo et bono*, the defendant ought to refund, the consideration having entirely failed." "It was the intention of the parties, that the transaction should be consummated by a delivery of the negro man, which . . . was not so consummated;"

Anderson v. Negro Julia Ann Baily, 8 Gill and John. 32, June 1836. Deed of manumission, executed December 2, 1803: "I, Gideon Longfellow . . . do hereby release from slavery, manumit, and set free, my negro girl named Lucy, being of the age of eleven years or thereabouts, when she shall arrive at the age of thirty years; and in case the said negro girl Lucy shall, or may hereafter have a child or children, before she arrives at the age aforesaid, that then, such child or children, shall be free at their birth." The petitioner, Julia, is the child of Lucy, born before her mother became entitled to her freedom, and now nineteen years of age. [33] "about two years before his death said Taylor, gave the petitioner then a small child to his daughter . . . who held her until after her father's death, when the family supposing her to be free under the said manumission, suffered her to depart from their service, and come to Baltimore, to reside, and where she has continued to reside for about ten years last past, enjoying her freedom, until arrest" by Anderson, Taylor's son-in-law, "which occasioned the filing this petition [for freedom]. . . the City court gave judgment for the petitioner,"

[35] "Judgment reversed and *procedendo* awarded." [34] "the intention [of the testator to liberate the issue at its birth] cannot be legally perfected, for at the moment of time, when the freedom is to operate, the petitioner was incompetent to take it; that is, she was unable to gain a sufficient maintenance."¹ [Archer, J.]

Evans v. Merriken, 8 Gill and John. 39, June 1836. Held: the issue of a mortgaged slave, born after the title of the mortgagee has become absolute at law, and during the possession of the mortgagor, is liable for the payment of the mortgage debt; and such issue may be sold upon a bill filed to enforce payment, although no specific notice of the issue is taken in the bill. [49] "we are happy to find that . . . the law of the land, and the law of nature, so far from being at variance are in perfect harmony;" [Stephen, J.]

Wilson v. Negro Ann Barnet, 8 Gill and John. 159, December 1836. Will of Elizabeth Richmond, who died in 1831: "*Item*—In case my personal property, other than negroes, shall not be sufficient to pay debts and legacies; I do hereby direct my executor . . . to sell so many of my male negroes until they attain the age of thirty-two years, at which time it is my will and desire that they be free, those under seven years of age I wish to be free at the age of twenty-five, and none to be sold out of the

¹ Act of 1796, ch. 67, sect. 13. Follows *Hamilton v. Cragg*, p. 71, *supra*.

State. *Item*—I give and bequeath my negro man Sam, to the Rev. Thomas D. Monnelly, to serve him three years, at which time I wish him to be free. I give old William, at his own request, to his friend, John Holland, a free negro, and all the others who have attained to the age of forty or upwards, to be given or sold for no more than one dollar a piece to such of their free relations as they may choose to go to. As it is my wish and desire that all my *female* negroes may be free at my decease, unless my debts should require the sale of them, in which case I desire, that as many of them that is under the age of twenty-five, may be sold until they arrive to that age, and I desire, that all the children that they may have in the time of their service may be free when their mothers are free. I desire the female children under the age of six and seven to be given to their mothers." Negro Ann, the petitioner, was included in the inventory, which [161] "described her above thirty years of age," [160] "she had been living and acting in the City of Baltimore, as a free woman, from the 27th July, 1830, until she was arrested as a slave by the defendant [Mrs. Richmond's administrator *de bonis non*] on the 11th October 1836, and confined in . . . jail as a runaway by his order." The administrator had applied to the Orphans' Court, which had, on August 15, [161] "ordered that he sell at public or private sale at his discretion, for cash or on credit, for not less than the appraised value the following negroes . . . Ann Barney [*sic*], and her daughter, Ann Milly Gross, and her two children, Jacob and Jemmy, and boy Robert." The verdict and judgment being against the defendant, Wilson, he appealed.

Judgment reversed and *procedendo* awarded: [165] "we do not perceive any evidence in the record of the consent of the administrator, that the petitioner should act as a free woman, or that her residence in . . . Baltimore was, at any time previous to her arrest, known to him." [Archer, J.] See same *v.* same, p. 88, *infra*.

Divers v. Fulton, 8 Gill and John. 202, December 1836. Action of replevin "for a negro woman named Phillis, and her child, Lucinda. . . Mrs. Martha Amos, a widow, . . . having broken up housekeeping some time in the autumn of 1828, . . . [203] negro Phillis left the house . . . with all her clothes and things, in the carryall of the plaintiff, with him and his wife, who was the daughter of said Martha, and remained in their service till the death of said Martha; and never was off the farm of the said plaintiff from 1828 until about two days before this replevin was issued [1833], when she went to the house of the defendant," James Fulton, son-in-law and administrator of Martha Amos. Mrs. Amos had died in April, 1832, and had left a will, dated the second of that month: "I give to my three daughters Martha McComas, Hannah Fulton, wife of James Fulton, and Elizabeth Divers, wife of Ananias Divers, my negro woman, Phillis, to work alternately and equally between . . . them, and they to be at equal expense in her clothing and support, and also at equal expense in her support if she should become infirm, or from any cause be rendered unable to labour for them to profit, and each one shall make their election at my decease, whether they will take this legacy or donation subject to the incumbrance, and such election shall thereafter

be binding on them respectively." On April 24, 1832, the plaintiff wrote to the defendant, James Fulton: "Philas is in sarch of a master, as shee cant serv three at wounst, she wants to stay in the family. I am willing to take forty dollars for my shear of here, or I will give forty, if she is willing to stay with me. I am willing to give here that chance."

Judgment against the plaintiff affirmed: his letter showed [209] "his recognition of the legal validity of the bequest . . . to his wife, and her . . . sisters."

Negro John v. Morton, 8 Gill and John. 391, December 1836. Petition for freedom, based on the will of James Clagett, who died in 1834: [392] "I give full power to my executors, and I direct them immediately after my decease, to manumit and release from slavery my two negro men, Robert and Aaron, to whom I hereby give the use and quiet possession, rent free, of my tenement and garden in Georgetown, late in the possession and occupancy of Mrs. Rabbitt, to hold and continue such use and possession for their joint lives, and the life of the survivor of them. I direct my executors, immediately after my decease, to manumit and release from slavery, after well-clothing them, my four negro women, Mary, Phoebe, Sophia, and Elizabeth, and all their increase, which increase shall be so specially manumitted as to belong to their mothers, the boys to the age of twenty-one years, and being girls to the age of sixteen years; and I declare, that all the said negroes may remain on my farm, and be supported out of my estate, they working thereon as usual, until the said farm shall be sold, and I direct my executors, when the said negroes shall depart from my farm in consequence of its being sold, to give and deliver unto Mary and Phoebe, in consideration of their numerous offspring, three barrels of corn, and one hundred pounds of meat, or a milch cow a-piece, at their option. I direct my executors, after making sale of my farm, whereon I reside, and after conveying and giving possession thereof to the purchaser thereof, without any delay, to manumit and release from slavery, (after well-clothing them,) all and every of my other slaves, except only my negro man, named Harry, a shoemaker, now in the service of Jesse Leach, which said Harry is to be taken as a part of the residue of my estate. My will and desire is, and I do hereby will and direct, that my male slaves shall be manumitted and discharged from slavery upon this condition, that they make comfortable and ample provision for old Phoebe during her life." The next of kin had filed a *caveat* in the Orphans Court, alleging that Claggett was, "at the time the said paper writing was executed by him, of an unsound mind," and the said court had [393] "refused to admit the same to probate." Judgment against the petitioners for freedom affirmed.

Pocock v. Hendricks, 8 Gill and John. 421, June 1837. Action of trover. In 1825 Mary Hare executed a bill of sale to Pocock [422] "of a negro boy, named Richard Hughes, . . . for the consideration of \$100," [432] "not an absolute bill of sale, but was intended to secure the plaintiff from loss by reason of his securityship for Mary Hare; . . . that he held the negro . . . as security for a liability which was nearly . . . extinguished; . . . he suffered the negro slave [in 1828] to go to Mrs.

Hare, in Pennsylvania [where she then resided with Hendricks, her son-in-law] and remain with her or in her service more than three years," during part of which time he was hired out in Baltimore to Galloway, a son of Mrs. Hare. Being sick there [425] "he was again carried by the daughter of Mrs. Hare to the state of Pennsylvania, where he remained about six or eight weeks, when he returned to Galloway's in Baltimore, and there staid to complete his time of two years. About the 1st September, 1830, the said boy went again to Pennsylvania, and immediately after worked with one Walker, who resided in New Market, Maryland, for one month; that during the one month the boy returned to defendant's every Saturday night, where his washing was done for him, that by the end of the said month, the said boy, about the 1st of October, went to the defendant's house, where he continued until about the last of March, 1831, when he was sent again to the said Galloway's with whom he continued to live, . . . the plaintiff and defendant lived within a mile or two of each other, the defendant in Pennsylvania, the plaintiff in Maryland; that the said boy Dick, between the years 1828 and the death of Mrs. Hare, was frequently in the state of Maryland, once or twice at a husking match on the farm of the plaintiff, also at a camp meeting in the neighborhood, and that he appeared at all times openly, and it was notorious to the neighbours that he resided with the defendant for the period above stated." The counsel for the defendant prayed the court to instruct the jury [430] "that then by the laws of this state, the boy is free, and the plaintiff is not entitled to recover." The instruction was given and the plaintiff excepted.

The Court of Appeals held that [432] "the prayer on the part of the defendant would have been rightly granted had it called on the jury to find one additional fact, *viz*: That the bringing of the negro back into . . . Maryland to reside, was the act of the plaintiff, or was done by his authority, or with his approbation."

Newton v. Turpin, 8 Gill and John. 433, June 1837. "an action of trover for the value of a negro girl." Turpin, a resident of Maryland, gave the slave to his daughter, who "removed and carried the said negro girl to . . . the District of Columbia, and resided there for some time; and afterwards, in the year 1826, removed . . . and carried the said negro girl slave into the state of Delaware, and there resided" Turpin, in 1829, "took and sold the said girl . . . in Maryland. The defendant [administrator of Turpin] on his part offered in evidence" the act of Delaware, passed February 3, 1787. [435] "The county court gave judgment for the defendants, *pro forma*, and the plaintiff appealed"

Judgment reversed: "the slave . . . is not entitled to her freedom. The design of the proviso or exception in the act of assembly, was to encourage persons removing with their slaves to settle in Delaware. There could have been no motive with the legislature of . . . Delaware in protecting settlers removing from . . . Maryland or Virginia in the enjoyment of their rights as slaveholders, which did not apply with equal force to like settlers from the District of Columbia."

Bland v. Negro Beverly Dowling, 9 Gill and John. 19, June 1837. "At the trial, the petitioner proved, that some time prior to the 7th of August, 1833, Sophia Bland . . . being the legal owner of the petitioner as her slave, who had been hired to some person in Baltimore, entered into an agreement with the said slave, that he should be set free, on the payment to her of the sum of \$200; in and from which period, until he was arrested in October, 1835, as a slave, he went at large and acted as a free man, by keeping an oyster house, and boot-black shop, and otherwise acting as his own master. . . . that on the 17th day of August, 1833, he paid to her, in part performance of said agreement, the sum of \$100—on the 25th of October, 1834, the further sum of \$23—and, on the 1st of June, 1835, the further sum of \$50, for which he obtained receipts, expressed to be on account of his freedom. That shortly after the last payment, the petitioner left Baltimore, and proceeded to New York, where he was a waiter on board a steamboat, on the North river, until the month of October, 1835, when he returned to Baltimore, and paid over to Jonathan Pinkney, Esq. through whose hands the other payments were made, the sum of \$27, the balance of the \$200 which he was to pay for his freedom, which sum was tendered by Mr. Pinkney to a Mr. Law, the agent of Sophia Bland, but refused to be received as such balance. That after the payment of said \$27 by the petitioner to Mr. Pinkney, and the tender of that sum by the latter, as the balance due under said agreement, the petitioner was arrested in Baltimore as a runaway slave, and soon thereafter sold . . . [24] verdict and judgment . . . for the petitioner,"

Affirmed: [25] "we cannot maintain the principle that a slave can enter into any binding contract with his master, or . . . appear as a suitor in any of our courts . . . to enforce any alleged contract. . . . [29] the receipts furnish evidence of her sanctioning during a long period this procedure [going at large and acting as a free man] . . . if in the exercise of this permission he should go abroad into another state, . . . the mistress must take the consequence . . . [30] On the subject of a resumption of the rights of property over the petitioner after his return, and his seizure and sale amounting to an importation within the meaning of the act of 1796, ch. 67, . . . the question was yielded . . . Even although the return had been *originally* against the consent of the owner, . . . by such . . . sale . . . his return was sanctioned, and if such a course of proceeding do not amount in law to an importation within the meaning of the act, its provisions would be liable to great evasion." [Archer, J.]

Hope v. Hutchins, 9 Gill and John. 77, June 1837. Bill of sale from Hannah Hope to Hutchins, in 1818, "of a negro girl, named Betty, . . . provided the said Hannah Hope shall not be debarred . . . holding, using, and enjoying, the said property . . . and all profits arising therefrom during her natural life; . . . [78] The negroes claimed [by Hutchins, in an action of replevin against Hannah Hope's administrator] were the children of Betty, born after the execution of the bill of sale, and during the life time of Hannah Hope."

Judgment for the plaintiff affirmed: [80] "the property was transferred by the deed immediately . . . and nothing more was reserved than a . . . temporary right of user, which expired upon the death of the donor."

Wilson v. Negro Ann Barnett, 9 Gill and John. 158, December 1837. See same *v. same*, *supra*. "The defendant [Wilson] for the purpose of showing the insufficiency of the personal estate of the testatrix, for the payment of her debts, independent of her negroes, (which . . . amounted to the sum of \$1,315,) offered in evidence . . . his administration account . . . dated . . . 1833, in which he charged himself with . . . Negro hire to 27th September, 1833, . . . \$192.68 . . . [160] The petitioner, in order to show a sufficiency of assets offered evidence, that the hire of negro men, exclusive of food and clothing, was from \$50 to \$60 per annum; women from \$20 to \$25 per annum; of girls of eleven or twelve years of age, \$15 per annum, all exclusive of food and clothing. To the competency of which testimony, the defendant, (now appellant) objected, because the petitioner had offered no testimony to show, that the defendant had hired the negroes . . . after the 9th October, 1833, or that he had received any profit or advantage from their labour. But the court permitted the evidence to go to the jury, . . . The petitioner . . . prayed the court to direct the jury, that the administrator was answerable to the estate for the reasonable hire and profits of the slaves . . . from . . . 1833, till they were disposed of in October, 1837, and that the jury had a right to add the amount of such hire or profits of said negroes, to the amount of the inventory as part of assets to pay debts, . . . [161] The court granted the direction, . . . the verdict and judgment being for the petitioner," the defendant appealed.

Judgment affirmed: [163] "The ground most strongly urged against the claim of the petitioner, that her right to freedom, must depend on the sufficiency of the personal assets of the deceased, at the moment of her death to pay all her debts, has nothing in reason or law to support it. Had such estate at the death of the testatrix, been abundantly sufficient . . . [164] but in due course of administration, and before the assent of the administrator, to the freedom of the petitioner, and without any default on his part, the estate other than negroes, had . . . become wholly inadequate to the payment of debts, the petitioner's right to freedom would no longer have existed; and if by events subsequent to the death of the testatrix, . . . her estate, at her death greatly insufficient, should become sufficient, the right of the petitioner to her freedom could not be resisted. To be a sound rule it must work both ways." [Dorsey, J.]

Negro Peggy v. Wilson, 9 Gill and John. 169, December 1837. Petition for freedom. [170] "A list of slaves brought into this State from the State of Virginia, to work on his farm in Alleghany county, Maryland, to wit: One negro woman, Peggy—16 years of age. 15th June, 1824. Michael Wilson." Judgment against the petitioner affirmed: [173] "the statement of the manner of acquiring the title . . . is clearly dispensed with, by the act of 1823,"¹

Negro Harriett v. Ridgely, 9 Gill and John. 174, December 1837. Will of Eleanor Dall, 1829: [175] "I hereby manumit, enfranchise and set free my negro woman Maria, and her two children, Benjamin and Harriett,

¹ Ch. 87.

the freedom of said children to take effect when they shall have respectively attained the age of twenty-one years." "Harriett . . . is now in jail, and claimed by Edward Ridgely, executor . . . as his slave for life. The petition then suggested that the said Ridgely intended to remove the said negro Harriett from the state of Maryland—prayer for a subpoena, and that he give security not to remove said girl, now about 17 years of age, entitled to freedom at the age of 21 years;" Ridgely answered "that the said Harriett was born the slave of . . . Sterrett, . . . mortgaged . . . to Mrs. Dall, but . . . that mortgage conveyed no title to Mrs. Dall;" A niece of Mrs. Dall testified: [176] "Harriett . . . was never . . . in my aunt's possession. . . Harriett lived with her grandmother in the country, who was Mr. Sterrett's slave, but permitted by him to live with her son who was a free man." [177] "The city court . . . adjudged the petitioner to be a slave," Affirmed.

Negro Anna Maria Wright v. Rogers, 9 Gill and John. 181, December 1837. [184] "Mrs. Anna M[aria] Tilghman executed a deed of manumission to her female slave, [Anna] Maria Wright, on the 18th of May, 1832; this deed was not recorded within six months after its date as required by the act of 1796, ch. 67, sec. 29. Mrs. Tilghman afterwards sold Maria to Tench Tilghman, who by a bill of sale dated the 2d of May, 1833, transferred her as a slave for life to Lloyd N. Rogers" for the consideration of \$100. "By an act of the legislature, passed 23d of February, 1835, December session, 1834, ch. 95, sec. 1, the clerk of Talbot county was authorized to admit to record, 'three several deeds of manumission from Ann Maria Tilghman, of which the above deed was one, and that when recorded, they should be as valid and effectual for every purpose as if the same had been duly recorded within the time prescribed by law.' Under this act the deed to the appellant was recorded . . . 21st March, 1835." [182] "the county court gave judgment for the defendant, and the petitioner appealed" G. W. Dulany, counsel for the appellee: [192] "the act of 1834 is void . . . because it destroys vested rights;" Judgment affirmed.

Cross v. Black, 9 Gill and John. 198, December 1837. [200] "Woolsey Welles, on part of the petitioners, deposed; that he saw William Black at Palmyra, in Ohio, on the 21st November, 1835, with his wife and two sons and the petitioners, eight persons, very slightly tinged with African blood, and a light colored mulatto girl. Black said he was going to Mercersburg, Pennsylvania, where a brother of his resides. That Exhibits No. 1, 3, and 4, were drafted and witnessed by deponent, that he saw Black and his wife sign them. That Exhibit 2, is in the hand writing of John Curtis, and signed by David Cross and William Black in the presence of the witness, after the execution of the deeds of manumission of David and Airy Cross. That Exhibits 1, 2, 3, and 4, were executed by Black and his wife freely and voluntarily, without any threats of personal or other injury to himself or family, or any of them, and without any circumstances calculated to produce a reasonable apprehension of personal or other injury to himself or family, or any of them. The witness further deposed, that he told said Black, before the execution of any of the papers,

that he, the witness, had in his possession, a writ of *habeas corpus* directed to Black, commanding him to bring the coloured persons in his custody, and whom he claimed as slaves, before the judge who issued the writ; that if that writ was served upon him, he would have to go with the slaves before the judge, and that inasmuch as the laws of Ohio providing for retaking and reducing again to slavery of fugitive slaves, only spoke of 'blacks and mulattoes,' the probability was, the judge would discharge from his custody, all those who have not a sufficient amount of African or negro blood, to come under the description of mulattoes or blacks. The witness stated that he had such a writ in his possession, it was never served on William Black, and that the opinion he then expressed to said William Black, was his honest opinion. Black said he thought it morally wrong to hold his fellow-men in slavery, and had intended to give freedom to his slaves, and after the execution of the deeds of manumission, he asked what was to pay for drafting them, and being answered, not any thing, he expressed his thanks for making out the papers: witness has no distinct recollection of what Black said in relation to his intended residence, but thinks he said, he intended to go to Missouri: that the justice of the peace . . . [201] who took Black and wife's acknowledgment, was an acting justice, . . . and witness has no doubt he was a lawful justice according to the laws of Ohio. As to his general character witness cannot speak understandingly, nothing against his character, but that he drank ardent spirits: that the witness Daniel M. Lathrop is a minister of the gospel of the Presbyterian denomination; his voice having failed, so that he cannot preach the gospel, he has been engaged for a year or more, as editor of the *Ohio Atlas*. He is a man of good character, would be believed any where in the Northern part of Ohio, where he has been extensively known as an agent of the American Home Missionary Society. The other witness to the deed of manumission is John Curtis, a student of law, lives in Brownhelm, in Ohio, a member of the Presbyterian Church, and to be relied on, where known. That witness, Woolsey Welles, is an attorney at law, and not aware of any law of Ohio in relation to negroes residing there *temporarily* with their owners: that slavery is prohibited by the constitution of Ohio, and knows of no law relating to manumissions. Upon cross-examination, Welles deposed as follows: 'that he resided in the village of Elyria, Loraine county, Ohio, where he has resided since July, 1835. From that time back to June, 1834, he was travelling (as the agent of the Ohio State Temperance Society), in various parts of the state of Ohio, principally in the Miami country, and on the Western Reserve; from that time back to May, 1826, he had resided in Akron, Portage county, Ohio, engaged in the practice of law, as a justice of the peace, a collector of canal tolls on the Ohio Canal, and as a post master, which latter office he resigned . . . [202] before he entered upon his agency for the Ohio State Temperance Society. From . . . 1826, back to . . . 1823, he resided in Elyria, aforesaid, where he practised law. From that time back to . . . 1819, he resided in Cleveland, Cuyahoga, Ohio, engaged in the study of law, and teaching school, and for a short time as a clerk in a store. From that time back to 1808, he resided for the most

part in his father's family in Lerveille [Lowville], Lems [Lewis] county, New York. From that time back to the year, 1802, he resided in his father's family, in Lanesborough, Berkshire county, Massachusetts, where, if the family Bible record be true, he was born on the 26th May, 1802. That what led to his acquaintance with William Black, was information that the said Black was in possession of a number of persons, nearly of white colour, whom he claimed as slaves, and to whom he had promised liberty. He told his own name, and there was with me at the time I became acquainted with him, Daniel W. [M. ?] Lathrop, John Curtis, and a citizen of Edinburgh, a township adjoining Palmyra, by the name of Greenbury Keen; that Black stated to the witness, at the time he first saw him, that he claimed all the persons in his custody, except David Cross, as his slaves, to wit: Airy wife of David, Charles, David Perry, Mary, James and Harriette, their children, and Maria Thornton, a yellow girl; that he was undetermined whether he should go to Virginia, to Maryland or to Pennsylvania; he told us he was a cooper by trade, and that either David Cross the elder, or Charles Cross, was also of that trade; his (William Black's) wife and two sons were with him at the same time. This witness further proved, that the Exhibits 1, 2, 3, 4, were executed in the presence of the slaves; he cannot say they expressed a desire for them. They were evidently under constant fear of their master or mistress; their conduct and conversation was different when in, and out of their presence. The papers were executed at Palmyra; that within an hour or two after the execution of the papers, William Black and family started with their teams and the coloured persons, from Palmyra, eastwardly, intending, as he then said, to go to Mercersburgh, in Pennsylvania; he heard Black say he intended to manumit his slaves, and that he did not believe it morally right to hold them. Witness has heard Curtis express opinions that slave-holding is a sin against God. That he (Curtis) and Lathrop are members of an Anti-Slavery Society; that no consideration was given for the manumission deeds. Witness considers slavery as a sin, and would consider it no immorality, in aiding a slave to escape from his master. Another witness proved, that Black had admitted David Cross, the father, to be free; that the mother was in part paid for; that the children would be freed by him at certain ages: and the slaves were then inquired of, whether if he, Black, would manumit them, they would serve him, and enter into agreement to that effect, until the time of liberation arrived? That Black executed the deeds voluntarily, without any apprehension or grounds of damage, either to himself or his family. Other witnesses were examined under the commission, to the same effect.

“Exhibit No. 1, was a deed from William Black and wife, manumitting Maria Thornton, (the yellow girl) in consideration of her faithful services, theretofore rendered, and the good will and affection which the said Black had for her. Exhibit No. 2, was a contract, setting forth that the children of David and Airy Cross, had theretofore been the slaves of William Black, and in consideration of manumission, the children agreed to serve him respectively, until they reached the age of

twenty-five years. Exhibit No. 3, was the manumission by Black and wife, of David and Airy Cross, and their six children. Exhibit No. 4, was the contract of Maria Thornton, with David Cross as her surety, that in consideration of liberty, the said Maria should serve Black until she was twenty-five years of age. These Exhibits were dated 21st November, 1835; and executed and acknowledged at the same time, and before the same witnesses. . .

[206] “ The defendant then offered proof to the jury by several witnesses, that said defendant had, at various times, from six months before, to the very day on which he left the state of Maryland, declared to said witnesses, that it was his intention to go to the state of Missouri to reside. That when advised a short time before he left the state, by one of the witnesses, to go to the state of Ohio, and there reside, he objected to doing so, because he could not there hold his negroes in slavery, and that he did leave Maryland, and on the day he departed he said he intended to go to Missouri, and that in the progress of his journey he went to the residence of his brother in the state of Ohio, where he remained about two days and a half. That he was induced to make said visit to his brother, because the latter had assured him that he would go with defendant to Missouri; that his said brother being unable to go with him to Missouri, on account of the sickness of his family, the defendant then left his brother’s house, with a view to get to the Ohio river, and to go upon said river to St. Louis, in Missouri; that upon his way from the residence of his brother to the Ohio river, he was overtaken in the village of Palmyra, and with his wife, forced by a large collection of persons to sign instruments of writing, purporting to be deeds of manumission of all the petitioners, which said deeds were read in evidence by said petitioners. That in consequence of this forcible interposition, he determined to return to Maryland, and immediately bent his way in that direction; where, without stopping, except in the usual manner of travelling, he arrived in the month of December, 1835, the said negroes voluntarily returning with him; and the defendant further proved, that the petition for freedom by the plaintiffs was filed in March, 1836. He also proved that the said negroes constituted the greater and more valuable part of the defendant’s property, . . . [207] shortly after his return, the defendant advised with his friends as to the course he should pursue to assert his right to said negroes, and that he had by the advice of some . . . of his friends, sent Charles out of the state, and there sold him as a slave for life, . . . [208] The jury found David Cross, the father, to be free, and that the others are not free persons.”

“ The judgment . . . against them,” affirmed: [211] “ what is the true construction of the act of 1831, chapter 323,¹ in reference to negro slaves, under the circumstances which exist in this case? . . . [213] The act is penal . . . A literal interpretation will include this case, as doubtless the petitioners were ‘ brought ’ into this state in one sense of the term; . . . From our earliest history, masters have been accustomed to take and send their slaves out of the state for purposes obviously temporary. The legis-

¹ Sect. 4.

lature has secured to citizens of other states the privilege of having their slaves here while 'travelling or sojourning,' . . . It could not then be the design of this statute, or the older statute,¹ from which this portion of it is copied, to deprive a citizen of Maryland of the privilege elsewhere, which every citizen of every other portion of the United States can enjoy in this state. . . . [215] The case made by the petitioners . . . does not consummate the purpose of a permanent abandonment of the state. . . . The itinerant and unsettled condition of the master will give character to the condition of his slaves. They are to be considered as attached to his person; dependent on his movements; and their will is merged in his. Their return with him, therefore, under the circumstances we have been considering, must be regarded, like his, as the termination of a temporary absence, which will not constitute an importation within the meaning of the acts of assembly." [Chambers, J.]

Wood v. Bruce, 9 Gill and John. 215, December 1837. In 1824 Ann W. Wood filed her bill, "alleging, that in . . . 1818, she purchased of . . . Strickland, a negro woman on credit, for . . . \$500, . . . that said negro belonged to . . . John Peirce, who devised her to be free at the age of twenty-one years; that said negro was upwards of twenty-one years of age when she purchased her, at which time she had never seen the will of Peirce; . . . that a *fi. fa.* has been . . . levied. That the negro has recently filed a petition for freedom; that the complainant has been summoned to answer that petition, and the protection of the court granted to said negro. The bill prayed a subpoena against Strickland and Bruce [his assignee], for an injunction" An injunction granted in 1824 was dissolved in 1837. Order reversed.

Hawkins v. Bowie, 9 Gill and John. 428, June 1838. The defendant [431] "says, that at the time of the making of the bill obligatory . . . the said Thomas Hawkins . . . was . . . a slave, . . . Which, upon motion of the plaintiff's counsel, were not received by the court, and a judgment [in 1835] . . . was entered for the plaintiff," The defendant petitioned the county court for [432] "a writ of error, *coram nobis*, to correct the record of said judgment" and it was ordered to be issued. "the court . . . reversed the judgment, and . . . the plaintiff appealed. It is admitted that the said Thomas Hawkins, the legal plaintiff, was born a slave, and continued a slave up to the time of his death, although an attempt was made by his master, the late Osborn Sprigg, to manumit him by his last will and testament, which was inoperative in consequence of the said Hawkins being above forty-five years of age at the death of the said O. Sprigg. It is admitted that Samuel Sprigg, the residuary devisee and legatee of said O. Sprigg, suffered the said Hawkins to go at large and act for himself."

Judgment reversed by the Court of Appeals: the plea [438] "that at the time of making the bill obligatory, . . . Hawkins . . . was . . . a slave . . . was rejected by the county court; on what ground, the record does not inform us; . . . If it were error, it was error in law, and . . . does

¹ Act of 1796, ch. 67.

not belong to the class of errors which may be corrected by proceeding in error *coram nobis*,"

Caton v. Carter, 9 Gill and John. 476, June 1838. "The petitioner . . . offered proof that he was the son of a free woman; that he was lawfully bound to Mrs. Anne Kearney by indenture of the 2d September, 1834, approved by the justices, and recorded in the records of Anne Arundel county court, that his name was Robert Carter, and that upon the death of his said mistress, whom he served several years, her representatives abandoned all claim to him—that the mother of the appellee is dead, and her and his next of kin were now in court, soliciting that he should be bound again. . . [477] The orphans court . . . ordered him, with the consent of his nearest relation, to be bound to . . . Duvall."

Cheney v. Duke, 10 Gill and John. 11, December 1838. The plaintiff sold a slave [12] "to the defendant by parol, on the 1st May, 1836, . . . for . . . \$650, . . . the defendant was then engaged in the purchasing of slaves, for the purpose of exporting them beyond the limits of this state, and that he was known to the plaintiff to be so engaged; and that the plaintiff . . . knew he was purchasing said slave, . . . for the purpose of exporting . . . said slave beyond the limits of the state." [23] "The suit was brought to recover the price in part"

Held: [25] "a knowledge on the part of the vendor, of the illegal¹ purpose contemplated by the vendee, . . . without any participation in the accomplishment of the illegal . . . purpose . . . will not close against him the doors of a court of justice, when seeking to recover his purchase money,"

Sutton v. Crain, 10 Gill and John. 458, December 1839. Will of Henry Watts, who died in 1819: [459] "I give and bequeath to my loving wife . . . and her heirs . . . the following property, *viz*: one negro man Jess; one negro woman Catherine and her three children; . . . also, during her life the use of negroes Nell, Anna and Daniel, after which they and their increase to be the right and estate of my son . . . I give and bequeath to my grand-daughter . . . one negro girl by the name of Lydia, and her increase. . . [460] I bequeath . . . to the children of my . . . son George H. Watts . . . and their heirs . . . the following property: negro man Perry, negro woman Amey and all her children, and negro woman Sarah, to be paid to them when they arrive at age, . . . And I direct that the profits arising from the hire or use of said negroes, be applied towards their education and maintenance respectively, until a division of the same under this my will can take place; and in case either of them shall die before they arrive at lawful age, then I give the share of him or her so dying, unto the survivor or survivors of them. It is however my desire that their mother, Ann Watts, shall have the exclusive use of negro Sarah until the youngest of my said grand-children arrives at age." Sarah "came to the possession of Mrs. Ann Watts immediately after the death of . . . Henry Watts, . . . negro girl Mary . . . was the daughter of negro Sarah . . . born after the death of Henry Watts, . . . and long before the

¹ Act of 1817, ch. 112.

youngest of Mrs. Ann Watt's children came of age; that Mrs. Watts . . . sold her to defendant [Sutton] . . . 1834," and Sutton sold her in 1836. Held: [479] "There is nothing . . . in the will . . . which militates against the right of Mrs. Watts to the issue born during the existence of her estate."

U. S. v. Dow, 25 Fed. Cas. 901 (Taney 34), April 1840. "Lorenzo Dow was indicted¹ for the murder of the captain of the brig *Francis*, on the high seas; the brig being an American vessel, and Lorenzo Dow one of the mariners on board." Dow [902] "was a native of the town of Manilla, . . . his parents were both Malays . . . the prisoner was baptized and educated in the Christian religion, and had always professed to be a Christian. At the time of the murder, the captain was the only white person on board; the crew consisted of the Malay, three negroes, and one mulatto; two of the negroes were natives of Philadelphia, and one a native of the state of Delaware; the mulatto was a native of the British province of Nova Scotia; they were all free."

Held: "according to the acts of Maryland,² negroes and mulattoes, free or slave, are not competent witnesses in any case wherein a Christian white person is concerned; but they are competent witnesses against all other persons." Dow is not a Christian white person. He was found guilty on a reindictment, and sentenced to death, but was pardoned by the President.

Strohm v. United States, 23 Fed. Cas. 240 (Taney 413), April 1840. The schooner *Anne* "(together with another of a like description built at the same time), was built for a Portuguese merchant, named DeSylva, who was a partner of a mercantile house established at Bahia, in South America; but DeSylva himself generally resided in Cuba. The two vessels were built under the superintendence of two men who were sent to Baltimore for that purpose, from Havana, by DeSilva [*sic*]; . . . [241] a Spaniard and . . . a Portuguese; and it appeared from the letters of DeSilva, introducing them to his factor, that they were to have the command of these schooners, as masters in the service, when the vessels were finished. The contracts for the building and equipping these vessels were made by Strohm and Co., merchants of Baltimore; who were the factors of DeSilva, . . . when the *Anne* was finished and equipped, and ready to sail, she was registered by Strohm and Co., as their own property; and the usual oath of ownership was taken by Strohm, at the custom-house, in order to obtain for her American papers. As soon as Strohm thus registered her, she was seized by the collector, and the proper information lodged against her with the district-attorney;" under the act of Congress, April 20, 1818, ch. 91.

Held: "it was very clear that the *Anne* was built for the slave-trade, and that Strohm and Co. knew it, . . . when the criminal purpose is proved to exist in the owner, or in the factor or master, who has the direction of the vessel at the time she is built or fitted out, the forfeiture attaches; . . . the purpose of either one of them . . . would subject the vessel to forfeiture." [Taney, C. J.]

¹ Under the act of Congress of Apr. 30, 1790, ch. 36, sect. 28. 1 Stat. at L. 118, ch. 9.

² Acts of 1717, ch. 13; 1801, ch. 109; 1808, ch. 81.

Garrott v. Johnson, 11 Gill and John. 173, June 1840. Agreement, in 1836, [176] "that . . . Garrott gives to . . . Johnson his negro man Sandy, for two hundred and fifty barrels corn, . . . Garrott to deliver . . . the said negro to-morrow or the next day, or when the said Johnson takes his negroes to the south." Johnson "was . . . a citizen of Frederick county, of respectable character, and who had not been in the habit of purchasing negro slaves for a foreign market, but was at the time of said sale engaged in purchasing negro slaves to take to some of the southern States,"

Young v. Robinson, 11 Gill and John. 328, December 1840. Dr. Daniel Young's will (executed in 1823, proved in 1838): [329] "I give . . . to my niece . . . a slave. . . It is my will . . . that all my negroes shall be entitled to their freedom the [sic] in course of three months after my decease, or sooner, at the discretion . . . of my executors." The codicil of 1837 "gave specific legacies to . . . one of his servants,"

Lee v. Pindle, 11 Gill and John. 362, December 1840. [363] "1839, it appearing to the Chancellor . . . that the negro slaves . . . and their increase, are not susceptible of division among the parties entitled, without a sale thereof, . . . it is ordered . . . that the said slaves and their increase be sold; . . . From this decree, Stephen L. Lee entered an appeal,"

Abell v. Harris, 11 Gill and John. 367, June 1841. [368] "Bill of sale . . . 1822, for Stephen, a house carpenter, 45 years of age; Nace a blacksmith, 29 years of age; Lewis 25 years of age; Basil 18 years of age; Jinny 40 years of age; Rose Ann 18 years of age; Lora 8 years of age; Emeline 6 years old; Alonzo 4 years of age; Manning 2 years of age; Henry 26 years of age; Eliza 20 years of age."

Hatton v. Weems, 12 Gill and John. 83, December 1841. Will of Henry Hatton, dated 1822, admitted to probate 1824: "I . . . give in trust to my . . . son, Henry D. Hatton, for my . . . daughter, . . . Mary R. Hatton, . . . [87] the following negroes, namely: Frank, Hendley, etc., etc.; Rose, Kitty, Mathilda, etc., twenty in all, and their increase; also Kitty's children and Mathilda's child" [86] "during her [Mary's] natural life, and after her death, to her children, . . . but if she should die without lawful issue . . . then . . . to my . . . son" In 1832 Weems married Henry Hatton's daughter Mary and they filed their bill, praying for an account. Henry D. Hatton answered, in 1833: [87] "that the expense and trouble of the negroes were worth more than their actual profits, nearly all of them being very old, very young,¹ or breeding women." In 1834 [88] "Hatton petitioned for an order to sell certain negroes, on the ground that they had become refractory, ungovernable, and disposed to run away; that some had run away, and some were now in jail for safe custody;" In 1835 "the Chancellor authorized Hatton to sell certain of the negroes." Mrs. Weems died, "leaving issue an only daughter . . . also dead."

¹ [110] "Eight witnesses are examined to prove, when in their judgment, a child ceases to be expensive to his master, and what would be a fair price for the maintenance of a child; . . . witnesses . . . vary in such opinions, of the annual expense of each negro, from five to twenty dollars."

The court held that, under the will, Mrs. Weems [107] “took an absolute estate” “in the personal property . . . and that the limitation over to Henry Hatton, being after an indefinite failure of issue, is void. This construction of the will as regards the limitation over of the stock, plantation utensils, and kitchen furniture, is not denied; but it is insisted, that the case of *Briscoe and Briscoe* [*sic*]¹ is an authority to shew that he is entitled . . . at all events, to the male negroes. The court in their determination of *Briscoe v. Briscoe*, refer to the case of 4 Harr. and Johns. 441,² and 4 Harr. and McH. 393,³ and do not overrule them; but distinguish them from the case then before the court, by the character of the subject matter of the bequest. These latter cases are decisive of the right of Mrs. Weems to the negro women, and their children and increase. Did the testator mean a definite or indefinite failure of issue, as the event upon which the ultimate legatee was to take? These cases are decisive to shew, that where the subject of the bequest is a woman and her increase, that the testator meant an indefinite failure of issue. Such terms are used in this clause, and are decisive of the right of the first taker to the women and children; the men are contained in the same clause, and the same intention must be considered as applicable to them; for he clearly meant that all should go over on the same event, and not that one portion of the bequest should go over on definite, and the other on an indefinite failure of issue. He could not, and clearly did not, mean to separate them, as would be the case upon the construction contended for.” [Archer, J.]

Allein v. Hutton, 4 Md. Ch. 537, December 1841. Petition for freedom. “Richard G. Hutton, . . . by a deed of manumission, executed . . . 1819, manumitted sundry negro slaves after a term of years, to wit: ‘George, aged twenty-five, to be free on the 1st of January, 1827; James, aged twenty-three, to be free on the 1st of January, 1827; Little James, aged twenty, to be free on the 1st of January, 1828; William, aged one year, to be free on the 1st of March, 1840; woman Nancy, aged nineteen, to be free on the 1st of January, 1827, and all the increase of the said Nancy born during the time of her servitude to serve, if males, twenty-one years, and if females, eighteen years. Woman Minta, aged seventeen, to be free on the 1st of January, 1824, and all the increase of the said Minta born during the time of her servitude, to serve, if males, to the age of twenty-one years, and if females, eighteen years, and the increase of the above women, born after their term of servitude is expired, to be free to their latest generations.’ Hutton died in 1832, and . . . 1833, negro Jim Sharp . . . filed his petition for freedom . . . against . . . Allein,⁴ the administrator . . . who had taken possession of him . . . the Court of Appeals . . . decided that . . . ‘the proper remedy . . . is by a bill in equity where the manumitted slaves and all proper parties can be brought before the court,’ . . . [539] 1836, Allein, the administrator, and several of the

¹ *Biscoe v. Biscoe*, p. 81, *supra*.

² *Johnson v. Negro Lish*, p. 66, *supra*.

³ *Davidge v. Chaney*, p. 55, *supra*.

⁴ *Allein v. Sharp*, p. 81, *supra*.

creditors of Hutton . . . filed their bill in equity, alleging that Hutton, at the time of the execution of said deed of manumission, was largely indebted . . . and that he continued insolvent . . . till his death. That Hutton remained in possession of the negroes . . . till his death. That he executed said deed with a view of prejudicing . . . his creditors, . . . [540] the Auditor . . . 1841, filed his report . . . that the debts due by the deceased amounted to \$9421.79, that no account of his personal estate was rendered . . . the whole having been absorbed by executions binding thereupon."

Decreed "that the defendants, Jim Sharp, Jim Ennis, Nancy, George, Minta, Lloyd, Samuel, Admirilla, William and Wilson, together with the increase, if any, . . . be sold for the purpose of satisfying the claims . . . appoints a trustee to make the 'sale of the said negroes for life,' . . . Under this decree the negroes were sold,"

Slater v. Magraw, 12 Gill and John. 265, December 1841. [266] "Received, . . . 1838, of William Slater, the sum of two hundred dollars, in full, in payment for my negro boy Upton, to serve ten years as a slave . . . I do hereby obligate to give the said . . . Slater a good title for said boy when called on."

Lee v. Pindle, 12 Gill and John. 288, June 1842. Will, dated 1827: [290] "I give . . . to my . . . son, Stephen Lewis Lee, one negro man, to be selected by him, etc., giving to him the right of first choice. I give . . . to my son, Thomas Daniel Lee, one negro man, to be selected by him, having the right of second choice." Second codicil, dated 1832: [293] "I do hereby revoke the bequest of any of my slaves, as made in my will, but will and direct that the whole of my slaves shall remain in the possession of my wife, during her life, for the benefit of her and my children, in common, in working and cultivating the lands and premises whereon I now reside, . . . and after her decease, the same shall be equally divided among my children," In 1837 a bill was filed to procure a distribution of the slaves. Several had died [295] "in the life time of the widow, but Abraham was drowned since the property came to the possession" of the executor. "Ordered, that this case be . . . referred to the auditor, . . . and . . . if practicable, to make an equal division of the said slaves and their increase, among the said legatees, . . . but if an equal division of the said slaves cannot be made without a sale, then to state the same accordingly to the end, that the court may be enabled to order a delivery of the said slaves or the payment of the proceeds of the sale of them in due proportions to the said legatees. And it is further ordered, that the defendant, Stephen Lewis Lee, account for the hire and profits of the said slaves, and their increase, after the death of the testator, to the said legatees, from the death of the said widow of the said testator, until the same shall have been delivered up or sold;" In 1839 the chancellor ordered [298] "that the said slaves and their increase be sold;"

The Court of Appeals held: [304] "Proper allowances ought also to be made for the expense of maintaining and clothing the whole, as well those incapable of labor as those who were able to work. The hire of the negro man Abraham, who was drowned, ought to have been carried up to the time of his death; and ought not, certainly, to have been extended

beyond that period, as a charge against the appellant. We think there was no error in the charge of interest on the annual hire or value of the negroes' services."

Hall v. State, 12 Gill and John. 329, June 1842. [331] "State of Maryland—Benjamin T. Pindle, Informer, agst. Randall Hall, Kissey Lane, Henry Lane, Richard Lane and Mary Lane. February 15, 1842. This case having been heard and considered, it is this day adjudged and ordered, that Randall Hall, K. L., H. L., R. L. and M. L., who have been proved before me to be free negroes immigrating to this State from the State of Virginia, in the year 1836, and remaining in it contrary to the provisions of the act, entitled, an act relating to free negroes, passed at December session 1831, chap. 323,¹ each pay to the sheriff of Anne Arundel, the sum of fifty dollars per week, for each and every week, commencing from the 1st day of January, 1837, and ending the 10th day of February, 1842, and each and every of said negroes refusing or neglecting to pay said fine, to be sold by the said sheriff at public sale, for such time as may be necessary to pay said fine, he first giving ten days notice of such sale. The said sheriff, after deducting prison charges, and a commission of ten per centum, to pay over one-half of the nett proceeds to the informer, and the balance to the county commissioners, for the use of the county. Wm. Glover."

Held: [337] "The act of 1839² was a merciful modification of the act of 1831. It assumed that a single penalty of twenty dollars might keep this class of persons out of the State; a penalty which they could pay, and be not subject to sale as slaves. Both cannot be in force, . . . The judgment was passed in 1842. . . for a money penalty, a debt accruing weekly from 1837, . . . The judgment upon its face is barred" by the act of February 1777.³

State v. Nutwell, 1 Gill 54, June 1843. Nutwell was indicted for suffering "a slave to be in his store-house, in which [he] . . . was accustomed to sell distilled liquor between sunset . . . and sunrise of the succeeding morning, . . . not having a written . . . license for that purpose from his master,⁴ . . . [55] the county court arrested the judgment [against Nutwell]," Affirmed: [56] "the indictment . . . is defective, in omitting the name of the slave and that of the master, if known,"

Brooke v. Berry, 1 Gill 153, December 1843. [155] "Articles of agreement made . . . 1837, between Elisha Berry . . . and William F. Berry, . . . [156] to wit: The said Elisha Berry, for the consideration hereinafter mentioned, doth for himself, his executors and administrators, covenant . . . with the said William F. Berry, his executors, administrators and assigns, that he the said Elisha Berry . . . will furnish him the said William F. Berry, with the following property, to wit, one negro man named John, one negro man named Andrew, one negro man named

¹ Sect. 1.

² Ch. 38.

³ Ch. 6.

⁴ Act of 1817, ch. 227, sect. 1.

Robert, one boy named John, one boy named Hanson, one boy named Robert, one woman named Beck, and one boy named Bill; two plough horses, two oxen, ploughs, cart, and other plantation utensils; all which property is to remain with the said William F. Berry, on the land where he now resides, for and during the term of ten years from the date hereof. And he the said Elisha Berry, doth further covenant . . . to pay to the said William F. Berry, one hundred and fifty dollars, annually; and the said William F. Berry, on his part, doth hereby covenant . . . that he will pay to the said Elisha Berry, the one-half of the crops made by him the said William F. Berry, . . . during the term above named, after deducting the expenses for making the said crops. And he, the said William F. Berry, doth covenant and agree to superintend and look after all the said Elisha Berry's business." [157] "immediately on the execution of the said agreement, the . . . negroes . . . were delivered into the possession of" William F. Berry, "and remained with him until the spring of the year 1840, when . . . [John, Bill and Hanson] ran away, and came to the possession of Elisha Berry and the defendant." William F. Berry brought an action of replevin. [155] "the jury found . . . that the plaintiff is entitled to the possession of the negroes replevied . . . John, Bill and Hanson, for the unexpired term of ten years, . . . and one cent damages."

Bowling v. Lamar, 1 Gill 358, December 1843. [365] "a receipt . . . purporting to have been given by . . . the sheriff . . . for the apprehension fee and jail fees of negro Hanson, . . . But no proof has been offered . . . that negro Hanson had ever run away or been confined in jail as a runaway."

Chaney v. Smallwood, 1 Gill 367, December 1843. [368] "all the negroes . . . are the descendants of a negro woman, slave, named Peggy, of whom . . . Zephaniah Mitchell acquired the possession about twenty-five or thirty years ago; . . . some of the said negroes were . . . returned sold . . . by . . . the administratrix of the said Z. M.;"

Jones v. Earle, 1 Gill 395, December 1843. Will of Alfred Jones, dated 1830: [398] "I give . . . all my personal estate, . . . In trust, . . . to manumit all my slaves as they severally arrive to the age of forty years, the said forty years of age to be determined by an entry in the last part of my oldest day-book, where I have made a list of their names and respective ages; and to manumit all my slaves, immediately upon my real estate devolving on my . . . grand nephew, . . . should it come to his hands;" The testator "also made provision for the support of some of his aged slaves, then unable to labor." Codicil, dated 1831: "I hereby revoke and make void that part of my will which manumitted my servants, as they severally arrive at the age of forty years, and do now give and devise all my said servants (except old Harry,) to my dear wife, for and during her natural life, and after her death, then said servants to be free; but in case that any of said servants shall run away, and afterwards be apprehended, they shall forfeit their freedom, and be sold for life. . . . If any of my servants, which I have at this time run away, shall be apprehended after my death, I do hereby direct that they shall be sold for life."

[397] “ negro Jeff ran away about the 6th of August 1836, and was apprehended and sold . . about the 20th of August 1836, for the sum of \$800, and that the expenses of apprehending the said negro Jeff, amounted to \$50 . . ; that about the 25th of March 1841, negro Peggy ran away, and that she was apprehended and sold about the 30th March 1841, for the sum of \$575, and that the expenses of apprehending her amounted to seven dollars,” Held: the proceeds belong to the widow of the testator.

U. S. v. Brig Malek Adhel, 2 Howard 210, January 1844. [213] “ The next vessel we met [1840] was the *San Domingo*, . . our captain was acquainted with the passengers . . after they left, Captain Nunez told witness, that the passenger had been a slaver, and was just returning from a prosperous voyage; . . [218] Nunez struck the cook; cook said, ‘ When I shipped, I did not know I shipped on board a slaver.’ ”

State v. Jones, 2 Gill 49, December 1844. [55] “ special judgment bearing interest from . . 1824, to be paid in negro property,”

McElfresh v. Schey, 2 Gill 181, December 1844. Will of Caspar Mantz, 1832: [187] “ It is my will . . that my sister Theresa shall pay to Catharine Clark, a free coloured woman, \$100 in quarterly payments of \$25 each, in advance, during her natural life.”

Isaac v. Williams, 3 Gill 278, December 1845. [279] “ in 1835, . . the defendant paid to the plaintiff [her son-in-law] twenty-five cents, for one year’s hire of negro Harriet ” and said “ that she would continue to do so as long as the plaintiff would suffer her to keep possession of said negro ” Defendant [280] “ asked the plaintiff if he would agree to sell negro Harriet, and her children . . ; that Harriet had selected a Mr. Hyatt for her master, if the plaintiff would agree to sell them; that the plaintiff asked the defendant, if she did not recollect a promise he had made his wife . . on her death bed? ¹ . . that he would not sell them, but that he would take said negroes home; . . defendant then said that negro Harriet would not be satisfied at the plaintiff’s, that his rules were too severe for her; . . [281] in 1836, the plaintiff furnished clothing for the children of Harriet. . . in 1838, the defendant . . asked the plaintiff, whether he had the clothing for Harriet’s children? that the plaintiff brought the cloth out and cut it off, when the defendant said, the plaintiff had not given enough, when the plaintiff told defendant to cut it off; . . and stated . . that he should, the next year, take said servants home, that they were old enough to earn their clothes; . . defendant then said, that Washington, one of the children of Harriet, was becoming useful to her, and asked the plaintiff to let him stay with her. . . that Mary, one other of Harriet’s children, should be put out near her mother, who could attend to her; . . in 1840, the defendant asked . . if he would pay the doctor’s bill for said negroes? . . the plaintiff said, that if she would bring the bill to him, he would get the doctor to separate the items, and would pay them,”

Chaney v. Tipton, 3 Gill 327, December 1845. [331] “ a negro woman, valued [in 1830] at \$300, . . sold for \$500,”

¹ [281] “ that he . . would give said negroes to his daughters.”

Compton v. Barnes, 4 Gill 55, June 1846. John Barnes, by his will, made in 1844, "manumitted [two] negroes,"

Mudd v. Turton, 4 Gill 233, December 1846. In 1839, Turton, [234] "who was the father of the plaintiff, told the plaintiff, who was then attending the negroes now in controversy, as a physician, and had been so attending them for a long time before, that if he would cure the said negroes, who were at that time sick, and small children, he might have them for the medical bill; and that he must make no charge against them, from that time: to which proposition the plaintiff assented. The witness also proved, that one of the negroes was not, in his opinion, at that time worth more than five dollars; and that the other was worth nothing, by reason of their then state of sickness. . . they recovered from their sickness under his treatment." [238] "the defendant's testator had a considerable family of negroes, there being charges in the account for attending ten,"

Peters v. Van Lear, 4 Gill 249, December 1846. [250] "The bill in this cause was filed on the 12th May 1842, by Caesar Peters, Thomas Clemens, Alexander Clemens, Henry Jones, Isaac Clemens, Nathan Mingo, Margaret Pierce, and Sophia Clemens, colored persons, residing in Washington county, and alleged, that they were, during the lifetime of Mary Van Lear, . . . the servants and slaves of the said Mrs. V. L. . . about the year 1828, the owner of your orators departed this life, leaving her last will and testament, which contains a provision . . . 'It is my will, and I do hereby . . . direct my said executors to manumit, by deed, all the slaves which may be mine at the time of my death, whose age and health may be such, as that their manumission may not be prohibited by law, leaving it in the discretion of my said executors to carry this clause into effect, at such time or times as they may judge expedient and proper.' Which was admitted to probate, . . . 1828; That *fourteen* years have elapsed since the death of their mistress, during all which time the said executors have refused to allow to your orators any benefit of the said last will and testament, and contrary to the express intention of the said testatrix, the said executors have ever since held your orators in bondage and servitude, and have refused to execute deeds of manumission to your orators, although your orators have not been prohibited by law from being manumitted, in consequence of their age or health, or any other cause whatever. And the said executors have, ever since the death of the said testatrix, and do now hold, your orators in servitude and slavery, although there is no reason for their doing so. That the best part of the life of many of your orators, when freedom would be of most value to them, is wearing away; and that the said executors have retained . . . [251] your orators in servitude, for their own profit and emolument, which your orators charge is contrary to good faith, and the kind and benevolent intentions of the said testatrix; . . . That your orators may be decreed to be free and discharged from slavery; that the executors, or one or more of them, may be required to execute to your orators deeds of manumission; that they may be allowed, under the decree of your honorable court, adequate

compensation for their services, for the time during which they have been detained in slavery by the said defendants; . . . a sufficiency of personal estate of the testatrix came into the hands of her executor to pay her debts, without including the complainants in the same,"

Held: [262] "by the laws of this State, a slave possesses no civil rights, and as a general proposition, it is true, that he is incapable of instituting a suit either in a court of law or equity. But as he has been made capable of acquiring freedom, by deed or will, the statutes¹ of Maryland recognize his ability to assert in a court of law his right to freedom, notwithstanding, pending the controversy, . . . he is treated as a slave. . . [263] As in this case, the complainants were under the necessity of invoking the aid of a court of equity, that an execution of the power created by the will might be enforced, as preliminary to the institution of a petition for freedom in a court of law; we think, that in analogy to the right secured to the slave of preferring his petition in that court for the purpose of establishing his freedom, and on the principle so distinctly announced by the Supreme Court, in the case of Fenwick and Chapman,² they must be regarded as capacitated for the purpose of this suit, and therefore able to maintain it. . . [264] the court below had no power to determine by their decree the freedom of the complainants, nor to order an account of the value of their services, . . . but . . . the court had jurisdiction of the cause, for the purpose of directing the executor to execute deeds of manumission as required by the will. . . [265] Cause remanded under act of 1832, ch. 302, sec. 6."³

Mayo v. Mayo, 4 Md. Ch. 103, July 1847. [113] "he has been compelled, from a well founded apprehension, that negro man Phil . . . [114] would escape out of the state, to sell him; that he has received for him the sum of \$600, . . . [115] said slave hired at the rate of \$60 per annum, and was worth about \$80 a year,"

Spencer v. Spencer, 4 Md. Ch. 456, September 1847. Will of William Spencer, 1822: [458] "none of my negroes to be sold out of the state, except for gross misconduct." In 1835 [460] "credit is taken for \$1200 on account of runaway slaves, . . . [461] all the negroes belonging to the estate of William Spencer, appraised at \$1200, absconded soon after his death, and were finally lost, though legal measures were taken to recover them, by his executor,"

Worthington v. Shipley, 5 Gill 449, December 1847. Bill of sale executed, in August 1841, by James Shipley to his daughter: [451] "one negro woman, named Catharine, aged about twenty-five years, and one negro girl named Nancy, three years of age," [450] "said negro girls have been seized and taken out of the possession of your oratrix [Mary E. Shipley] by . . . the sheriff . . . by virtue of . . . a writ of *feri facias*, issued . . . 1842, upon a judgment . . . against James Shipley . . . by the court . . . at the March term . . . 1841, . . . that the said S. was induced

¹ Act of 1796, ch. 67, sect. 21.

² 9 Peters 475.

³ See *Pearce v. Van Lear*, p. 122, *infra*.

to convey the said girls to your oratrix, by the death-bed solicitations of her said mother, who requested said S. to give all the negroes, who came to him through her, upon her marriage to her several children . . . that S. gave said girls to your oratrix during the lifetime of his wife, . . . and that said deed was made in pursuance of said gift. . . they are favorite negroes with your oratrix, both on account of the manner in which they became the property of your oratrix, and on account of their own good character,"

Bill for injunction, dismissed: [455] "We have not been able to discover in this record any evidence even tending to prove . . . an express delivery¹ of these slaves by James Shipley to his daughter at the time . . . of the verbal gift alleged to have been made in the life-time of Mrs. Shipley; . . . [460] the voluntary conveyance in this case . . . must be pronounced fraudulent and void. The donor, at the period of its execution was literally loaded with debt;"

Anderson v. Hammond,² 5 Gill 461, December 1847. Hammond "married Elizabeth Ann Shipley, another daughter of James Shipley, to whom . . . 1841, he made another conveyance of a slave called Miranda. The appellee claimed also under a gift from J. S., to his daughter made in 1835, at which time S. was not indebted."

Bill dismissed: [462] "the appellee has not succeeded in proving that express delivery of possession at the time of the gift, which is required by the act of 1763, ch. 13."

Buchanan v. Pue, 6 Gill 112, December 1847. [113] "The will of Edward Buchanan [who died in 1843], after . . . liberating a certain negro man slave,"

Magruder v. Darnall, 6 Gill 269, December 1847. [283] "The inventory of the [personal] estate of Richard Hill . . . amounts to \$12,208.87, comprising fifty-six negroes, mostly women and children; 25 between the ages of 1 and 10 years; and 10 (men and women,) between the ages of 44 and 94, *viz*: 44, 45, 45, 60, 62, 63, 60, 68, 52, 94. Some of them . . . shewn to have been worth nothing." [272] "To proceeds of sales [1842]—negro Harry, . . . \$415.00 Deduct jail fees, . . . \$4.76" [275] "By hire of Tildy, in 1829, . . . \$12.00 By interest on \$480, value of Priss and Moses, who died in 1825,"

Cornish v. Willson, 6 Gill 299, June 1848. Will of Beachamp Harper, 1795: [304] "I give . . . unto my daughter . . . one negro boy, called Jacob, . . . and at her decease, for said negro boy to be free. . . [305] N. B.—Before the signing, sealing, and delivery of these presents, the said Beachamp Harper doth set free, and to be at their liberty as followeth: one negro woman called Leddy, and one negro man called David, and one negro woman called Taymer, to be free 1st January, 1799, and one negro boy called Thomas, to be free 1st January, 1815, and one negro boy called Stephen, to be free 1st January, 1817, and one negro boy called

¹ Act of 1763, ch. 13.

² See *Worthington v. Shipley*, p. 103, *supra*.

Jonathan, to be free 1st January, 1820, etc. Signed, B. H." On the day that the will was admitted to probate "Solomon Twyford, being a new Quaker, did solemnly . . affirm, that he was present at the late mansion house of Beachamp Harper . . at the time when the foregoing instrument . . was executed; and that he heard the testator . . say that negro Leddy and negro David were to be free at his death; . . and the rest of the negroes mentioned . . to be free at the particular . . times mentioned in said writing," In 1796 the executors returned an inventory of the personal estate: [306] "The negro David's age, thirty-nine. Taymer's age, thirty-seven. Boy Jacob, nine years; one boy, five years; one boy, three years, and one boy, five months. Negro woman, Leddy, fifty-seven, . . £211. 5. 0" . . The Orphans Court ordered the executors [307] "to sell all . . the residue of the deceased's effects [which included the negroes], to pay the creditors" [308] "a return of sales [dated 1797]. . .

One negro man, David,	£58	0 s.
“ negro woman, Taymer,	45	0
“ child, Thomas,	25	15 s.
“ “ Stephen,	22	10
“ “ John,	10	0
“ negro woman, Lid,	7	10
	£168	15 s.”

[342] "even, after their sale, the insufficiency [of the legal assets] still continued." In 1846 negro Stephen filed a petition for freedom, and proved [305] "that on the first day of January, 1817, . . he was able to work and gain a sufficient livelihood . . [306] and that he was under the age of fifty years;" The court refused to instruct the jury to find for the petitioner [309] "unless they shall believe . . that there was a deficiency of personal and real estate, to pay the debts . . [311] The verdict being against the petitioner for freedom, he appealed"

Judgment affirmed: [341] "neither upon the true construction of the act of 1796, nor of the will of the testator, is there any charge upon the real estate of the testator for the payment of debts,"

Maryland v. Dorsey, 6 Gill 388, June 1848. "Nicholas Worthington . . by his will, . . manumitted . . all his negro slaves, . . appraised in the inventory at \$15,433 . . 1847. The State . . filed a suggestion . . alleging . . that the State was entitled to the tax of two and a half per cent. under the act of 1844, ch. 237," Held: [391] "The bequest of freedom to the slaves are legacies, and the executor is liable for the tax . . on their appraised value."

Thomas v. Wood, 1 Md. Ch. 296, September 1848. "Joseph G. Harrison, . . by his will, dated . . 1844, . . manumitted some of his slaves immediately," [304] "He bequeathed her [his widow] his negro man Major, to serve her for three years after his decease, at the expiration of which period he was to have the privilege of going to Africa, or remaining here if the law will permit him; and then the will says, 'that all

the rest of my negroes shall serve my wife, under the direction of my executor, for the interest of my estate, for the term of three years,' and after that time, and as the negroes attained the ages designated by the testator, they were to have the privilege of going to Africa. . . an authority given to the executor to sell the residue of the . . . real estate at his discretion; . . . [305] 'all, both real and personal, shall remain under his direction, the proceeds applicable to the payment of my debts,' "

Held: "the testator did not intend to give his wife the same interest in the services of the residue of his negroes, as he had given her in the negro named Major, but that he designed that these negroes, other than Major, should, for the space of three years, be employed for the benefit of his estate, for the payment of debts," [301] "the personal estate, independently of the slaves, is quite sufficient to pay the debts, . . . [302] In this case, the creditors, if any remain unpaid, are not before the court, . . . But with regard to the manumittor himself and his legal representatives, the manumission, though in prejudice of creditors, is valid, and the negroes manumitted are not assets for the payment of debts." [Johnson, Ch.]

Duffy v. Calvert, 6 Gill 487, December 1848. [490] "to Caroline Calvert, her choice of ten negroes—"

Garner v. Smith, 7 Gill 1, December 1848. In 1841 or 1842 Smith said [2] "that he had given nearly all the young negroes to his sons at the south, and to . . . his daughter, and that his stock of negroes was old and unable to work his farm, and that he should be obliged to buy negroes for his own use; that he gave in twenty odd negroes to the assessors:"

Brooke v. Waring, 7 Gill 5, December 1848. In 1843 [6] "the witness was sent, by the plaintiff's intestate [Baldwin], to the residence of the defendant, to receive a negro girl, which the . . . defendant had . . . contracted to sell . . . and on which contract . . . one hundred dollars had been paid; . . . the witness was informed . . . that he could not then deliver the negro . . . that the negro woman was unwell, and unfit to be delivered, . . . but that in ten days' time, she would be left at the house of Dr. Wyville, . . . witness did go to said Wyville's, and the said negro girl was not there, . . . she having died shortly after said last application for her delivery to him. . . between the two visits of the agent of plaintiff's intestate, . . . the defendant informed said plaintiff's intestate, that he need give himself no uneasiness about the . . . one hundred dollars, that . . . it should not be Baldwin's loss if the negro girl was not delivered" Judgment for the defendant reversed: [9] "the principle of *nudum pactum*, can have no application to such a transaction."

Brooke v. Townshend, 7 Gill 10, December 1848. Will of John Townshend, dated 1844: [12] "I give and bequeath to all my negroes or servants, old and young, and their increase, their freedom; and do direct, that my executor hereinafter named, shall, immediately after my demise, procure and deliver to them respectively, from the proper office in said county, such certificates as may be necessary to secure to them their full enjoyment of their freedom; the said certificates, when thus procured, to

be paid for by my executor out of my estate. And whereas also, in and by a certain deed of manumission, by me heretofore executed, bearing date . . . 1831, and recorded . . . 1832, my said negroes and their increase are to be liberated, manumitted, and set free, from and after the time of my death: and some doubts have been expressed as to the validity of said deed, I have, for remedy thereof, inserted the foregoing clause herein, and in case the said deed and this, my will, should be insufficient to manumit and free from slavery my said negroes, and their said increase, I hereby give and bequeath them, and their said increase, to my nephew, Jeremiah Townshend, and his heirs, not for the use of himself and his heirs, but for the use of the said negroes and their increase, save the amount of one cent per capita per annum, which the said slaves, and their said increase, are hereby required to pay forever hereafter to the said Jeremiah Townshend and his heirs. I give, devise and bequeath, to my said negroes, and their said increase, all my property, both real and personal, to be divided amongst them equally, share and share alike, to them and their heirs, forever. This devise and bequest is to take effect, even if, for any cause at all, at present unforeseen by me, the said negroes, or their said increase, should after my death, be deprived of their said freedom and held in bondage." The testator believed [13] "that he had seen and conversed with God face to face, and that he had been told by God, to make such a will. . . [20] He died [in 1846] at the age of eighty-one years, possessed of a real estate, amounting to thirteen or fourteen hundred acres, and a large stock of negroes, more than fifty in number. Judgment in favor of the caveators reversed and *procedendo* awarded.¹

Gibbons v. Riley, 7 Gill 82, December 1848. [85] "The admission . . . that Martha and Mary jointly purchased the negro man Henry, does not prove that they were joint tenants. The presumption is, that each of them paid one-half of the purchase money for the negro, and were tenants in common thereof."

Janney v. Sprigg, 7 Gill 197, December 1848. Will of Sarah Lamar, executed 1839: [199] "It is my will and desire, that if my executor should think it most advisable, he may sell . . . my negro woman, Ellen, and her children, the said negro woman is to have the privilege of choosing her own master. It is my wish, that the mother and children may not be parted, but should my niece, Mary Tilghman, wish to retain, for her own use, one or more of said Ellen's children, she is to have the privilege of doing so."

Patterson v. Crookshanks, 7 Gill 211, December 1848. In 1832 Ford of Baltimore County sold to Crookshanks of the same county [212] "for the sum of \$200, a negro boy named William, aged about eighteen years, to serve until the 1st of January 1844." Crookshanks covenanted "that from and after the said 1st of January 1844, the said negro boy William shall be liberated, manumitted and set free, and forever discharged from any and all kinds of slavery whatsoever." The bill of sale was not recorded. In 1838 William [Patterson] "absconded" and "was recently arrested as an absconding servant," He was brought before the Orphans Court of Washington County, which [212] "ordered, that the term of service of

¹ See *Townshend v. Townshend*, p. 116, *infra*.

said William Patterson, (negro,) be extended for eight years¹ from this date [1848], and that . . . Crookshanks have the right of selling . . . Patterson, . . . in or out of the State of Maryland." The defendant appealed on the ground [214] "that the orphans court of Washington county, had no jurisdiction in the cause. . . The master . . . must reside in the county where the application is made;" Counsel for the plaintiff contended [215] "that the bill of sale . . . if intended to operate as a deed of manumission, is void, because it was not recorded . . . the negro remains a slave, and . . . has no status in court."

Frick, J.: The appellee "first arraigns him before the court as a free-man, and then to drive him from his rights and his defence as such, he invokes the instrument of his title, and its defective execution, to convert him into a slave. . . The orphans court . . . did not profess to deal with Patterson in that character, and the very sentence imposed by them, denies it, by adding to the previous limited term of his servitude. . . [216] The forum selected by the appellee has no jurisdiction . . . and their decision must be reversed."

Negroes Monica et al. v. Mitchell, 1 Md. Ch. 355, December 1848. Ignatius Semmes, by his will, executed April 1843, [356] "gives freedom to several of his slaves, to each of whom he bequeathed a pecuniary legacy of three hundred dollars." Also, "I will and devise, that my executor shall cause to be erected on some part of my farm, called Rose Hill, (the place to be selected by the above manumitted negroes,) a good substantial dwelling house, with one brick chimney, which house, together with two acres of land adjoining thereto, I give and devise to the above manumitted negroes and their heirs forever."

Held: "the testator intended by this devise, to provide the negroes in question, with a habitation to live in, and, as this intent comes in conflict with the policy of the legislature, which forbids persons in their situation from remaining in the state, unless upon terms incompatible with the unrestricted enjoyment of the devise, the latter must fail. Looking to the 3d, 4th and 5th sections of the act of 1831, chap. 281, it is manifest, that no slave manumitted since its passage can remain in this state in a condition of freedom. It is true, that the orphans courts may or may not grant slaves so manumitted annual permits to remain, but the privilege of doing so depends upon the discretion of the court, and if withheld, they are liable to be expelled at any time." [Johnson, Ch.]

Conner v. Ogle, 4 Md. Ch. 425, December 1848. [428] "By a codicil, executed on the 23d of June, 1815, the testatrix [Mrs. Henry Margaret Ogle] manumitted her negro man, Caesar, and gave him an annuity of \$20 per annum, during his life, also her negro man Orson, and her negro cook, Nan Bowser, and gave each an annuity of \$10 per annum, during their lives; also her negro girl, Nance, whose freedom was to commence on the 1st of January, 1818, and requested these devises to be scrupulously carried into effect. By another codicil, dated the 28th of July, 1815, the manumission of the negro girl, Nance, was postponed until the 1st of

¹ Acts of 1833, ch. 224; 1845, ch. 105.

January, 1820, and her services in the mean time were bequeathed to . . . [432] On the 11th of June, 1828, . . . executor . . . passed . . . an additional final account, charging himself 'with cash received for [twelve] negroes under the treaty of Ghent, \$3,402,' . . . The negroes referred to in this order had been carried away during the late war with England. On the 1st October, 1828, . . . a further additional final account, in which he charges himself 'with cash received for negroes under the treaty of Ghent, \$1,291.68,' "

The African Methodist Bethel Church v. Carmack, 2 Md. Ch. 143, March 1849. A bill for an injunction, alleging [144] "fraudulent misconduct on the part of the five defendants . . . in collecting and misapplying the funds of the church,"

Spencer v. Negro Dennis, 8 Gill 314, December 1849. Samuel Brohawn's will, executed 1831: [315] "My will and desire is, that all my negroes be free at the age of thirty-eight years, provided they leave the State of Maryland, and do not return therein to reside, in the course of thirty days after they arrive to the age of thirty-eight years; and should they return to reside in the State of Maryland, my will is, then, that they shall be slaves to my heirs." His slave, Dennis, attained 38 years on December 19, 1845, and received a certificate of freedom. He was "permitted to go at large, and act as a freeman, until taken by appellant, on the 1st of August, 1849. That the appellant, sometime in February, or the 1st of March last, sent for petitioner, and notified him, if he did not give security, or leave the State, he (appellant,) would sell him, as he had stayed longer than the will allowed. That if he would leave the State, he would let him go free. That petitioner made no answer to this notice. That he has never left the State, and never offered to leave it. The court gave judgment that petitioner was entitled to his freedom,"

Affirmed: [321] "The conditions attached to the bequest for freedom . . . are manifestly conditions subsequent, and being subsequent, they are wholly unauthorised by the act of Assembly, and are therefore void. The power of testamentary manumission only exists in Maryland, in virtue of the 13th section of the act of 1796, ch. 67, and it can only be exercised in pursuance of the authority thereby given. A testator . . . is explicitly empowered to limit . . . the period at which manumission shall commence . . . but there his power ceases. . . 'Once free and always free,' is the maxim of Maryland law . . . Freedom having once vested, by no compact between the master and liberated slave, nor by any condition subsequent, attached by the master to the gift of freedom, can a state of slavery be reproduced." [318] "The acts of Assembly of Maryland, authorising the manumission of slaves, were not passed in consequence of any legislative hostility to slavery, or in gratification of any general wish or policy to diminish or destroy it; or to confer benefits upon slaves, and promote their comforts and happiness; because all observation and experience, in Maryland, had demonstrated, that the reverse would be the result; that slaves, for the most part, were far better fed and clothed; more contented and happy; and in point of sobriety, virtue and moral character, far above the free coloured population of the State. But the design of these enact-

ments was to gratify the masters of slaves, to enlarge their privileges, and to give them an authority to dispose of their slaves, in a way which otherwise they did not possess." [Dorsey, C. J.]

Negro Andrew Franklin v. Waters, 8 Gill 322, December 1849. Deed of manumission executed by Charles Waters, in 1812, by which he [323] "manumitted and set free my negro boy, Andrew, from and after the 1st of January, 1840." Andrew "was detained in slavery by said testator up to the time of the latter's death, on the 12th of May, 1846, and was kept in ignorance of said deed of manumission, and of his right to freedom, until he was discharged by the defendant, as executor [of Waters] . . . on the 2nd of September, 1846." Waters, in his will, "bequeaths a legacy of \$100 to his 'negro man Andrew,'" The court refused to instruct the jury that [324] "the plaintiff is entitled to recover so much as the jury may find . . . his services were worth from the period . . . he was so retained [in the service of defendant's testator] . . . after the 1st day of January, 1840." The plaintiff excepted, "and the verdict and judgment being against him, appealed"

Judgment affirmed: [327] "The relations that exist between master and slave, must necessarily modify those general rules which govern the rights of persons . . . [328] no such *assumpsit* or contract to pay can be implied, where the facts show that the parties did not intend or design the one to pay or the other to receive."

Dorsey v. Whipps, 8 Gill 457, December 1849. Action of slander. Whipps, [459] "a blacksmith," declared that Dorsey, the defendant, had said: [458] "I have been informed, that some gentleman in the neighborhood of Mr. Whipps, had missed some clevises off his ploughs, and went to Whipps to have others made, and, on arriving there, found his clevises in the possession of Mr. Whipps; that he claimed the clevises, and Mr. Whipps pretended not to know how they came into his shop, but afterwards acknowledged that he had purchased them from one of the claimant's negroes, and begged him to say nothing about it, as it would ruin him;" [459] "meaning that the plaintiff had acknowledged that he had purchased said clevises from one of the negroes of said gentleman, and meaning further, that the said clevises had been feloniously stolen by said negro, and purchased by said plaintiff from him, knowing the same to have been feloniously stolen." A witness [460] "heard a negro slave ask Whipps if he wanted to buy some crowbars, and Whipps said he would take them; no bargain was then made, but the negro afterwards left two crowbars at Whipps. The same witness also proved, that he had known Whipps to purchase old horse shoes from negroes." The verdict was in favor of the plaintiff. Judgment arrested: [461] "no special damage is charged to have resulted to the plaintiff, . . . [462] We do not think that the words charged . . . to have been spoken by the defendant, are *per se* actionable."

Taymon v. Mitchell, 1 Md. Ch. 496, December 1849. [504] "a case in which the complainant has been induced to purchase a family of incurably diseased slaves, upon representations made to him by the vendor, that

they were sound and healthy." [498] "They were radically and permanently diseased. The complainant stated that the negroes had been of very little service to him, requiring frequent care and medical attendance, and that one of them, an infant, died before the bill was filed; and that as soon as he ascertained their unhealthy condition, which was about a month after the sale, he applied, without success, to the defendants to take them back." Decree [506] "to rescind the contract *in toto*,"

Holmes v. Mitchell, 4 Md. Ch. 162, March 1850. Will of Ignatius Semmes: "I . . . devise to . . . Mitchell . . . my farm . . . together with all the rest of my negroes, . . . [163] in trust . . . the income therefrom to be applied to the mutual benefit of my uncle William Holmes, . . . and my aunt Sarah Floyd, during their lives, and after their death to my cousins." Holmes filed a bill, claiming "that the trustee should be compelled . . . to transfer to the complainant" "the issue of the female slaves comprehended in the bequest, born since the death of the testator, . . . or such of them as the complainant is properly entitled to, and one-half of such as may be hereafter born,"

Held: [166] "the testator . . . meant the annual income and no more." [165] "To separate the issue from the mother, . . . involves the necessity of determining at what age this may be done. The infant cannot be torn from its mother and sold or transferred to the complainant. No one would buy, and humanity would cry out against it. There would have then to be a periodical partition, or sale, after first determining at what age the offspring could with propriety or without shocking the public sensibility, be separated from the mother. . . I cannot think . . . that the reasons which have influenced the courts to give to the legatee for life or for a term, the after-born issue, apply to a case where a mass of property is left in trust as here. . . the title to the issue . . . will pass with their parents to these who are entitled in remainder upon the termination of the life estates." [Johnson, Ch.] ¹

Harker v. Dement, 9 Gill 7, June 1850. [8] "plaintiff was in possession of a farm and negroes . . . under the management of . . . his overseer; That on the 13th March, 1846, John Campbell . . . [9] came to this farm . . . accompanied by Mr. Edmund Briscoe and the sheriff; . . . that Briscoe then and there bargained with Campbell for the sale of the [two] negroes, . . . that no money was then paid, but Campbell handcuffed the negroes and carried them away."

Hayden v. Burch, 9 Gill 79, June 1850. Will of Peregrine Hayden, executed in 1848: [80] "confirming freedom to certain negroes therein named, whom he devised to the appellant, in trust, to receive their freedom whenever they shall determine to emigrate to a free state or to Liberia, but should they determine to remain in this State under existing laws, the appellant was still to hold them in trust, to aid them in their support, and permit them to live on testator's land free of rent. The will also states, that having executed a deed of manumission to said slaves, 'it is my wish, in the event of the said deed proving inadequate to secure

¹ See same *v. same*, p. 122, *infra*.

their freedom, that this my will and testament may take effect for the object and purpose herein declared and set forth.' ”

Anderson v. Garrett, 9 Gill 120, June 1850. Will of Sarah Cord, executed in 1805: [125] “ My will and desire is, that all my negroes be liberated and set free, and is by this my will liberated and set free from bondage, in the manner and form following: that is to say, that my negro man Tom, my negro man Joshua, and my negro woman Phebe, be free to all intents and purposes, from the date of my decease; my negro woman Beck, and my negro man Basil, to be free at the expiration of four years from the date of my decease, my negro boy Levi, my negro boy David, my negro girl Seny, my negro girl Mariah, my negro girl Elizabeth, my negro girl Matilda, my negro boy Elias, my negro child William, all and each of them to be free when they arrive at the age of twenty-five years, them and their issue or increase forever.” The testatrix [125] “ desired that no letters of administration should be taken out on her estate, . . . Rebecca Garrett, the petitioner, was the daughter of Beck, . . . John Cord, named as executor of Sarah Cord, sold the rest of the negroes.” No letters testamentary “ had been ever granted to any one.” In 1849 [122] “ Rebecca Garrett and her five children, by . . . their next friend, filed their petition for freedom in Baltimore county court, . . . The defendant, Thomas Anderson . . . pleaded in abatement to the jurisdiction of the court, averring that the petitioners did . . . reside . . . under the directions of the defendant, their master . . . at Howard district of Anne Arundel County, out of the jurisdiction of said court. . . . Rebecca . . . came to Baltimore about eighteen years ago, where she has continually resided with her children till within a short period prior to the filing of this [123] petition. That during all this time she was reputed a free woman, and always acted as such, making contracts, renting houses, hiring herself out and receiving her own wages, hiring out her children and receiving pay for their services, and raising and supporting her family by her own industry. That shortly before the filing of their petition, Isaac J. Anderson, the son of defendant, with several police officers, came to the house of petitioners at night, seized and hand-cuffed them, and carried them off to the residence of defendant, in Howard district. On the part of the defendant, it was proved that he claimed the petitioners as his slaves, the mother, Rebecca, having been given to his wife at five or six years of age.” “ that about twenty years ago, . . . not having constant employment for her, he permitted her to live with her husband, one William Garrett, a free negro. That several years afterwards, . . . Garrett being about to remove to the city of Baltimore, Rebecca applied to defendant for permission to accompany her husband. That defendant for some time refused to let her go, but afterwards agreed to hire her to her husband, and he took her with him to reside in the city of Baltimore. That by this agreement, . . . Garrett promised to pay a certain sum, yearly, for the services of Rebecca, and defendant reserved to himself the right at any time, to take and remove [124] her, or any child or children she might afterwards have, from the possession of . . . Garrett, without any previous notice. That all the petitioners mentioned as the children of said Rebecca,

were born after this agreement was made. That for several years . . . Garrett continued to pay the sum stipulated in the agreement, but defendant, in consideration of the expense and trouble of supporting his large family of children, did not exact afterwards the payment of the same from him. That defendant frequently supplied Rebecca and her children with provisions and whatever else necessary to their support, his farm afforded." [123] "That he had permitted them to live as they had for many years, until recently, when having heard that one of them was about to escape into Pennsylvania, he did, acting under the advice of counsel, seize . . . them . . . as stated above. That immediately upon doing so, he addressed a letter to petitioners counsel, . . . inviting him to bring suit for freedom in [Howard district] . . . court. . . the court . . . overruled the plea and directed the defendant to answer over, . . . [127] The court granted the fourth [prayer] . . . of petitioners:" [126] "The jury may presume, from the lapse of time and all the evidence . . . that . . . John Cord had acted under letters testamentary . . . And . . . that the estate . . . was fully administered, and all debts paid. And if the jury find . . . that . . . Rebecca . . . [127] publicly acted for herself as a free person . . . for a period of twenty years, or any considerable length of time less than twenty years, without the interruption of any one; . . . and that no attempt was made . . . to claim them as slaves, then the jury may find that they are abandoned, . . . and . . . entitled to their freedom. . . The verdict and judgment being for petitioners, the defendant appealed."

[137] "judgment is reversed and no *procedendo* will be awarded." [129] "In overruling the appellant's plea, in abatement . . . Baltimore county court erred," [128] "By the act of 1796,¹ . . . the county court of that county in which the . . . 'petitioners shall reside, under the direction of . . . their master' . . . are exclusively vested with the power of trying the petition for freedom. . . In acquiring a residence by a slave, he has no will of his own. . . Its creation and continuance depend entirely upon the acts and intentions of the owner, . . . [131] We concur in opinion with the county court, that by the last will . . . of Sarah Cord, . . . Rebecca Garrett, was not manumitted. . . [132] As to the issue of her negro woman Beck, . . . she has made no provision, . . . [134] There having been no letters testamentary granted, no . . . presumption ['that the estate . . . was fully administered and all debts paid'] can legally arise. . . [135] The county court . . . erred in declaring that the petitioners are entitled to their freedom had they thus gone at large as free for any time less than twenty years. . . [136] The conclusion of the prayer . . . is also erroneous. . . If it meant to assert that abandonment by the owner of a slave that he might be free, is, *per se*, a legitimate mode of manumission in Maryland, it is a proposition as novel as it is contradictory to the express provisions of our act of Assembly upon the subject. . . This prayer, however, is radically wrong, upon another ground . . . An executor has no power, . . . as such, to execute a deed of manumission; . . . No presumption . . . that such a deed was executed by the executor can ever arise," [Dorsey, C. J.]

¹ Ch. 67, sect. 21.

Clements v. Smith, 9 Gill 156, June 1850. Plaintiff sold Smith a negro boy at auction, in August 1845, for three hundred dollars, the auctioneer warranting him [157] "sound as a dollar;" The defendants, in an action of debt, proved by a witness "who saw the boy the day after he was purchased, and had frequently had the boy in his service since, that the boy had not the free use of his limbs, and can do no good service; that his stomach is swollen, and he is . . . defective in body and mind, and not worth more than his victuals and clothes. . . . By another witness, . . . that he seems to be deformed, and cannot walk well; that no defect is discernible in the boy when sitting or standing still, but is perceptible when he moves; . . . [158] he is more defective in body than in mind. By another witness, that plaintiff before the sale had offered the boy to witness's brother, who told plaintiff he would not buy him, that he was very defective both from whipping and deformity, that in witness's opinion the boy was worthless, and a tax upon any one who owned him; that when the boy is in his clothes, he looks tolerably well, and that the defects are shown upon examining him. They also proved that the value of a boy of his age, (about seventeen years,) varied from \$300 to \$400. . . . The plaintiff . . . proved by a competent witness that he raised said negro, and sold him in December, 1844; . . . that at that time the boy was sound; but the defendants objected to this evidence . . . which objection the court sustained, and plaintiff excepted. . . . [159] the verdict and judgment being against him, he appealed."

Judgment reversed and *procedendo*: [159] "The defendants had offered evidence to prove, that the negro man was [un]sound before the sale, and without limitation of time, as to how long before the sale; and Carter's testimony was admissible to rebut that evidence."

Lark v. Linstead, 2 Md. Ch. 162, September 1850. Lark [164] "died in . . . 1826, and his executrix returned an inventory of his personal estate in March, 1827; in which there is included a negro woman and child, (the latter supposed to be the boy in dispute,) appraised together at \$250. . . . [165] June 1829, she passed . . . her . . . final account," In November 1829 she sold the boy, who had been bequeathed to her for life, to Linstead for \$35. The legatees [162] "in reversion of" the testator filed a bill, alleging that Mrs. Lark "could only have sold her life estate in the said boy" Linstead answered that [164] "he purchased the boy . . . bona fide and for a fair price as a slave for life,"

Bill dismissed: [165] "If the child was but two or three years old, or even a year or two older, the price given . . . though less than the witnesses say negro children of that age were worth, is not so low as of itself to create a presumption . . . that the defendant did not purchase the child for life. . . . [166] It does not seem very probable that a cautious person would purchase a negro child of tender age for the life of another person . . . past the meridian of life. . . . [168] there is no ground for imputing fraud." [Johnson, Ch.] ¹

Ex parte Garnett, 10 Fed. Cas. 6 (7 Leg. Int. 174), October 1850. "Henry Garnett belonged to the estate of Benedict Jones; that he was

¹ See same *v.* same, p. 119, *infra*.

held to labor for a term of years, and that said Henry had run away from his owner, as long ago as the year 1842." [7] "Henry was seventeen years old at the time of his escape;" The son of Jones had him arrested, under the act of October 18, 1850.¹ He was brought before the court, and it was held that [11] "the party [Jones] has failed to make the necessary proof," The claimant's counsel promised "to have the proper certificates here, certifying to this will" "if your honor will remand the prisoner until to-morrow morning, . . . Your honor knows from the state of feeling on this subject, that the moment it is known, that a claimant is pursuing a fugitive, that moment the fugitive is secreted and escapes and there is no opportunity to get him."

Judge Grier: "I knew the excitement this arrest would cause, and I was determined, that if he made good his case, I would at all expense carry out the requirements of the law." [10] "the party was warned yesterday . . . to be prepared." [11] "This man is in the possession of the marshal here, at a risk of one thousand dollars every minute." "the prisoner has a right to be discharged, and is discharged."

Edelen v. Middleton, 9 Gill 161, December 1850. Will, executed 1808: [164] "I give and bequeath unto my son, Ignatius Fielder Thompson, two negroes, the one called Pol, who is the wife of Nace, and the other her child called Gusty, as also, the said Pol's future increase, . . . to be paid to him after the natural life of my wife, Eleanor and myself, at which death may last happen. But in case my said son shall die without lawful issue, and before he possess the said negroes, . . . my will and desire is that the whole of them shall go to my daughter, Mary Ann Thompson; in case she . . . should die as aforesaid, . . . the property aforesaid, shall go to my second daughter Elizabeth . . . and so on, down to the youngest of my children; this being according to a particular contract made with my brother in law, . . . at the time I swapt with him for said negro Pol."

Clarke v. Marriott, 9 Gill 331, December 1850. [332] "an action of replevin brought by . . . administrator of Walter Clarke, for a negro boy" In 1820 Marriott, by a bill of sale, transferred his "negro woman named Jemima . . . to . . . Walter Clarke, to serve for the term of ten years . . . and the children of said Jemima, if boys, born during the said term, to serve until the age of thirty years. The boy in question in this suit, was born in 1833, . . . Walter Clarke died in the year 1826. The appellees offered in proof . . . that about eighteen months before his death, . . . Peach, claiming to act as trustee, employed . . . auctioneer . . . to sell all the estate of Walter Clarke; . . . he sold . . . Jemima, to Caleb, the brother of said Walter, and that Walter there delivered the woman to Caleb. . . [333] the woman was never out of the possession of Walter Clarke, *except as stated*, but she continued in his possession up to the period of his death; and afterwards with his widow, until after the birth of the boy, who, at the age of two or three years, was . . . still in the possession of the widow."

¹ 9 Stat. at L. 462.

Held: "This negro being the property of Walter S. Clarke in 1820, remaining in his possession until his death, and there being no ground for a presumption that Marriott . . . ever had possession, or set up any title to Jemima or her child, until the institution of this suit, it would seem that the plaintiff is entitled to the negro boy . . . unless it can be shown that his intestate by his own act, lost or parted with the title thereto. . . [336] the testimony was not sufficient to justify the inference of a sale, . . . [340] It was intimated that the original bill of sale from Marriott . . . was not such . . . as is required by the act of 1817, chap. 112, sec. 3. . . such a disposition of a slave for life, is not within the provisions or the spirit of the act "

Tayman v. Tayman, 2 Md. Ch. 393, March 1851. Suit for divorce. Answer of the husband: [395] "He admits, that on one occasion, she, in her disobedience, attempted, by interposing her person, to prevent respondent from whipping her negro boy, who was disobedient and impudent to respondent, and when, in his proper efforts to chastise the boy, he may have accidentally struck complainant "

Henderson v. Jason, 9 Gill 483, June 1851. [484] "The petitioners proved by Alfred Warfield, that the petitioner William is now nineteen, Reuben thirteen or fourteen, Asbury fifteen, and Louisa about seventeen years of age. That they are all healthy . . . Their reputed father is Aaron Jason, with whom they had lived from their birth until the defendant took them. Their mother was Rachel, who up to 1830 was the slave of Mrs. Francis Warfield. . . Rachel went to live with Aaron in 1830, by permission of Mrs. W. and under an agreement between Mrs. W. and Aaron. . . [485] that in consideration that he, Aaron, should support and bring up two of Rachel's children then *in esse*, Arch and Sam, she, Rachel was to be free." [484] "Gustavus Warfield . . . always regarded Aaron as free, has attended him and the petitioners, his children, as a physician, and charged Aaron therefor, who paid him; that Aaron sometimes put out the petitioners for their victuals and clothes, . . . [485] Charles D. Warfield proved, that his father owned Aaron, and that he was too old to set free when witness' father died, being over forty-five years. That witness in 1829 or 1830 let him go free for \$100, of which Aaron paid \$90, and witness gave up the rest; . . . [486] Sam, one of Rachel's children, staid with Aaron about six months or a year, and was taken away by Eli [Warfield] for his mother, . . . and that Arch . . . staid longer; . . . five or six years, . . . at the time Rachel went to live with Aaron she was under forty-five years of age, and able by her labor to gain a competent livelihood. . . [490] verdict, and judgment . . . in favor of the petitioners," Affirmed.

Townshend v. Townshend,¹ 9 Gill 506, June 1851. [513] Evidence by the caveators: "Townshend stated that God had commanded him to set his negroes free, and to give them all his property, that he had told him this repeatedly, that at one time he, Townshend, intended to convey a piece of land to one of his nephews, and that God had told him that he

¹ See *Brooke v. Townshend*, p. 106, *supra*.

must not do so, but must give it to his negroes: . . . that it was not his will, but God's will;" "Townshend was of sound and disposing mind. . . [514] That his opinions . . . were professed on the occasion for the purpose of disputation, . . . They also read the deed of manumission referred to in the will, . . . by which he liberated . . . all his negroes, thirty-five in number, . . . with their increase . . . after his death. . . [517] The jury rendered a verdict . . . for the caveatees. . . judgment against the caveators for costs, . . . [520] "Judgment reversed and *procedendo* awarded."¹

Bayne v. Suit, 1 Md. 80, December 1851. Sealed agreement: "Bought of . . . Bayne, one of the administrators . . . two servants, Tom and Aaron, for . . . \$1150. In case the administrator, . . . Webster, should not sanction the sale . . . we bind . . . ourselves, under the penalty of \$300, to return the . . . negroes to . . . Bayne, or . . . Webster on or before Saturday night next, and provided the purchase money is returned, we do promise to make no charges for our trouble in taking and keeping said negroes, until such time." Webster "did not sanction the sale . . . the plaintiff [Bayne] tendered . . . the purchase money" [81] "but the appellees refused to receive it, and . . . sold the said negroes to a trader in Baltimore," When the covenant was signed, [84] "there was an action of replevin pending² for the same negroes." Verdict for the defendant. Judgment affirmed.

McChesney v. Bruce, 1 Md. 344, December 1851. [345] "The will of Helen Bruce bears date . . . 1841, . . . giving freedom to some of her negroes,"

Linstead v. Green, 2 Md. 82, June 1852. Will of Ignatius Bright, dated 1823: "I will and bequeath my negro woman Caroline, to be and go free at the age of thirty-six years old, both she and her increase, she being at this time seventeen years old. I will and bequeath my negro boy Joshua, son of said Caroline, to be and go free at the age of thirty-six years he being at this time four months old." Caroline [83] "died about . . . 1836 or 1837, before she arrived at the age of thirty-six." The petitioner for freedom is her daughter who was born about 1830 or 1831, and [87] "was not at the time of the filing of her petition, nor is she now, thirty-six years old." Held: the testator [88] "designed to manumit Caroline when she should become thirty-six years old, and, also, to manumit each . . . of her children when they should respectively attain the same age, and not before."

Usilton v. Usilton, 3 Md. Ch. 36, July 1852. Will, executed 1850: [37] "I give . . . unto my son, . . . one negro man . . . and one boy . . . one negro woman . . . and one negro woman . . . an old man Ned he is to support and take care of,"

Robinson v. Robinson, 4 Md. Ch. 176, September 1852. A bill was filed in 1850, [177] "by Henry Robinson, a free negro, and others, free negroes, against Washington D. Robinson and others, free negroes, and

¹ See *Townshend v. Townshend*, pp. 124, 126, *infra*.

² Act of 1833, ch. 274.

. . . Farquharson, for the sale of certain real estate devised to William Rea, in trust for them, by William S. Harper, . . . Rea had declined the trust, and . . . Farquharson had been appointed . . . trustee in his stead; . . . By the third clause [of Harper's will, dated 1838] bequeaths a horse to his negro boy Henry. By the fourth he directs all his personal estate . . . to be sold . . . and the money . . . and whatever money may be due him at the time of his death, to be equally divided, . . . [178] between the negroes manumitted by the succeeding clause . . . 'Fifth. It is my will . . . that my eight negroes . . . Old John, Kate, Daniel, Mary, Hannah, Henry, Ann, and Nancy, shall be free immediately after my death. Sixth. I devise to my friend William Rea . . . my plantation whereon I now live, and all the lands thereto belonging, . . . upon trust that the said plantation shall be rented out by him, and the rents and profits . . . paid over to my negro boy Daniel, or his written order, attested by some justice of the peace.' " There were similar provisions as to other land, [180] "to be rented out . . . and annually paid to my negro boy Henry, or his order, . . . [179] and any other real estate not already devised in trust to be rented out . . . and the money . . . equally divided between . . . Old John, Kate, Mary, Hannah, Ann, and Nancy, and their respective proportions paid annually to each one, . . . immediately after the decease of any of the legatees, . . . trustee . . . shall pay over whatever property he shall then have as trustee to the legal representatives and heirs at law of the . . . deceased, unless the deceased shall make some other appointment by his last will." Codicil executed in 1840: [180] "If any bequest or devise contained in my last will and testament, or this my codicil, shall fail to take effect from any cause, in such an event I will and desire that the trustee and executor by this will appointed, shall immediately transfer the equitable and legal title to the same, be the same real or personal, (except negroes,) to the states of Delaware, Pennsylvania or New Jersey, for the benefit of said states, or either of them that will guarantee the freedom and emancipation of my slaves by this my will and codicil, to be liberated and freed, as well as my two young negroes, Washington Decatur, aged about fifteen months, and my negro girl Diana, aged about nine months, whom I hereby manumit and set free at my death, and I desire my executor and trustee to provide for their support out of my funds belonging to my estate until they shall be able to obtain their freedom under this my codicil and the laws of this state, and to have their part of the property devised under the eighth clause of my will." A third codicil executed June 2, 1841, makes [181] "an additional devise of a house to his boy Daniel, and also one to Henry, and some wearing apparel to his negro women." A decree was passed [181] "to sell this real estate . . . The sales were made . . . for \$7280," Jacob Wilson, in 1850, bought Henry's share, worth [183] "very little short of \$2800," for \$750. In 1851 Wilson [181] "by his petition . . . stated that he was one of the purchasers, and claimed . . . [182] the proportion of the proceeds of the sale to which . . . [Henry] Robinson, . . . was entitled. . . Farquarson interposed his petition, in which he alleges that . . . the consideration is grossly inadequate, and the deed was extorted . . . by fraudulent practices "

Wilson's petition dismissed: there are no [183] "circumstances . . . to raise a presumption of fraud" but [185] "the testator never contemplated conferring upon any of the *cestui que trusts* the power of sale. . . [187] The vendor can neither read nor write. His mark is affixed to all the papers executed by him," [Johnson, Ch.]¹

Lark v. Linstead,² 2 Md. 420, December 1852. [423] "he was then about five years old, and that the value of a sound boy of that age, at that time, as a slave for life, was from \$75 to \$100."

Decree reversed and cause remanded: [428] "Having passed a final account, . . . she could sell rightfully only in one character—that of legatee for life. The law will not presume that she committed a wrong upon the legatees in remainder."

Rawlings v. State, 2 Md. 201, December 1852. [202] "The grand jurors of the State of Maryland for Calvert county, upon their oaths do present, that Richard H. Rawlings, late of said county yeoman, on the eleventh day of January, in the year one thousand, eight hundred and forty-nine, at the county aforesaid, (the said Richard being then and there a licensed retailer,) did suffer a negro slave named Charles, the property of one John Mad, to be in his storehouse, wherein he, the said Richard, was then and there accustomed to sell a certain distilled liquor, commonly called whiskey, then and there situate, about the hour of nine, between sunset in the evening of the same day and sunrise of the succeeding morning, (the said slave then and there not having a written order or license for that purpose from his said master or from his mistress, owner, or other person in whose employment the said slave then and there actually was, with the consent of his said owner, and the said slave not being then and there employed as a wagoner, or by a traveller putting up or stopping whilst travelling through said county,) against the act of Assembly³ in such case made and provided, and against the peace, government and dignity of the State." The traverser was found guilty.

Buel v. Pumphrey, 2 Md. 261, December 1852. Action of trover. Connell, the agent of Pumphrey (the plaintiff and owner of the slave) went, in August 1847, [262] "to the residence of defendant [Buel], . . . with an order . . . to deliver up the negro woman . . . and her child; that defendant . . . stated that he had hired the negro from the plaintiff, who had the right to take her away at any time; that defendant asked witness if he was trading for the south, to which witness replied he was not; . . . that he had purchased . . . the said negro for his sister-in-law, in Washington, that defendant then said, if the woman knew him he could take her; . . . the woman . . . said she knew him, and defendant asked him to wait until the woman had done her breakfast; that in a few minutes after this defendant had some conversation with his wife, and then stated to witness that he could not have her, that the society to which he (the defendant) belonged would not permit him to hold slaves, and they could not give the price that was asked for her, and that if defendant did not

¹ See *Wilson v. Farquharson*, p. 123, *infra*.

² For other facts see same *v.* same, p. 114, *supra*.

³ Act of 1817, ch. 227.

get her, she should never be of service to Pumphrey or any one else. . . some days afterwards" Connell "in company with the plaintiff, went after the said negro woman, that they did not see the defendant on his farm or at his house, but they saw the woman escape through the window and run to the woods, and that some months afterwards the plaintiff advertised her as a runaway, offering a reward of \$50 for her if taken out of the State. . . [263] The witness Connell further proved, that he made the statement of purchase to induce the defendant to deliver up the negro, but that in fact he had not purchased her. Defendant . . . proved . . . that on Sunday morning in August 1847, plaintiff came to witness and stated to him, that he and Connell, on the Friday before, had run the woman off from Buel's, and wanted him to help to catch her, and that he was afraid Ann was so frightened she would not come back again;" Verdict and judgment against the defendant.

Negroes Jerry, Anthony, et al., v. Townshend,¹ 2 Md. 274, December 1852. [275] "This was a petition for freedom, filed . . . 1847, in Prince George's county court, . . . Upon the suggestion of the appellants, supported by the affidavit of their counsel, that they could not have a fair . . . trial in that county, that court removed the cause to Anne Arundel county court" in a different judicial district. [277] "Anne Arundel county court refused to hear the case, and ordered it to be remanded to Prince George's county."

Judgment reversed and *procedendo* awarded: I. the act of 1849, ch. 518, under which this removal was made, is constitutional; II. [279] "a petition for freedom is embraced within the meaning of the terms 'suit or action at law.'" "The plaintiff in the present suit, of all the classes in our community, belongs to that which is the most defenceless. Our laws give him a standing in court to prosecute his petition for freedom. An unimpeachable attorney . . . makes oath that he cannot have justice done him in his own county. . . Would it not involve a contradiction of terms to say that he shall have the benefit of our courts of justice, but at the same time that his case shall be tried in a county where he cannot have a fair and impartial trial?" [Mason, J.]

Vansant v. Roberts, 3 Md. 119, December 1852. Will of Cornelius Vansant, 1841: [125] "I give and bequeath unto my dear wife, Jane, all my estate, both real and personal, during her natural life, . . . and after her decease, do hereby release from slavery, liberate and set free my negroes," naming them, "and their issue forever; provided nevertheless, that the aforesaid negroes are willing to leave the State, according to the act of assembly in such case made and provided, and to go to Liberia or some other colony in Africa." The will provides for raising money to pay their expenses in case they elect to go, by hiring them out. "But if the aforesaid negroes, at the decease of my wife . . . are not willing to leave the State as aforesaid, then, and in that case, they, the said negroes, are to be hired out . . . [126] from year to year, and every year, and their wages or hire, clear of good and sufficient board and clothing to be paid over annually . . . unto . . . the Methodist Episcopal Church, located in

¹ See same *v. same*, p. 129, *infra*.

Philadelphia," The negroes [120] "have not elected to go to Liberia or any other African colony." The brother and sole next of kin of the testator filed a bill in 1848, praying that the administrator *c. t. a.* "be required to deliver up all the property . . . remaining in his hands,"

Held: [127] "Whilst we cannot in this proceeding adjudge the freedom of the negroes . . . they not being parties properly before us, we can so far recognize the case of *Spencer vs. Dennis*¹ as to defeat the claim of the petitioner."

Steuart v. Williams, 3 Md. 425, June 1853. Elijah Williams petitioned for freedom, and [426] "offered in evidence the will of Catharine Belt, executed in 1825, . . . 'I bequeath my negro woman Esther to my son, George . . . during the natural life of my son, Thomas . . . and the children of the said Esther now born or that may hereafter be born of the said Esther, in trust, for the sole use . . . of my said son, Thomas . . . and upon his death, . . . I . . . bequeath to my grandson, . . . Elijah, son of the said Esther.' Also a codicil executed in the same year, . . . 'that none of them shall be sold out of . . . Maryland, and . . . if any of them should be sold in . . . Maryland, that they shall serve for a term of years, . . . viz: the children of my woman Esther . . . shall be free . . . at twenty-eight years of age, provided they be sold.' . . . [427] since the death of the testatrix, Thomas Hanson Belt had sold him to the defendant as a slave for life, and that he was . . . over twenty-eight years old." T. H. Belt testified "that his mother . . . about . . . 1812, gave to him a family of negroes, among whom . . . Esther was one, and that ever since she has resided with him, . . . and employed by him as his slave; that in . . . 1822 or 1824, the petitioner was born of . . . Esther in his house," In the inventory "the petitioner, then nine years old, was appraised as a slave for life at \$160;"

Judgment in favor of the petitioner, reversed and *procedendo* awarded: [430] "a gift of a negro . . . when accompanied by delivery, is just as effective as though it were evidenced by a bill of sale, and can only be impeached according to the . . . principles of the law of evidence; . . . This has not been attempted."

Cole v. Ensor, 3 Md. 446, June 1853. In 1822 Cole devised to his mother, for life, "two negro women, . . . who, while in possession of Mrs. Cole, . . . had issue, ten children." [452] "the ten slaves . . . constitute \$2105 of the . . . estate."

Magruder v. Carroll,² 4 Md. 335, December 1853. Will of Michael B. Carroll, dated 1837: [336] "to my dear wife, Jane, I give and bequeath all my slaves, and do request that none of them be sold or disposed of for the payment of my debts, but that provision shall be made for discharging the same out of the other personal property and effects which I shall leave at the time of my death." Jane was made residuary legatee and executrix. Carroll died in August 1851. His widow died in September 1853, leaving a will by which she manumitted all her slaves five years after her death. Her executors filed a "bill for an injunction restraining the

¹ P. 109, *supra*.

² See *Carroll v. Carroll*, p. 124, *infra*.

administrators d. b. n. of Mr. Carroll from selling the negroes for the payment of his debts.”

Order refusing the injunction, affirmed: [351] “It is contended . . . that the real estate and personal property, other than the negroes . . . ought to be applied to the payment of his debts before the negroes are resorted to. . . the question is not before us . . . *This is not a bill filed on behalf of the negroes,* . . . Carroll died in debt . . . His creditors would have the right to proceed . . . first, . . . against the personal [estate] as the primary fund. *Their* rights could not be affected by anything he might request in his will; . . . *He did not manumit his slaves;* . . . Had she, immediately on obtaining letters of administration, manumitted the negroes, it could not be pretended such manumission could have affected the rights of the creditors of her testator; . . . [352] if she could not do it . . . as executrix, . . . she could not accomplish it by her will.” [Le Grand, C. J.]¹

Holmes v. Mitchell,² 4 Md. 532, December 1853. Affirmed by a divided court: if the testator, Ignatius Semmes, [539] “had intended the issue to pass to the appellant, he would not have used the word ‘income,’ . . . It is not so employed generally. . . [542] He appears to have had a peculiar regard for his negroes. Some he sets free and provides for. To one he gives his watch and wearing apparel, and to another his furniture. . . reason for creating the trust may have been, that the negroes, whom from considerations of kindness and affection for his relatives he could not manumit, should be kept together on the estate, the increase to follow the legal title in the trustee, and not to be separated from their parents, as would have been the consequence of a direct bequest of the use to the appellant. . . [546] the whole estate, including the increase of the negroes, shall be kept together as trust property, . . . In this way the expenses of the young negroes will be paid by the estate, and the loss to the *cestui que trusts*, by reason of any diminution of income on this account, will ultimately be made up to them by the increased value and future earnings of the negroes so reared.” [Tuck, J.]

Thomas and Sally Pearce (negroes) v. Van Lear, 5 Md. 85, December 1853. [87] “The mother of these petitioners, with other negroes of Mrs. Van Lear, filed their bill in equity [in 1842] claiming freedom under her will, . . . The Court of Appeals decided that they were entitled to relief, and remanded the cause, in order that deeds of manumission might be executed according to the will.³ A decree was . . . passed . . . directing deeds to be executed . . . from which the present defendant in error [John Van Lear, jr.] appealed; and . . . 1850, “that decree was reversed as to negroes Isaac and Sophia, who were three and five years old at the death of Mrs. Van Lear; and affirmed as to the other parties, including Margaret, the mother of the present petitioners, who received her deed of manumission on the 1st April 1851.”⁴ The petitioners for freedom [88] “insist, that their mother was free as of the time of her mistress’ death, and that they, having been born in the years 1841 and 1844, respectively,

¹ See *Alexander v. Worthington*, p. 125, *infra*.

² See same *v. same*, p. 111, *supra*.

³ *Peters v. Van Lear*, p. 102, *supra*.

⁴ Twenty-three years after the death of the testatrix.

are entitled to their freedom as issue of a free mother." [85] "the court below . . . was of opinion the petitioners were not entitled to their freedom,"

[91] "Judgment reversed and judgment for the petitioners." [90] "if the executors had a right under the will to retain these negroes in the service of the estate, as long as it might be unsettled, and that they were then to take freedom under the deeds of manumission alone, and not from the time of Mrs. Van Lear's death, they might possibly never become free at all, although capable under the law of taking freedom at her death. This the testatrix never designed." [Tuck, J.]

State, use of Clements v. Van Lear, 5 Md. 91, December 1853. [94] "action on an appeal bond, executed by the appellees. The *cestui que use* was one of the complainants in the case of *Peters, et al., vs. Van Lear*,¹ . . . [95] When that cause was remanded to the equity court, . . . a final decree was passed directing the defendant to execute deeds of manumission, according to Mrs. Van Lear's will.² . . . Van Lear appealed, and gave bond on which this suit is brought." The plaintiff [92] "assigned as breaches . . . that Van Lear . . . did not pay the plaintiff the value of his freedom for the time it was suspended by the appeal, . . . the defendants demurred, which demurrer the court . . . sustained and gave judgment for the defendants,"

Judgment affirmed: [95] "It cannot be maintained that one can be required to contract, by bond or otherwise, with a negro whom he claims to be his property. . . . The fact that the State is the obligee . . . does not vary the case, . . . The decree did not make the parties free. . . . As long as the contest continued and the deed was not executed they were slaves under the law, because held and claimed as such." [Tuck, J.]

Wilson v. Farquharson,³ 5 Md. 134, December 1853. [140] "Order of chancellor reversed and cause sent to . . . county circuit court, as a court of equity:⁴ [138] "We concur . . . with the chancellor, there is no evidence to show that the appellant practiced any fraud . . . [139] we do not perceive that the sum agreed to be paid was so grossly inadequate," "The peculiar nature of the interests . . . devised . . . and the state of our law in regard to that class of our population, especially since . . . the act of 1831,¹ . . . may very well have suggested doubts . . . as to the value of the rights of Robinson, . . . Robinson is shown . . . as possessing an intelligence quite equal to the general run of colored persons, and fully competent to the transaction of business; . . . Moreover, the disparity in the value of the rights assigned and the amount agreed to be paid for them, is considerably lessened, according to the view we have of the interests which he had the right to assign, . . . only . . . the interest of . . . John and Daniel, which devolved absolutely on him by their death, and the profits arising from his share of the devise during his life. He could only dispose of his own share in fee by last will." [Le Grande, C. J.]

¹ P. 102, *supra*.

² See *Pearce v. Van Lear*, p. 122, *supra*.

³ For facts see *Robinson v. Robinson*, p. 117, *supra*.

⁴ Ch. 281.

Rebecca Ringgold and others (negroes) v. Barley, 5 Md. 186, December 1853. In 1832 Money [192] "having sold all his property in Maryland, left for . . . Missouri, carrying with him the petitioner and other of his slaves, together with his own family. Such of his slaves as were unwilling to remove with him to Missouri had been previously sold to the south. . . immediately on his arrival in Missouri, [he] rented land and commenced farming; that he continued to farm till November 1833, when, falling into bad health and changing his purposes, he sold out his property of every kind, except his slaves, and returned to Maryland, bringing with him the petitioner, Rebecca." Held: Rebecca is entitled to freedom.¹ Missouri had become Money's [193] "fixed present domicil,"

Townshend v. Townshend, 5 Md. 287, December 1853. [288] "an appeal from an order of the court below, granting an injunction to restrain the appellants, who are, (except Jeremiah Townshend,) negroes, from the further prosecution of their petitions for freedom.² The bill was filed by the appellees, who, with . . . Jeremiah Townshend, are the heirs at law . . . of John Townshend, deceased, and states that said John having been, from . . . 1794 to his death, *non compos mentis*, . . . 1831, and . . . 1846, executed two pretended deeds of manumission of about seventy negroes; that shortly before his death, . . . he executed a writing purporting to be his last will³ . . . by which he gave to his said slaves their freedom and all his real estate, . . . which writing was . . . declared by the verdict of a jury, utterly null and void, . . . That certain of said negroes have filed petitions for freedom . . . [289] The bill charges, that by reason of the insane delusions of said John Townshend, especially in reference to his negroes, he was wholly incapable of executing these pretended deeds of manumission,"

[297] "Decree reversed and bill dismissed with costs to the appellants in both courts." [295] "The proper mode . . . by which to try the title of a negro to his freedom, is by petition filed in the circuit court. This right is to be asserted subject to certain restrictions and privileges, . . . By the act of 1796, ch. 67, one of those privileges secured to both parties, consists in the right of *peremptory challenge*. . . any tribunal that would attempt to adjudicate upon the rights of an alleged slave, (except under some other specific proceeding pointed out by statute,) in a manner which would deprive him of this right of challenge, would act in violation of law," [Mason, J.]

Carroll v. Carroll,⁴ 16 Howard 275, December 1853. Will of Michael B. Carroll, 1837: [280] "To my dear wife, . . . I give . . . all my slaves, and do request that none of them may be sold . . . for the payment of my debts, but that provision shall be made for discharging the same out of the other personal property"

Marriott v. Badger, 5 Md. 306, June 1854. Petition for freedom. John Hammond bequeathed his slave Hess [310] "to his son Wm. Hammond

¹ Act of 1831, ch. 323, sect. 4.

² See *Negroes Jerry et al. v. Townshend*, p. 129, *infra*.

³ *Brooke v. Townshend*, p. 106, *supra*; *Townshend v. Townshend*, p. 116, *supra*, p. 126, *infra*.

⁴ See *Magruder v. Carroll*, p. 121, *supra*.

for life, and that after his decease, she . . . passed under the will of John Hammond to his [grandson] . . . William H. Marriott, . . . whilst Hess was held by . . . Marriott, the petitioner was born." Before petitioner's birth William Hammond died, leaving a will manumitting Hess,¹ and bequeathing "a considerable sum of money" to Marriott. Held: [312] "receiving the legacy, and continuing to hold the negro in slavery without any testimony to show that an election was made, did not confer freedom."

Alexander v. Worthington,² 5 Md. 471, June 1854. I. [493] "land descended was first applicable in payment of debts in relief of personal estate specifically bequeathed." II. "at the suit of the specific legatee, equity will restrain the executor from voluntarily applying the chattel bequeathed in payment of debts, in a case where the executors are also heirs, and have assets descended, which are first applicable in payment of debts, . . . the creditors were not pressing . . . for a sale of the negroes. . . [494] To permit the heirs at law who have availed themselves of their proximity in blood to obtain administration on the personal estate of the testator, to sell the negroes into ceaseless bondage in foreign climes, for the purpose of providing for payment of debts which are justly chargeable on the lands descended to the heirs at law, and to do this under the pretence that equity ought not to restrain the remedy of creditors, and where the creditors themselves are passive, would seem to be an act of injustice of which a court composed of slave-holders, residing in a slave-holding State, could not possibly be guilty." [Le Grand, C. J.]

Pierce v. Negro John, 6 Md. 28, December 1854. [29] "The petitioner offered in evidence the will of Richard Pierce, executed . . . 1850, and admitted to probate . . . 1851. This will manumits the petitioner, John, at the death of the testator, and also negroes Aaron, Charles, Priscilla, Adaline and Mary. . . also . . . a bequest of \$100, to the testator's daughter Mary Rowles, . . . and directed the residue of his property to be sold, and the proceeds equally divided between his son and daughter, . . . final account of . . . the executor, in which he claimed allowance for . . . disbursements, '1st. Of current money, legacy left . . . to Mary E. Rowles, as per receipt . . . \$100. 2nd. Of current money, appraised value of six negroes divided between representatives, as per receipt . . . \$2125.' Also the following receipt signed by . . . Rowles and wife, . . . 1851, . . . [30] 'Received of . . . executor of Richard Pierce, . . . one thousand and fifty dollars, in negroes, which we acknowledge to be our full and just share of negroes. Names of negroes are John, Priscilla and Mary.' The defendants then offered a bill of sale executed by . . . Pierce, . . . 1828, conveying to Mary E. Pierce, (afterwards the wife of Rowles,) . . . a negro woman named Charity, and her three children, Moses, Aaron and Priscilla. . . Mary was the child of Priscilla, and John . . . the child of Charity, mentioned in this bill of sale, born after its execution. . . the petitioner remained in possession of Richard Pierce, from his birth till the death of said Pierce. . . [31] The verdict and judgment was in favor of the petitioner."

¹ He could not manumit a slave in which he had only a life estate.

² See *Magruder v. Carroll*, p. 121, *supra*.

Judgment reversed and *procedendo* awarded: [35] "Rowles and wife . . . did not elect to take the legacy in lieu of the negroes, but determined to have both. . . [36] considering the receipt as acknowledging satisfaction of a claim to negroes belonging to the estate of Richard Pierce, it was consistent . . . to have the value inserted, and also to state that the negroes received were in full of the share to which the parties were entitled. . . [37] the acceptance and the receipt do furnish some evidence of an acknowledgment, that the petitioner belonged to the testator; and . . . that he had the right to manumit him." [Eccleston, J.]

Woodland v. Wallis, 6 Md. 151, December 1854. Will of John Mason, executed in 1826: [164] "to my daughter Mary Matilda Mason, all . . . except my negro man Thomas and my negro woman Ann, who it is my will that Thomas should serve four years and Ann seven years after my death; also the children, Elizabeth, George and Jervis, should each of them be free when they arrive at the age of thirty years, if my daughter should die without heir, but if not, then the said children to serve for life." Elizabeth died during the life of testator's daughter, who [152] "died . . . 1843, unmarried and without issue, leaving a will, in which she . . . gave [Wallis] . . . all the residue of her property including negroes," The wife of the appellant Woodland was a residuary legatee of John Mason. "This was a suit by the appellants . . . to determine . . . whether [they] the plaintiffs have any title . . . to George and Jervis, . . . [153] It was . . . agreed that if the court . . . should be of opinion that the plaintiffs were entitled to recover, judgment should be entered in their favor for \$150, and the negroes to remain the property of the defendant until they attained thirty years of age, when they were to be free, . . . The court . . . gave judgment for the defendant,"

[167] "Judgment reversed, and judgment for plaintiffs," [165] "As freedom is a personal privilege . . . a contingency upon which it is to depend must . . . occur within a life in being, when the party intended to be manumitted by the will is *in esse* at the date of the will, . . . the negroes could not possibly be entitled to freedom except upon the decease and failure of issue of Mary M. Mason during their lives." [Eccleston, J.]

Townshend v. Townshend, 6 Md. 295, December 1854. [296] "This is the third appeal in the case; ¹ . . . At the trial under the last *procedendo* . . . exceptions were taken by the caveatees, . . . [297] Among other evidence on the part of the caveatees to show that John Townshend would both buy and dispose of negroes, were three deeds or bills of sale, the first . . . 1803, . . . conveying several negroes to said Townshend; the second . . . 1813, by which . . . Townshend, conveyed several negroes to William Townshend, and the third . . . 1824, by which he also conveyed several negroes to George S. Townshend. The caveators then produced . . . a witness, and proved by him that he knows the whole family of the slaves which belonged to . . . John Townshend, and . . . proposed to prove by this witness, that the several slaves named in the above deeds were not, . . . at any time, one of the family of slaves of said John Townshend, and that

¹ *Brooke v. Townshend*, p. 106, *supra*; *Townshend v. Townshend*, pp. 116, 124, *supra*.

no one of them ever resided with him . . . as one of his slaves. . . evidence which they deem material upon the first issue,¹ as rebutting evidence, and as showing that no one of the negroes mentioned in said deeds was at any time of the family of slaves owned by [298] Townshend at the time of making the declarations, . . . that he had been commanded by Almighty God to set his negroes free and to give them his property. . . to the refusal to exclude said evidence for the purpose for which it was offered, the caveatees excepted, and the verdict being against them upon the first issue, appealed."

Judgment affirmed: [302] "If this case rested *alone* upon the testimony of this witness, its admissibility might well be questioned on the ground of irrelevancy or of its legal insufficiency to establish the issues. But . . . The testimony was rebutting evidence, and besides, constituted but one of many items of the caveators' proof." [Mason, J.]²

Nash v. Smallwood, 6 Md. 394, December 1854. Will of Ann Ward: [395] "I . . . bequeath to my Sister, Jane Smallwood, my man Henry, and boy Lawrence, during her life, and at her death the above named servants are to be sold to some humane person, who is to keep them in the county . . . [396] I . . . bequeath to my niece . . . the child with which my woman Peggy is now pregnant," "general legacies were left to the appellants, . . . It required all the property, except the specific legacies, to pay debts and costs of administration. The appellants filed a bill . . . praying that the executor might be required to sell the property bequeathed to the appellees, and divide the proceeds, pro rata, among all the legatees. This the court refused, . . . Order affirmed"

Smith v. Smith, 6 Md. 496, December 1854. Will of George Smith, who died in 1834: [499] "It is my will that my negro girl Maria, be retained by my wife until she arrives at the age of thirty-five, which will be in October 1858; and should it so happen that my wife should die before that period, that then and in that case my son shall take her himself, and have her time for the term of her service valued, and account therefor as he has to do as executor." The widow "sold the girl for the term prescribed . . . for . . . \$275," to a person who "afterwards sold her beyond the limits of the State of Maryland;"

Held: "This right of disposition—her husband's estate being solvent—was only limited by the legislation of the State, prohibiting the sale of a slave, for a term of years, beyond its limits. The purchaser could not defeat the right of the estate of George Smith, to the value of the services of the girl from the time of the death of Mrs. Smith [in 1852] up to October 1858:" Chief Justice Le Grand closes his opinion by [500] "expressing our condemnation of the contrivance, by who[m] ever made, to deprive a helpless negress of the freedom to which she was entitled by her master's will. Such conduct was not only a gross fraud, but ought to be visited with the severest penalties of the criminal law."

¹ "Whether . . . Townshend, at the time of signing the . . . instrument of writing, purporting to be his last will . . . was of sound . . . mind," *Brooke v. Townshend*, 7 Gill 10 (15).

² See *Negroes Jerry et al. v. Townshend*, p. 129, *infra*.

Negro Louisa Jason v. Henderson,¹ 7 Md. 430, June 1855. [441] “The question involved . . . is, whether a negro, who has been adjudged to be free, can maintain an action on the case to recover damages for having been unlawfully held in servitude? This very question was determined in the case of *Franklin vs. Waters*,² . . . and settled adversely to such a claim.”

Tongue v. Negroes Crissy, Rhody, et al., 7 Md. 453, June 1855. Will of John Collinson, executed 1836: [454] “I will and devise that all my negroes, of which I shall die possessed, shall be free from the servitude of all persons whatever, from and after my decease: *provided* that they, my said negroes, shall go to Liberia, or some one or other of the American settlements on the coast of Africa. But should they refuse to go to either of the settlements in Africa aforesaid, then and in that case I will and bequeath them as follows” [to various legatees] Crissy and Rhody “were, at the time of the death of John Collinson, their master, of the ages respectively of six and four years. . . the other petitioners are the children of said Rhody and Crissy, . . . the personal estate of . . . Collinson, other than his manumitted negroes, was more than sufficient to pay his debts, and that he left no widow.” The defendant [456] “offered to prove that . . . Rhody and Crissy, were the children of Nelly Hutton, (. . . one of the negroes manumitted by [Collinson’s] . . . will,) . . . and . . . offered to read in evidence certain proceedings in the Orphans Court . . . showing that . . . 1837, . . . Nelly Hutton and another, two slaves of said Collinson, appeared in open court, ‘and after an explanation made to them, made their election to remain in the State and serve the family of Thomas Tongue in preference to emigrating to Liberia.’ The woman Nelly appears to be about twenty-three years of age, and says she has a husband a slave of Gideon G. Tongue,” The defendant “offered to prove . . . that . . . Rhody and Crissy . . . since the filing of their petition . . . had said that they never authorized the filing of it, and did not consent to be manumitted. To the admissibility of this evidence the petitioners objected, . . . sustained, . . . [457] verdict and judgment . . . in favor of the petitioners,”

Affirmed: The act of 1796 [464] “in so far as its limitations³ are concerned, is repealed by the act of 1831.⁴ The limitation in the act of 1796, was evidently intended to guard the public against the burden which would devolve upon it, if persons were permitted to manumit such of their slaves as were unable to maintain themselves. At that time the idea of colonization had not taken hold of the public mind. When, however, it came into general favor, the policy of the State was to get rid of its free colored population of all ages, and accordingly authorized the manumission of *all* slaves, irrespective of their ages. But . . . [465] if he [the emancipated slave] be unable to maintain himself, and does not remove out of the State, his former owner, and if dead, his representatives, are liable for his support. . . . We do not consider any *consent* to the gift of

¹ For facts, see *Henderson v. Jason*, p. 116, *supra*.

² P. 110, *supra*.

³ “no manumission . . . by last will . . . shall be effectual . . . unless the said slave . . . shall be under the age of forty-five years, and able to . . . gain a sufficient . . . livelihood at the time the freedom given shall commence.” Ch. 67, sect. 13.

⁴ Ch. 281, sects. 3, 5.

freedom necessary. The consent mentioned in the 3d section of the act of 1831, refers to removal from the State, and not to manumission. . . The law presumes that as freedom is a most precious legacy, those on whom it is cast do accept it, and has provided a mode how their dissent, wherever it exists, shall be evidenced by requiring it to be done in *open court*." [Le Grand, C. J.]

Lammott v. Maulsby, 8 Md. 5, December 1855. "the orphans court bound out a free colored boy . . by indenture, dated . . 1854. . . [6] the appellee filed a suggestion . . stating that the indentures were not in conformity with the act of 1839, ch. 35,"

Negro Henry Rozier v. Holliday, 8 Md. 381, December 1855. Petition for freedom. [384] "the will of Van S. Brashears, . . [385] executed . . 1832, . . provided that all his property . . should belong to his wife, . . but that at her death all his slaves then existing, and those that might be born of them thereafter, should then cease to be slaves, and ever thereafter remain free." The testator died soon after. It was proved "that petitioner was born after the death of the testator, and was the son of Henry and Mary Rozier, slaves of the testator at his death; and that the widow . . died . . 1837, when petitioner was about four or five years old; and that a negro boy is not able to work and gain a sufficient maintenance and support until he is ten or twelve years of age. . . the orphans court passed an order, that the administrator . . 'proceed to make such disposition of the negroes . . as will enable him to close the estate . . with the court.' The administrator [in 1838] sold the petitioner, then in his fifth year of age, to . . Fitzhugh, to serve from the 1st of March 1838 until the 1st of March 1860, who afterwards sold him to the appellee in this case for the residue of the term." [382] "the verdict and judgment were against the petitioner,"

Judgment reversed and *procedendo* ordered: [386] "under the act of 1831, ch. 281, a negro of whatever age is capable of receiving freedom, by will, . . The right is derived under the will, limited in its enjoyment by the term of service that may be imposed in the due administration of the estate; and when the time expires, . . the party can claim the usual certificate of freedom from the register of wills. Hence . . at the time the appellee purchased the appellant from Fitzhugh, he was in a condition which secured to him the protection afforded by the act of 1817,"¹ [Tuck, J.]

Negroes Jerry et al. v. Townshend, 9 Md. 145, June 1856. [146] "The petitioners offered in evidence a deed of manumission,² executed by John Townshend, . . 1831, and duly recorded . . 1832, . . Townshend died in . . 1846. This deed describes 'Jerry' as forty-four years of age." The defendant "took possession of these negroes immediately upon the death of John Townshend, . . and . . offered to prove that at the time of the execution of the deed of manumission, in 1831, . . Townshend was insane,"

¹ Ch. 112, sect. 3.

² See *Brooke v. Townshend*, p. 106, *supra*; *Townshend v. Townshend*, pp. 116, 124, 126, *supra*.

Verdict and judgment in favor of the defendant. Affirmed: [157] "In the case of a petition for freedom, the issue being *freedom vel non*, and not title to the negro, any party who may be in the possession of the negro, and who may be the party defendant to the suit, may offer any legal evidence to defeat the negro's petition."

O'Byrne v. Clagett, 9 Md. 512, December 1856. The will of O'Byrne, who died in 1842, provides that his property shall remain in the possession of his wife, "until his son, Terence, should attain the age of twenty-one years, unless . . . , in either of which events [his executors] . . . were directed to sell his stock, . . . hire out the negroes, . . . and apply the proceeds . . . to the . . . benefit, support and education of his children. When his son . . . [513] attained twenty-one, . . . his personal estate, then to be sold, . . . He next gives a negro man to Terence,"

Wampler v. Wampler, 9 Md. 540, December 1856. Abraham Wampler, by his will, dated 1855, [541] "first manumits a negro woman and her children,"

Wilson v. Smith, 10 Md. 67, December 1856. [73] "action of replevin, instituted . . . 1850, for the recovery of a negro woman named Milly, claimed by the plaintiff as the property of Samuel Owens, [who] . . . died . . . 1815 . . . [74] he had . . . certain negroes, among which was Milly. . . he devised, for life, to his wife, . . . all his property, with remainder to his children and grand-children, . . . in 1834 the said widow . . . sold the woman Milly, with others, issue of Milly, born after the death of . . . Owens, to . . . Lowe, as slaves for life, . . . [75] Lowe had said, he . . . was going to send a cart for them, and on being informed that there had been no letters of administration granted on the estate of . . . Owens, and that she had no right to dispose of them, he declared he did not care, that Mrs. Owens owed him a large bill, and if he got the negroes into his possession, he would take care of himself." "After his death the woman was distributed as a portion of his estate, . . . In 1847, she was sold at public sale" to the defendant.

Farrell v. Bear, 10 Md. 217, December 1856. [220] "Mrs. Farrell did not want to sell the negro to a trader."

Townshend v. Matthews, 10 Md. 251, December 1856. [253] "In contemplation of an intended marriage between Henry M. Chew . . . and Elizabeth Ann Haw . . . a deed was duly executed . . . [254] 1833, . . . by which the real and personal estate of Elizabeth Ann were conveyed to . . . Matthews and his heirs, . . . 'for the sole . . . use of . . . Elizabeth Ann, her heirs and assigns, the said Elizabeth Ann and her assigns, during her life, to . . . receive all the . . . issues and profits,' . . . in 1839, Elizabeth Ann, the wife, died, leaving several children, . . . negroes Sophia and Anthony . . . were originally the property of Elizabeth Ann Haw, before . . . her intermarriage with . . . Chew; . . . the other slaves mentioned in the *nar*, are the children of the said Sophia, born during the coverture of the said Elizabeth Ann." All remained in Chew's possession "from the time of his wife's death up to . . . his decease, . . . 1851;"

Held: [255] "the deed excluded the husband from any title to the two elder negroes, . . . [256] the husband became entitled to whatever issues or profits accrued, and were actually received by his wife during the coverture, . . . Negroes Mary and John, as children of Sophia, are issues or profits of the trust property, according to the Maryland decisions." [Eccleston, J.]

Scaggs v. Railroad Co., 10 Md. 268, December 1856. "Trespass on the case . . . to recover the value of a negro slave killed by the defendant's cars," The defendant offered to prove by the conductor, engineer, and brakeman [270] "that all care . . . was used to avoid the collision, . . . The plaintiff objected to the competency of these witnesses, since the act of 1846,¹ . . . but the court overruled the objection,"

Judgment against the plaintiff, affirmed: [278] "The act of 1846 . . . covers every description of stock. . . it is remarkable that the Legislature, . . . if slaves were in their contemplation, should have . . . omitted all mention of the most valuable of personal estate, . . . we think it as reasonable to suppose that negroes were intentionally omitted, because of their greater capacity to avoid such dangers than stock, as that they were designed to be comprehended by the general terms employed." [Tuck, J.]

Negroes Louisa Bell and others v. Jones, 10 Md. 322, December 1856. "a petition for freedom, filed . . . 1854, in the Superior Court of Baltimore city, . . . against Campbell, who . . . disclaimed title, and . . . the appellee filed his petition claiming title . . . and prayed a removal of the case to the circuit court for Prince Georges county, where he resided. . . The court . . . ordered the removal . . . The case . . . came up for trial . . . [323] 1855, . . . A jury was empannelled . . . and the petitioners being called and not answering, the petition was dismissed . . . and judgment rendered in favor of the defendant, for \$11.98 $\frac{1}{3}$, 'for his costs and charges' . . . On the same day the petitioners filed their second petition against the appellee, who at the same time made and filed" [329] "an affidavit, in which he says, "that by virtue of the first petition for freedom, filed by the petitioners in the second case, he has sustained, and incurred the following expenses: for fees paid his two counsel, \$250 each, making \$500; 'for jail fees and board of the petitioners' from the 13th of November 1854, to the 11th of June 1855, 'at twenty five cents each per day, making \$250 or thereabouts, in addition to the taxable costs in his cause.'" Thereupon the court ordered "that there shall be a stay of all proceedings in the second petition, until the said costs and expenses shall be paid or secured to be paid."

Order reversed and [333] "a *procedendo* awarded in regard to the second petition." [331] "we do not think the act of 1796² should be construed to include counsel fees, as 'reasonable damages and expenses,' or either." The legislature [330] "were aware that negroes, held as slaves, could not have funds of their own, nor be expected to procure them from others, sufficient to pay the fees of counsel employed by their masters. The

¹ Ch. 346.

² Ch. 67, sect. 27.

laws of this State recognize negroes as slaves, and the courts are bound to protect and enforce the legitimate rights of masters. It is likewise the duty of our courts so to administer the laws as will secure to negroes the rights designed for them by law." [Eccleston, J.]

Atwell v. Miller, 11 Md. 348, December 1857. [349] "Asbury Johns, the consignee . . . was a *colored man*; that plaintiff, some three or four years ago, sent goods to Liberia by Johns, and they were jointly interested in the profits and losses; . . . they made some \$3000, . . . Johns was here when these goods were brought, and aided in making the selection of them, and went out in the *Harp* with them; . . . the business was done in the plaintiff's name here, and in Johns' name at Monrovia. . . he was a porter in witness' store until he went to Liberia, . . . 1851; . . . he received his own wages, and acted as a free man; . . . [350] The defendants' counsel . . . asked . . . this question: 'Did you hear any conversation . . . between said Johns and the defendants, . . . and what was said by said Johns?' . . . the plaintiff objected, . . . sustained," Counsel for the plaintiff: [354] "He is proved to be a *negro*, and his declarations are inadmissible in a suit between white persons. Act of 1717, ch. 13. . . The policy of this law extends to the declarations or conversations of negroes as well as to their testimony. The protection of this law should be extended fully to the citizen, because the policy of our laws keeps the black race in such a condition as to make them unfit, in a great measure, to be entrusted with any power over the rights of the superior race."

Held: [359] "the testimony was inadmissible" on other grounds. "This view relieves us from all necessity of inquiring, whether the color of the party, whose declarations are proposed to be given in evidence, could have a *legal* bearing on the question in any event?"

Waring v. Edmonds, 11 Md. 424, December 1857. During her last illness Miss Deborah Waring said to her physician: [431] "I have given my sister (Mrs. Edmonds) my three negroes. Mrs. Edmonds was then in the room, and the negro girl Louisa; and Miss Deborah Waring told Louisa, 'There is your mistress, (pointing to Mrs. Edmonds,) you must be a good girl, and obedient to her.' She sent for Mrs. Mary Beall ['for the other negroes, who were small children, were at the quarters' on her plantation], and requested her, after her death, to deliver the negroes to Mrs. Edmonds." Held: These are valid gifts *mortis causa*.

Brown v. Brown, 12 Md. 87, June 1858. Will of Clement Brown, dated 1835, admitted to probate in 1836: [88] "*Item*. I leave the plantation on which I now live to be rented out yearly. *Item*. I leave one negro girl, Ellen, to be hired out for ten years, one negro boy, Thomas, to be hired out for ten years, and one other negro girl, Nancy, to be hired out for fourteen years, by my executor, . . . and then set free, under the protection and care of my executor. *Item*. I leave my negro woman Beckey, Elizabeth Ellen and James Henry, free, them and their heirs forever, under the protection and care of my executor, . . . [89] *Item*. I placed \$700 in the hands of Thompson D. Hayden, to purchase a negro man for me. Should it be so, he is to be hired out for seven years, and then set free,

by my executor . . . under his protection and care. . . *Item.* I leave my negro woman Beckey and her children a reasonable support . . . from the income of my real and personal estate, as long as she shall live; at her death, I give to Elizabeth Ellen all the income of my whole estate . . . to her and her heirs forever, . . . except there should be any one among them not able to support themselves, then they must have a support. I also leave Elizabeth Ellen one bed and bedstead, one pair of sheets, two pillows and bolsters, two counterpaines, to her and her heirs forever,"

Held: [94] "the testator intended that his executor should hold this land, as well as the personal property not otherwise disposed of, for the benefit of the negroes . . . [95] since the case of *Monica vs. Mitchell*,¹ the chancellor and this court have recognized a trust of this description by giving effect to a will in which land was devised to trustees for the purpose of being rented out, and the proceeds applied for the use of negroes manumitted by the will. If, as we think, this will created a trust by implication for like purposes, its provisions no more infringed the policy of the law² than did that of the testator in . . . *Robinson vs. Robinson*, . . . and *Wilson vs. Farquharson*,"³ [Tuck, J.]

Robinson v. Commissioners of Harford Co., 12 Md. 132, June 1858. George Brown, the slave of the appellants, was [142] "presented, indicted [for larceny], arrested, tried, found guilty, sentenced and valued on the 23rd of November 1853." The judge of the court (the Hon. Albert Constable) directed [438] "that the criminal should be sold as a slave for life, by the sheriff of the county, to some person who should convey him beyond the limits of this State; and the judge also valued and appraised the negro, George Brown, at the sum of six hundred dollars, which it was adjudged and determined should be assessed and levied upon the taxable property of Harford county, by the commissioners of said county, to and for the use of the present appellants; and that if the negro should sell for more than \$600, then the excess thereof should be assessed and levied in addition thereto by the said commissioners, to and for the use of his owners aforesaid. . . . [142] Nine days thereafter" [139] "the commissioners for the county filed a petition, alleging that the valuation of the negro was excessive," with a doctor's affidavit "stating the crippled condition of the negro, and the diseased state of his feet." Thereupon the court ordered the sheriff to "suspend the execution of the judgment and retain the . . . negro prisoner until the hearing of this application, and the further order of the court;" The negro was retained by the sheriff for two years. "On the 29th of November 1855, Judge Price (the successor of Judge Constable) ordered and adjudged that the said negro should be sold to some person who would carry him out of this State," the court valuing the negro at the sum of \$400, to be paid to his owners. He [140] "was sold, on the 29th of January 1856, for \$250;" The owners appealed. Counsel for the appellants: [134] "Campbell, who deals in negroes, and knows more of their value than any other witness, says the

¹ P. 108, *supra*.

² Act of 1831, ch. 281.

³ Pp. 117, 123, *supra*.

negro was worth, in his then condition, \$750. Dallam, the sheriff, was offered \$500; so that it will be seen, by the proof, that the valuation was not too high. A convicted negro is valued as if his morals were good. If it were otherwise, as some of the witnesses evidently suppose, then a murderer, or other atrocious offender, would not be valued at any thing. Convicted negroes are always valued at the 'price the traders give for negroes of similar qualities which have not been convicted.' But few, if any, of the States allow convicts to be introduced. Hence conviction injures the sale, though it does not affect the valuation. If a negro is to be hung, he is valued as if he were a slave in the market, free from crime. The amount a convict sells for, therefore, is no test of value; it is common for them to sell for less than half what they are valued at. Reference to the affidavits will show that the valuation ought to have been \$750; the negro was one of uncommon value. Besides, in this case, the owner lost two years' services, worth, according to the uncontradicted testimony, \$100 per year, and this after the negro was convicted. . . The valuation must be made at the time of the sentence, nor can the sentence be long delayed. The negro might die, escape from jail, and many accidents might happen which would deprive the owner of the value of his negro. As soon as the slave is found guilty of felony, his master loses him, and is entitled to his value. He is like property taken for public purposes."

Order affirmed: [142] "We see no good reason why the sentence should have been suspended and the negro retained, instead of being sold. . . But supposing the court committed an error in thus ordering the sentence to be suspended, it is not such an error as can be revised on this appeal by the owners," [140] "The State and the negro were the only parties who could ask this tribunal to review the action of the court below in relation to the sentence. The owners have no such right. When a convicted slave is sentenced, if the court should neglect to ascertain his value, the owners would have the right to apply for a prompt valuation;¹ . . . And should such an application be refused, the owners would be entitled to an appeal. The amount of the valuation, however, is a matter within the discretion of the court in which the case is tried, and . . . not subject to revision by an appellate tribunal." [Eccleston, J.]

Hughes v. Jackson, 12 Md. 450, June 1858. Action of trespass *quare clausum fregit*, brought in 1851, [451] "charging the defendants with breaking and entering the plaintiff's messuage or dwelling-house, and taking and carrying away, and converting to their use his property, to wit, his two children of the value of \$1000." [450] "In the writ, declaration and proceedings the plaintiff is described as a 'negro,' and in the original *nar*, . . . the defendants are described as 'free negroes.' . . . [451] verdict rendered in favor of the plaintiff . . . for \$750 damages." Motions for a new trial and in arrest of judgment, overruled.

Affirmed: [464] "The words, *free negro*, are not essential in the averments of the pleadings except in the case of a petition for freedom; in all others the word 'negro' is sufficiently full in its description; it notifies the adversary party of the fact of color, and thus affords him an oppor-

¹ Act of 1809, ch. 138, sect. 21.

tunity to show the condition of slavery, if such be the case, by pleading that disability." [463] "From the earliest history of the colony, free negroes have been allowed to sue in our courts and to hold property, both real and personal, and at one time, they having the necessary qualifications, were permitted to exercise the elective franchise. To deny them the right of suing and being sued, would be in point of fact to deprive them of the means of defending their possessions, and this, too, without subserving any good purpose to the rest of the community. Neither the policy of our law, nor the well-being of this part of our population, demands the principle of exclusion contended for by the appellant, on the contrary, they are both opposed to it, and so long as free negroes remain in our midst a wholesome system induces incentives to thrift and respectability, and none more effective could be suggested than the protection of their earnings." [Le Grand, C. J.]

Negroes Charles and others v. Sheriff, 12 Md. 274, July 1858. Will of Henry H. Waring executed in 1853, admitted to probate in 1854: "It is my will and desire that at my death all my slaves . . . shall be free, and that my executors . . . shall immediately after my death remove them from the State of Maryland to the District of Columbia, or some free State, and make the necessary provisions out of my personal estate, for their comfortable support for the space of twelve months from my death." In 1858 [275] "the negroes thus manumitted . . . filed their bill . . . against the executor, the pecuniary and residuary legatees, and also against certain persons . . . as *judgment creditors* of the testator . . . to obtain an injunction, to restrain the further trial of a petition for freedom, instituted by the complainants, and then in progress of trial, and also to restrain certain of the judgment creditors from selling the complainants then levied on under executions, and that the assets of the estate may be marshalled," The bill [278] "avers that there is property . . . beyond what is necessary to pay all the debts of the estate without a resort to them, . . . that they had filed a petition for freedom, but that they were unable to prosecute it successfully because of the difficulty in showing the true condition of the assets of the estate." [275] "There was *no affidavit*" to the bill. [279] "The court refused the injunction."

Order reversed and cause remanded: "the complainants are negroes, and, under our act of Assembly of 1846, incompetent to give testimony in any case in which a white person is interested. They therefore, could not have made the affidavit. What is required as preliminary to the granting of an injunction, other than the sufficiency of the averments of the bill, is, that the confidence of the court should be obtained, and this may be had on documentary evidence as well as on affidavit. . . the will . . . is their muniment of title. . . They are also . . . entitled to the decision of [a court of equity] . . . as to whether the real estate . . . is charged with the payment of debts in favor of the bequest of freedom, . . . [280] The investigation . . . can . . . occasion but a short delay . . . while it will guarantee the preservation of the rights of a helpless class, if any rights they have." [Le Grand, C. J.] See *Sheriff v. Negroes Charles and others*, p. 136, *infra*.

Sheriff v. Negroes Charles and others, 12 Md. 280, July 1858. "After the appellees in this case had filed their bill in the circuit court for an injunction, as stated in the *preceding case*,¹ the executor, the present appellant, filed his petition in the orphans court, asking for the passage of an order directing a sale of the appellees for terms of years or for life, for the payment of the debts of his testator." He averred [282] "that the personal estate . . . other than the negroes, was inadequate to the payment of its debts; that some of the creditors had prosecuted their claims to judgment, and that all the other property . . . had been specifically bequeathed, and that the negroes were the primary fund out of which the debts were to be paid." [281] "The court . . . dismissed the petition."

Order affirmed: [282] "There had been no marshalling of the assets of the estate, . . . nor any adjustment of the proportions in which the several legatees, if bound to do so at all, were to contribute to the payment of the debts of the estate. . . . Had [the prayer of the executor] . . . been granted, the rights of the negroes would have been concluded, when, under the law of this State, they had the right to have them passed upon by a court of equity, prior to the determination of their petition for freedom." [Le Grand, C. J.]

State v. Baltimore and Susquehanna Steam Co., 13 Md. 181, March 1859. [187] "an action of debt to recover the penalty imposed by the first section of the act of 1838, ch. 375," [182] "Henry Miles, a citizen of Somerset county, Maryland, was, in August 1855, the owner of a negro boy, 'Sam,' and that at a camp-meeting which took place in that county, on the Annamesix river, the steamer *Lancaster* was there for bringing passengers to the camp-meeting from Baltimore, and carrying them in return; that, on Sunday, witness went on board the said steamer to go to Baltimore, where the boat arrived the next morning, and that after the steamer left the camp-meeting, witness saw said negro 'Sam' on board the boat, in the public passage from bow to stern, talked with him, and has not seen him since that time. The defendants then proved, that . . . [183] the *Lancaster* was chartered by her owners . . . that the captain and crew of the owners were to navigate the steamer, and the charterers were to have the exclusive control . . . that whilst in the river, at the camp-meeting, . . . one of the charterers, sold some tickets for the trip back, but only one to a negro man, he having gone down without a ticket; . . . Mitchell [one of the charterers] went into every hole and corner of the boat, except the fireman's room, to collect tickets and to see if improper . . . persons without tickets, were on board; that he knew 'Sam,' and . . . [184] did not see him . . . no negro was in the fireman's room . . . the captain . . . looked in all parts of the boat to see if slaves were on board, and that he found no negro on board, except such as went down in the boat."

Judgment for the defendants, reversed and *procedendo*: [187] "the liability may be enforced without reference to such circumstances. . . . If the Legislature deemed it expedient . . . to hold persons responsible for

¹ *Negroes Charles and others v. Sheriff*, p. 135, *supra*.

transporting negroes, whether they were instigated by a criminal intent or not, they had the power to do so. . . [188] as recited in the preamble, it had been represented to the Assembly, that the owners of slaves had suffered great loss by the facilities of escape offered to slaves, by means of railroads and steamboats; . . . would it not be going in the face of the law, to give [the words used] . . . a different construction, by allowing the party charged to excuse himself, . . . when the law, in terms, declares, that the transportation of slaves, without permission in writing, shall be unlawful under the penalty sought to be recovered here?" [Tuck, J.]

Chew v. Beall, 13 Md. 348, May 1859. [364] "Aquila Beall, the husband of the plaintiff, made a gift of two negroes, Jenny and Eliza, to their daughter Amelia H. Beall, when she was a small girl. That Aquila died in April 1840; that Amelia H., about four or five years before her marriage to the testator of the defendants, which took place in October 1835, gave to her mother . . . negro Maria [one of the children of Jenny], then about sixteen years of age; that in 1836, L. H. Chew [the husband of Amelia], being about to sell the children of Maria to one Frisby Chew, of Mississippi," [362] "Maria wished to go with them, and Mrs. Beall was persuaded by Mr. Chew and his wife, to take Jane in exchange for Maria her sister, in order that Maria might not be separated from her children."

Cecil v. Negroes Rose and others, 14 Md. 64, July 1859. "The appellees filed a petition for freedom . . . August 1857, against the appellant, which was dismissed on the 13th of November following, and . . . 1858, they filed a second petition . . . The appellant then filed his petition, . . . alleging that he had incurred costs and expenses to the amount of \$377.53 in the defence of the first petition and the maintenance of the negroes during the pendency thereof, and asking a stay of proceedings in the second petition until such . . . expenses were paid,¹ . . . [65] The items claimed were costs of suit . . . jail fees and board, medical bill, personal expenses of the appellant, boarding and clothing the negroes from the 12th of September to the 2d of November; expenses incurred in bringing the negroes from Montgomery county to Upper Marlborough, and then . . . to . . . Anne Arundel county, and for an examination of docket entries and records. The court . . . passed an order allowing the following expenses . . . 'and no more, that is to say, \$28.43 $\frac{1}{3}$ for cost of suit, \$3 for personal expenses, \$18.50 paid Judson Richardson, November term 1857, \$25 for bringing negroes to court, and \$14 for medical bill.'" Appeal dismissed.

Negroes William and others v. Reynolds, 14 Md. 109, July 1859. Will of Betty Reynolds, executed 1840: [110] "I give and bequeath unto my niece, Harriet Reynolds, all the rest and residue of my property, of every kind whatsoever, except my negroes, which I dispose of in the following manner: It is my will and desire, that my man Lewis, aged twenty-three years, and my man David, aged twenty years, be hired out by my brother, . . . until they arrive at the age of twenty-seven years, then to be free to go to Africa, and the money arising from their hire

¹ Act of 1796, ch. 67, sect. 27.

to be paid to Foreign and Domestic Missions, except ten dollars to be paid to each of the above named servants, annually, out of their hire; and if the said Lewis and David refuse to go to Africa, at the time specified, then they shall serve my niece, Harriet Reynolds, until they do go, but whenever they, or either of them, desire or consent to go, after their term of servitude, they shall be at liberty to do so; and on the same terms and conditions I leave to my niece, Harriet Reynolds, my servant, Lucinda, until she arrives to the age of twenty-seven; Fanny to serve until she is twenty-five years, and Clarissa to serve until Fanny arrives to the age of twenty-five years, then Fanny, Clarissa and Lucinda shall be free to go to Africa at the end of their respective terms, and carry with them any child or children they may then have under the age of five years; all the children which they, or either of said female slaves, may have, over five years of age, at the time of their departure from the United States, for Africa, shall serve my niece, Harriet Reynolds, until the male children arrive at the age of twenty-one years, and the female children arrive at the age of eighteen years, and then, like their mothers, to be free to go to Africa, and their children also in like manner; and if all, or either of the above named negroes, should die in the United States, or refuse to go to Africa, nevertheless, all or any of their children, or descendants, are hereby made free to go to Africa, at any time they may please, with the above restrictions, that is, after serving an apprenticeship, as before stated, for all children over five years of age." Lucinda [111] "attained the age of twenty-seven in 1847." On May 5, 1856, she filed a petition for freedom [109] "in behalf of herself and her seven children; . . . [111] at the time of this trial (July 1858) William was about sixteen years old, Juliet from eleven to twelve, John from seven to eight, Charles about six, Robert from four to five, and Jane from three to four. . . [112] The verdict of the jury was in favor of Lucinda, and against the other petitioners, who appealed from the judgment thereon against them."

Judgment reversed and *procedendo* awarded: [115] "Lucinda was free at [twenty-seven] . . . whatever her mistress may have intended; because, according to the established doctrine in this State, in reference to conditional bequests of freedom, the words, 'to go to Africa,' can have no effect on the question. . . The consequence is that the children of Lucinda, . . . born after that time, were free at their birth," But as to "such of Lucinda's children, as were under the age of five at the time she reached twenty-seven, . . . It is a mistake to suppose that they became free when their mother's freedom commenced. Their state was made to depend on a contingency; the removal of the mother to Africa." [Tuck, J.]

Reynolds v. Negroes Lewis and David, 14 Md. 116, July 1859. "Petition for freedom, filed . . . 1857, . . . under the same will as in the preceding case.¹ . . . [117] judgment for the petitioners," Appeal dismissed.

Reynolds v. Negroes Juliet and others, 14 Md. 118, July 1859. [119] "Petition for freedom, filed on the 5th of May 1856, . . . under the will

¹ Negroes William and others *v.* Reynolds, p. 137, *supra*.

of Mary Reynolds," The court refused to instruct the jury "that the petitioners . . . are not entitled to their freedom, because there is no evidence of the sufficiency of the estate of Mary Reynolds, . . . to pay the debts due from the estate." Verdict and judgment for the petitioners. Judgment affirmed: [120] "If there was any proof on the subject of assets, it ought to have been set out"

Negro Ann Hammond v. State, 14 Md. 135, July 1859. Negro Ann [136] "was indicted for obtaining goods under false pretences" and [147] "was described in the indictment as a free negress; at the trial, . . . it appeared that she was a slave; whereupon the State's attorney moved the court for leave to amend the indictment according to the fact, which was allowed. The trial proceeded to conviction, when a motion was entered in arrest of judgment" [137] "The court overruled this motion, imposed a fine of \$10 and costs, and adjudged her to be imprisoned ninety days in the county jail,"

Judgment affirmed: [148] "The Act of 1835, ch. 319, does not exclude slaves. . . it is supposed that the word 'persons' is a discriminating term, and excludes them. Several examples were furnished from other Acts of Assembly, but they do not sustain the argument. And if they did . . . how should this court decide, in view of the fact that punishments have been inflicted on slaves, on the authority of other laws, where the word 'persons' is used, and especially the Act of 1809, ch. 138? If that word does not include this class, many judicial murders have been committed in this State. . . [149] Hardship upon the master may be assumed in any case where his slave is taken under the law for punishment, for the benefit of society; but if compensation is not provided, it does not become the courts to avert the consequences of such a *casus omissus*, by arresting judgment if jurisdiction be conferred." [Tuck, J.]

"Since the above opinion was prepared the court has been furnished with the following opinion of Taney, Ch. J., which is directed to be appended . . . as well on account of its importance, as because it sustains the views here presented:" See *U. S. v. Amy*, I. 247, of this series.

Watkins, free negro, v. State, 14 Md. 412, July 1859. Watkins [421] "was indicted¹ for the larceny of a silver watch, valued at six dollars, and, upon a verdict of 'guilty,' judgment was pronounced . . . 'to be sold for the period of five years out of the limits of the State,'" Counsel for the plaintiff in error: According to [415] "the construction now contended against . . . a negro convicted of wilfully burning down a courthouse, or of enticing slaves to run away, has a chance of being kept comfortably at home by a merciful application of the discretion committed to the court, while a negro who pilfers a ham or a jewsharp, is to be hopelessly assigned to the clutches of a speculator, and has absolutely no chance of escape from a doom, which everybody knows is equivalent to perpetual slavery, aggravated by banishment." Judgment reversed: [424] "The judgment was not authorized by the law,"

¹ Act of 1858, ch. 324, sect. 1.

Haney v. Baltimore Steam Packet Co., 23 Howard 287, December 1859. [301] “the wheelsman was a colored man, and could not, therefore, be examined as a witness; but it is abundantly proved that he was an experienced wheelsman, and accustomed to perform that duty on steamboats and was fully competent and trustworthy.” [Taney, C. J.]

Whitridge v. Dill, 23 Howard 448, December 1859. [452] “the master [of the vessel] . . . directed the steward, a colored man, to keep a lookout, . . . [453] the steward assisted the master in putting up the helm;”

Negro Ann Maria Cornish v. State, 15 Md. 208, March 1860. “The plaintiff in error (a free negro) was indicted for the larceny ‘of one mouseline-de-laine dress, of the value of two dollars, current money, and one muslin skirt of the value of one dollar, current money.’ Upon a verdict of guilty the court . . . sentenced the convict to ‘be sold at public auction, by the sheriff, for the period of two years and six months from date, as a slave, out of the State, according to the provisions of the Act of 1858, ch. 324.’”

Judgment reversed: [211] “the court has no power to superadd any other punishment to that prescribed by the Act of Assembly. There are some offences enumerated in the same Act for which the convict may be sentenced to be sold as a slave, ‘either within or without the State, according to the discretion of the court,’ but the offense of which the plaintiff in error was convicted is not one of them.” [Bartol, J.]

Northern Central Railway Co. v. Scholl, 16 Md. 331, July 1860. [347] Action [333] “to recover the value of a slave . . . alleged to have been lost . . . by being transported in the cars over the railway of the defendant.” “The slave was last seen at the home of his master, in Frederick county, Maryland, on the evening of Whitsunday of 1855; and that he was next seen on Whitmonday, in Hanover, Pennsylvania, by a Mr. Epply, in company with two other slaves, who had also run away, at the same time, from the same neighborhood in Frederick county. At the time Mr. Epply saw them, all three slaves were in the ticket office of the Hanover Branch Railroad; and one of the other slaves had applied for, and had obtained, a ticket for Little York, Pa. The agent of the railroad then inquired of the slave to whom he had sold a ticket, whether the others wanted tickets also. Being answered in the affirmative, the agent proceeded to prepare for the last mentioned slaves, two tickets, and whilst so employed, Mr. Epply asked him, ‘How he came to give those boys tickets, not knowing whether they had permits, or were free or slaves?’ He replied, ‘That it was not his business to enquire,’ and added, ‘that if a black man called for a ticket, and paid for it, he had as good a right to a seat in the first class cars as any other man.’ Epply told the agent that the boys were runaways and that he wanted to arrest them. It was *after* this notice, given by Epply,—according to his testimony,—that the ticket was given to the slave of the intestate of the appellee. Mr. Lieb, the agent, testifies the ticket was sold *before* the notice was given to him. The ticket purchased by the slave was a through ticket to York, by which he was

entitled to travel over the appellant's road. There is no direct evidence how far the slave travelled on either the Hanover or the appellant's road; he was never heard of after the starting of the cars from Hanover." [338] "The verdict was in favor of the plaintiff for \$813.40, damages and costs,"

Judgment thereon, affirmed: [351] "The plaintiff is a citizen of Maryland, and his right of property in his negro slaves is recognized by the Constitution of the United States, which is the supreme law of the country; and whilst it is perfectly competent to Pennsylvania, or any other State, to prohibit within its borders, negro or any other kind of slavery of the person, yet, it is beyond its power to authorize its inhabitants, or others, to assist in despoiling its neighbors of their property in slaves. It may, if it pleases, forbid its courts to grant redress for the wrong, but it cannot oust the jurisdiction of the courts of the State of the injured party. Whenever the wrong-doer comes within its limits, he is liable to be made answerable for his tortious acts. . . [352] Although slavery be not established by the laws of Pennsylvania, it is recognized, and its protection guaranteed, by the Constitution of the United States; and a railroad company, in Pennsylvania, has no more right, knowingly, to assist in the escape of a runaway slave, than a wagoner on the highroad." [LeGrand, C. J.]

McKee v. McKee, 16 Md. 516, January 1861. [519] "an action of trover, instituted . . . by the administrators of Alexander McKee against the administrators of his wife, Margaret McKee, who died in 1851, to recover the value of a number of negroes, . . . her husband . . . died in 1855; . . . and exercised absolute control over them . . . up to the time of his death. The defendants . . . offered to prove, by . . . Quinn, that . . . 1847, he had in his hands, as deputy sheriff . . . a writ of *vendi exponas*, which had issued out of the Court of Appeals, at the suit . . . *vs.* Alexander McKee . . . and that negroes Charlotte, Silvey and Martha, (three of the negroes, and the mothers of the remaining negroes in controversy,) had been previously seized on a *fi. fa.*, issued in the same case; and that on the same . . . day . . . the witness, as deputy sheriff, sold the said three negroes to Mr. Carroll (who said he bought them for Margaret McKee [wife of Alexander McKee]) for the sum of \$700, and that it was her money. . . [520] The court . . . excluded the said testimony as incompetent to show title in the defendants' intestate . . . unless the executions . . . is [*sic*] produced, . . . verdict and judgment . . . for the plaintiffs," Judgment affirmed. See *McKee v. McKee*, p. 143, *infra*.

Cox v. Harris, 17 Md. 23, March 1861. Will of William W. Cox, dated 1853, admitted to probate in 1857: [28] "I devise . . . that my negro woman Kitty, and her children, John, Catharine, Sarah and Charles, shall work for themselves, by paying my executors annually, one cent per year hire;"

Cause remanded: [30] "We should regard with favor, the propriety of the point . . . that the negroes would take their freedom by implication, if the testator had confined himself to that provision of his will, . . . 'work for themselves,' . . . But the condition annexed . . . would have been in

direct contravention of the Act of 1817, ch. 104. . . The testator, doubtless, intended to discharge his negroes from servitude; that they should be free in fact, but not in law. In such case, the intent contrary to the law, or its policy, must render the whole bequest void, and we are of opinion, that the will, if executed, would be in violation of the Act of 1817, ch. 104, and the Act of 1831, ch. 281." [Goldsborough, J.]

Cecil v. Negro Rose and others, 17 Md. 92, March 1861. Petition for freedom, filed in 1860. [93] "Samuel Owens, Sen., died in 1821, . . . bequeathed negro Rose . . . to his wife, Mercy Owens, whom he appointed his executrix. . . [She] died in 1831, leaving a will, by which she bequeathed the same negro, Rose, to her daughter, Tabitha Macbee, 'for seven years after my decease, after the expiration of which term of servitude, I will the said mulatto woman Rose to be . . . forever set free from slavery,' . . . The other petitioners are children of Rose, all born after the expiration of the said term of seven years. After the death of Mercy Owens, Rose went into the possession of Tabitha Macbee, . . . who, after holding possession of her for two years, sold . . . [94] her to . . . Clarke, to serve for five years . . . after the expiration of which period she went at large and acted as free . . . until 1857, when she was taken possession of by the defendant, after he had obtained letters of administration upon the estates of Samuel Owens, Mercy Owens . . . He . . . proved . . . that in 1818 . . . Samuel Owens, Sen., sold to his son, Samuel Owens, Jr., a tract of land for \$700, the son paying therefor \$300 in cash, and delivering Rose, then a child six years old, at a valuation of \$200, . . . The defendant then offered in evidence two deeds" and on account presented in the Orphans Court, to show [95] "that Samuel Owens, Sen., died indebted, and that the said . . . Rose was the only property left by him at his death as assets for the payment of his debts, but the court . . . rejected said offered evidence." Verdict and judgment for the petitioners.

Judgment affirmed: Mercy Owens [102] "had a right to negro Rose, which vested upon the death of the testator; her title was derived from the will, and although, to perfect it, an administration was necessary, yet, before administration, she had an inchoate title, which it was competent for her to assign or dispose of by her will. When administration is afterwards had upon the estate, her title, or the title of those claiming under her, becomes complete; it relates back to the time of the testator's death, and may be asserted against the defendant, who is administrator, with the will annexed, of Samuel Owens, in the same manner as if such administration had been granted in the life time of Mercy Owens. . . [103] there was no evidence of any debts due . . . by the estate of Mercy Owens, . . . the burden of proof is on the administrator, . . . [104] neither the deeds nor the account presented in the orphans court, were admissible for the purpose of showing a debt due by Samuel Owens, Sen." [Bartol, J.]

Negroes Chase et al. v. Plummer, 17 Md. 165, April 1861. Jacob W. Brashears died in 1816, leaving a will, executed in 1811, giving all his estate to his sister: [167] "It is my wish and desire, in case my sister Mimy die without issue, that she shall will and devise all my negroes to

be free, or manumit them in any other way she may think proper; this request I hope she will comply with in time, so as to carry my wish into effect." Mimy married Wells, and took possession of the negroes. Wells "died in 1853, . . . leaving a will, of which he appointed the defendant the executor, who . . . has possessed himself" of the slaves. Jemima Wells died in 1854 "intestate, without issue, and never having had a child, and without having devised the said negro . . . to be free, or manumitted them in any way."

Held: [176] "Mrs. Wells took an absolute estate in the negroes . . . [177] the testator . . . did not intend their freedom to take effect, at all events, on the death of his sister. . . [178] it has never been held [in Maryland] that freedom can be obtained under a trust of this kind. . . We are dealing with the rights of parties under the law, not with the moral duties of Mrs. Wells, or of any claiming under her and her husband. If . . . the appellee has these negroes in possession, claiming them as owner under Mr. and Mrs. Wells, he must determine for himself whether he will manumit them or not. This court possesses no power to direct it." [Tuck, J.]

McKee v. McKee, 17 Md. 352, October 1861. The children of Alexander and Margaret McKee filed the bill in this case, in April 1861, "against the appellees, the administrators of the said Margaret and of the said Alexander. The bill charges that, in 1845, a judgment was recovered . . . against the said Alexander.¹ . . . Margaret died . . . intestate, . . . [353] after the death of said Alexander, one of said children, for himself and on behalf of his brothers and sisters, took possession of said negroes and their increase, . . . Charlotte hath three children, Sylvia five, and Martha seven, and that these negroes are incapable of advantageous partition amongst said children, and that it will be for their interest . . . that the same should be sold, and the proceeds distributed amongst said children. . . the complainants claim these negroes and their increase directly from their mother, and not through her administrators, so that the recovery against the latter² does not prejudice the rights of the complainants. . . [354] The bill then prays that the judgment so recovered . . . may be declared void . . . and for an injunction restraining the administrators of . . . Margaret from delivering to the administrators of . . . Alexander, . . . as well the original stock as the increase thereof, in satisfaction of said judgment, and that all said negroes may be sold . . . The court (Crain, J.) refused to grant the injunction"

Order affirmed and cause remanded: under the act of 1842, ch. 393, sect. 4, slaves which were the separate property of the wife, and their increase, born during the life of the wife, descend, on the death of the surviving husband, to her children, without the necessity of administration on her estate; but the increase born during the survivorship of the husband, are his, in absolute right.

Maddox v. Negroes Price and others, 17 Md. 413, June 1861. Will, executed 1837: [416] "I . . . bequeath to my nephew, James T. N.

¹ See facts given in *McKee v. McKee*, p. 141, *supra*.

² *Ibid*.

Maddox, the residue of my negroes in trust, which negroes he shall hire out from year to year, until my just debts are paid as well as certain legacies discharged and paid, . . . then he . . . may, if he wish to do so, take such of my negroes as are willing to go to the State of Kentucky, or elsewhere, where they shall be manumitted; it being my wish and intention, to manumit all my negroes except Josias, when my just debts shall have been paid, and the bequests made in this will are discharged and paid; and if any of my negroes shall refuse to leave the State of Maryland—a condition of freedom required by our equitable laws—then he . . . may sell such negro or negroes, allowing those sold the privilege of choosing masters, provided the persons chosen will give a fair price for them.” Dr. Maddox, the executor, “called on said negroes after the debts and legacies were paid off, to go out of the State of Maryland; they have refused and still do refuse to leave the State of Maryland.”

Held: the removal of the negroes out of the State, by their *consent*, is a condition precedent to their manumission. [418] “They are sentient, rational beings, and have capacity to make the election, under the will, before they have become free; such a choice is not inconsistent with a state of servitude. On the contrary, by the provisions of the Act of 1831, ch. 281, sect. 4, the privilege is accorded to a manumitted slave to renounce freedom and to continue a slave. In the will before us, the testatrix referred to that law with approbation, and plainly intended to give to the petitioners a similar choice.”

Cecil v. Clarke,¹ 17 Md. 508, June 1861. Cecil brought suit for malicious prosecution against defendants for causing him to be arrested on a charge of kidnapping negro Rose and her four children. [523] “The plaintiff, accompanied by friends, arrives in a village which has been alarmed by the report of and flight of negroes to it for protection. He has in his charge and under his care certain negroes whom he has brought from an adjoining county, and is in pursuit of others well known in the village. He finds, on his arrival, a number of persons standing around, gossiping, it being a place of great resort. His right to the negroes is denied by one of these persons, and he is asked for his authority which he exhibits. The testimony is, that he was permitted to depart, although he failed to convince the bystanders that he had the right to take with him the negroes. It was then said by one of the defendants, Welling, that he could not be arrested unless some one would make an oath, whereupon Moore volunteered to do so. It does not appear from any part of the evidence that the meeting of the defendants was by concert, or that its motive had anything whatever to do with the arrival of the plaintiff or the negroes; for aught that appears, it seems to have been purely accidental. None of these parties did anything violent, except one, who, according to the testimony, did not know what he was doing, being under the influence of liquor. When the warrant for the arrest of the plaintiff was issued, the defendants refused to assist in its execution, and were only prevailed on to do so by being threatened by the constable with being presented to the grand jury, if they refused. Surely there is nothing in

¹ See *Cecil v. Negro Rose*, pp. 137, 142, *supra*.

all this unusual or malicious. That such an arrival in a small village would create some agitation, was to have been expected; and we see nothing in the conduct of the defendants to whom we have alluded, which is deserving of censure. Their conduct was both natural and humane. There is no evidence that there was any conspiracy whatever among them; all that was said and done on the occasion, was clearly from the impulse of the moment, and from a commendable impulse, to see that helpless beings were not illegally and forcibly carried out of their county. They would have been less than men, had they not exhibited some emotion on the occasion. In our judgment, they did nothing but what they had a right to do—they made inquiries and expressed their opinions in regard to the rights of the negroes, and nothing more.” [LeGrand, C. J.]

Merrick v. Bradley, 19 Md. 50, December 1862. [51] “Received December 22nd, 1858, of Mr. Clinton Wright an order on James Merrick for six hundred and fifty dollars, in payment for a colored woman, Mary, a slave for life, whom I guarantee to be sound up to this day. S. J. Bradley.” “Mr. David Wallace:—You will please let Mr. Clinton Wright have Mary, as I now consider her his property. December 22nd, 1858. S. J. Bradley.” Mary was in the possession of Wallace under contract of hire to him. [52] “Wright came up to the kitchen door where the said negro was, . . . and the said Finley said to the said Wright, pointing to said negro, ‘There is your negro,’ and the said Wallace said, ‘I am sorry you have come, for it will put me to great inconvenience.’” Mary committed suicide before actual delivery, while Wright was waiting at the door to receive her. Held: there was a valid sale to Wright, and the purchase was thereafter at his risk.

Wilson v. State, 21 Md. 1, February 1864. [2] “action of debt brought . . . 1860 . . . to recover the penalty of \$500, imposed by the Act of 1838, ch. 375, for the illegal transportation . . . of the negro slave of Davis, from Annapolis to Baltimore, . . . [3] The said negro Washington was hired by his owner to the defendants as a seaman or hand, to work on board of, and assist in, the management and sailing of the sail vessel of the defendants, and as such hired hand or seaman was received on board of the said sail vessel, and was assisting in the navigation and working thereof, with the consent and knowledge of his said owner.”

Held: the words in the Act, “without a permission in writing from the owner of such slave,” were not intended to apply to a care of hiring a slave by the owner to the master of a vessel, as a seaman to work on board of said vessel. [10] “It is not necessary to constitute the offence punishable under the first section that an escape should actually have occurred.”

McCeney v. Duvall, 21 Md. 166, March 1864. [167] “an action brought . . . 1863, by the appellee . . . to recover damages for a negro woman named Hester, . . . [169] ‘Annapolis, Nov. 10th, 1859. Received of . . . Duvall, the sum of thirty-four hundred and fifty dollars, . . . in full for . . . three negro slaves, named: Swain, aged eighteen years, Hester, aged twenty years, and Ann, aged thirteen years. . . I . . . warrant them

sound and healthy, and slaves for life. . . Edward McCeney, (Seal.)' . . . [Hester] was then apparently a hearty and healthy woman, and was then, if sound, worth \$1150 or \$1200 for the Southern market; . . . [Duvall] kept her a day or two, and then sent her to Campbell, in Baltimore, who shipped her, with other negroes, to New Orleans, for sale, from whence she was returned to Campbell, in Baltimore, on the last of March or first of April 1860, as unsound, and Campbell, after having her examined by a physician, returned her to the plaintiff, in Annapolis, telling him she was unsound." Three physicians examined her [170] "in March and April 1860, and found that she was suffering from *prolapsus uteri*; . . . and all concur in the opinion that it was a very serious case, of long standing, and must have existed for some time prior to November 1859; that the effect of the disease was seriously to impair the woman's usefulness and ability to labor, and was almost, if not quite, an incurable case." Witnesses testified "that after her return from New Orleans, the woman was of no value for the Southern market, that about here she was worth \$250 or \$260." A witness stated that [171] "McCeney asked the woman why she had not spoken before the sale, about her having this disease, to which she replied that she had been ashamed to speak of it, but that she had been so a long time. . . the woman was afterwards sold by Duvall, at the court house door, at public sale, . . . and witness bought her . . . for \$250 or \$260, and afterwards sold her to Campbell for \$15 more than he gave for her; he bought her to sell again. . . Campbell . . . sold her to a Mr. Logan, of South Carolina, for about \$300, . . . without a guarantee, and after a statement of her condition. . . it was not their custom to examine women particularly at the jail, . . . because they always receive a warranty of soundness," Another witness "had seen her working in the crops like other hands, and in October 1859, she and her mother worked several days, with other negroes of McCeney, on the public roads [with a hoe] under charge of witness, as supervisor; the work was very laborious, and she kept up with it as well as any other negro. . . in September 1859, being short of hands, witness hired her of McCeney to tend a threshing machine; that the work is of a very laborious character, requiring a great deal of stooping and lifting, and that being pressed for hands, he required her to work briskly and for a long time, and that he could perceive no difference between her ability to work and that of the other negroes. . . [172] Doctor Claytor . . . for many years has been the attending physician on his [McCeney's] place, and . . . knew Hester as one of the hands, sometimes a house servant, but frequently in the crop, and that he never was called to attend her, . . . she could not have performed the work spoken of . . . in 1859, if she had been diseased with *prolapsus uteri*, . . . Dr. McCeney never attended himself to his negroes, . . . [175] The verdict was in favor of the plaintiff,"

Judgment reversed, and *procedendo* awarded: [183] "the declarations of a slave, though admissible to prove the present nature of the disease . . . must be confined to the disease under which the slave is laboring at the time . . . and cannot be so extended, as to make those declarations evidence to show that she had been diseased . . . anterior to that time,"

Morsell v. Baden . . . and Negroes Caroline and Solomon, 22 Md. 391, November 1864. A bill in equity, filed in 1854, "to set aside as . . . void as against creditors, a deed of manumission executed by [Jeremiah M. Baden] . . . 1833, manumitting the said negroes. . . the manumission to take effect at certain periods specified in said deed; that Baden . . . [392] was insolvent . . . the negroes . . . plead limitations of three years and twelve years, and *laches*. . . [393] The Court below . . . 1859, passed a decree dismissing the bill with costs, and the complainant appealed."

Decree affirmed: [396] "under the existing Constitution, the particular relief sought by this bill cannot now be granted. . . as they have been declared free by the organic law of the State, the claim of the appellant, that they should be sold for the purpose of paying the debt alleged to be due to him . . . [397] can no longer be maintained. In view, however, of the question of costs, we think it proper to express . . . our opinion of the case, as it stood upon the law when it was argued; . . . [398] The right to vacate the deed, could have been maintained only on proof of the exhaustion of the real and personal estate, and its insufficiency for the payment of the debts."

Trustees of the African M. E. Church v. Gibbs, 24 Md. 323, December 1865. [329] "The question as to the use and employment of a musical instrument in the divine service of the African Methodist Episcopal Church [of Baltimore], was submitted, after due notice, by the minister in charge (Rev. Mr. Cronin,) to a meeting of the male members of the Church, called according to the charter of the corporation, at which he presided, and was, as is proved by the minutes, duly attested, decided by the majority of the said meeting that the musical instrument [an organ, which the trustees 'had introduced into the Church building'] should not be so used and employed." [331] "The appellees 'as male members of the African Methodist Episcopal Church of the City of Baltimore,' . . . sue the appellants . . . [333] praying an injunction . . . An injunction was issued . . . May, 1864,"

Injunction dissolved and bill dismissed: [336] "The male members of the Church are invested with no . . . controlling power over the minister or trustees,"

Coston v. Coston, 25 Md. 500, July 1866. "Leah Coston, on behalf of Simon and Washington Coston, as mother and next friend, petitioned for a writ of *habeas corpus* to be directed to Samuel Coston, . . . The writ was issued on the 6th of May, 1865, . . . Coston appeared in Court on the 17th with said Simon and Washington, and returned that he held them as apprentices, . . . [501] To this return the following pleas, in substance, were filed on behalf of the petitioner: 1st. That the parents of said children were not summoned to be present at the binding. 2nd. That the said children, at the time of said binding, were not the children of free negroes, but were born in slavery, and that both they and their mother were the slaves of the defendant until set free by the Constitution of 1864, and that the detention of said children under the color of apprenticeship, as returned, was a detention in slavery or involuntary servi-

tude contrary to said Constitution. . . the Court . . passed an order discharging them from his custody, and delivered them to their parent ”

Brady v. Dilley, 27 Md. 570, July 1867. [585] “ 1857, . . Greenwade sold . . negro ‘ Jim,’ for one thousand dollars, and . . 1859, negro ‘ Bill,’ for twelve hundred dollars.”

In re Turner, 24 Fed. Cas. 337 (1 Abbott U. S. 84), October 1867. “ Having upon a writ of *habeas corpus*. The petition . . alleged that Elizabeth Turner . . was restrained of her liberty . . by . . Hambleton, . . in violation of the constitution and laws of the United States. . . [338] the child and her mother were formerly held as slaves by the respondent. They were emancipated by the new constitution of the state, which took effect November 1, 1864.” [339] “ Almost immediately thereafter many of the freed people of Talbot county were collected together under some local authority, . . and the younger persons were bound as apprentices, usually, if not always, to their late masters. . . Elizabeth, the petitioner, was indentured [‘ by the consent of her mother, present in court ’] to Hambleton by an indenture dated November 3, two days after the new constitution went into operation.” [338] “ The indentures . . provided that Elizabeth Turner shall be taught the art or calling of a house servant; and that the master shall provide . . food, clothing, lodging, and other necessaries, and shall pay to Betty Turner, her mother, ten dollars at the end of her sixteenth year, twelve dollars and fifty cents at another period, and fifteen dollars to the girl at the end of her term of service, . . 1874, she having been born . . 1856.” [339] “ The petitioner, under this indenture,¹ is not entitled to any education; a white apprentice must be taught reading, writing, and arithmetic. The petitioner is liable to be assigned . . at the will of the master to any person in the same county; the white apprentice is not so liable. The authority of the master . . is described in the law as a ‘ property and interest ’; no such description is applied to authority over a white apprentice.”

Held: “ The alleged apprenticeship . . is involuntary servitude, . . [340] The petitioner, therefore, must be discharged from restraint by the respondent.” So ordered and “ that the costs of this proceeding be paid by the petitioner.” [Chase, C. J.]

Nickerson v. Nickerson, 28 Md. 327, February 1868. In 1853 [328] “ the defendant in the presence of the witness . . said to Bill Johnson the negro . . ‘ Go home Bill, to Sam and serve him, until John comes of age, and then you will go to John,’ neither Samuel Nickerson nor the plaintiff being present,”

Held: “ said declarations do not constitute a gift in the law,” [332] “ It is equally essential, [under the Act of 1763, ch. 13] . . as under the common law rules . . that there should be an express delivery of the property *at the time*, and *in pursuance* of the gift.”

Goldsborough v. Cradie, 28 Md. 477, March 1868. Action to recover a reward of \$600 offered for the apprehension and delivery in jail of three

¹ “ claimed to have been executed under the laws of Maryland relating to negro apprentices.”

runaway slaves. [479] "On Saturday night, the 21st of August, 1858, five of the negroes of the defendant's intestate ran away; on Monday following, . . . the defendant had advertisements printed offering a reward, which in the afternoon of Monday were sent from Easton for distribution. Before the advertisements were circulated, the negroes came into the town of Felton, in Delaware, . . . stated they had run away from their master, and wanted to get tickets in the stage to take them home. The plaintiffs, Cradie and Davis, . . . took some of the negroes about the town, and locked them up in a room in the hotel, gave them their dinner, etc., but afterwards, there being some excitement, gave over the negroes to the constable Clymer, . . . [480] who said he would take them to Easton. While this state of things existed, no one having charge of the negroes, they being at large, Mr. Cheezum, a friend of the defendant, came in the train and seeing the negroes whom he well knew, and hearing from them that they had run away and wanted to return to their masters, he paid their passage, and re-paid the sums the plaintiffs had paid for the negroes at Felton, and took the negroes in the stage with him; . . . Arriving at night in Easton, he put them in the jail, notified the defendant, and received from him all his expenses on account of the negroes."

Judgment for the plaintiffs reversed: [486] "Upon no fair or just principle could the reward be claimed, unless at the time of their alleged apprehension, the negroes still continued absconding and runaways from their owner."

Clark v. Mayor, 29 Md. 277, June 1868. [283] "the appellant enlisted at Baltimore city, in Company 'G,' Fourth Regiment of United States Colored Troops, a regiment raised in the city and credited as part of the quota of the city under the call of the president for five hundred thousand men.¹ That he was mustered into the service on the 11th of August, 1863, and was honorably discharged in May, 1866."

Williams v. Johnson, 30 Md. 500, May 1869. "an action of trover brought . . . 1860, . . . to recover the value of a certain negro man, her slave. . . 1867, . . . [501] the defendant demurred to the *nar.*, . . . The demurrer was held good by the Court, and judgment was entered thereon."

Judgment reversed and *procedendo* awarded: [505] "the sole question raised by the demurrer is, whether . . . [the] abolition [of slavery] by the Constitution of 1864 operates as a bar to the plaintiff's recovery. The radical error, which underlies the argument of the appellee's counsel, is the assumption, that negro slavery, as it existed in this State, was the creature of statutory law. . . . The act of 1663, ch. 30, . . . so far from establishing slavery in the colony, recognizes, in express terms, its existence at that time, . . . when these colonies were planted, negro slavery and the slave trade were not only recognized as lawful, but sanctioned and protected by all of the enlightened and commercial nations of Europe. . . . [506] Especially was it the policy of Great Britain to introduce and encourage it in the colonies, . . . The cases, therefore, in which it has been held that actions based upon statute law, fall with the repeal of the law, . . . do not

¹ Feb. 1, 1864. Richardson, *Messages*, VI. 232.

apply. Slavery being established by the municipal law of the State, . . . rights vested under the municipal law . . . are not affected by a change or abrogation of the law. . . [507] To deprive the plaintiff of this [perfect and vested] right,—to impose upon him the costs of a suit brought under the sanction of the law, . . . would indeed be an alarming subversion of principle.” [Robinson, J.]

Griffith v. Plummer, 32 Md. 74, January 1870. Will, admitted to probate in 1839: [77] “ I give unto my son . . . one hundred and sixty acres, . . . in trust, together with nine negroes, . . . in trust for his sister Rachel ; ”

Wallis v. Woodland, 32 Md. 101, February 1870. Will of John Mason (executed in 1826, and admitted to probate in 1829): [104] “ I give . . . to my daughter . . . all . . . the property . . . except my negro man, Thomas, and my negro woman, Ann, who, it is my will that Thomas should serve four years and Ann seven years after my death. Also the children . . . should each of them be free when they arrive at the age of thirty years, if my daughter should die without heir, but if not, then the said children to serve for life.”

Smith v. Doe, 33 Md. 442, January 1871. [446] “ Conner died about . . . 1813, . . . and that by his will, . . . he bequeathed the [leasehold property] . . . to his wife . . . for life, and after her death to her son Lloyd Gibbs, for his life, and after the death of the latter to an illegitimate son of the testator, named Thomas Conner, absolutely. The last named legatee was a slave for life, . . . [447] and not belonging to the testator, the bequest of that interest failed; it being well settled that a devise or bequest to a slave for life, if it cannot operate to give freedom, as well as the property intended for the benefit of the devisee or legatee, is absolutely void.”¹

Needles v. Martin, 33 Md. 609, February 1871. [614] “ Simultaneously with the execution of his will [in 1843] he [Nelson Wells] executed another paper, in the form of a letter of instructions to Needles, Tyson and Jessop, . . . ‘ Being in my last moments desirous to make some provisions for the school education of free colored children, . . . [615] I have, by my last will . . . bequeathed . . . to you, as a special, confidential trust, the stock I hold of the City corporation of Baltimore, say about three thousand five hundred dollars, . . . And further . . . on the death of my wife . . . all the residue of my estate. Now it is my . . . will that you will hold the same in trust, . . . and that the net income . . . be applied by you to the education of free colored persons in . . . Baltimore.’ . . . [616] the whole income . . . has been expended by them in the accomplishment, as far as was practicable, of the intentions . . . of the testator.” Held: [618] “ The trust . . . is too vague . . . to be enforced, and is void ”

Henning v. Varner, 34 Md. 102, February 1871. Henning’s will, dated 1830: [103] “ the proceeds of sale of his slave Louisa, should his wife sell her for cause ; ”

¹ *Hall v. Mullin*, p. 69, *supra*.

Jones v. Jones, 36 Md. 447, June 1872. [453] "David Jones was married, while yet a slave, to Hannah Williams, a free woman, and that some of her children were born before David became free and some afterwards, and that David and his brother Andrew were both manumitted by Margaret Gardner by deeds, . . . 1814, . . . David's freedom to commence five years and Andrew's six months thereafter. David and Hannah lived together as man and wife . . . long after David's emancipation, and up to the time of Hannah's death, . . . [454] David died twelve or fifteen years ago. Andrew died in August, 1870, leaving . . . his widow, but no child"

Held: since the act of 1777, ch. 12, sec. 11, slaves could lawfully marry, [455] "and consequently the issue would be legitimate." David's children [457] "are capable in law of inheriting from their uncle Andrew D. Jones,"

Gent v. Cole, 38 Md. 110, May 1873. Cole, the plaintiff, [111] "was born free, being a negro—that in October, 1864, he was about seventeen years of age, and an apprentice to the defendant, and had been living with him in that relation for ten or twelve years; . . . that in obedience to his orders he . . . [112] was enlisted in the army of the United States . . . he had not been drafted, but was placed in the army by the defendant as a substitute for his son, who had been drafted." A substitute broker testified that "in October, 1864, . . . substitutes were high; that three hundred dollars at that time was a very low price. . . . A verdict was rendered for the plaintiff for \$300."

New trial awarded: he owed the defendant service until twenty-one year of age. [114] "By entering the army he absolved himself from his apprenticeship, . . . and . . . became entitled to receive . . . the regular pay of a soldier . . . [115] the Court below was in error in admitting the evidence . . . as to the price of substitutes," [Alvey, J.]

DISTRICT OF COLUMBIA

INTRODUCTION

I.

[401] “ In the second section of the act of the 19th of December, 1791,¹ the state of Maryland declared, ‘ that all that part of the territory called Columbia, which lies within the limits of this state, shall be, and the same is hereby acknowledged to be for ever ceded and relinquished to the Congress of the United States, in full and absolute right and exclusive jurisdiction, as well of soil as of persons residing, or to reside thereon pursuant to the tenor and effect of the eighth section of the first article of the constitution of government of the United States—provided that the jurisdiction of the laws of this state, over the persons and property of individuals residing within the limits of the cession aforesaid, shall not cease or determine until Congress shall, by law, provide for the government thereof, under their jurisdiction, in manner provided by the article in the constitution before recited.’

“ Previously to the above cession, in 1789,² Virginia ceded to the United States, ‘ ten miles square or any lesser quantity for the purposes aforesaid, as Congress might direct,’ with the reservation ‘ that the jurisdiction of the laws of Virginia over the persons and property of individuals residing within the limits of the cession aforesaid, shall not cease or determine until Congress having accepted the said cession, shall, by law, provide for the government thereof, under their jurisdiction, in manner provided by the article of the Constitution before recited.’ This cession was accepted.

“ By the first section of the act of the 17th [27th] of February, 1801,³ Congress provided, ‘ that the laws of the state of Virginia, as they now exist, shall be and continue in force in that part of the District of Columbia which was ceded by the said state to the United States, and by them accepted,’ etc., ‘ and that the laws of the state of Maryland as they now exist, shall be and continue in force in that part of the said district which was ceded by it, etc.’ The part of the district ceded by Virginia constitutes Alexandria county, and the part ceded by Maryland, constitutes Washington county. . . [404] the counties of Washington and Alexandria are governed by the laws of the states to which the territories composing them were respectively attached before the cession. This is especially true in regard to the importation and sale of slaves. . . It was, undoubtedly, the policy of Congress, until the passage of the act

¹ 2 Laws Md. 1791, ch. XLV.

² 13 Hening 43.

³ 2 Stat. at L. 103.

of 1812,⁴ to preserve the same relation between the counties of the district, on this subject, that existed between the two states. . . The act of 1812 was designed to enable the owner of slaves in either of the two counties, within the district, to hire or employ them in the other. . . [405] The counties of Washington and Alexandria, excepting the modification made by the act of 1812, are as foreign to each other, as regards the importation of slaves, as are the states of Virginia and Maryland.”⁵

The county of Alexandria was re-ceded to Virginia in 1846.⁶

II.

A few months before the date of the earliest case recorded in the ensuing pages, Congress, by the Act of February 27, 1801, provided for a circuit court of the District of Columbia consisting of three judges, one of whom should be chief judge. It was to have the same powers within its jurisdiction as those of the circuit courts of the United States, with appeals in civil cases to the Supreme Court of the United States. This circuit court held sessions in each of the two counties into which the District of Columbia was divided,—Washington County north of the Potomac and Alexandria County south of it. It continued to be the highest court of the District until the passage of the Act of March 3, 1863, which provided for a Supreme Court of the District of Columbia, consisting of a chief justice and three associate justices (a fourth was added in 1871), from which cases might be brought by appeal or writ of error before the Supreme Court of the United States.

⁴ 2 Stat. at L. 757.

⁵ Judge McLean, in *Rhodes v. Bell*, 2 Howard 397.

⁶ 9 Stat. at L. 35.

DISTRICT OF COLUMBIA CASES

Rose v. Kennedy, 20 Fed. Cas. 1188 (1 Cranch C. C. 29), July 1801. "Action of assault and battery to try the plaintiff's right to freedom. She was brought into Virginia in . . . 1792, and she claimed to be free because her owner had not taken the oath prescribed by the act of Virginia of December 17, 1792, sect. 4.¹ The defendant produced a certificate . . . of an oath taken by the owner . . . 1792, but varying in some respects from the oath prescribed. . . the Court directed it to be read to the jury, and instructed them that they might judge from that, and the testimony produced, whether the oath was taken or not."

Talbott v. Hartley, 23 Fed. Cas. 650 (1 Cranch C. C. 31), July 1801. "Bowling, the owner of the [two negro] boys, had by indenture bound them as apprentices to the plaintiff. Bill was to serve until September, 1798, and Hanson until September, 1799. Talbott hired the boys to Hartley,"

Sylvia v. Coryell, 23 Fed. Cas. 591 (1 Cranch C. C. 32), July 1801. "Assault and battery to try the right of the plaintiff to her freedom. . . The plaintiff was born a slave in Virginia, in 1779, . . . In . . . 1789, the defendant [her owner] sent her to New Jersey, where she remained three years in the service of the defendant's mother, but continued all that time the property of the defendant. At the end of three years, the plaintiff returned to Virginia, . . . Judgment for the defendant,"²

Resler v. Shehee, 1 Cranch 110, December 1801. "1799, Resler . . . procured a certain false . . . warrant, . . . charging Shehee with having received from a certain negro slave . . . certain stolen goods,"

U. S. v. Jack, 26 Fed. Cas. 555 (1 Cranch C. C. 44), December 1801. Indictment against negro Jack, a slave, for theft. "The Court decided that they had not jurisdiction,³ and ordered the slave to be delivered to a constable to be carried before a justice of the peace."

Atkinson v. Patton, 2 Fed. Cas. 105 (1 Cranch C. C. 46), January 1802. Slander: "at the time the defendant spoke the words, he stated that he had received his information from his slave." Held: no justification.

Thomas v. Jamesson, 23 Fed. Cas. 952 (1 Cranch C. C. 91), April 1802. "Assault and battery. The plaintiff was a man of color. The defendant, a free white man, offered his slave as a witness under the act of assembly.⁴ The Court refused to permit the slave to be sworn."⁵

¹ Rev. Code 196; ed. 1803, p. 187.

² Act of Va., Dec. 17, 1792, ed. 1832, p. 186.

³ "by the act of assembly of Maryland."

⁴ Rev. Code 289, sect. 3; Old Acts Assem. 284.

⁵ Act of Jan. 21, 1801, sect. 4. Laws Va., 1800-1801, p. 38.

U. S. v. Bell, 24 Fed. Cas. 1081 (1 Cranch C. C. 94), November 1802. "Indictment for stealing. Slaves were permitted to be sworn on the part of the United States against the prisoner [Betty Bell, alias Mullican, a free mulatto]." ¹

U. S. v. Louder, 26 Fed. Cas. 998 (1 Cranch C. C. 103), December 1802. "Indictment for stealing. The prisoner pleaded *ore tenus* that he is a slave . . . the court . . . ordered him to be delivered to a constable to be carried before a justice of the peace and tried;"

Hamilton v. Russell, 1 Cranch 309, February 1803. [314] "On the 4th January, 1800, Robert Hamilton made to Thomas Hamilton an absolute bill of sale for a slave . . . which . . . was recorded . . . The slave continued in possession of the vendor; and some short time after the bill of sale was recorded, an execution on a judgment obtained against the vendor was levied on the slave, . . . In July, 1801, Thomas Hamilton, the vendee, brought trespass against the defendant Russell, by whose execution, and by whose direction, the property had been seized;" Judgment for the defendant, affirmed: [318] "an absolute bill of sale is itself a fraud, unless possession 'accompanies and follows the deed.'" [Marshall, C. J.]

U. S. v. Wright, 28 Fed. Cas. 790 (1 Cranch C. C. 123), June 1803. Indictment against Betty Wright, a slave, "under the statute for stealing goods. Some question arose how she should be tried. Under the law of Virginia, she would have been tried by five justices of the county court, without a jury. Upon consideration of a former precedent in this court, she was tried by a jury in the usual form. Verdict, guilty. Judgment, 20 lashes, 1 cent fine."

U. S. v. Barton, 24 Fed. Cas. 1024 (1 Cranch C. C. 132), July 1803. "Indictment for stealing a handkerchief. Upon the prisoner being brought to the bar, he appeared to be a mulatto. Two black witnesses, manumitted, were produced by the United States. . . witnesses admitted, after reading the acts of assembly of Maryland, 1717, c. 13, and 1796, c. 77. Barton was indicted as a free man."

Rogers v. Fenwick, 20 Fed. Cas. 1113 (1 Cranch C. C. 136), July 1803. [1114] "Voss had employed Rogers . . . to attend Mrs. Fenwick's negroes whom he had hired of her. The court instructed the jury that if they should be of opinion that it was the general custom of the country, in the hiring of negroes, that the owner should pay for medicine and medical attendance, and that the defendant did not inform Voss that she had a family physician [at a certain sum per annum] who was bound to attend to all her slaves, it was lawful for Voss to employ the plaintiff on the defendant's account, to administer the necessary and proper medicine to such of the slaves as might require it."

U. S. v. Swann, 27 Fed. Cas. 1379 (1 Cranch C. C. 148), December 1803. "Indictment for theft [against Nancy Swann, a free mulatto]. Mr. Hewitt, for defendant, prayed for a summons for a negro slave as

¹ Old Acts of Va. 348; Rev. Code 199, 200; Act of Jan. 21, 1801, sect. 4.

a witness for the defendant. The Court inclined to think that the slave could not be a witness against her, and therefore not a good witness for her, and refused the summons."

McCall v. Eve, 15 Fed. Cas. 1232 (1 Cranch C. C. 188), November 1804. "the slave secreted himself in the forecastle, and was not discovered for five or six hours after the vessel had sailed; the captain landed him at St. Mary's, in Maryland, and lodged him in jail; and wrote to the owners of the vessel requesting that information might be given to the master of the slave." "Question—Whether the master of the vessel is liable to the penalty [of the act of Virginia¹ for carrying a slave out of the commonwealth], if he did not know that the slave was on board at the time he sailed? . . . Mr. Simms, for defendant. . . the carrying cannot be attributed to the captain unless it was with his knowledge." Fitzhugh, J. *contra*: "The legislature intended to excite vigilance in captains. . . they have never made a knowledge in the exporter necessary to constitute an offence; . . . slaves constitute a large proportion of our property, disposed to escape from our possession; and a disposition having been discovered in captains of vessels to aid them in their attempts, it was found necessary to impose severe penalties. . . The defendant, after discovering he was on board, should have landed him in Virginia, where he could not have claimed his freedom by removal. . . he ought not to presume the negro to have been free. Color and law forbid it."

Bazil v. Kennedy, 2 Fed. Cas. 1096 (1 Cranch C. C. 199), November 1804. Will of Mrs. Turner, who died in 1796: "I will that my slaves be sold by my executors, for the following terms: Bazil for eight years, . . . I will that after the above slaves respectively arrive at the completion of the above terms, they shall be free and their posterity after them at the age of thirty years." "Her husband suppressed the will. Bazil was sold as the property of the husband, by the marshal, to the defendant Kennedy, on the 27th of January, 1802. The will was found and proved June, 1804. This action was brought on the 22d of August, 1804."

Held: "the term began to run from the time of her death, unless some cause should be shown for extending it for a further reasonable time; and that as more than eight years had elapsed . . . the plaintiff is entitled to his freedom."

U. S. v. Prout, 27 Fed. Cas. 625 (1 Cranch C. C. 203), December 1804. "The Court . . . instructed [the jury] . . . that the selling of spirituous liquors to negroes in a public manner, assembled in considerable numbers, and suffering them to drink the same in and about the house on the Sabbath, constitutes it a disorderly house. Verdict for the United States. The defendant had not an ordinary license. Fined \$100."

U. S. v. Coulter, 25 Fed. Cas. 675 (1 Cranch C. C. 203), December 1804. "Indictment for keeping a disorderly house. . . Coulter had a license to keep a tavern; . . . The Court: The license does not authorize the defendant to sell to slaves or negroes on a Sunday; it is therefore no

¹ Act of Dec. 17, 1792. Rev. Code, P. and P. ed., p. 195.

justification as to those facts. The practice of selling spirituous liquors in a public manner to negroes and slaves, assembled in considerable numbers, and suffering them to drink in and about the house on the Sabbath, constitutes the offence of keeping a disorderly house. Verdict guilty. Fined \$10."

U. S. v. Brown, 24 Fed. Cas. 1246 (1 Cranch C. C. 210), December 1804. "Indictment [against Scipio Brown] for stealing a pair of boots, . . . Verdict guilty. Sentence, twenty stripes, and one dollar fine."

U. S. v. Fisher, 25 Fed. Cas. 1086 (1 Cranch C. C. 244), July 1805. Indictment against a free white man "for beating prisoner's wife. . . Lucy Butler, a black woman, was offered as a witness on the part of the United States. Mr. Threlkield having sworn that she had always passed for a free woman for many years, the court permitted her to be sworn to the jury. *Quaere*. See the act . . . of Maryland (1717, c. 13, sect. 2)."

U. S. v. Lindsay, 26 Fed. Cas. 971 (1 Cranch C. C. 245), July 1805. Lindsay, "being a shopkeeper, sold liquors to slaves on Sundays," Held: "the practice of selling spirituous liquors in a public manner to negroes assembled in considerable numbers, and suffering them to drink the same in or about the house on a Sabbath day, constitutes the offence of keeping a disorderly house."

Voss v. Howard, 28 Fed. Cas. 1301 (1 Cranch C. C. 251), July 1805. Assault and battery on plaintiff's servant, *per quod servitium amisit*. "Joseph Cole, a mulatto slave, . . . hired himself, with his owner's permission, in the city of Washington, to Nicholas Voss, by the month; the said negro received the wages for his labor, and lived, not with Mr. Voss, but with his own wife, a free white woman, and came daily to his labor; that an affray and fight took place between the defendant and said Cole; that the defendant struck and beat the said Cole, but not so as to occasion any loss of labor to the said Voss." Judgment for the defendant: "The loss of service is the gist of the action, and the statement admits that there was no loss of labor, which the court considered as synonymous with service."

U. S. v. Scholfield, 27 Fed. Cas. 975 (1 Cranch C. C. 255), November 1805. "Indictment for false imprisonment of James Carter, a mulatto boy. . . the boy (who was a free mulatto) was bound to the defendant in Maryland. The defendant brought him to Alexandria . . . [and] sold his time to Hodgkins."

Lee v. Lacey, 15 Fed. Cas. 209 (1 Cranch C. C. 263), November 1805. Action "upon the case upon the statute of Virginia of 25th January, 1798, 6, 7, by the owner of a slave, against the master of a Georgetown packet-boat, for damages for carrying the plaintiff's slave from Alexandria to Georgetown, whereby the plaintiff lost the service of the slave from the 29th of April to the 21st of May," "Verdict for the plaintiff, 120 dollars."

London v. Scott, 15 Fed. Cas. 940 (1 Cranch C. C. 264), November 1805. See *Scott v. London*, p. 158, *infra*.

Scott v. Negro London, 3 Cranch 324, February 1806. "Negro London brought an action of assault and battery against Scott, to try his right to freedom."¹ Scott's [325] "father, claiming to own the plaintiff as his slave, brought him from Maryland into Alexandria, in July, 1802, without the knowledge or consent of the defendant, and hired him out in Alexandria until his death, which happened about Christmas in the same year." He "never took the oath required by the 4th section of the act. The defendant, in March, 1803, got possession of the plaintiff, and in April following, being then a resident of Maryland, but intending to remove to Alexandria, hired him out in Alexandria, claiming him as his slave, . . . The defendant came from Maryland in June, 1803, and on the 5th of July next following, took the oath prescribed by the 4th section of the act." Negro London resided in Alexandria from the time of his importation in July 1802 "until the present time, except for about three weeks in April, 1803." The court below held [326] "that the oath ought to have been taken within sixty days after the removal of the negro," and directed the jury [331] "that, under the circumstances stated, the plaintiff below was entitled to his freedom,"

Judgment reversed by the Supreme Court: [329] "within the year from the time the negro was brought in, and also within the sixty days from the time the plaintiff in error removed to Alexandria, the oath prescribed by the law was taken. . . the acts of bringing the negro into the state, and of removing into it" need not "be concomitant." [Marshall, C. J.]

Ex parte Anthony, 1 Fed. Cas. 1045 (1 Cranch C. C. 295), March 1806. "*Habeas corpus*. . . the prisoner was committed by a warrant under the hand of Mr. Justice Faw, . . . 'Alexandria County, ss. You are hereby required to receive into your custody negro Anthony, who was brought before me . . . as a runaway, said to be a slave, the property of Mr. Richard West, of Prince George's county, Maryland, and him safely keep until he be thence discharged according to law. . . 1806' . . . The prisoner was discharged, on consideration of the Acts of Assembly, of December 26, 1792, p. 246; December 10, 1793, pp. 315, 316; and January 21, 1801, p. 412."

Moses v. Dunnaho, 17 Fed. Cas. 892 (1 Cranch C. C. 315), June 1806. "Petition for freedom. Mr. Caldwell, for petitioner, moved the court for leave to the petitioner to go in search of evidence in support of his petition. Refused. The Court said they knew no law which authorized them to give such leave. The usual recognizance is to permit the petitioner to attend court from time to time."

Foster v. Simmons, 9 Fed. Cas. 579 (1 Cranch C. C. 316), June 1806. "Petition for freedom on the ground that the petitioner . . . on 27th of February, 1801, resided in that part of the District of Columbia which was ceded by Virginia . . . with . . . his owner, who sold him to Mr. Payne, who sold him to the defendant in Washington county, in this

¹ Act of Assem. of Va., Dec. 17, 1792, P. P. 186, sects. 2-4.

District, and sent him . . . into this county." Counsel for the petitioner: "a bringing from Alexandria county to Washington is the same as from Virginia to Maryland." Held: "It was the intention of congress¹ to continue in force in this part of the District all the laws² as they then existed."

U. S. v. Terry, 28 Fed. Cas. 41 (1 Cranch C. C. 318), June 1806. "Indictment [against the negress Terry, a free woman] for assault and battery on Mr. Foxon. A slave was offered as witness for the traverser. . . The Court permitted the slave to be sworn. Verdict, not guilty."

Ex parte Letty, 15 Fed. Cas. 411 (1 Cranch C. C. 328), July 1806. "*Habeas corpus* upon the petition of a man claiming to be the master of the negro Letty, committed to jail by a magistrate, upon a complaint made that she was entitled to her freedom under the law of Virginia, December 25, 1795³ . . . The negro had been confined in jail in Washington, and, while in jail there, was sold by B. G. Orr to Henry Dawes, of Georgetown, by him brought to Alexandria, and sold to Dozier of South Carolina. She had petitioned for her freedom in Washington county, where the petition was still pending. . . The court . . . refused to suffer the master to take the negro away, unless upon giving security not to take her out of the District of Columbia, etc., according to the Maryland practice, and remanded her."

Ben v. Scott, 3 Fed. Cas. 154, 155 (1 Cranch C. C. 350, 365, 407), October and December 1806, June 1807. See *Scott v. Ben*, p. 163, *infra*.

Harrison v. Evans, 11 Fed. Cas. 648 (1 Cranch C. C. 364), December 1806. [649] "a mulatto woman slave, named Nell" was carried away in the stage-coach of the defendant who "had ordered the driver to call at Mrs. Thompson's and take a servant, who proved to be the slave in question." She was thereby lost to the plaintiff. The court instructed the jury, "that if the slave had a written authority from the plaintiff, without limitation of time or place, to seek for a new master, the plaintiff could not recover in this action, although such authority was not shown to the defendant or his agents. Verdict for the plaintiff, \$180. New trial refused."

Minchin v. Docker, 17 Fed. Cas. 437 (1 Cranch C. C. 370), December 1806. "Charles Cavender, a black man, was admitted to testify . . . after witnesses had testified that Charles had acted publicly for eleven years as a free man, and was generally reputed as such. Duckett, Circuit Judge, said that persons born free, that is, descended from a white woman, were not, in Maryland, held to be negroes; and were permitted to testify against white persons. And although color is *primâ facie* evidence of slavery, yet the fact that the witness had, for a long time, publicly acted as free, turned the presumption the other way, and was *primâ facie* evidence that he was born of a white woman. Cranch, Chief Judge, concurred."⁴

¹ 2 Stat. at L. 103.

² Act of Md., 1796, ch. 67.

³ Rev. Code, 1803, p. 346.

⁴ See Acts of Md., 1717, ch. 13, sect. 2; 1796, ch. 67, sect. 5.

Burr v. Dunnahoo, 4 Fed. Cas. 806 (1 Cranch C. C. 370), December 1806. "the petitioner relied on the act of Maryland, 1796, c. 67, and that he was brought in for sale. The evidence was that the negro came from Virginia to Mr. Nourse, more than one year after Mr. Nourse came here, and was sold by Mr. Nourse to . . . Dunnahoo. Verdict for the petitioner."

U. S. v. Shorter, 27 Fed. Cas. 1072 (1 Cranch C. C. 371), December 1806. Indictment against William Shorter, "a free black man." A slave was admitted as a witness. Verdict, not guilty.

U. S. v. Butler, 25 Fed. Cas. 212 (1 Cranch C. C. 373), December 1806. Indictment "for beating a woman of color (a slave) to her damage, . . . Mr. Hamilton, for the traverser, contended that beating a slave was not an indictable offence. *Curia, contra*. The property which a man has in a slave is not of the same nature as his property in a horse. It is only a right to his perpetual service."¹

Ex parte Amy, 1 Fed. Cas. 799 (1 Cranch C. C. 392), April 1807. "Negro Amy, on her petition for freedom, having . . . 1805, been delivered to the custody of the marshal by order of the court, and none of the material facts stated in the petition being proved . . . to the satisfaction of the court, it is ordered that she be delivered to Joseph Thomas, who is stated . . . to have held her in slavery, upon his paying the marshal's fees for her custody,"

U. S. v. Walker, 28 Fed. Cas. 388 (1 Cranch C. C. 402), June 1807. "Indictment for stealing wood. . . the wood was delivered to the prisoner (or rather suffered to be taken) by the owner's servant, a slave. The Court . . . directed the jury that if they should be satisfied that there was a collusion between the servant and the prisoner, with intent to commit a theft, the fact of the delivery does not alter the case, but it is still a felony."

Fidelio v. Dermott, 8 Fed. Cas. 1175 (1 Cranch C. C. 405), June 1807. "Petition for freedom. The petitioner proved by Lund Washington that he was sold by him to James R. Dermott, in April, 1800, upon the express condition that he should be free at the expiration of the term of six years from the sale; and the price paid (£80) was much less than if the sale had been for life." [1176] "the will of James R. Dermott . . . bequeathed the petitioner his freedom after a service of four years." There was "a codicil, by which the testator ordered his 'negroes,' (generally), to be sold,"

Held: the codicil does not revoke the bequest of freedom, "because, at the time of making the codicil, there were three years unexpired of the time of his service; which might be sold, and so make the codicil consistent with the will," Verdict for the petitioner.

Mulatto Lucy v. Slade, 15 Fed. Cas. 1091 (1 Cranch C. C. 422), July 1807. "Trespass, for assault and battery and false imprisonment, to try the right of freedom. E. J. Lee, for defendant, offered a deed of gift of

¹ See pp. 190, 191, *infra*, *U. S. v. Lloyd, contra*.

the plaintiff by Colonel William Lyles to Miss Ann Lowery, whom W. H. Lyles afterwards married, acknowledged before . . . a justice of the peace . . . The Court decided that it was not evidence, unless proved by witnesses. . . . The Court also allowed the plaintiff to give evidence of an importation by Colonel William Lyles, . . . whereupon the defendant gave in evidence a certificate of an oath taken by William H. Lyles; but the Court instructed the jury that the said oath was not in compliance with the Virginia act¹ . . . unless taken within sixty days after the removal of W. H. Lyles."

Lee v. Ramsay, 15 Fed. Cas. 224 (1 Cranch C. C. 435), July 1807. See *Ramsay v. Lee*, p. 162, *infra*.

Negro Jenny v. Crase, 13 Fed. Cas. 547 (1 Cranch 443), July 1807. "Bill for injunction to prevent the defendant from taking away the plaintiff out of this county, until he appears and answers a suit at law to try the right of freedom. Injunction refused. Defendant not a resident of the county of Alexandria, nor of the District of Columbia. The plaintiff merely states her apprehension."

U. S. v. King (a Negro slave), 26 Fed. Cas. 786 (1 Cranch C. C. 444), November 1807. Indictment "for highway robbery of John Graham, and taking from him his watch. . . . Verdict, guilty of the robbery, but not in a highway. The Court sentenced him to be burnt in the hand and whipped with one hundred stripes."²

U. S. v. Milly Rhodes (a slave), 27 Fed. Cas. 794 (1 Cranch C. C. 447), November 1807. Indictment "for stealing a piece of Russia linen, the property of Mr. Vowell."

Held: Mr. Vowell is not a competent witness, for "the act of congress under which she is indicted makes the fine a necessary part of the punishment, and Mr. Vowell will be entitled to one half of the fine."

Crease v. Parker, 6 Fed. Cas. 791, 792 (1 Cranch C. C. 448, 506), November 1807, July 1808. [792] "an action brought against a free negro for money lent to him while a slave, to enable him to purchase his freedom." He "was manumitted in due form of law on the 30th of March, 1803. . . . defendant did, in the month of November, 1806, subsequent to the commencement of this suit, acknowledge . . . that he . . . was indebted to the plaintiff in the sum of £24, and would be able to pay it by the time a judgment was rendered against him." Judgment for the defendant.³

Wilson v. Kedgeley, 30 Fed. Cas. 138 (1 Cranch 477), December 1807. "Trespass *vi et armis*, for beating his slave, whereby he lost his services. Mr. F. S. Key moved in arrest of judgment, . . . Motion overruled."

Negro Reuben Reason v. Bridges, 20 Fed. Cas. 370 (1 Cranch C. C. 477), December 1807. "Petition for freedom. The defendant . . . challenged Mr. Smith . . . for favor. . . . The court refused to suffer Mr. Smith to be examined on oath as to . . . whether the Methodists had religious scruples as to the legality of slavery. A witness . . . testified that

¹ Act of Dec. 17, 1792, p. 86, sect. 4.

² Act of Assem. of Va., Dec. 17, 1792, p. 190, sect. 34.

³ Act of Va., Dec. 17, 1792, ch. 103, sect. 36, p. 191.

it was not an essential tenet of their religion that slavery was contrary to the divine law; but some of them were of that opinion."

Ramsay v. Lee, 4 Cranch 401, February 1808. Action of detinue for a slave. "Mrs. Gordon, being the owner of the slave in 1784, made a verbal gift of him to the defendant Ramsay, who was then only eight years old, and possession accompanied the gift; the slave remained with the defendant and his mother, Mrs. Ramsay, in the family of Wilson, until the year 1790, when Mrs. Ramsay, (claiming the slave as residuary legatee under the will of Mrs. Gordon, under the idea that the parol gift to her son was void,) by deed . . . conveyed the slave to Wilson," in whose family Ramsay and his mother and the slave continued to live from the year 1784 till the year 1805, when Ramsay took the slave away "and has ever since detained him. . . The court below . . . instructed the jury, 'that if such a verbal gift was made to the defendant . . . and such possession given . . . the gift is void in law,'¹ . . . verdict and judgment . . . against the defendant," Affirmed: [403] "This court gives no opinion as to the title acquired by such possession."

Davis v. Baltzer, 7 Fed. Cas. 111 (1 Cranch C. C. 482), June 1808. The slave, Harry Davis, was "brought into the state of Maryland, from Virginia, by Daniel Dulany, in the year 1797;" and "was sold by Dulany within fourteen months after he was brought into Maryland."

Held: "the master's entry of the slave, with the clerk of this court, made this day, was not a compliance with the act of Maryland, 1796; . . . and that it ought to have been made with the clerk of the court of the county into which the slave was first brought. . . Verdict for the petitioner."

U. S. v. Mullany, 27 Fed. Cas. 20 (1 Cranch C. C. 517), December 1808. "Indictment for assault and battery. The defendant was a white man." "Several free-born negroes and mulattoes are offered as witnesses to support the prosecution. . . [22] I am clearly of opinion, that free-born negroes, not in a state of servitude by law, are competent witnesses in all cases, or rather than color alone does not disqualify a witness in any case."² [Cranch, C. J.]

U. S. v. Hill, 26 Fed. Cas. 318 (1 Cranch C. C. 521), December 1808. "Indictment for stealing a gold watch. The defendant [Peggy Hill] was a free-born mulatto, not subject to any term of servitude by law." Charity, a slave, was offered as a witness against the prisoner. Held:³ not a competent witness. "Verdict, 'Not guilty.'"

Nan v. Moxley, 17 Fed. Cas. 1147 (1 Cranch C. C. 523), December 1808. Petition for freedom by the negress Nan and children. "Affidavit of the negro Charles, a manumitted negro, that his wife Nan . . . was about to be removed out of the District. The Court . . . allowed a *subpoena*, returnable immediately, to answer the petition just filed by Mr. F. S. Key."

¹ Act of Va., 1758. 7 Stat. at L. 237, ch. 5.

² Act of Assem. of Md., 1717, ch. 13.

³ Acts of Assem., 1717, ch. 13, and 1751, ch. 14, sect. 4.

Joice v. Alexander, 13 Fed. Cas. 907 (1 Cranch C. C. 528), December 1808. Petition for freedom by Clem Joice. Wright, who was called as a juror, was challenged because he had declared that "they had better not summon him on negro causes, for he would free them all." "Mr. Caldwell, for petitioner, asked the witness what was the general reputation of the neighborhood as to the condition of Ann Joice, who was alleged to have been brought into this county by Lord Baltimore, *viz.*, whether she was a free white woman. . . the Court refused to permit it to be asked, . . . [908] admitted the copy of the deposition [of Thomas Lane, in *Mahoney v. Ashton*¹] to be read in evidence to the jury, as the declaration of a deceased person. Verdict for defendant."

Scott v. Negro Ben, 6 Cranch 3, February 1810. The petitioner claimed his freedom on the ground that he had been imported into Maryland, contrary to the act of 1783. The lower court refused [4] "to admit, as evidence, two certificates made during the trial, the one by the collector of the customs and naval officer of the United States, . . . and the other by a collector of taxes . . . that Scott [the master of the slave] had . . . (16th June, 1807), by his own oath, proved, to the satisfaction of each of those officers, respectively, that Ben was a resident of the state of Virginia . . . three whole years next preceding the time when the said mulatto Ben was brought into the state of Maryland."

Held: [8] "the fact of the residence of the plaintiff below within the United States was open for examination, even had his master omitted entirely to make the proof of that residence before the naval officer, or collector of the tax, and . . . the circuit court erred in refusing to admit testimony respecting that fact." [Marshall, C. J.]

Thomas v. Scott, 23 Fed. Cas. 970 (2 Cranch C. C. 2), June 1810. "Petition for freedom. . . Scott, offered to appear and disclaim all right of property in the petitioner at the time of service of the *subpoena* or any time since. Mr. Law, for the petitioner, . . . suggested that Mr. Scott, knowing that a petition was filed, sold and conveyed away the negro before service of the *subpoena*."

Priscilla Queen v. Neale, 20 Fed. Cas. 130 (2 Cranch C. C. 3), June 1810. "Petition for freedom. The declaration of the ancestor, while held as a slave, cannot be given in evidence, to prove that the ancestor came from England. . . A witness . . . stated that he heard a deceased person say that the ancestor was free. . . the court . . . permitted it to be read to the jury, as evidence that she was in fact free, that is, that she was not actually holden in slavery. The court . . . refused to instruct the jury that Jiam's declarations,² that the ancestor was a free woman, and sold only for seven years, were incompetent to prove the petitioner's title to freedom; and instructed the jury that those declarations were admissible evidence, to prove that she was a free woman."

¹ P. 53, *supra*.

² See *Mima Queen v. Hepburn*, pp. 164, 165, *infra*.

Mima and Louisa Queen v. Hepburn, 20 Fed. Cas. 130 (2 Cranch C. C. 3), June 1810. "Petition for freedom. . . The Court admitted a free-born black to give evidence. . . Verdict for the defendant."¹

Newman v. Davis, 18 Fed. Cas. 98 (2 Cranch C. C. 16), December 1810. "Trespass *vi et armis* for assaulting and shooting the plaintiff's slave."

Bell v. Hogan, 3 Fed. Cas. 107 (2 Cranch C. C. 21), June 1811. "Trespass [by Hogan against Bell for] assault, battery and false imprisonment. . . the defendant took up the plaintiff as a runaway, and carried him before a justice of the peace."

Held: I. if a colored man "was born a slave, his being permitted to go at large without restraint, and to act as a free man, was no evidence of his being free." II. if the plaintiff's freedom "was not so notorious that the defendant might be presumed to know it, then the defendant is not liable . . . if he used no unnecessary violence," "the plaintiff's color was *prima facie* evidence of his being a slave, and justified his being taken up under a suspicion of his being a runaway."

Davis v. Forrest, 7 Fed. Cas. 129 (2 Cranch C. C. 23), June 1811. Petition for freedom. Rosamund Bentley, the petitioner's aunt, had recovered her freedom in a suit against Addison. The court admitted the record "as evidence, to prove the freedom of Mary Davis, the ancestor of the present petitioner," and "also suffered the depositions of witnesses, now dead, which had been taken in that suit, and made part of that record, to be read in evidence as hearsay. . . also admitted in evidence the record of a recovery by the petitioner's sister, Susan Davis, of her freedom, on the ground of having been free-born. Verdict for the defendant."

U. S. v. Thomas, 28 Fed. Cas. 78 (2 Cranch C. C. 36), December 1811. [79] "Indictment for selling negro Flora as a slave for life, who was entitled to freedom at a certain age. . . The defendant offered evidence that he had informed . . . the *cestui que* trust, before the execution of the deed, that Flora was not a slave for life."

Held: "in a criminal case, parol evidence might be given to explain the intention, the *quo animo*, with which the deed was made, and to prove that the defendant only meant to sell his right to her service during the term."

Thompson v. Carbery, 23 Fed. Cas. 1028 (2 Cranch C. C. 39), December 1811. A female slave was valued at \$425.

Wood v. John Davis, 7 Cranch 271, March 1812. "John Davis and others, were children of Susan Davis, a mulatto woman, who had obtained a judgment for her freedom in a suit which she had brought against Caleb Swann, to whom she had been sold by Wood . . . her petition stated that she was born free, being descended from a white woman;" [272] "Duvall, J. stated that in all the petitions which he filed in Maryland, in the cases of the Shorters, the Thomases, the Bostons, and many others, he always stated their title at large, tracing it up to a free white woman;

¹ Affirmed by the Supreme Court of the United States. 7 Cranch 290.

and after judgment in those cases, the Courts always held, that the subsequent petitioners who claimed under the same title, were only bound to prove their descent." [273] "March 10th . . . All the Judges being present, Marshall, Ch. J. Stated that the opinion of the Court to be, that the verdict and judgment in the case of Susan Davis against Swann, were not conclusive evidence in the present case. There was no privity between Swann and Wood; . . . Wood had a right to defend his own title, which he did not derive from Swann." Judgment reversed.¹

U. S. v. Butler, 25 Fed. Cas. 213 (2 Cranch C. C. 75), June 1812. Indictment for arson in burning a stable. A slave was offered as a witness. "Mr. Key, for defendant [Minta Butler, a free black woman], objected that he was not a competent witness against a free negro in a capital case. Mr. Jones admitted the objection to be good. Mr. Key then objected to free negroes as witnesses against the prisoner, and cited the Maryland act of 1717, c. 13, sect. 3. But the Court said that only free negroes, during their term of servitude by law, or mulattoes, during their term of servitude by law, were excluded by that act."

Lewis v. Spalding, 15 Fed. Cas. 500 (2 Cranch C. C. 68), December 1812. The plaintiffs charged that the defendant conspired to kidnap their slave, and "by false pretences, procured a warrant to have the slave apprehended and delivered to the defendant; and hired persons to seize and carry away the slave out of the peaceable possession of the plaintiffs, . . . by means of which . . . conspiracy the plaintiffs were put to great labor, expense . . . in watching and protecting their said slave, and were deprived of his labor"

U. S. v. Patrick, 27 Fed. Cas. 460 (2 Cranch C. C. 66), January 1813. "The defendant, a slave, was convicted of an attempt to ravish a white woman. The indictment was under the act of assembly of Maryland, 1751, c. 14, sect. 2. Judgment of death was entered on the 30th of January, 1813, and executed on the 11th of March. The slave was valued by the court at 400 dollars, according to the 7th section of the act."

Mima Queen and child² v. Hepburn, 7 Cranch 290, February 1813. Petition for freedom. Hearsay evidence was introduced in the court below [292] "to prove that a certain ancestor came from England." "Caleb Clarke's deposition, as to what he heard his mother say, was admitted, but, as to what he heard his mother say her father said, was rejected." The lower court overruled [291] "part of the deposition of Freeders Ryland, which stated what he had heard Mary, the ancestor of the petitioners, say³ respecting her own place of birth and residence." [294] "Richard Disney . . . deposed that he had heard a great deal of talk about Mary Queen, the ancestor of the Plaintiffs, and has heard divers persons say that Captain Larkin brought her into this country, and that she had a great many fine clothes, and that old William Chapman took her on shore once, and that no body would buy her for some time, until

¹ See *Davis v. Wood*, p. 168, *infra*.

² They "were descended from a yellow woman, a native of South America." 1 Wheaton 7.

³ See *Priscilla Queen v. Neale*, p. 163, *supra*.

at last James Carroll bought her." Thomas Warfield deposed "that John Jiams . . . told him that Mary the ancestor of the Plaintiffs was free and was brought into this country by Captain Larkin, and was sold for seven years." These depositions [293] "were rejected by the Court" Verdict and judgment were rendered for the defendants.

Judgment affirmed: [295] "hearsay evidence is incompetent to establish any specific fact, which fact is in its nature susceptible of being proved by witnesses who speak from their own knowledge. . . [297] This Court is not inclined to extend the exceptions further than they have already been carried." [Marshall, C. J.]

Duvall, J. dissented: [298] "In Maryland the law has been for many years settled that on a petition for freedom where the petitioner claims from an ancestor who has been dead for a great length of time, the issue may be proved by hearsay evidence, if the fact is of such antiquity that living testimony cannot be procured. . . the reason for admitting hearsay evidence upon a question of freedom is much stronger than in cases of pedigree or in controversies relative to the boundaries of land. . . the right to freedom is more important than the right of property."

Park v. Willis, 18 Fed. Cas. 1109 (2 Cranch C. C. 83), November 1813. Action on the case "founded on the Virginia laws of December 17, 1792, p. 192, sect. 50, and January 25, 1798, p. 374, sects. 6, 7; . . . The jury . . . found . . . That the defendant, on the 29th of January, 1802, hired the plaintiff's negro slave Anthony, in Alexandria, in the District of Columbia, by the following written agreement: . . . 'until the 1st day of January, 1803, . . . for \$110, and to furnish the said negro with every thing necessary except his clothing and taxes,' . . . the defendant did transport him from the town of Alexandria, in the sloop *Hope*, whereof the defendant was master and owner, into the city of Philadelphia, . . . where the slave made his escape . . . [1110] And if the law be for the plaintiff, they assessed his damages at \$453; . . . the Court . . . was of opinion that the law was for the plaintiff,"

U. S. v. Douglass, 25 Fed. Cas. 896 (2 Cranch C. C. 94), December 1813. "Indictment for larceny. The defendant was a white woman. Nancy Butler, a freeborn mulatto, was permitted to testify for the United States,"¹

U. S. v. Bruce, 24 Fed. Cas. 1279 (2 Cranch C. C. 95), December 1813. "Indictment under the statute of Maryland, 1751, c. 14, for conspiring with Negro Charles to burn Mrs. Love's house, Charles having been convicted and pardoned.² . . . The indictment charged the defendant [Jacob Bruce] as a slave. The statute makes it a capital offence." His counsel offered as evidence of his freedom [1280] "an informal paper, purporting to be an instrument of manumission, and evidence that he was actually set free before the commission of the offence by Mr. John M. Goldsborough, his master, for his faithful services; and a formal deed of manumission, executed after the commission of the offence, agreeably to the provisions of the Maryland law, 1796, c. 67."

¹ "upon the authority of *U. S. v. Mullany* . . . 1808."

² See *U. S. v. Charles*, 25 Fed. Cas. 409 (2 Cranch C. C. 76).

Held: "as between the master and slave, the informal paper, with actual manumission, was valid, and that the defendant could not be convicted as a slave under the act of assembly."

U. S. v. Peter, 27 Fed. Cas. 506 (2 Cranch C. C. 98), April 1814. "the prisoner [the negro Peter], . . . indicted for larceny . . . was entitled to a peremptory challenge of twenty jurors."¹

Simmons v. Gird, 22 Fed. Cas. 157 (2 Cranch C. C. 100), April 1814. The slave Simmons was "brought into Alexandria, whence he sailed on a voyage, and returned to Alexandria, but was not 'kept therein one whole year together, or so long, at different times, as amounted to one year,' unless the time of his sailing on the voyage should be included." Judgment for the defendant.

Emanuel v. Ball, 8 Fed. Cas. 611 (2 Cranch C. C. 101), June 1814. Petition for freedom. Emanuel "was permitted to come from Virginia, to the city of Washington to see his wife, and to return by a certain day; but he stayed some months longer, and was taken up in Washington, by an agent of his owner, but escaped and eloped, and the agent sold him to the defendant, while he was so eloped and while he was in the city of Washington." The Court "instructed the jury that he was not entitled to his freedom under the Maryland law of 1796, c. 67."

Violette v. Ball, 28 Fed. Cas. 1218 (2 Cranch C. C. 102), June 1814. Petition for freedom by the negro Violette against Henry W. Ball. Violette had been [1219] "sent from the city of Washington to Virginia for sale, and, not being sold, brought back to the city, after an absence of eight or nine months." The Court refused to instruct the jury that she was entitled to freedom.

Garey v. Johnson, 10 Fed. Cas. 1 (2 Cranch C. C. 107), December 1814. "Trespass *vi et armis* for beating the plaintiff's slave. The Court instructed the jury that the plaintiff might recover if the defendant unnecessarily, and without sufficient provocation, beat the plaintiff's slave, although the plaintiff did not prove any damage by loss of service."

O'Neale v. Willis, 18 Fed. Cas. 698 (2 Cranch C. C. 108), December 1814. "Assault and battery, by beating the plaintiff's slave. A free colored man was offered by the plaintiff as a witness. The court was divided as to his admission. . . . The witness was not sworn."

U. S. v. Minifie, 26 Fed. Cas. 1272 (2 Cranch C. C. 109), December 1814. "Indictment, for larceny, against [Christopher Minifie] a white man. Mr. Jones, for the United States, offered, as a witness, a black man who had obtained his freedom by being removed from Virginia to Maryland, contrary to the Maryland law of 1796, c. 67. . . . The Court . . . rejected the witness."

U. S. v. Carrico, 25 Fed. Cas. 309 (2 Cranch C. C. 110), June 1815. Indictment² for selling a free person as a slave. "The witness stated that he delivered to the defendant the papers which he had received with the

¹ Act of Va., Nov. 13, 1792, p. 103, sect. 8.

² Under Act of Md., 1796, ch. 67.

woman who was sold, which papers showed that she was bound to serve only three years and nine months. . . A special verdict was found, upon which judgment was arrested."

U. S. v. Tom, 28 Fed. Cas. 200 (2 Cranch C. C. 114), November 1815. "The defendant, a slave, was convicted of manslaughter, and the judgment of the Court (*nem. con.*) was that he should be burnt in the hand by the jailor in open court, and should be publicly whipped with thirty-nine stripes."¹

Negress Sally Henry, by William Henry, her father and next friend, v. Ball, 1 Wheaton 1, February 1816. The petitioner for freedom "being a child, and the slave of the defendant, who resided in Virginia, was, some short time before the month of May, 1810, put to live with Mrs. Rankin, then residing also in Virginia, whose husband was an officer in the marine corps, stationed in the city of Washington. Mrs. R. was to keep the girl for a year, and was to give her victuals and clothes for her services. Some time in May, 1810, Mrs. R. removed to Washington, and brought the petitioner with her, whether with or without the permission of Mr. Ball, is entirely uncertain. . . In October, 1810, Mr. Ball married, and soon after took the petitioner into his possession, and carried her home, he then residing in Virginia."

Judgment for the defendant: the act of assembly of Maryland,² prohibiting the importation of slaves into that state for sale or to reside, does not extend to a temporary residence, nor to an importation by a hirer or person other than the master or owner of such slave.

Negro John Davis v. Wood,³ 1 Wheaton 6, February 1816. The witnesses "had heard old persons, now dead, declare, that a certain Mary Davis, now dead, was a white woman, born in England, and such was the general report in the neighborhood where she lived; and [the petitioners] also offered the same kind of testimony to prove that Susan Davis, mother of the petitioners, was lineally descended, in the female line, from the said Mary; and it was admitted, that said Susan was, at the time of petitioning free, and acting, in all respects, as a free woman; which evidence, by hearsay and general reputation, the court refused to admit, except so far as it was applicable to the fact of the petitioners' pedigree. . . [7] having proved, that the petitioners are the children of Susan Davis, and that she is the same person named in a certain record in a cause wherein Susan Davis, and her daughter Ary, were petitioners against Caleb Swan, and recovered their freedom, the plaintiffs offered to read said record in evidence to the jury, . . connected with the fact that the defendant in this cause sold said Susan to Swan, . . which the court refused to suffer" Judgment against the petitioners, affirmed.

U. S. v. Pickering, 27 Fed. Cas. 528 (2 Cranch C. C. 117), April 1816. "an indictment for dealing with a slave without the consent of his master,"⁴

¹ Act of Va., Dec. 17, 1792, sect. 34, p. 190.

² Act of 1796, ch. 67, sects. 1, 2.

³ See *Wood v. John Davis*, p. 164. *supra*.

⁴ Act of Va., Dec. 17, 1792, p. 188, sect. 16.

. . . The Court . . . decided . . . that an indictment will not lie; the statute having directed the prosecution to be by action on the case by the master "

Ex parte Deane, 7 Fed. Cas. 306 (2 Cranch C. C. 125), November 1816. A motion "for a *habeas corpus* to bring up the slaves of Joseph Deane, who had been committed by the mayor of the town [Alexandria] for the supposed violation of a by-law prohibiting the nightly meeting of slaves," [307] "The lot on which the meeting of negroes was held, was at some distance north " of the limits of Alexandria.

Held: "the common council had no authority to make by-laws operating beyond the limits of the town, . . . and that the corporation could not enforce its by-laws by corporal punishments." [Thruston, J.]

Beverly v. Brooke, 2 Wheaton 100, February 1817. Three slaves were hired to the "master of the brig *Sophila*, then in the county of Alexandria," for a voyage to Amsterdam, or "as a last resort . . . to Liverpool," [101] "these slaves were received on board the vessel as mariners on the usual wages, and without any special contract." The slaves escaped at Liverpool, [105] "and have been totally lost."

U. S. v. Bowen, 24 Fed. Cas. 1207 (2 Cranch C. C. 133), April 1817. "Indictment, at common law [against Henry Bowen, a negro], for stealing a banknote. Verdict, guilty. Judgment arrested; the court . . . being of opinion that it was no offence at common law to steal a banknote."

Thompson v. Clarke, 23 Fed. Cas. 1032 (2 Cranch C. C. 145), December 1817. Petition for freedom "by Jo. Thompson, a negro." "John Thompson by his will dated December 31st, 1804, devised, that if his wife should not have a child within nine months after his death, the petitioner, his slave, should be free after ten years service. The widow renounced the provision made for her by the will and adhered to her legal rights; and the executor assigned to her the petitioner in part of her thirds, their [*sic*] being other personal property enough to satisfy her claim without resorting specifically to the slaves. . . [1033] Verdict for the petitioner, and judgment. Although the title of several other of the slaves depended upon the same will, no writ of error was issued."

Washington v. Wilson, 29 Fed. Cas. 359 (2 Cranch C. C. 153), November 1818. [360] "action upon the case for the value of a slave . . . carried away as a seaman by the defendant and lost. . . The Court . . . refused to suffer evidence to be given that the slave hired himself as a free man to another master of a vessel in a previous voyage, . . . Verdict for the plaintiff, \$400 damages; the slave being supposed to be worth \$800."

U. S. v. Godley, 25 Fed. Cas. 134 (2 Cranch C. C. 153), November 1818. "Indictment at common law for stealing a 'mulatto boy, named William Foote, of the price of 500 dollars, of the goods and chattels of one Fanny Thomas.' . . [1342] The Court . . . quashed the indictment, because it did not aver the boy to be a slave. Mr. Herbert, then moved that the prisoner should be recognized to appear at the next term to answer to a new indictment. But the Court . . . refused; being of opinion that

the decisions of the courts of Virginia, that an indictment at common law, for stealing a slave, cannot be supported, are conclusive upon this court."

Love v. Boyd, 15 Fed. Cas. 992 (2 Cranch C. C. 156), November 1818. Action upon the case against "the marshal of the District of Columbia, for negligently suffering the plaintiff's female slave to escape from his custody to which the slave, who had sued for her freedom, had been committed for safe keeping by order of this court, the owner having failed to give security to have her forthcoming . . . Verdict, for the plaintiff, \$250."

Betty v. Deneale, 3 Fed. Cas. 319 (2 Cranch C. C. 156), November 1818. Held: "the deed of manumission, . . . when it was acknowledged and recorded, . . . related back to the time of its execution."

Slacum v. Smith, 22 Fed. Cas. 316 (2 Cranch C. C. 149), December 1818. Jane H. Slacum hired to Amos Smith [317] "a negro slave . . . to serve as a mariner on the brig *Virginia* . . . on a voyage from Alexandria, D. C., to Lisbon, and thence back to a port in the United States; . . . the said slave, with the plaintiff's . . . consent, subscribed shipping articles . . . That the plaintiff received from the defendant \$25 for one month's wages in advance." At Lisbon "the slave was confined nine days in prison, for disorderly conduct, . . . the brig . . . arrived [in New York] on the 29th of April, 1813; on which day the said slave absented himself from the said brig, without leave of the master . . . and has not since returned." Held: his wages were not forfeited.

Bias v. Rose, 3 Fed. Cas. 328 (2 Cranch C. C. 159), December 1818. The petitioner for freedom was brought into the county of Washington from Maryland by his owner, and "within three years thereafter was mortgaged" The court held [329] "that the law¹ was against the petitioner,"

Contee v. Garner, 6 Fed. Cas. 361 (2 Cranch C. C. 162), December 1818. "The defendant pleaded, that at the time of signing the bond he was a slave, and so *non est factum*, . . . The Court . . . decided that a slave cannot bind himself, at law, to pay money to his master, even for his freedom."

Sarah v. Taylor, 21 Fed. Cas. 431 (2 Cranch C. C. 155), April 1819. On January 8, 1789 Alexander Smith sold to Thomas Taylor "one negro woman named Tamah, about five and thirty years old, to serve him . . . nine years . . . and no longer." Taylor was not to take her out of certain counties "in this commonwealth, during the term aforesaid of her servitude, and, at the end thereof, . . . set free and emancipate the aforesaid negro" Sarah, the daughter of Tamah was born during the nine years of service. Tamah was manumitted but Sarah was detained by Taylor as his slave. She brought a suit for freedom. Judgment for the plaintiff.

Sam v. Green, 21 Fed. Cas. 284 (2 Cranch C. C. 165), April 1819. Held: Sam "did not acquire a right to freedom by being brought into

¹ Act of Md., 1796, ch. 67, sects. 1-3.

Alexandria, and continuing there one year, unless he was continued there a year by one and the same master.”¹

Gusty v. Diggs, 11 Fed. Cas. 128 (2 Cranch C. C. 210), June 1820. “A negro boy, about eight years old, was brought into court by *habeas corpus*, in the custody of Edward Diggs. . . he had been brought into the city of Washington from Maryland, where he had been bound to Diggs to be taught the business of a farmer. Diggs hired him here to a chimney-sweeper. The Court discharged him from his indentures, and ordered him to be bound out again;”

Grant v. Bontz, 10 Fed. Cas. 977 (2 Cranch C. C. 184), November 1820. Bontz sold Grant a slave Celia, who “was not sound, but on the contrary . . . was afflicted with the misfortune of idiocy, . . . the plaintiff . . . paid the defendant \$350 for her . . . although the plaintiff saw her before he purchased her, yet the defendant prevented the plaintiff from speaking with her, under the pretence that she might run away, if she knew that he was about to sell her. . . when she was delivered to the plaintiff and he spoke to her he immediately perceived that she was an idiot, and offered to return her, but the defendant refused to receive her; and the plaintiff lodged her in the jail, where she died in less than a month after the sale. . . [978] judgment was rendered for \$370, according to the verdict.”

Reeler v. Robinson, 20 Fed. Cas. 455 (2 Cranch C. C. 220), November 1820. “plaintiff was only six years old when imported” from Maryland to Alexandria, twenty-four years before. Held: “No presumption [that the importers took the oath required by the Virginia law] could begin to arise against him until he was of full age,”

Garretson v. Lingan, 10 Fed. Cas. 46 (2 Cranch C. C. 236), April 1821. Petition for freedom. Jack Garretson [47] “was carried, by his owner, from Maryland to Virginia, in the year 1784, and kept there several years, and then brought back to Maryland. By the law of Virginia of 17th of December, 1792,² the slave was entitled to his freedom, unless the owner took a certain oath within sixty days after his removal to Virginia.” The court refused to instruct the jury “that after such a lapse of time they have a right to presume that the oath was duly taken agreeably to law.”

U. S. v. Neale, 27 Fed. Cas. 79 (2 Cranch C. C. 241), April 1821. “The Court permitted Edward Pleasants, a black man, to be sworn as a witness for the United States, after proof that he had publicly lived and acted as a freeman for eight years, and was generally reputed to be free.”

U. S. v. Pompey, 27 Fed. Cas. 590 (2 Cranch C. C. 246), May 1821. “Indictment [against the negro Pompey] . . . for enticing away a slave belonging to Judge Washington. Verdict, guilty, and the jury assessed the fine at \$50.”

¹ Act of Dec. 17, 1792.

² P. 186.

Costin v. Washington, 6 Fed. Cas. 612 (2 Cranch C. C. 254), October 1821. Held: the clause in the charter of Washington which gives power to the corporation "to prescribe the terms and conditions upon which free negroes and mulattoes may reside in the city," is applicable only to those persons of color who come to reside in the city after the promulgation of such terms and conditions. [613] "The clause in the charter does not, in itself, seem to be repugnant to the constitution." Nor does the by-law of April 14, 1821, ch. 133, in its prospective operation.

Dunbar v. Ball, 7 Fed. Cas. 1185 (2 Cranch C. C. 261), October 1821. Leonard Dunbar "is a native-born slave of Virginia, and was there purchased by . . . Brunet, . . . March, 1820;" In March 1821 Brunet removed to Georgetown, D. C. About three weeks later Leonard was brought by Brunet's order from Virginia, through Alexandria county, to Georgetown, and was sold in Georgetown to Ball in July 1821. Dunbar brought a petition for freedom.¹ [1186] "Mr. Jones, for defendant, contended . . . under the act of the 24th of June, 1812,² Brunet, as soon as he brought his slave into Alexandria county, which he had a right to do under the act of the 3d of May, 1802,³ had a right to remove him to Washington county, and there exercise over him fully all the rights of ownership. Mr. Taney, for petitioner, contended that the act of . . . 1812, was only applicable to bona fide . . . residents of Alexandria county, not to persons merely *in transitu*. The Court . . . rendered judgment for the petitioner."

Daniel v. Kincheloe, 6 Fed. Cas. 1150 (2 Cranch C. C. 295), April 1822. Petition for freedom. Held: if "the importation of the petitioner into the county of Washington was with the intent that he should be hired to remain a limited time only, . . . it was not such an importation as is within the first section of the Maryland act of 1796, ch. 67."

Brown v. Wingard, 4 Fed. Cas. 438 (2 Cranch C. C. 300), April 1822. "The petition of negro Joseph Brown, stated, that before the year 1818, he then being the slave of Abraham Wingard, . . . entered into an agreement with the said Abraham, at his, the said Abraham's request, for the purchase of his freedom, at and for the sum of nine hundred dollars, . . . the said Abraham immediately suffered the petitioner to go at large and labor for his own use; and in the course of that year he paid the said Abraham \$300, and in the next year, \$550, expressly as the purchase-money of the petitioner's freedom, leaving a balance of fifty dollars due, as appears by the receipt . . . [439] that he brings into court the fifty dollars," but the executrix of Wingard "refuses to manumit him," A. Taney, counsel for defendant: "The petitioner is still a slave, and, in law, incapable of contracting." The court "ordered judgment to be entered up for the defendant."

Scott v. Bartleman, 21 Fed. Cas. 813 (2 Cranch C. C. 313), May 1822. The defendant, Bartleman, hired a negro woman, the slave of Scott, for one year at \$36. "Within ten days after hiring, she was arrested and

¹ Act of Md., 1796, ch. 67.

² 2 Stat. at L. 757.

³ 2 Stat. at L. 194.

imprisoned upon a warrant for theft, and kept in custody the rest of the year." Held: "the loss of time and service must fall on the defendant."

Somboy v. Loring, 22 Fed. Cas. 788 (2 Cranch C. C. 318), May 1822. "Trespass *vi et armis* [by negro Sampson Somboy against Solomon Loring], for taking away the plaintiff's son and servant *per quod servitium amisit*. . . [789] judgment for the defendant, . . it was necessary for the plaintiff . . to prove either actual force, or a knowledge on the part of the defendant that the young man was under age."

Humphries v. Tench, 12 Fed. Cas. 883 (2 Cranch C. C. 337), October 1822. "Petition for freedom. The defendant offered to read the depositions in a record of Charles county court in Maryland, in a suit for freedom, by one of the same family of negroes, as hearsay, in relation to the common ancestor of that family. . . The Court . . said that the depositions could not be read in evidence, to prove the condition of the ancestor, (Airy.) Verdict for the petitioner."

Matilda v. Mason, 16 Fed. Cas. 1106 (2 Cranch C. C. 343), April 1823. See *Mason v. Matilda*, p. 179, *infra*.

Jordan v. Sawyer, 13 Fed. Cas. 1101 (2 Cranch C. C. 373), April 1823. [1102] "the petitioner, early in January, 1823, was brought into this county, from Wheeling, in Virginia, by . . Peyton, who never has been a resident of this county or district, and who sold the petitioner to the defendant in this county . . in March, 1823. That it was agreed . . that the petitioner should be sent by the defendant, forthwith, to Norfolk in Virginia, which was done; . . when he was put on board the steamboat for Norfolk, the purchase-money was paid . . petitioner returned in the steamboat, and filed his petition.¹ . . the case was settled by the parties."

Gardner v. Simpson, 9 Fed. Cas. 1202 (2 Cranch C. C. 405), April 1823. Petition for freedom. Simpson "offered evidence to prove that the petitioner [Vincent Gardner] was his slave, born in Virginia, and that he hired the petitioner to the petitioner's father, Tom Gardner, for the year 1821, who then lived in Virginia. And that in 1822, he hired him to one Barnes, for the petitioner's father, not knowing that the father was about to remove into the county of Washington in the District of Columbia, which he did in December, 1821, taking the petitioner with him, where he remained" a year, returning to Simpson's house in Virginia December 25, 1822. The petitioner "afterwards returned to Washington,"

Held: the petitioner is not entitled to his freedom under the Maryland act of 1796, ch. 67, by being hired to a resident of the county of Washington for a limited time only.

U. S. v. Thompson, 28 Fed. Cas. 89 (2 Cranch C. C. 409), May 1823. A constable came "to take the defendant upon a warrant . . upon a charge . . of having violently beaten negro Griffin, the slave of Jonah Thompson."

U. S. v. Randall, 27 Fed. Cas. 696 (2 Cranch C. C. 412), May 1823. "Indictment [against the negro Randall] for a rape"

¹ Act of Md., 1796, ch. 67, sects. 7-11.

U. S. v. Ellick, 25 Fed. Cas. 999 (2 Cranch C. C. 412), May 1823. Indictment "of a slave, for an assault and battery upon . . . a white man. The jury found him guilty, and assessed the fine at \$23. The Court arrested the judgment, being of opinion that neither the court nor jury could assess a fine or inflict corporal punishment upon a slave, and that an adequate corporal punishment could only be inflicted by a justice of the peace. . . . ordered the marshal to take the prisoner before . . . a justice of the peace, to be dealt with according to law, and that the verdict and this order be certified to the said justice."

Amelia v. Caldwell, 1 Fed. Cas. 596 (2 Cranch C. C. 418), October 1823. Middleton, the master of the slave Amelia in Maryland, removed to Fredericksburg, Virginia, to reside, and in 1820 took Amelia there, "with an agreement and understanding . . . that if she did not like to continue in Fredericksburg, she should return and get a master, either in Maryland or the district, as she might choose. That after staying some time [one year] in Fredericksburg," she "became dissatisfied, and expressed her desire to return; . . . Middleton . . . gave her a pass authorizing her to proceed from Fredericksburg to Washington. That in some few weeks afterwards, the said Middleton came to Washington, . . . and sold her to the defendant." Held: the petitioner is not entitled to her freedom.¹

Smallwood v. Worthington, 22 Fed. Cas. 367 (2 Cranch C. C. 431), October 1823. [368] "the defendant promised that the servant, whose time of service the plaintiff had bought of the defendant, had three years to serve, when, in truth, she had only one year to serve." "the said slave . . . was entitled to her freedom in one year,"

U. S. v. Richard, 27 Fed. Cas. 798 (2 Cranch C. C. 439), November 1823. Negro Richard was indicted for stealing planks, the property of McGuire. "The prisoner, upon a promise that he should not be prosecuted, was induced to confess his guilt, . . . and to select those [planks] which belonged to Mr. McGuire. . . . The Court said that the fact that the prisoner selected Mr. McGuire's lumber was evidence against him. Verdict, 'Guilty.'"

U. S. v. Brockett, 24 Fed. Cas. 1241 (2 Cranch C. C. 441), November 1823. "The indictment charged that the defendant . . . 'did make an assault [upon his slave Nat], and . . . did . . . cruelly . . . cut, slash, beat, and ill-treat [him], . . . The jury found the following verdict: . . . 'not guilty . . . but recommend that the court should express their strong disapprobation of similar conduct.'"

Tarlton v. Tippett, 23 Fed. Cas. 702 (2 Cranch C. C. 463), April 1824. "Petition for freedom. Mr. Alexander Scott had been appointed by the president of the United States, an agent to Caraccas in South America. He went with an intention to reside permanently, if certain events should happen. He took the petitioner with him, and she remained there with him

¹ Act of 1796, ch. 67.

more than a year. The event not having occurred upon which his decision to reside there permanently was to be founded, he returned to reside here, and brought her with him." The court instructed the jury "that if they find . . . that, at the time of his being compelled to leave Caraccas, he had not actually settled himself as a permanent resident there, but still remained there undecided as to the duration of his residence, . . . then the bringing the petitioner back . . . to Maryland and from Maryland to this District, was not an importation against the act of assembly."¹

Fanny v. Kell, 8 Fed. Cas. 995 (2 Cranch C. C. 412), May 1824. In 1796 Sims "purchased Dorcas, the mother of the plaintiff, for a term of years," of Smith. "That Smith voluntarily promised to execute a deed of emancipation for the rest of her life. . . but the deed of emancipation was, from inadvertence, neglected to be executed." After some years Sims sold his right for the unexpired term to "Carrington, with whom the said Dorcas served out her term, and was then discharged by him as a free woman. During her servitude with Carrington, she had two children, one of whom, the plaintiff Fanny, is now in the possession of . . . Kell, who purchased her . . . with notice of the rights of the said Fanny." Judgment for the defendant; . . . upon the authority of *Brown v. Wingard*² . . . 1822."

U. S. v. Ware, 28 Fed. Cas. 404 (2 Cranch C. C. 477), May 1824. "Betsey Ware, a free colored woman, was indicted for burglary"

Alice v. Morte, 1 Fed. Cas. 408 (2 Cranch C. C. 485), May 1824. Alice, a mulatto woman, "stated that she was formerly held as a slave in Maryland, by one Samuel Edelin, in whose family she continued till she was sixteen years of age, and where she was kindly treated. That Edelin was an unmarried man, and about five years ago gave her what she supposed was a deed of emancipation, an[d] was suffered by him to go at large, as a free person, which she did for some time, in his immediate neighborhood, with his knowledge and approbation. That, with his knowledge, she then went and resided in Washington, D. C., where she continued unmolested until the year 1819. That she lost her paper which was given her by Edelin, when she was discharged from his service, . . . That she was lately seized, thrown into jail, and sold to the defendant, Peter Morte, who was informed of her claim to freedom, and who is about to remove her to some part of the southern or western country." The deposition of John B. Edelin fully confirmed these facts.

Decreed: "That the complainant should be emancipated and set free, and that the defendant Edelin should make, execute, and deliver to her a proper and full deed of emancipation, duly prepared for record; and that the defendant Morte should be perpetually enjoined from exercising, or in any manner setting up, any claim to the complainant."

Rebecca v. Pumphrey, 20 Fed. Cas. 384 (2 Cranch C. C. 514), January 1825. Pumphrey "had attempted to carry the petitioners [Rebecca and

¹ Act of Md., 1796, ch. 67.

² P. 172, *supra*.

her three children] away, after notice of their having filed their petition for freedom, the judge, upon the urgency of the case, directed the marshal to take them into custody. The defendant refused to give the security required by law for the forthcoming of the petitioners to prosecute their petition, and they were kept in prison until the trial, viz. from November 26, 1824, to January 8th, 1825, forty-four days, at an expense of thirty-four cents a day for each, and one dollar each for commitment and release; making \$63.84. Verdict for the petitioners. . . The Court . . . ordered this expense to be taxed in the bill of costs against the defendant."

Peter v. Cureton, 19 Fed. Cas. 312 (2 Cranch C. C. 561), April 1825. "Anthony Addison, being the owner of negro Joanna, the mother of the complainants [Peter and Lewis], in the year 1797, sold her to Walter D. Addison for the term of twelve years, without saying anything of her increase. . . Walter D. Addison transferred her to Peter Savarie, in whose family the complainants were born, . . . Peter in 1801, and Lewis in 1803. Savarie died. . . Preuss married his daughter and sole heiress, and took out letters of administration upon his estate; and took possession of the complainants as slaves, who continued in his service until he sold them to the defendant Cureton; as slaves for life, at the price of \$640, who confined them in gaol, to be carried to South Carolina. At the expiration of the twelve years, viz. on the 8th of October, 1809, Anthony Addison executed a deed to manumit the negro immediately, and her children after they should respectively attain the age of thirty-one. This deed was duly executed, acknowledged, and recorded. . . injunction to prevent the removal of the complainants from the jurisdiction of this court, . . . was granted" but the bill for leave to sue for freedom was dismissed: [313] "the complainants, being the issue of a slave, were born slaves, either of Savarie, or of Anthony Addison. If of Savarie, they are slaves for life. If of Anthony Addison, they are slaves until they arrive at the age of thirty-one years; and that not being yet entitled to their freedom, this bill must be dismissed."¹

U. S. v. Clark, 25 Fed. Cas. 441 (2 Cranch C. C. 620), November 1825. "The defendant [John Clark], who was a slave about thirteen years old, was indicted for the murder of another slave, named Burdet, about fifteen years old. The deceased was larger and stronger than the defendant, and struck him several times, till the latter drew a knife and told the deceased that if he did not leave striking him, he would stab him; the deceased continued to strike him, and he stabbed the deceased in the left breast, of which wound he died instantly. The jury found him guilty of manslaughter, and the Court sentenced him to be burnt in the hand, and whipped with ten stripes."

Young v. Palmer, 30 Fed. Cas. 863 (2 Cranch C. C. 625), December 1825. "a special contract of sale of slaves . . . in which the defendant promised not to sell them out of the neighborhood, etc., whereby the plaintiff was induced to sell them for less money; but the defendant sold them . . . contrary to his agreement. . . the plaintiff 'believes' he could

¹ See *Lee v. Preuss*, p. 179, *infra*.

have sold them for four hundred dollars more than he got for them from the defendant if he had sold them unconditionally,"

Semmes v. Sherburne, 21 Fed. Cas. 1059 (2 Cranch C. C. 637), December 1825. The defendant hired a female slave from the plaintiff and carried her [1060] "away to N. Hampshire and did not bring her back again . . . Verdict for the plaintiff, \$360, and judgment."

U. S. v. Calvin, 25 Fed. Cas. 265 (2 Cranch C. C. 640), April 1826. "Indictment for a riot, and assault and battery, by slaves, on a constable." Held: "this court has not jurisdiction; . . . the prisoners committed to take their trial before a justice of the peace."¹

Stump v. Deneale, 23 Fed. Cas. 278 (2 Cranch C. C. 640), April 1826. Will of George Deneale, dated 1815: "I further recommend to my wife to sell all the negroes that I shall die possessed of, for such term of years as their respective ages shall warrant to them a support when free."

Letty v. Lowe, 15 Fed. Cas. 411 (2 Cranch C. C. 634), May 1826. Petition for freedom. Lowe agreed to pay Mary Greenfield \$250. for the slave Letty. Thomas Bingay "then took the defendant aside, and inquired of him what was his purpose and object in making the said purchase; to which he replied that he was about to make the said purchase from motives only of Christian charity, and to serve the said woman, of whom he had a good opinion, and whom he thought it his duty to serve; that he had confidence in her, that she would repay him what he should advance, and that she should then be free. The witness told him . . . he would, if he desired it, be security for Letty for \$50; that she would pay up, in small sums, what he might advance; and that he would, moreover, put into his hands \$40 then, to enable him to make the first payment for Letty. . . which the witness thereupon paid him. The witness got the said \$40 from a colored woman, to whom Letty told him to apply for it, saying that it had been contributed by some friends of hers, for the purpose of enabling her to buy herself of her said mistress. . . That after the said bargain, the defendant never claimed nor held the petitioner in his service; but that she lived at large, as a free woman, in the city of Washington, . . . and while so living at large, the child . . . was born. . . paper writings . . . signed by the defendant. [I] 'Washington City. This is to certify that Letty Brown, the bearer of this, is my property; that I, in 1817 or 1818, purchased her from Miss Mary Greenfield, then her mistress. I further certify that I have received from her (Letty,) at sundry times, \$206, and that there is now due . . . to me, \$64.94, on payment of which I hereby promise and find myself that she (Letty) shall be free, her lifetime, from bondage to any person or persons. . . 21st day of February, . . . 1823.' . . [II] 'Washington City, 8th October, 1823. Received from Letty, through the hands of Mr. Bingay, \$20, in part payment of the above Claim.' . . [III] [412] 'Received of Letty nine dollars. 5th February, 1825.'" The petition was filed July 15, 1825. The defendant demurred to the evidence. The court "ordered judgment

¹ Laws of Va., Dec. 17, 1792, p. 187, sect. 11.

to be entered for the defendant upon the demurrer, without prejudice to any equitable relief which the petitioners might thereafter have."

William v. Van Zandt, 29 Fed. Cas. 1286 (3 Cranch C. C. 55), December 1826. Petition for freedom. Mrs. Straas imported William [1287] "into this county, and delivered to the clerk a list of slaves imported by her, including the name of the petitioner; . . . she afterwards, within three years after such importation, sold him to one Coburn, in this county, contrary to the act of assembly of Maryland, 1796, c. 67, sect. 3. . .

The court instructed the jury that if Mrs. Straas had only a distributive share in the slave, her sale would not entitle the petitioner to his freedom; but . . . [if she] exercised acts of ownership, and several of the distributees knew it and did not object, and . . . [the administrator] never claimed the slave until after the sale, they may presume she had good title. . . Verdict for petitioner."

U. S. v. Williams, 28 Fed. Cas. 647 (3 Cranch C. C. 65), December 1826. "Indictment under the 19th section of the Maryland act of 1796, c. 67, for aiding . . . the escape of a female slave of W. L. Brent, 'by means whereof she was put into a stage to be transported out of the District.' . . . The Court said there must have been a transporting of the slave out of the District or the offence was not complete. Verdict, 'not guilty.' "

Armstrong v. Lear,¹ 12 Wheaton 169, January 1827. "Thaddeus Kosciuszko, on the 5th of May, 1798, placed a fund² in the hands of Thomas Jefferson, and executed a will,³ as follows: 'I, Thaddeus Kosciuszko, being just on my departure from America, do hereby declare and direct, that, should I make no other testamentary disposition of my property in the United States, I hereby authorize my friend, Thomas Jefferson, to employ the whole thereof in purchasing negroes, from among his own, or any others, and giving them liberty in my name, in giving them an education in trade or otherwise, and in having them instructed for their new condition in the duties of morality, which may make them good neighbours, good fathers or mothers, husbands or wives, in their duty as citizens, teaching them to be defenders of their liberty and country, and of the good order of society, and in whatsoever may make them happy and useful. And I make the said Thomas Jefferson my executor of this. (Signed,) T. Kosciuszko. 5 May, 1798.' . . . [171] That said

¹ Administrator (with the will annexed) of Kosciuszko.

² Mr. Justice Wayne, in *Ennis v. Smith*, 14 Howard 400 (412) gives the origin of the fund. After the Revolutionary War, General Kosciuszko "returned to Poland, poorer than when he came to us, and was, in fact, our creditor for a part of his military pay, . . . he returned to the United States [in 1798] after he was released from the prisons of Catherine, by her son and successor, the Emperor Paul. Whilst he was absent from the United States, a military certificate for twelve thousand two hundred and eighty dollars and fifty-four cents, had been issued, as due to him for services during the war. . . . That military certificate, with a part of the interest upon it, was the basis of the fund now in controversy." The funds were augmented by "lending them to the Government during the late war, . . . to seventeen thousand one hundred and fifty-nine dollars and sixty-three cents." Thomas Jefferson to De Poletica (Russian Ambassador), June 12, 1819. *Armstrong v. Lear*, 8 Peters 52 (64).

³ Written "all with his own hand," *ibid.*, p. 63.

Jefferson refused to take letters testamentary under said will,¹ . . . Mr. Jefferson received a letter from General Kosciuszko dated as late as the 15th of September, 1817 [one month before Kosciuszko's death], in which he thus affirms his first will." "nous avançons tous en âge, c'est pour cela, mon cher et respectable ami, que je vous prie de vouloir bien (et comme vous avez tout le pouvoir) arranger qu'après la mort de notre digne ami Mr. Barnes, quelqu'un d'aussi probe que lui prenne sa place, pour que je reçoive les intérêts ponctuellement de mon fonds; duquel, après ma mort, *vous savez la destination invariable*, . . ." ² But the will of 1798 had been revoked by the testator in his will of 1816, and it was decided by the Supreme Court of the United States in 1852 that General Kosciuszko died intestate as to "the funds in controversy, . . . and that they may be distributed to his relations who may be entitled to inherit from him." ³

Mason v. Matilda, 12 Wheaton 590, March 1827. [591] "Matilda, a negress, brought suit in behalf of herself and her three children, to receive their freedom. . . James Craik . . . in the year 1792 brought Matilda from . . . Maryland into . . . Virginia, and there settled and resided until his death, . . . The whole time which elapsed from the bringing of Matilda into Virginia to the commencement of this suit, was thirty years. . . On the trial, the defendants below could not produce positive testimony that the oath [required by the Virginia statute⁴] had been taken" The lower court refused to charge the jury "that, from the circumstances so given in evidence, the jury might presume that the oath had been taken in the prescribed time," and a verdict was found for the plaintiffs below. [594] "Judgment reversed, and *venire facias de novo* awarded." ⁵

Lee v. Preuss, 15 Fed. Cas. 223 (3 Cranch C. C. 112), May 1827. "Petition for freedom by Lizette, John, and Janette, or Jeane, children⁶ of Joanna," (the slave of Anthony Addison), "and Nancy, the daughter of Lizette [Lee]" against Augustus Preuss, the son-in-law and administrator of Savary or Savarie, to whom Joanna had been conveyed for the remainder of an unexpired term of twelve years. Lizette, John and Janette or Jeane were "born during the said term of twelve years; and the petitioner Nancy . . . was born long after the expiration of the said term,

¹ "After the testator's death, Mr. Jefferson proved the will in the county court of Albemarle, but renounced the executorship," *Estho v. Lear*, 7 Peters 130 (131). "When the general named me his executor, I was young enough to undertake the duty, although, from its nature, it was like to be of long continuance; but the lapse of twenty years more, had rendered it imprudent for me to engage in what I could not live to carry into effect: finding now, . . . that it is likely to become litigious, and age and incompetence to business admonishing me to withdraw myself from entanglements of that kind, I have determined to deliver the will and whole subject over to such court of the United States as the attorney general of the United States shall advise, . . . and to petition that court to relieve me from it, and to appoint an administrator with the will annexed." Thomas Jefferson to De Poletica June 12, 1819. *Armstrong v. Lear*, 8 Peters 52 (64).

² *Ibid.* The last words are not italicized when the same quotation from Kosciuszko's letter is given in *Ennis v. Smith*, 14 Howard 400 (413). Much of the italicizing in the reports seems to have been done by counsel to emphasize important points.

³ *Ibid.*, p. 421.

⁴ 12 Hening 182.

⁵ Follows *Abraham v. Matthews*, 6 Munford 159.

⁶ See *Peter v. Cureton*, p. 176, *supra*. Peter and Lewis were also children of Joanna.

to wit, in the year 1825, or thereabout; the mother [Lizette] still being held by the said Savary " who did not deliver them up to Anthony Addison when Joanna was returned to him at the end of the twelve years. " after the expiration of said term . . . 8th of October, 1809, . . . Addison executed . . . an instrument of writing, purporting to be an emancipation of the said Joan or Joanna, and her children; . . . after certain terms of service," which " will expire at the times following, to wit, of the said John in May, 1830; of Lizette at Christmas 1827; of the said Janette or Jeane, on the 19th of May, 1834; and petitioner Nancy is about two years old."

Held: " the petitioners will be entitled to their freedom, at the expiration of their respective terms of servitude " The defendant " being now fully apprised of the petitioners' contingent right to freedom, will take care that he do not subject himself to the penalty of the law of Maryland by selling them out of the state for a longer time than they have to serve by law." The solicitor for the petitioners " filed a bill for injunction . . . stating their contingent right to freedom, and their fears that the defendant would sell them to persons who would carry them to some distant place,¹ where they would not be able to prove and maintain their right to freedom. The petitioners had run away from the defendant, believing themselves entitled to freedom, and had been taken up and committed to jail here where they petitioned for their freedom. . . [224] Injunction refused."

U. S. v. Birch, 24 Fed. Cas. 1148 (3 Cranch C. C. 180), November 1827. " James Birch, a white man, was indicted jointly with others for a riot. One of the defendants, William Bill, was a colored man. . . Wilfred Mortimer, a colored man, born of a white woman, [was offered] as a witness for the prosecution against the colored defendant, William Bill. . . The Court rejected the witness; because it was a joint indictment, . . . and the testimony, if given against one, would operate against all." ²

Foxall v. McKenney, 9 Fed. Cas. 645 (3 Cranch C. C. 206), December 1827. Foxall (who died in 1823) by his will, gives his wife [647] " the use of all my servants during the remainder of their time of servitude." Trustees, empowered under the will to carry on his bakehouse business " in the same manner as the same is now carried on by me," " claim the use of the bakehouse servants " who " were literally Mr. Foxall's servants, and had a limited time to serve;" Held: Mrs. Foxall " is not entitled to the use of the bakehouse servants."

Richard v. Van Meter, 20 Fed. Cas. 682 (3 Cranch C. C. 214), December 1827. Richard [683] " was the slave of William W. Claggett, who, on the 25th of June, 1822, gave him the following written certificate: ' This is to certify that Richard, my negro, wishes to purchase himself, and it is my wish that he should do so; therefore, he is at liberty to work for himself, so as he may be able to accomplish his object. Upon his

¹ He had so sold their brothers Peter and Lewis. See *Peter v. Cureton*, p. 176, *supra*.

² Act of Va., Dec. 7, 1792, p. 187, sect. 5.

finally paying one hundred dollars he then is to be free." Claggett sold him, December 6, 1822, to Bussard, as a slave for life. "There is no evidence that Mr. Bussard ever saw Mr. Claggett's certificate until after he bought him, although there is some reason to believe, that he knew, that the negro had received some such promise. It is probable that some part of the 100 dollars was paid by Richard to Mr. Claggett; but how much, is uncertain. Mr. Walter Claggett has testified, that he heard his brother, William W. Claggett, say, that about thirty-five dollars were due, and that when that sum was paid, Richard was to be free. There is no evidence that Mr. Van Meter had any knowledge, at the time of his purchase of the negro, that he had any promise of freedom. . . the judgment must be against the petitioner." [Cranch, C. J.]

Mitchell v. Wilson, 17 Fed. Cas. 524 (3 Cranch C. C. 242), December 1827. In 1787 Joseph Wilson sold to his son Joseph "his slave Bet, then about six years old, and three other slaves" for £105. Bet "was an idiot, lame, and worthless." In 1801 the son Joseph sold to his brother Thomas for £25, "Bet, then said to be about twenty-three years of age, 'and all her increase, from and after the date hereof, and her son, a negro boy named Patrick, about eighteen months old;' . . . [525] Bet continued in the possession of the father. In . . . 1805, however, she was found, with her child, Mahala, then from six to nine months old, living in the family" of Mitchell, whose wife was the daughter of Joseph Wilson, sr.

Held: the possession of a slave for twenty years is *prima facie* evidence of a good title in a plaintiff in replevin, against everybody who does not show a better.

U. S. v. Holland, 26 Fed. Cas. 343 (3 Cranch C. C. 254), December 1827. "Negroes Margaret Holland and her daughter Louise . . . were indicted separately for the same theft." Both were found guilty. "There seemed to be some doubt whether Margaret was actually present at the taking of the goods; and the court granted her a new trial, upon which Mr. Key, for the United States, entered a *nolle prosequi*. The other prisoner, Louisa, was sentenced to be whipped fifteen stripes, and to pay a fine of \$1, and costs."

Mandeville v. Cookenderfer, 16 Fed. Cas. 580, 586 (3 Cranch C. C. 257, 397), December 1827, December 1828. The slave Richard Bunbury [586] "eloped from the plaintiff's service in Alexandria and went to Washington City, and there called himself Seymore Cunningham; and showed a certificate from a notary-public, which had been granted to Seymore Cunningham, stating that he, the said S. C., was a free man of color; and that the said slave, Richard Bunbury, stated that he was, in fact, the said Seymore Cunningham. . . R. B. . . was taller than the person described in the certificate, and was a very bright mulatto, whereas Cunningham . . . was a dark mulatto." The slave "went to the stage-office in Washington City, . . . represented himself . . . as Seymore Cunningham, and showed his said certificate of freedom; and the defendant [the agent of the stage company] thereupon permitted him to take his seat in the book of the said stage-office, . . . and permitted him to take

passage in the stage . . . and the said slave went off in the said stage to Baltimore, and from thence to Boston." [581] "the plaintiffs were put to great trouble and expense in recovering him. . ."

The jury found a general verdict for the plaintiffs for \$200 damages. Verdict set aside: the defendant [588] "was not bound by his orders, to be more vigilant than he was. . . he was to permit every colored person to pass who could produce a certificate purporting to prove the freedom of the person presenting it."

Barnes v. Barnes, 2 Fed. Cas. 855 (3 Cranch C. C. 269), December 1827. John Barnes, who died in 1826, left a will, "manumitting his two negro women, Abigail and Nelly, providing them with an annuity and bequeathing them some small articles," [858] "Decreed, . . . that the executors and trustees shall invest \$1,750 in the six per cent. stock of the corporation of Georgetown, . . . to pay the annuities to Abigail and Eleanor,"

Archer v. Deneale, 1 Peters 585, January 1828. Deneale, in his will, dated 1815, [588] "recommends to his wife, to sell the negroes for a term of years."

Whelan v. Washington, 29 Fed. Cas. 918 (3 Cranch C. C. 292), May 1828. A non-resident slaveholder was fined "\$20 for not paying the tax of two dollars on a female slave, hired out by the defendant, in the city of Washington, before the hiring, under the second section of the by-law of April 5, 1823. The tax was paid before the prosecution was commenced." Judgment reversed: "the tax . . . did not accrue until the hiring was complete;"

Johnson v. Mason, 13 Fed. Cas. 771 (3 Cranch C. C. 294), May 1828. Held: "if the petitioner was not brought into this county [Washington] for sale or to reside, she is not entitled to freedom under the Maryland act of 1796 (chapter 67), and that the act meant a permanent residence, a residence without expectation of change."

Battles v. Miller, 2 Fed. Cas. 1037 (3 Cranch C. C. 296), May 1828. Petition for freedom. Miller, a citizen of Virginia, removed to Washington, being his slave, John Battles. Within three years he sold John to a person residing out of the District of Columbia, who removed John "to Alexandria, on his way to his ultimate destination; that the said slave . . . [1038] while temporarily detained in Alexandria till the said purchaser was ready to proceed on his journey, absconded and returned to Washington of his own accord, and that the sale was then rescinded by agreement of parties,"

Verdict for the petitioner. "if the slave was sold by the importer within the three years, the importer is not protected by the 2d section of the act of 1796, c. 67, from the prohibition contained in the first section." [Cranch, C. J.]

Murray v. Dulany, 17 Fed. Cas. 1047 (3 Cranch C. C. 343), November 1828. "Assault and battery. The plaintiff was a mulatto." Held: he

cannot be compelled to prove his freedom, as "the defendant had waived the objection to the person of the plaintiff by pleading the general issue."

Reardon v. Miller, 20 Fed. Cas. 369 (3 Cranch C. C. 344), November 1828. "Manly, in 1800, made a deed to Reardon of a slave called Henry Nokes, for the benefit of Manly's wife, and such children as he had, or should have, by her. The slave was then only one year old. In 1810 Manly, with the consent of his wife, sold the same slave to Mordecai Miller, the defendant, for \$250, as a slave for life, . . . the former deed to Reardon was not known to Miller, who resided in Alexandria, although it was recorded in Virginia. Miller had possession of the slave from 1810 until the present time. He purchased this slave for the purpose of emancipating him at a future day." Held: the plaintiff cannot recover.

Clagett v. Gibson, 5 Fed. Cas. 808 (3 Cranch C. C. 359), December 1828. [809] "Petition for freedom. . . The petitioners [Phillis Clagett and her children] were her [defendant's] property at the time of her marriage with Gibson; and claimed their freedom under his deed of emancipation, dated October 31, 1826, duly acknowledged and recorded, according to the Maryland act of 1796¹ . . . by which he emancipates them to be free after his death. The defendant had filed a petition . . . against . . . her husband, for alimony, and obtained an injunction on the 10th of July, 1826, to prevent him from conveying away his property. This suit for alimony was pending at the date of the deed of manumission. He died in the following year." Verdict for the defendant.

Pipsico, a free mulatto, v. Bontz, et al., white men, 119 Fed. Cas. 727 (3 Cranch C. C. 425), April 1829. "*Indebitatus assumpsit* for work and labor. . . The defendants' counsel offered a free mulatto as a witness . . . Mr. Taylor, for plaintiff, objected; and cited the Virginia laws² . . . The Court rejected the witness."

Wigle v. Kirby, 29 Fed. Cas. 1179 (3 Cranch C. C. 597), May 1829. [1180] "Petition for freedom. The petitioners [negro Harry Wigle and others] claimed freedom under the will of John Baptist Kirby, by which they were to be free at his death. Some of them were over forty-five years of age at the death of the testator." Held: the manumission is void as to the petitioners over the age of forty-five at the testator's death.³

Butler v. Duvall, 4 Fed. Cas. 898 (3 Cranch C. C. 611), May 1829. The petitioners for freedom were "Thomas Butler, his wife Matilda, their three children, . . . and their two grandchildren . . ." They stated "that they were about to be sold out of this district to foreign purchasers." Their master, Duvall, a resident of Maryland, "pleaded to the jurisdiction of this court"

Held: [900] "the remedy by petition for freedom . . . existed long before, and was in daily use at the time of passing the [Maryland] act of 1796. . . There is no statute which expressly gives to a person, held in

¹ Ch. 67, sect. 29.

² Rev. Code, p. 187, Dec. 17, 1792, ch. 103, sect. 5.

³ Act of Md., 1796, ch. 67, sect. 13.

slavery, a right to sue for his freedom. The remedy was probably adopted in analogy to that given . . . in cases of complaints between masters and servants¹ . . . and was probably in use from that time. . . Nor can the action, or the cause of action, be considered as local. . . It is in its nature, strictly personal. . . The petitioners sue quasi in forma pauperis, and the court ought to see that they are not entrapped in the subtleties of special pleading." [Cranch, Ch. J.] The cause [901] "was tried upon its merits, and verdict rendered for the petitioners."

Scott v. Auld, 21 Fed. Cas. 812 (3 Cranch C. C. 647), November 1829. "Detinue [by Scott's executor] for three negroes who were born while Hannah, their mother, was in the possession of James Anderson, under the following instrument: 'Alexandria, March 1, 1816. I have this bo't of Mr. Jessey Scott, Hannah and her sonn John; Hannah to serve twelve years, and John untull he is thirty-five years old, and then both to be free;'" Held: "Scott parted with his whole right in the slaves . . . Judgment of nonsuit to be entered."

Smith v. Parker, 22 Fed. Cas. 618 (3 Cranch C. C. 654), December 1829. "Appeal from the judgment of a justice of the peace, for \$50, upon a note given by the appellant [negro William Smith] to the appellee [Daniel Parker] in consideration of his emancipation by the latter. The note was given immediately upon the execution and delivery of the deed of emancipation, and bears date the same day. . . The Court affirmed the judgment, with costs, Cranch, Chief Judge, doubting."

Maria v. White, 16 Fed. Cas. 732 (3 Cranch C. C. 663), December 1829. Maria "claimed her freedom by reason of importation, contrary to the act of Maryland, 1796, c. 67;" She was the slave of Joseph White, "a resident of the territory of Florida, and the delegate in congress from that territory. That he brought the slave to Washington to wait upon his family, while he was attending congress, in the winter of 1828-1829. . . at the end of the session," she "was too far advanced in pregnancy to be removed, with safety, to Florida; and was, therefore, left by her master in Washington. That, at her request, after her confinement, she was permitted by her master, who was reelected, to hire herself out in Washington, until he should return to congress, in December, 1829;" she "received her wages to her own use. That the defendant, learning that she had a free husband in Washington, and that she wished to live with him, agreed that if he could raise \$400 for him he should have her. That the money was never raised," The court refused to instruct the jury that "the continuing of the petitioner in this county, under such circumstances, is evidence of an importation contrary to the law of 1796, c. 67."

Beall v. Beck, 2 Fed. Cas. 1111 (3 Cranch C. C. 666), December 1829. "Replevin for the plaintiff's slave William, hired to Mr. Easton, who was a boarder at Mrs. Rich's boarding-house, for whose rent, due to Mr. Archer, the slave was, by his order, distrained." Easton hired [1112] "the slave in question for his own exclusive service as a domestic servant,

¹ Act of 1715, ch. 44, sects. 30, 31.

. . . paid for his hire and clothed him." Held: the slave is exempt from distress for rent, on the ground of public convenience.

U. S. v. Gray, 26 Fed. Cas. 17 (3 Cranch C. C. 681), December 1829. "Indictment [against Charity Gray, a free mulatto,] for larceny. The prisoner's daughter, who is a slave, was offered as a witness for the United States. . . Thruston, Circuit Judge, was of opinion that, under the third section of the act of [Maryland] 1717, c. 13, the court, in its discretion, might admit the witness, but that the daughter ought not to be forced or permitted to testify against her mother. . . Verdict for the prisoner."

Harris v. Alexander, 11 Fed. Cas. 611 (4 Cranch C. C. 1), April 1830. Petition for freedom. "The slave was brought into the county of Washington, with the defendant, to reside; but the defendant sold him before the expiration of three years." Judgment for the petitioner.¹

Stanback v. Waters, 22 Fed. Cas. 1042 (4 Cranch C. C. 2), April 1830. "Action on the case for enticing away and receiving the plaintiff's slave, named Williamson, in Virginia, and bringing him into the District of Columbia."

Quando v. Clagett, 20 Fed. Cas. 105 (4 Cranch C. C. 17), May 1830. Will of Mrs. Clagett: "After my decease it is my will that my woman Maria, and all her increase, including the children that she now has, to be free and manumitted forever; and that the money that is now due to me, be received by Thomas Clagett, and for the support of the said Maria and her children until the last of May next; and I also desire that my woman Rhoda, and all her increase to be free and manumitted after serving the term of two years where Elizabeth Osborn shall hire her anywhere in the district, and the hire to be applied to the getting of the said children good places, and paying Elizabeth Osborn for her trouble. My will is that my man Harry is to serve one year to any person that will give a fair hire for him, one half to be applied to the support of Maria and her children, and the other part to himself." Held: "there could be no doubt of the intention of the testatrix to emancipate the petitioner [Harry]."

Simon v. Paine, 22 Fed. Cas. 163 (4 Cranch C. C. 99), November 1830. Negroes Simon and Lewis "had been brought here by their master and kept here more than a year." After having been taken back to Maryland, their master's domicil, "they escaped into this district, and gave themselves up [to] the magistrate, and prayed leave to sue *in forma pauperis*. . . The cause was tried, and the jury found a verdict for the plaintiffs,"

Bernard v. McKenna, 3 Fed. Cas. 277 (4 Cranch C. C. 130), April 1831. "a negro woman named Carolina, of the value of \$300,"

Butler v. Duvall, 4 Fed. Cas. 901 (4 Cranch C. C. 167), May 1831. Petition for freedom. I. "more than twenty-five or thirty years before the bringing of this petition," Dales, "the owner of the petitioners, or their parents, in the state of Maryland, or in Georgetown in the District of Columbia, . . . removed to Virginia, and kept them in that state, one

¹ Act of Md., 1796, ch. 67.

whole year together," The court instructed the jury that the petitioners are "entitled to their freedom under the law of Virginia, unless the said Dales, within the time specified in the Virginia law, complied with the requisitions of that law by taking the oath therein prescribed;" but after the lapse of twenty-five or thirty years, the jury may presume that such oath was taken as prescribed, and within the limited time. II. Dales, "more than twenty years before the bringing of this petition," sold the petitioners to Duvall [902] "then residing in Washington county, D. C., who then carried said slaves to Prince George's county [Maryland] with intent to reside therein," The court instructed the jury that the petitioners are entitled to their freedom, whether Dales was still residing in Virginia, or had removed with the slaves "to the District of Columbia, and sold them within three years after such removal," in which latter case "the jury may infer that the said slaves were imported with intent to sell them;" Verdict for the petitioners.

Edds v. Waters, 8 Fed. Cas. 298 (4 Cranch C. C. 170), May 1831. Slander: "that as keeper of the Georgetown penitentiary he suffered a negro-buyer to escape for a bribe."

Gilbert v. Ward, 10 Fed. Cas. 348 (4 Cranch C. C. 171), May 1831. Petition for freedom by Emanuel Gilbert, a negro, under the will of Peter Dejean.

Held: "under the 13th section of the act of Maryland of 1796, c. 67, the manumission is *prima facie* valid; and that the defect of age, which by the proviso is to render the manumission ineffectual, must be shown by the party who claims the petitioner as a slave." Verdict for the petitioner.

Kitty v. McPherson, 14 Fed. Cas. 709 (4 Cranch C. C. 172), May 1831. "The petitioner claimed her freedom under the will of Mary Brooke, who directed that she should be free in the year 1840. . . her hire for the intermediate time is bequeathed to a particular legatee;" The jury found that she would be entitled to her freedom in 1840, and "the court ordered the original injunction to be continued, restraining the defendant from removing the petitioner from the jurisdiction" of the court unless he gave a bond for \$600 not to remove her. He did so.

Mary v. Talburt, 16 Fed. Cas. 949 (4 Cranch C. C. 187), December 1831. "the petitioner was brought here [Washington] from Virginia by her lawful owner, and afterward ran away, and her owner sold her running, supposing her to be then in Virginia;" The Court refused to instruct the jury that "the running away . . . will prevent the slave from the benefit of the provision [of the law¹] in her favor. . . Verdict for the petitioner."

Samuel v. Childs, 21 Fed. Cas. 306 (4 Cranch C. C. 189), December 1831. Negro Sam "was included in a deed of manumission made in Maryland, February 17, 1797, which was witnessed by only one witness. The Maryland act of December 31, 1796, c. 67, sect. 29, required two witnesses. The master afterwards carried them to Virginia, where he died,

¹ Act of Md., 1796, ch. 67, sects. 1-3.

having by his will left them free at the age of twenty-five. The petitioner's mother, one of those slaves, was living in Virginia at the death of the testator; after whose death, and before the petitioner's mother had attained the age of twenty-five, that is, before she was actually free, the petitioner was born in Virginia. . . Judgment for the defendants."¹

Johnson v. Brown, 13 Fed. Cas. 734 (4 Cranch C. C. 235), May 1832. "Slander; in saying of the plaintiff, 'he is a yellow negro,' . . . the plaintiff is a free white male citizen . . . Judgment for the defendant."

Delilah v. Jacobs, 7 Fed. Cas. 415 (4 Cranch C. C. 238), October 1832. "The plaintiffs [negro Delilah and others] claimed their freedom under the law of Maryland of 1796 (chapter 67), or the act of 1783, by being imported from Virginia into Maryland by a . . . citizen and resident of Maryland, who gave no list of them to be recorded,"

Held: the compact between Virginia and Maryland "did not prohibit Maryland from prohibiting her own citizens from importing slaves, or any other property, belonging to them."

Esther v. Buckner, 8 Fed. Cas. 797 (4 Cranch C. C. 253), November 1832. Petition for freedom by Esther, a negro, and her two children. They were brought to Washington from Virginia January 6, 1828. Their master had come to Washington November 3, 1826, and had given a list of his slaves "in order to be able to hire his slaves in this District without incurring the fine of \$20 each, imposed upon slaves of non-residents hired out in the city," He "had some of his household furniture . . . in that city; and some of his family, . . . and some of his servants resided there. His wife and some of his children and . . . furniture did not arrive until about the 7th of January, 1827. . . on the 7th of January, 1828, he gave a like list of other slaves brought in within twenty days preceding. . . This last list included the petitioner, Esther, and her two children." Verdict for the petitioners.

Estho v. Lear, Administrator of T. Kosciuszko, 7 Peters 130, January 1833. See *Armstrong v. Lear*, p. 178, *supra*.

U. S. v. Prout, 27 Fed. Cas. 625 (4 Cranch C. C. 301), March 1833. Prout was fined fifty dollars for enticing "a certain slave named Joseph Dozier [worth \$600], . . . to run away,"² The slave was recovered by the owner, [626] "and the expense of recovering, and loss of service, were much less than the value of the slave."

U. S. v. Johnson, 26 Fed. Cas. 625 (4 Cranch C. C. 303), March 1833. "The indictment, which was founded on the Maryland act of 1796, c. 67, sect. 19, charged that the defendant did, on the 19th of April, 1833, 'assist the transporting of a certain slave named Joseph Dozier, [from Washington County] . . . by advice, and by conveying said slave in a gig . . . to the city of Baltimore, . . . thereby depriving . . . the ow[n]er of said slave, of the service of her said slave,'" The defendant was found guilty and fined fifty dollars.

¹ Following *Maria v. Surbaugh*, 2 Randolph 228.

² Act of Md., 1751, ch. 14, sect. 10.

Moore v. Jacobs, 17 Fed. Cas. 686 (4 Cranch C. C. 312), May 1833. Petition for freedom. The petitioner, Clara Moore, "was owned by Mr. Mills, in Alexandria, D. C., who removed to Maryland to reside, and settle there, and took the petitioner with him. She ran away and returned to Alexandria. While there, her owner in Maryland, sold her ('running') to Jacobs."

Held: "that her escape to Alexandria was not a voluntary importation into Alexandria county; and that the sale in Alexandria . . . was not such a sale as could give the petitioner a right to freedom under the Maryland act of 1796, c. 67."

Bell v. English, 3 Fed. Cas. 102 (4 Cranch C. C. 332), October 1833. "Orphans' Court, Alexandria County, October Term, 1832. Andrew Bell, a free orphan boy of color, who will be thirteen years old on the 25th of November next, is, by the court, bound an apprentice to James English until he is twenty-one years of age, to learn the business of a house-servant; which said business, in open court, the said James English agrees to teach the said apprentice, to furnish good board, clothing, washing, and lodging, and pay him \$20 freedom dues."

U. S. v. Summers, 27 Fed. Cas. 1363 (4 Cranch C. C. 334), October 1833. "Indictment for stealing a slave, . . . under the Virginia statutes of December 17, 1792, p. 190, sect. 29, and January 25, 1799, p. 387, making it a felony punishable by death without benefit of clergy; and the penitentiary act of congress,¹ sect. 14, changing the punishment from death to penitentiary confinement and labor. . . Verdict, not guilty."

U. S. v. John, 26 Fed. Cas. 615 (4 Cranch C. C. 336), October 1833. "Indictment for stealing a five-dollar bank-note. The prisoner [the negro John] had been convicted . . . of stealing a pocket-book valued at ten cents, and sentenced. The bank-note was in that pocket-book, . . . The Court . . . rendered judgment for the prisoner:" "the former conviction . . . for stealing the pocket-book, is a bar to this prosecution,"

Lee v. Lee, 8 Peters 44, January 1834. Petition for freedom. [46] "Upon the trial, the petitioners [Samuel and Barbara Lee] proved that they were born in the state of Virginia, as slaves of Richard B. Lee, now deceased, who moved with his family into the county of Washington in the district of Columbia about the year 1816, leaving the petitioners residing in Virginia as his slaves, until the year 1820, when the petitioner Barbara was removed to the county of Alexandria in the district of Columbia, where she was hired to Mrs. Muir, and continued with her thus hired for the period of one year. That the petitioner Sam was in like manner removed to the county of Alexandria, and was hired to general Walter Jones for a period of about five or six months. That after the expiration of the said periods of hiring, the petitioners were removed to the said county of Washington, where they continued to reside as the slaves of the said Richard B. Lee, until his death, and since as the slaves of his widow, the defendant." Judgment for the defendant, reversed and cause sent back for a new trial.²

¹ 4 Stat. at L. 448.

² *Lee v. Lee*, p. 195, *infra*.

Held: I. As to the jurisdiction of the supreme court of the United States: [48] "the matter in dispute is . . . the value of their freedom, and this is not susceptible of a pecuniary valuation. Had the judgment been in favor of the petitioners, and the writ of error brought by the party claiming to be the owner, the value of the slaves as property would have been the matter in dispute, and affidavits might be admitted to ascertain such value. But affidavits, estimating the value of freedom, are entirely inadmissible; and we entertain no doubt of the jurisdiction of the court."

II. The court below erred in refusing to submit to the jury the question [49] "whether, from the evidence, the bringing of the petitioners from Virginia to Alexandria,¹ and the hiring of them there, was not merely colourable, with intent to evade the law² . . . [50] If the original intention of the owners of the slaves was to bring them into the county of Washington, the hiring of them in Alexandria might have been thought by the jury a device to evade the law of 1796." [Thompson, J.]

Kosciuszko Armstrong v. Lear, 8 Peters 52, January 1834. See same *v. same*, p. 178, *supra*.

Fleming v. Foy, 9 Fed. Cas. 262 (4 Cranch C. C. 423), March 1834. Wager: "September 24th, 1832. I agree to pay Mr. M. Foy \$20 if your colour man did not execute my three springs of my carriage all together moening the four springs."

U. S. v. Brooks, 24 Fed. Cas. 1244 (4 Cranch C. C. 427), March 1834. The negro, John Brooks, was convicted of "disturbing the congregation of the African meeting-house while engaged in the worship of God." "by cursing . . . in and near the . . . meeting-house,"

Hobbs v. Magruder, 12 Fed. Cas. 265 (4 Cranch C. C. 429), March 1834. Petition for freedom. Will of Margaret Stockett, owner of the petitioner: "I give and bequeathe to my daughter Eliza Ann . . . all my property . . . and in case [she] . . . should die without having an heir . . . of her body, it is then my wish and will that my negroes are to be free," Eliza Ann married and "came to reside in this district with her husband, who brought the petitioner here and sold her to . . . Magruder; the said Eliza Ann, at the time of the sale, having had no issue of her body; but having since the sale, had issue . . . now living. The petitioner claims freedom under the act of Maryland of 1817, c. 212." Held: the act of Maryland is of no force in this district.

Chapman v. Fenwick, 5 Fed. Cas. 477 (4 Cranch C. C. 431), March 1834. See *Fenwick v. Chapman*, p. 191, *infra*.

Thomas v. Magruder, 23 Fed. Cas. 962 (4 Cranch C. C. 446), March 1834. "Petition for freedom. . . Mr. Key, for petitioner, offered in evidence the record of the deed of manumission . . . recorded in the office of the clerk of this court. . . Lee objected and called for the original, and

¹ Act of Congress, June 24, 1812. Davis's Col. 265, sect. 9.

² Act of Md., 1796, in force in Washington County by virtue of the act of Congress of Feb. 27, 1801. Davis's Col. 126.

proof by the subscribing witnesses. The Court . . . refused to require Mr. Key to produce the original, and permitted him to use the copy on the record; it having been acknowledged and recorded according to Act Md. 1796, c. 67, sects. 28, 29."

Bowman v. Barron, 3 Fed. Cas. 1075 (4 Cranch C. C. 450), March 1834. Petition for freedom. The widow of Barron, who had been a resident of Virginia, lent a slave, Frederick Bowman, belonging to her deceased husband's estate, to her son-in-law, H. Gassaway in Washington. After remaining there for more than a year, Bowman [1076] "was sent back to Virginia . . . to abide the final distribution of the estate; . . . and . . . was allotted to Ann C. Barron, one of the children of the intestate, after which he, . . . without the knowledge or consent of the owner, left Virginia, came back to Washington, and there filed his said petition," Verdict for the defendant.¹

Crawford v. Slye, 6 Fed. Cas. 778 (4 Cranch C. C. 457), March 1834. Petition for freedom by Joseph Crawford. "The importation of the slave (the petitioner) was alleged to be justified under the 11th section of the Act of Maryland, 1796, c. 67, which requires a list of the slaves so imported, distinguishing their sex. The list merely calls the slave 'Jo.'" Held: "that the list offered does not designate the sex; and that, therefore, the petitioner is entitled to freedom."

Keziah v. Slye, 14 Fed. Cas. 451 (4 Cranch C. C. 463), March 1834. Keziah "was brought from Virginia to Washington, under the 9th section of the Maryland act of 1796 (chapter 67), but was not recorded within three months thereafter, as required by the statute." Verdict for the petitioner.

U. S. v. Lloyd, 26 Fed. Cas. 986 (4 Cranch C. C. 468), October 1834. Indictment against Henry Lloyd. "The first count was for a simple assault and battery upon a slave. The second count was for assault (not assault and battery) with intent to kill and murder, a negro slave, Harry. . . . Verdict guilty on both counts, and amerced by the jury \$20 on the first count. The Court . . . was of opinion, that a simple assault and battery on a slave, is not an indictable offence; ² that a simple assault upon a slave, even with an intent to murder him, is not an offence at law; that the second count was bad under the penitentiary act,³ because it did not charge a battery. Cranch, Chief Judge, doubted of this, because the murder of a slave is a felony, and an assault with intent to commit a felony is a misdemeanor, at common law. . . . [987] A new indictment was . . . found by the grand jury against the defendant. The first count was for publicly and cruelly beating Harry, a slave. Second count for assault and battery with intent to murder the slave, Harry. Mr. Brent, for the defendant, moved to quash the indictment, because . . . it was not an offence to . . . beat a slave, even with intent to murder him. The Court . . . re-

¹ Act of Md., 1796, ch. 67.

² See *U. S. v. Butler*, *contra*, pp. 160, 165, *supra*.

³ 4 Stat. at L. 448.

fused . . without prejudice to a motion in arrest of judgment, if the verdict should be against the defendant.”

U. S. v. Lloyd, 26 Fed. Cas. 987 (4 Cranch C. C. 470), October 1834. “Indictment [against Richard B. Lloyd] for beating his own slave Henry, cruelly, and exposing him, so beaten, to public view. Verdict guilty, and amerced by the jury \$100. . . The Court rendered judgment for the amount assessed by the jury.”

U. S. v. Nathan, 27 Fed. Cas. 78 (4 Cranch C. C. 470), October 1834. “Indictment [against negro Nathan, a slave] for stealing a pair of shoes, of the value of one dollar. The prisoner pleaded guilty, and he was sentenced by the court to be burnt in the hand in open court, and to be whipped with ten stripes.”

Brooks v. Nutt, 4 Fed. Cas. 297 (4 Cranch C. C. 470), October 1834. “Action, of assault and battery, for freedom. The plaintiff’s mother, Clara, was the slave of . . Stewart, and sold by him to Finley . . 1805, by bill of sale, recorded . . 1833, for the term of seven years. Finley bound himself to Stewart to emancipate Clara at the end of the seven years; and Stewart bound himself to Finley then to relinquish his right to Clara. The plaintiff [Ann Brooks] was born in 1811, . . Finley emancipated Clara in 1817, but always claimed the plaintiff as his slave, she having been born while her mother was his slave. On the 3d of June, Stewart made a deed of emancipation of the plaintiff (Ann).” Held: Ann is a slave and belongs to Finley’s estate.

Runaways and Petitioners for freedom, 21 Fed. Cas. 1 (4 Cranch C. C. 489), November 1834. “The following questions were submitted to Cranch, Chief Judge, by the attorney of the United States and the marshal: Whether the United States are liable to the marshal for the maintenance of free colored persons committed by justices of the peace as runaways, and discharged on *habeas corpus*; and also for the maintenance of petitioners for freedom, committed by order of the court to attend the trial, etc. . . [5] I am of opinion that the marshal has not a right to include, in his account against the United States, his imprisonment fees for persons committed as runaway servants or slaves under the adopted laws of Maryland.¹ . . The expense of maintaining [petitioners for freedom, if the defendant refuses to give security for their appearance and security] . . is one of the reasonable contingencies accruing in holding the court, and ought to be allowed if the petitioners gain their freedom; otherwise, that expense must be paid by their owners.”

Fenwick v. Chapman, 9 Peters 461, January 1835. Will of Frances Edelin, of Maryland, 1825: [467] “after my debts² . . are paid, I devise and bequeath as follows. . . negro woman Letty, her daughter Kitty, a mulatto, with her three children, to wit, Eliza, Robert and Kitty Jane, with their future increase, and an old woman named Lucy, I do hereby declare them free at . . my death, and they shall have the right to live

¹ “By the act of Congress of the 27th of February, 1801 (2 Stat. at L. 103), the laws of Maryland, as they then existed, were continued in force in the county of Washington.”

² Act of Md., 1796, ch. 67, sect. 13.

in . . . the back room in the house . . . I . . . bequeath to my nephew . . . [468] To the two old negro women, I give them and bequeath 10 dollars a year to each of them as long as they live; and 10 dollars a year, during two years after my death, . . . to mulatto Kitty." [469] "the deceased left real estate to an amount in value more than sufficient to pay her debts, without the sale of the negroes emancipated by the will, . . . but not personal estate sufficient." In 1833 the executor, [467] "in virtue of an order of the orphan's court . . . to sell all the personal estate" sold the petitioners, Eliza and Robert, to Fenwick, after he had [462] "permitted [them] to go at large as free" "from the time of deceased's death"

Judgment in favor of the petitioners, affirmed: [481] "when a testator manumits his slaves by will . . . and it clearly appears to have been his intention that the manumission shall take place at all events; the manifest intention, without express words, to charge the real estate, will charge the real estate for the payment of debts; if there be not personal assets enough, without the manumitted slaves, to pay the debts of the testator. . . . [482] when an executor permits manumitted slaves to go at large and free, under a manumission to take effect at the death of the testator, he cannot recall such assent by his own act: nor can it be revoked under the order of an orphan's court in Maryland, for the sale of all the personal estate . . . that court not having jurisdiction of the question of manumission." [Wayne, J.]

Thornton v. Davis, 23 Fed. Cas. 1147 (4 Cranch C. C. 500), March 1835. Petition by negro John Thornton for freedom. [1148] "two of the constables . . . stated facts implicating the purity of the professional character of Mr. Giberson, one of the counsel of the petitioner in this cause, intimating that he had consented to take \$25 for discovering where the petitioner was, so that he might be seized by the constables who were trying to catch him to deliver him up to his master, so that he might carry him away out of the jurisdiction of this court, in violence of the injunction. Whereupon Mr. Key, attorney of the United States, . . . moved for a rule on Mr. Giberson to show cause . . . why he should not be dismissed from the bar, or be otherwise dealt with as to the court should seem proper." The attachment against Orrine Davis was returned, and the defendant appeared. The court rejected a plea of misnomer in abatement: "The proceeding by petition for freedom is a summary proceeding; it has little or no analogy to an action at common law, and is not subject to the technical rules of pleading. It is a petition by a person *prima facie* incompetent to maintain an action at law. It is framed in the simplest terms; complaining that the petitioner is a freeman, but is held in slavery by the person named, and praying that he may be summoned to answer the petition. The trial of the fact as well as the law is to be by the court, unless either party should apply to the court for the benefit of a trial by jury; . . . Here is no original writ . . . which is the subject of abatement; . . . There can be no personal judgment against the respondent, the judgment of the court only establishes a fact; namely, the freedom or the slavery of the petitioner. . . . the court will not suffer the merits of the case to be smothered in the technicalities of special pleading"

Lowe v. Stockton, 15 Fed. Cas. 1017 (4 Cranch C. C. 537), March 1835. "an action upon the case for permitting the plaintiff's slaves to be carried away in the defendant's stage-coach. The slaves were colored persons. A decent, respectable-looking white woman, who gave her name as Powell, came to the stage-coach office of the defendants in the morning of that day, or the day before, and told the office-keeper that she wished to take seats for two of her servants, and that they would be there at the time of the departure of the evening stage-coach; and she paid for their passage. The servants came at the time and said they were the persons for whom Mrs. Powell had paid the passage; and they were permitted to take their seats." [1018] "Verdict for the plaintiff, \$200. But a new trial was granted upon new evidence discovered, that the woman, who paid for the seats of the slaves, was not named Powell, but Howard, and was the sister of the plaintiff, and resided with her."

U. S. v. Frye, 25 Fed. Cas. 1222 (4 Cranch C. C. 539), May 1835. Indictment against Henry Frye "a slave for the manslaughter of Robert Jackson. . . [1223] Jackson, the deceased, and one Nightengale, had beaten the prisoner severely on shore, who escaped from them, and fled to his master's boat, which was then in his custody, and under his command, by the authority of his master. They followed him down to the wharf, and Jackson dared him to come on shore, that he might lay his hands on him again. The prisoner refused, and told Jackson to stand off, and not to come on board; and if he did, he would shoot him. The warning and threat by the prisoner were repeated. Jackson said, 'shoot and be damned,' and jumped on board. The prisoner, who was standing with a gun in his hand at his cabin door, about fifteen feet from Jackson when he jumped on board, instantly shot and killed Jackson." On the first trial Frye was found guilty; on the second, the jury could not agree; on the third the prisoner was again "convicted. It being stated . . . that the prisoner is a slave, the sentence was, 'that he be burnt in the left hand, and publicly whipped with twenty-five stripes.'" ¹

Taylor v. Buckner, 23 Fed. Cas. 737 (4 Cranch C. C. 540), May 1835. "Petition for freedom by Negro Charles Taylor, and others; six cases; removed from Washington to Alexandria county for a fair trial. The petitioners claim freedom by reason of their importation from Virginia into the county of Washington 'to reside,' contrary to the Maryland act of 1796, c. 67, sect. 1. . . some of the petitioners, namely, Fanny and her children, were the property of the defendant for the life of his wife only."

Held: I. the consent of the reversioner to the importation is not necessary to give freedom to the slaves then imported; II. the question of the intent with which the importation is made is for the jury.

U. S. v. Nelson, 27 Fed. Cas. 86 (4 Cranch C. C. 579), October 1835. "The prisoner [negro Nelson] was convicted of stealing a hair cap, of

¹ See act of Congress, Mar. 3, 1801, supplementary to the act concerning the District of Columbia, sect. 3 (2 Stat. at L. 115), and Act of Va., Dec. 17, 1792, p. 190, ch. 103, sect. 24.

the value of one dollar and twenty-five cents. . . he was a slave, . . . The Court . . . sentenced the prisoner to be whipped with twenty stripes."

Brent v. Armfield, 4 Fed. Cas. 60 (4 Cranch C. C. 603), October 1835. "The petitioner [Rachel Brent] claimed freedom by having been brought into the county of Washington, D. C., by Mr. Buckner, from Virginia, to reside, or for sale, contrary to the first section of the Maryland act of 1796, c. 67. . . Verdict for the petitioner." "the defendant was not protected under the said 4th section of that act, if the said Ariss Buckner returned and removed his family to Virginia in December, 1830, and left the petitioner hired out in Washington till June, 1832, and he did not attempt to remove her until that time when he sent for her."

U. S. v. Cross, 25 Fed. Cas. 705 (4 Cranch C. C. 603), November 1835. Cross was charged with cruelly beating Milly, the slave of Walker, on the public highway. "The Court instructed the jury that if they should be of opinion . . . that the defendant cruelly beat the slave in the public highway, and left her there, exposed to public view, it was an indictable offence."

U. S. v. Davis, 25 Fed. Cas. 775 (4 Cranch C. C. 606), November 1835. Davis was indicted for an assault and battery with intent to kill Shorter, a colored man. A mulatto man, "born of a white woman, and not in a state of servitude by law, was admitted by the court to testify for the defendant, who was a white man."¹

U. S. v. Brown, 24 Fed. Cas. 1247 (4 Cranch C. C. 607), November 1835. "Indictment [against John Brown, a mulatto] for highway robbery of George Milburne. . . [1248] one Sandy Spriggs, a free mulatto who had been convicted of larceny, and suffered his term of imprisonment and labor in the penitentiary of this district" was offered as a witness, and rejected because "the execution of the sentence . . . did not restore his competency. The prisoner was acquitted. The witness, Sandy Spriggs, was afterwards convicted of the same robbery, and sentenced to the penitentiary for four years only; he having probably prevented the other robbers from killing Milburne."

U. S. v. Henning, 26 Fed. Cas. 265, 267 (4 Cranch C. C. 608, 645), November 1835, January 1836. Henning "was convicted"² . . . for attempting to sell a free mulatto boy [Thad Key, bound to service until he was twenty-one years of age] as a slave for life." He brought him on his vessel from Virginia. [273] "From the smallness of the boy he was no use aboard; there was no evidence that there was any obvious purpose of taking him aboard as a hand," The judgment was arrested. Henning was then indicted [268] "under the 17th section of the penitentiary act for the District of Columbia, of the 2d of March, 1831"³ and was found guilty. [270] "For some time previous to the passing of this act, we know that there were rumors of kidnappers passing through this district from the state of Delaware, and the eastern shore of Maryland, to the

¹ Act of Md., 1717, ch. 13, sect. 2.

² "upon an indictment . . . contrary to the fifteenth and sixteenth sections of the Maryland act of 1796 (chapter 67)."

³ 4 Stat. at L. 450.

Southern states, with their booty; and applications have been made, from time to time, to the court and to the judges, to stop them by writs of *habeas corpus*, and injunction, which, when granted, only served to hasten their departure. This statute furnished the ground of issuing a warrant to arrest the parties in the first instance. . . The offence intended to be punished by the 17th section of the act, was the having a free negro in possession with an intention to sell him here or elsewhere, provided that intention should be accompanied here by the overt act or acts of coercion or control, mentioned in the statute." [Cranch, C. J.] [274] "The prisoner was sentenced to one year's imprisonment and labor in the penitentiary."

U. S. v. Spalding, 27 Fed. Cas. 1277 (4 Cranch C. C. 616), November 1835. "Indictment for a conspiracy to cheat one Washington Roby by selling him a free negro as a slave for life. . . defendants were acquitted."

U. S. v. Larkin, 26 Fed. Cas. 866 (4 Cranch C. C. 617), November 1835. The prisoner, indicted for highway robbery of Milburn, "replied that Milburn had no witnesses but colored persons, and they were not good witnesses against a white man."

U. S. v. Sims, 27 Fed. Cas. 1080 (4 Cranch C. C. 618), November 1835. "Indictment [against the negro Henry Sims] for highway robbery of one Latimer, by snatching his watch from his side pocket, . . The jury found the prisoner guilty of simple larceny, and that he was a slave; whereupon the Court . . ordered him to be taken before a justice of the peace, to be dealt with according to law."

U. S. v. Soper, 27 Fed. Cas. 1260 (4 Cranch C. C. 623), November 1835. "an indictment for conspiracy to extort money from one William Hickey, by seizing two of his slaves, and confining them in Maryland, as runaways, so that the defendants might claim the reward allowed by the laws of Maryland for taking up runaway slaves."

Fenwick v. Tooker, 8 Fed. Cas. 1146 (4 Cranch C. C. 641), November 1835. Petition for freedom. "The mother of the petitioner was the slave . . of Robert Patton, . . an inhabitant of . . Alexandria county, in the year 1817; . . in that year she was sold . . to Mr. Tennison, an inhabitant of Washington county, who took her immediately to Washington county, to reside therein, and that the petitioner was afterwards born in Washington. Held: Mr. Key, for petitioner, contended that the power of removal of slaves from Alexandria to Washington, under the act of 1812,¹ was confined to inhabitants of Alexandria owning slaves therein; and that . . an inhabitant of Washington [could not] bring slaves from Alexandria to Washington. . . Verdict for the petitioner."

Lee v. Lee,² 15 Fed. Cas. 209 (4 Cranch C. C. 643), November 1835. "Upon the trial of this cause on the *venire de novo*" the court was [210] "of opinion that an inhabitant of Washington county could not, under

¹ 2 Stat. at L. 755.

² See same *v. same*, p. 188, *supra*.

the ninth section of the act of congress of the 24th of June, 1812¹ remove his slaves from Alexandria county to Washington county; he not being an inhabitant of the county in which the slaves were, and possessing them therein. The verdict was for the defendant; and the court refused to grant a new trial,"

U. S. v. Beddo, 24 Fed. Cas. 1061 (4 Cranch C. C. 664), November 1835. "The defendants were convicted of a cheat, by passing and imposing a paper having the appearance of a bank-note, upon a free negro, born of a free colored mother. The only witnesses for the prosecution were free negroes and mulattoes, born of free colored mothers. The defendants were free mulattoes. . . Beddo, one of the defendants, was a mulatto, born of a white woman, and not in a state of servitude, by law." New trial granted. But [1062] "the attorney for the United States, finding that there were no witnesses for the prosecution other than free negroes and mulattoes born of colored women, ordered a *nolle prosequi* to be entered with the leave of the court."²

Wallingsford v. Allen, 10 Peters 583, January 1836. [584] "The petitioner [for freedom] produced a regular deed of manumission, duly recorded, executed by Rachel Wallingsford, . . . dated the 8th of September, 1826; by which, and for divers . . . considerations, and in consideration of the sum of 150 dollars paid to her, she released the petitioner and her children from slavery; the petitioner being at that time nineteen years old, and her two female children of the respective ages of three years and five months."

Judgment for the petitioner, affirmed: [592] "the terms of the act of Maryland,³ and the policy intended by it, were meant to prevent the manumission of slaves, who, from infancy, age, or decrepitude, would become burthensome to the community at the time the deed of manumission should take effect: and to such as were over the age, after which manumission is prohibited. But the slave manumitted must either be positively in the latter predicament; or be so decrepit, if under the age of forty-five; and if neither one nor the other, and being in infancy, it must stand so unrelated to any other free person, coloured or white, that it can have no claim, natural or artificial, to support from any one; and must, therefore, be at once a charge upon the charity of the community, or a charge upon its poor laws. It would be an unreasonable restraint upon the privileges of manumission, as it is granted in this act, if it were interpreted to exclude the manumission of mother and an infant child, the former being of healthy constitution and able to maintain it, as of other children who, in the natural progress of human life, would be able, in a few years, to maintain themselves by labour, and who would find in their adolescence, persons who would gladly maintain them for the services they could render. If this construction of the act could not prevail, there can be no fixed age in childhood when manumission can take effect; and the act

¹ 2 Stat. at L. 755.

² See *U. S. v. Beddo*, p. 200, *infra*.

³ Act of Md., 1796, ch. 67, sect. 13.

would be made to operate differently upon persons by no certain rule. The legislature having laid down the age after which manumission shall not be made, a strong presumption is raised that it did not mean to exclude all infants absolutely from the benefits of the act, or it would have said so in terms; or have fixed an age when, in childhood, manumission should be allowed." [Wayne, J.]

U. S. v. Bowen, 24 Fed. Cas. 1207 (4 Cranch C. C. 604), February 1836. "Indictment of a slave [John Arthur Bowen] for an attempt to murder his mistress [Mrs. Anna Maria Thornton]; and for burglary. . . [1208] Mr. Key . . . prayed the jury: (1) 'That if they believe from the evidence that the prisoner took the axe, and entered . . . his mistress's room, with the intent to murder her, and was prevented by the awakening of his mistress and her servant, and by their noise, and his being seized and forced out of the room, from executing his intention, then he is guilty under the act of assembly.'¹ (2) 'That if the jury believe from the evidence that the prisoner was drunk . . . it does not excuse' . . . Which instructions the court gave, but added . . . that the intoxication . . . is a fact proper to be considered by the jury in forming their opinion of the intent . . . The prisoner was convicted, and . . . sentenced to be hanged . . . but he was reprieved from time to time and finally pardoned at the instance of his mistress."

Smith v. Elwood, 22 Fed. Cas. 532 (4 Cranch C. C. 670), March 1836. "Henrietta Smith, a colored child, between nine and ten years of age, by . . . Duncausen her next friend, filed her petition stating that she had no parent but her mother, a free colored woman of bad character, and unable to maintain the petitioner; that . . . Duncausen . . . is willing to keep her as an apprentice. That the mother, to prevent the child being bound to the said Duncausen, has recently gone before two justices of the peace and entered into some writings purporting to be an indenture of apprenticeship, binding the child to . . . [533] Elwood . . . That the child was not brought before the said justices" "The Court ordered the child to be discharged from the indenture, and to be bound out to Mr. Duncausen."

U. S. v. Crandell, 25 Fed. Cas. 684 (4 Cranch C. C. 683), March 1836. Indictment against Reuben Crandell, a member of the Anti-Slavery Society, [685] "for publishing libels² tending to excite sedition among the slaves and free colored persons in this district." One of the witnesses against him was [689] "John Colclazer, a colored man, born of a white woman. . . Verdict, not guilty."

Manning v. Cox, 16 Fed. Cas. 644 (4 Cranch C. C. 693), March 1836. [645] "the wife of the defendant's slave, was the slave of the plaintiff, and that he was permitted from time to time, to visit his wife, with the

¹ Act of Md., 1751, ch. 14, sect. 2.

² "Reply to Mr. Gurley's Letter;" "Three Months' Residence, or Seven Weeks on a Sugar Plantation, by Henry Whitby;" plan of emancipation; twelve other libels [686] "in which were represented . . . 'several disgusting . . . pictures of white men in the act of inflicting, with whips, cruel . . . beatings and stripes upon young . . . black children;'"

consent of the plaintiff and defendant. That on one of these visits he was taken sick [with the small pox], and after lingering three weeks, died at the plaintiff's house. That the defendant, as soon as he heard of his slave's illness, offered to remove him to his own house, but the defendant [plaintiff] would not consent to it." Held: the plaintiff is not entitled to recover for her services in nursing the defendant's slave.

Harris v. Firth, 11 Fed. Cas. 625 (4 Cranch C. C. 710), March 1836. The petitioner was brought from Virginia to Washington by his master, Wilkes, who "was at the head of a company of sportsmen, (gamblers,) . . . he had hired a house in Washington . . . for three years, and afterwards. . . That Wilkes was considered as a citizen of the world, . . . That shortly before his death he intended, when he had made money enough, to go to the West" The court instructed the jury that if they found "that Wilkes removed to this county with an intention of remaining here for an indefinite time, and as a place of present domicile, this was his place of domicile, . . . [626] Verdict for the petitioner."¹

Bank v. Smith, 2 Fed. Cas. 736 (4 Cranch C. C. 712), March 1836. "1830, . . . securities for the said rent; to wit, a deed . . . of five slaves, and a deed . . . for three slaves, each of which deeds authorized . . . Smith to sell the said slaves . . . in case of the non-payment of the rent, when due."

U. S. v. Fenwick, 25 Fed. Cas. 1062 (4 Cranch C. C. 675), April 1836. "Indictment for a riot. . . defendants [to the number of nearly one hundred, armed with clubs] . . . surrounded, and entered the house of Snow and Walker, and destroyed their goods," Their purpose was to seize [1063] "Snow, on account of insulting expressions which they had heard he had used," "Walker, a colored man, and partner of Snow, had . . . said that the sign was cut down at his (Walker's) request, to prevent further excitement." [1064] "The jury found six of the defendants guilty, and recommended them to the mercy of the court." They were "sentenced to six months' imprisonment, and to pay a fine of fifty dollars and costs."

U. S. v. Jeffers, 26 Fed. Cas. 596 (4 Cranch C. C. 704), June 1836. [597] "A colored lad, serving for hire in the family of Mr. Bankhead, his Britannic majesty's secretary of legation, was this morning taken away from the house of that gentleman by a constable of the name of Jeffers, . . . upon the plea of conveying him to his master, Mr. King from Alabama. No previous intimation of a wish to remove the lad from Mr. Bankhead's service had been given to him" Held: Jeffers "was guilty of a violation of the privilege of his Britannic majesty's envoy" and removed from his office of constable.

U. S. v. Carter, 25 Fed. Cas. 314 (4 Cranch C. C. 732), October 1836. Held: an indictment at common law, in the county of Alexandria, will lie against a free negro or mulatto for assault and battery upon a white man; notwithstanding the Virginia statute of December 17, 1792, sect. 17.

¹ Act of Md., 1796, ch. 67.

Carey v. Washington, 5 Fed. Cas. 62 (5 Cranch C. C. 13), November 1836. Carey "was residing in . . . Washington . . . and had complied with the requisitions of the by-law of 1827, respecting the admission and residence of free colored persons. That he . . . sold perfumery, and paid for a licence therefor, previous to . . . 29th of October, 1836, . . . he applied to the mayor . . . for a renewal . . . who refused . . . under the ordinance of the 29th of October, 1836.¹ That he continued to . . . sell perfumery after the expiration of his said license. The justice rendered judgment for a fine of 25 dollars," Judgment reversed: [66] "Although free colored persons have not the same political rights which are enjoyed by free white persons, yet they have the same civil rights, except so far as they are abridged by the general law of the land. Among those civil rights, is the right to exercise any lawful and harmless trade, business, or occupation;" [Cranch, C. J.]

U. S. v. West, 28 Fed. Cas. 529 (5 Cranch C. C. 35), November 1836. "A colored woman was offered as a witness for the United States. . . . Eckloff testified that she had lived in his family as a free woman; that he had known her about twelve months; and that she was generally reputed to be, and passed as a free woman." There was other similar evidence. Held: "this evidence was sufficient to rebut the presumption arising from color,"

U. S. v. Prior, 27 Fed. Cas. 624 (5 Cranch C. C. 37), November 1836. Indictment of negro Ralph Prior "for stealing the goods of one Eckloff. . . for receiving them, knowing them to be stolen. . . [625] Cranch, C. J., said . . . that the whole confession must be given in evidence to the jury; . . . Verdict, not guilty."

U. S. v. Vinsent, 28 Fed. Cas. 379 (5 Cranch C. C. 38), November 1836. "Indictment for giving a pass to one of Mr. Custiss's slaves, 'being a paper writing, purporting to be a certificate from the president of the board of aldermen, and acting mayor of the city of New York, under seal of the mayoralty of said city of New York, that the bearer thereof, Alexander Vinsent, was a free person.'" Held: "not such a 'pass' as is contemplated by the 19th section" of the Maryland act of 1796, chapter 67.

U. S. v. Herbert, 26 Fed. Cas. 284 (5 Cranch C. C. 87), November 1836. James Herbert, a negro, was indicted for assault and battery with intent to kill Sybert. He was found guilty, and sentenced to the penitentiary for two years and a half.

Hill v. Washington, 12 Fed. Cas. 181 (5 Cranch C. C. 114), March 1837. Three judgments had been rendered against Ann A. Hill "for the penalty of \$20 in each case, for not causing three slaves to be recorded on the books of the corporation, which she had brought into the city to reside; and for not depositing with the register an affidavit that they were bona fide her property, within twenty days after bringing them in,"² Held: the by-law is warranted by the charter.

¹ Sect. 3.

² By-law of the city of Washington, Apr. 5, 1823, ch. 80, sect. 5.

Nevett v. Berry, 18 Fed. Cas. 27 (5 Cranch C. C. 391), March 1837. Forty-nine slaves "and all their children under three years and six months of age" were sold in 1835 to Nevett, a Mississippi planter, for \$18,775. "while the negroes were yet in the possession of the defendant, he applied to the plaintiff to withdraw from the said sale several of the said negroes," And though the plaintiff refused, he retained some of them. [28] "Verdict for the plaintiff, \$750."

Moody v. Fuller, 17 Fed. Cas. 658 (5 Cranch C. C. 303), March 1837. Petition for freedom. Fuller, an officer of the United States, residing for several years at Fortress Monroe, brought the negress, Sally Moody, "into the District of Columbia, with his family, when he removed here to reside;" and sold her within three years. Held: the petitioner became free by such importation and sale.

U. S. v. Farrell, 25 Fed. Cas. 1051 (5 Cranch C. C. 311), May 1837. Indictment against Farrell¹ "for forging a certificate of freedom for Mr. T. F. Mason's slave Sandy. The slave Sandy was offered as a witness for the United States." The court permitted him to be sworn and examined.² "Verdict, guilty. Sentenced to the penitentiary for four years," "Note. The prisoner was again convicted of a like offence, by forging a pass for negro Sam, another slave of Mr. Mason, at October term, 1837," He was sentenced to three years additional.

Bank v. Lee, 2 Fed. Cas. 702 (5 Cranch C. C. 319), November 1837. [704] "her husband sold George, and substituted Peter; and she emancipated Peter . . . her husband sold Henry, Milly, Letty, and her two sons,"

Richardson's Case, 20 Fed. Cas. 703 (5 Cranch C. C. 338), November 1837. "the prisoner, William Richardson, a colored man, was committed by a warrant, issued by a justice of the peace, . . . stating that whereas, F. B., a constable, had . . . brought before him, . . . Richardson, 'charged with being a runaway; and whereas no proof has been adduced before me that the said Richardson is not a runaway; you are hereby commanded to receive into your jail . . . Richardson and him safe keep'" Counsel for the prisoner "suggested that the old statutes of Maryland were not applicable to this part of the district, nor to the present state of society" and discussed the laws of 1715, 1719 and 1792. There was evidence [705] "which satisfied the court that the prisoner was born free in New Brunswick." Prisoner discharged.

Prather v. Burgess, 19 Fed. Cas. 1243 (5 Cranch C. C. 376), November 1837. "he was frequently heard to say that the slaves were the property of his wife, and he wished her to sell them, and sometimes drove them away from his plantation;"

U. S. v. Beddo, 24 Fed. Cas. 1063 (5 Cranch C. C. 378), November 1837. "Indictment for larceny. The defendant was a colored man, born of a white woman. The Court rejected as witnesses, free colored persons, not born of white mothers. Verdict, not guilty."

¹ Evidently a negro or mulatto.

² Act of Va., Dec. 17, 1792, sect. 5.

Washington v. Lasky, 29 Fed. Cas. 353 (5 Cranch C. C. 381), November 1837. Held: the corporation, under its charter has power to prohibit keepers of ordinaries or taverns from selling spirituous liquors "on Sundays, and other days between sunset and sunrise" "to colored persons of all descriptions, free or bond, young or old,"

U. S. v. Pearl, 27 Fed. Cas. 484 (5 Cranch C. C. 392), March 1838. "Indictment, under the penitentiary act¹ (section 9) [against negro Frank Pearl] for stealing" a silk reticule, pencil, and bank notes left by mistake in his hackney-coach. [485] "Verdict, 'Guilty.' There was a motion in arrest of judgment; but before it was argued, the president pardoned the defendant, and he died."

Bell v. McCormick, 3 Fed. Cas. 107 (5 Cranch C. C. 398), March 1838. Will of Benjamin Prather, Maryland, 1836: [108] "My will is, that my two servants, Robert and Sarah, immediately after my decease, be set at liberty, and forever free from slavery, and that my executor pay, out of my estate, to the said Robert, the sum of fifty dollars, and to the said Sarah, the sum of twenty-five dollars. Item, I will all the rest of my negroes, namely, Bacchus, Joseph, Bill, Dorsey, Hanson, Ann, John, Martha and Rachel, to be sold under the following provisions: that is, none of the said negroes shall be sold to any person residing out of Prince George's county, without their own consent; and in all cases they shall have the liberty of choosing their masters." To six of the last mentioned slaves, he bequeathed twenty-five dollars each. "The present suit was brought by Bacchus and Joseph, . . . the testator left assets, sufficient to pay his debts, without resort to a sale of the negroes, and to leave a *residuum*; . . . the petitioners had demanded their legacies . . . of the executor, who refused to pay them." Counsel for the petitioners "contended that a legacy to a slave is an implied emancipation,"

Held: "the petitioners were not entitled to freedom under the will. That an implied emancipation cannot be inferred in direct opposition to the express order of the testator to his executor to sell them."

Coots v. Morton, 6 Fed. Cas. 496 (5 Cranch C. C. 409), March 1838. Petition for freedom under the will of Mary Morton: "I will that George, if he behaves well until the year 1837, and continues to hire for good wages, shall, at the end of that year, be free." George ran away and "the defendant had to expend two hundred dollars to get him back again." Verdict for the petitioner.

Johnson v. Washington, 13 Fed. Cas. 876 (5 Cranch C. C. 434), March 1838. A justice of the peace had rendered judgment against a negress "for a fine for keeping a tavern without a license. . . . The Court . . . was of opinion that the corporation has a discretion to prohibit the granting of tavern licenses to colored persons."

U. S. v. Beerman, 24 Fed. Cas. 1065 (5 Cranch C. C. 412), August 1838. [1068] "At the last spring term in Alexandria, a woman (colored) . . . was charged . . . with stealing two articles [garments] belonging to

¹ 4 Stat. at L. 448.

two boys . . . at Holbrook's school, both together of the value of nine dollars. . . sentenced . . . to three years' confinement in the penitentiary; "

Fenwick v. Grimes, 8 Fed. Cas. 1142, 1144 (5 Cranch C. C. 439, 603), November 1838, November 1839. Fenwick owned a "valuable woman slave, named Henny, who had been brought up in the plaintiff's family and service, but for whose services he had no further use, and was willing to dispose of said woman slave for a sum far less than her real value to a master who resided and would keep her in the neighborhood, and would engage that she would not be sold away to the southern negro-traders " Grimes bought her, on these terms, for four hundred dollars, her real value being six hundred dollars; and sold her to a negro-trader who carried her out of the District. Grimes claimed that he [1143] "bought the woman for his own use, . . . and was afterwards persuaded by his friend that she was unfit for his use, and that he ought to sell her as aforesaid," [1145] "a verdict for the plaintiff . . . for \$150 damages,"

Jennings v. Washington, 13 Fed. Cas. 547 (5 Cranch C. C. 512), November 1838. "Appeal from the judgment of a justice of the peace against [Mary Jennings] . . . a free mulatto, for the penalty of \$10, for being out after ten o'clock at night, contrary to a by-law of the corporation. . . Judgment affirmed, with costs." "the by-law . . . was justified by the clause in the charter which gives the corporation power 'to restrain and prohibit the nightly and other disorderly meetings of slaves, free negroes, and mulattoes.' "

Bank of the U. S. v. Lee, 13 Peters 107, January 1839. In 1809 Richard Bland Lee of Virginia conveyed to trustees for the use of his wife, during her life, [113] "the following slaves, . . . John and his wife Alice, and their [eight] children . . .; Ludwell, and his wife Nancy, and their [five] children . . .; Henny and her child Eleanor; Rachel and her child Rachel; two sisters . . . and their [two] brothers . . .; George, (a blacksmith,) Harry, (a carpenter,) Harry, (a wagoner,) Tom, (a carter,) Thornton, (a cook,) Samuel, (a smith,) and John, (a ploughboy,) . . . It was further agreed . . . that the said Richard should be authorized . . . to sell . . . any part of the said slaves . . . with the consent of a majority of the . . . trustees, . . . [116] most of the slaves have been sold to supply his improvidence and necessities: "

Thomas v. Mackall, 23 Fed. Cas. 961 (5 Cranch C. C. 536), March 1839. "Bill in equity to restrain the defendant from removing the plaintiff's female slave from the District of Columbia; the slave having been sold by the plaintiff to the defendant for a term of years only, after which she was to be free, although not yet manumitted, and having two or three years yet to serve the defendant; the complainant having the reversionary right to the slave in himself, for the purpose of manumitting her."

Kennedy v. Purnell, 14 Fed. Cas. 318 (5 Cranch C. C. 552), March 1839. The petitioner for freedom was brought from Maryland into Virginia by a citizen of Maryland, who never abandoned his residence in Maryland, and was kept in Virginia two years. Verdict for the defendant.¹

¹ Act of Va., Dec. 17, 1792, sect. 2.

Nichols v. Burch, 18 Fed. Cas. 187 (5 Cranch C. C. 553), March 1839. Held: "the corporation [of Washington] had power to pass the by-law of 31st May, 1827, sect. 6, to prevent free persons of color from being out after 10 o'clock p. m." without a pass, etc.

Corcoran v. Jones, 6 Fed. Cas. 544 (5 Cranch C. C. 607), November 1839. The plaintiffs offered two negro girls [545] "of the value of \$2,000, for sale at public auction to the highest bidder; upon condition, however, that the said slaves, nor either of them, should be sold to any person south of the Potomac out of the District of Columbia, nor removed out of the said District south of the Potomac; but, in case of their being so removed, the said slaves should be immediately entitled to their freedom. That the defendant attended the said public sale, and bid for and purchased the said slaves, subject to the condition aforesaid, for the sum of \$650 [\$660], . . . Yet, the said defendant . . . hath knowingly sold the said several negro girls . . . as slaves for life, to persons south of the Potomac out of the District of Columbia, and hath removed the said negro girls . . . to places remote therefrom, and unknown to the said plaintiffs." Judgment for the defendant.

U. S. v. Davis, 25 Fed. Cas. 775 (5 Cranch C. C. 622), January 1840. "*Habeas corpus ad subjiciendum*, directed to Thomas N. Davis, commanding him to have before the court the bodies of Israel Brinkley, Emanuel Price, and Maria Course, persons of color, with the cause of their detention. . . . Davis stated upon oath, that he purchased the three negroes publicly, in the bar-room of Thomas Lloyd's tavern, in the city of Washington, as slaves for life, from one Joseph Woodall, . . . that he paid for them the sum of \$1,200, . . . the said individuals were removed . . . beyond the District of Columbia, . . . testimony tended to show that Davis had removed the negroes, because he suspected that they would apply for a writ of *habeas corpus*." As Davis refused to produce the negroes, he was committed to the custody of the marshal. Four days later he produced Emanuel and Maria. ("The negro Israel Brinkley had run away, and had been taken up an[d] lodged in jail in Baltimore.") They filed their petition for freedom against Davis; and as he refused [776] "to enter into recognizance, in the sum of \$1,000, that he would not remove the said negroes out of the jurisdiction of this court, until their right to freedom shall be tried," the negroes were committed to the marshal for safe-keeping.¹ "These negroes afterwards established their right to freedom, and were discharged; their jail fees being charged to the United States,"

Newton v. Carbery, 18 Fed. Cas. 130 (5 Cranch C. C. 632), March 1840. Will of Eloya Mattingly, dated 1838: [131] "I will . . . that my negro woman Matilda Gordon, and her child Mary Ann Elizabeth, shall be free at my death."

Jones v. U. S., 13 Fed. Cas. 1035 (5 Cranch C. C. 647), March 1840. William H. Brewster, Lucretia Clarke, alias Letty Clarke, free negress,

¹ See Laws of Md., 1796, ch. 43, sect. 5, ch. 67.

and Harriet Jones, free negress, were indicted for obtaining money under false pretences. They pretended to Williams that Letty was the slave of Brewster, and sold her to him for three hundred dollars. [1039] "Judgment reversed; and ordered to be arrested."

Graham v. Alexander, 10 Fed. Cas. 916 (5 Cranch C. C. 663), March 1840. "the petitioner is the son of Milly, . . . the slave of Miss Brown, who . . . about 1813, . . . brought Milly from Washington county, where she had been living hired out by her mistress for one or two years, to [her sister's] Mrs. Alexander's, in Alexandria county. . . . the petitioner was born afterwards, . . . Miss Brown . . . sold Milly and her two children to Mrs. Alexander; she to be free at thirty-one, and her children then born, and those afterwards to be born, at the same age. . . . Miss Brown died in 1825, making her last will . . . 'that the time of the . . . children of Milly, shall be purchased by my executor, and that they shall be forthwith emancipated by him; and I . . . authorize him to make such purchase out of the estate I shall leave.' . . . the petitioner will be . . . 1839, twenty-six years of age. . . . Milly . . . is free now;"

Held: [917] "the petitioner will be entitled to his freedom . . . 1844, and not before; . . . ordered that the . . . defendant . . . shall not be permitted to take the . . . petitioner into his possession, . . . until he . . . shall have given bond . . . with condition to be void, if he shall have the . . . petitioner forthcoming . . . 1844; . . . provided, however, that the . . . petitioner . . . shall have first given security . . . conditioned that he . . . shall continue faithfully in the service of . . . Alexander . . . until . . . 1844."

Bell v. Greenfield, 3 Fed. Cas. 103 (5 Cranch C. C. 669), March 1840. Ann Bell, a negro slave, and her children "claimed their freedom under a paper purporting to be the last will . . . of Gabriel P. T. Greenfield, of Maryland. . . . probate has been conclusively refused by the highest court in Maryland. . . . [104] The Court (Thruston, J. contra) refused to permit the paper to be read in evidence . . . as a will" or "as an instrument of manumission,"¹

Beckley v. United States, 3 Fed. Cas. 28 (1 Hayw. and H. 88), June 1842. "Jesse Beckley, the younger, a free negro," was indicted for stealing one hundred dollars and fifteen cents in 1841. [29] "Upon the trial of this cause the United States offered a free colored witness to give testimony in the same, to which the defendant objected, and offered evidence tending to prove that the mother of the defendant was a white woman, but his father was a black man. The court . . . permitted the witness to be sworn;" The jury "returned a verdict of guilty. The judgment of the court was that he suffer imprisonment and labor in the penitentiary for the period of two years." Affirmed.

Williams v. Ash, 1 Howard 1, January 1843. Will of Maria Ann T. Greenfield, 1824: [2] "I . . . bequeath to my nephew, Gerard T. Greenfield, all my negro slaves, . . . James Ash, . . . provided he shall not carry them out of the state of Maryland, or sell them to any one; in either of

¹ Under Act of 1796, ch. 67, sect. 29.

which events, I will and desire the said negroes to be free for life." G. T. Greenfield sold James Ash to Williams in 1839. Soon after Ash "presented a petition, stating that he was entitled to his freedom, and that he is . . . confined in the private jail of . . . Williams." Judgment for the plaintiff [Ash] affirmed: the bequest of the slave to her nephew, under the restrictions imposed by the will, was not [13] "a restraint on alienation inconsistent with the right of property bequeathed by the will. . . [14] the bequest . . . was a conditional limitation of freedom to the petitioner, and . . . took effect the moment he was sold." [Taney, C. J.]

Brown v. Robertson, 4 Fed. Cas. 426 (Hayw. and H. 134), April 1843. Action of trespass *vi et armis*. Brown, a free negro, "in the employment of Hon. Daniel Webster, then a senator of congress," was arrested by Robertson, a police officer, and imprisoned "in the watch-house for being out after ten o'clock at night, contrary to the provisions of the by-law of the corporation of the city of Washington, approved May 31, 1827."¹ No evidence was given "that he exhibited the evidence of his exemption from its general provisions to the officer making the arrest, . . . Verdict and judgment for defendant."

Cassedy v. Williams, 5 Fed. Cas. 272 (Hayw. and H. 151), August 1843. Williams "purchased, on the 9th of October, 1840, a negro boy . . . at Leesburg, Va., for \$600,"

Rhodes v. Bell, 2 Howard 397, January 1844. "petition for freedom filed by Bell." Before 1837 he was the slave of "Hoff, a resident of Alexandria county, in the District of Columbia; . . . in . . . 1837 . . . Hoff . . . did sell . . . petitioner to one Little, . . . [398] a resident of Washington county, . . . and the petitioner was immediately removed by said Little to Washington county . . . Little shortly afterwards . . . sold the petitioner . . . at the time of the sale . . . the petitioner was more than forty-five years of age, . . . and is now fifty-nine or sixty years old."

Judgment in favor of the petitioner, affirmed: [404] "the question . . . depends exclusively on the laws" of Maryland in regard to the importation of slaves.² [405] "The counties of Washington and Alexandria, excepting the modification made by the act of 1812, are as foreign to each other, as regards the importation of slaves, as are the states of Virginia and Maryland."³ . . . Slaves brought into the state of Maryland, in violation of the law, are declared to be free without reference to their age."⁴ [McLean, J.]

Adams v. Roberts, 2 Howard 486, January 1844. [487] "On the 30th of December, 1801, Summers executed a deed of manumission of several negroes, and amongst them, Sarah, then about eighteen years old, to be free on the 1st day of January, 1814; and . . . that the children of Sarah should be free at the age of twenty-five years." Her daughter Julia

¹ Rothwell's Laws 196.

² Act of November 1796. 2 Maxcy's Laws 351.

³ Act of Congress, Feb. 17, 1801.

⁴ Although the Maryland law prohibits "the owner of a slave from manumitting him, if he be over forty-five years of age;"

Roberts, the plaintiff, [493] "was twenty-eight years old when the trial took place, in May, 1842." Judgment of the court below, in favor of Julia's freedom, affirmed.

U. S. v. Gassaway, 25 Fed. Cas. 1263 (1 Hayw. and H. 174), March 1844. Indictment¹ against Samuel Gassaway, a slave. On November 26, 1842 he broke into a storehouse and stole "three pair of boots of the value of \$10.50 . . . and . . . one quarter box of segars, of the value of four dollars and fifty cents," He was found guilty.

Fletcher v. U. S., 9 Fed. Cas. 274 (1 Hayw. and H. 186), June 1844. Henry Fletcher, a free negro, "was indicted for an assault and battery by shooting a pistol with intent to kill Elizabeth Fletcher, and was convicted."

Miller v. Herbert, 5 Howard 72, January 1847. Betsy [74] "about forty-two years of age, and . . . Caroline Herbert about seventeen" [72] "claimed a right to their freedom, under a deed of manumission, executed to them . . . 1842, by their owner, George Miller, . . . an inhabitant of Washington county," He sent for a justice of the peace and two witnesses, who came to his house; and he executed the instrument [73] "then and there, in the presence of the said witnesses, . . . and did acknowledge the same before the said justice of the peace; but the said witnesses neglected to sign, or did not understand that they were called upon to sign, . . . Miller retained the said paper-writing . . . until some short time before his death, when he gave it to your petitioners, with instructions to place it in the hands and follow the directions of Mr. John McLelland, of this city; . . . [75] The jury, under the instructions given by the court, found a verdict for the petitioners, viz. that they were free." Judgment reversed and the cause remanded: [82] "this is a question of Maryland law, . . . the recording of the deed of manumission . . . within the time prescribed by the statute of 1796,² was an indispensable prerequisite to confer any rights on the petitioners" [Daniel, J.]

Drayton v. U. S., 7 Fed. Cas. 1063 (1 Hayw. and H. 369), February 1849. Drayton was [1065] "convicted of stealing two slaves,"³ Judgment reversed and cause remanded: [1068] "the court below erred . . . In refusing to give the instructions prayed by the prisoner" [1067] "That if the jury find . . . that the two Slaves . . . were runaways and that the prisoner, having the control of the schooner *Pearl*, . . . did receive the said runaways on board . . . with intent to transport them beyond the limits of the county of Washington, in the end that they should escape from their owners and go to a state where slavery does not exist, and did in fact so transport them . . . then the offence . . . is that which is provided for in the act . . . of Maryland, 1796, c. 67, sect. 19, and is not larceny."

Wilkinson v. Williams, 29 Fed. Cas. 1270 (2 Hayw. and H. 1), January 1850. Wilkinson received \$600 in notes for a negro man, in 1840. [1271] "Rodbird . . . testified that during the years 1839 and 1840 he was em-

¹ Under Act of Md., July 1729, ch. 4, sect. 3.

² "within six months from the date of such instrument of writing." Ch. 67, sect. 29.

³ Act of Md., 1737, ch. 2, sect. 4.

ployed by the defendant to purchase negroes for him in . . . Maryland and Virginia; . . . that the business . . . of the defendant was a trader in negroes; that witness paid for the negroes in the identical money placed in his hands by the defendant, . . . 'Received of Wm. H. Williams ten hundred dollars, to be laid out in negroes, or returned when wanted. June 16th, 1839.' "

Ennis v. Smith, 14 Howard 400, December 1852. See *Armstrong v. Lear*, p. 178, *supra*.

Hickerson v. U. S., 30 Fed. Cas. 1087 (2 Hayw. and H. 228), December 1856. "Indictment for an assault on a slave." James, "a slave of Mary A. Dodson, . . . was hired to Mr. Burch, the keeper of a livery stable, and that the defendant was the manager for said Burch, with authority from him to correct and manage his servants;" He whipped James in the stable. The Court instructed the jury: [1088] "It must amount, and you must believe that it was a nuisance, for a technical assault and battery on a slave is not indictable. A master or hirer of a slave, or his manager, has a right to correct a slave that belongs to him, or to whose services he is entitled by hiring, but if he does so in a cruel or inhuman manner in such a place, . . . as to be an annoyance or nuisance to the citizens, whose pleasure or business carry them near the scene of the infliction, he is indictable. The question of nuisance, or no nuisance, is one of fact exclusively for the jury to decide." "Judgment of criminal court affirmed."

Pemberton v. Lockett, 21 Howard 257, December 1858. [262] "The claims . . . originated as far back as . . . 1841, in consequence of the unwarrantable interference of the public authorities at Nassau, in the island of New Providence, one of the Bahama Islands, belonging to Great Britain, and liberating a cargo of slaves, who were on a voyage from Virginia to New Orleans, and who had mutinied, overcome the officers, and carried the vessel into that port. The persons interested in the slaves, of whom they were deprived by this interference, immediately appealed to their own Government for redress. A correspondence was opened between this Government and Great Britain . . . which continued down to the time of the convention . . . of the 8th of February, 1853. . . a board of commissioners, one to be named by each Government, and the two to appoint an umpire . . . sat in . . . London . . . the umpire allowed to the insurance company [which had been subrogated to the rights of one of the claimants for compensation against Great Britain, in the case of the brig *Creole*] \$28,460. . . [265] there were six separate claimants, besides Pemberton [liquidator of the Merchants' Insurance Company, in the city of New Orleans], for compensation arising out of the case of the *Creole*, . . . And there were, also, the cases of the brig *Enterprise* and schooner *Hermosa*, involving principles similar to those upon which the reclamation depended in the case of the *Creole*."

U. S. v. Merryman, 26 Fed. Cas. 1240 (2 Hayw. and H. 337), February 1860. [1241] "Sweggert sent a cart to a colored man named Rogers to be mended. . . Rogers would not give it up, alleging it was not paid for, and took the screws (nuts) from the axle . . . Merryman [a constable]

. . . decided that that was a felony; . . . Sweggert made oath to the search warrant, . . . Merryman proceeded to Rogers' shop, broke it open, . . . and took the cart [but] . . . did not . . . 'return the body' of Rogers, . . . simply using a criminal process . . . for the purpose of taking unlawful possession . . . of property which Rogers held lawfully as a pledge for a debt. The Court . . . remarked that such a proceeding . . . was a high-handed wrong, . . . The clerk was then ordered to dismiss the defendant from the office of county constable, and take away his commission."

Vigel v. Naylor, 24 Howard 208, December 1860. "a petition for freedom filed by Susan Vigel," "she offered in evidence the will of John B. Kirby, by which all his slaves over thirty-five years of age were emancipated; and all those under that age were to be emancipated—the males at thirty-five, and the females at thirty years of age. This was allowed by an act . . . of Maryland of 1796, ch. 67, sec. 13. A witness testified . . . 'that a few days after the death of Kirby, . . . 1828, George Naylor brought to his house . . . the petitioner, her mother, and her brother, and her sister; and . . . Naylor stated . . . that the had brought said negroes from the residence of said Kirby; and that the petitioner was then between six and eight years of age.' The petitioner then offered to prove that her brother Richard, and her mother Sarah, and her sister Eliza, had obtained their freedom under the will of Kirby; . . . Sarah . . . and Eliza . . . by suits brought against George Naylor, . . . in 1838; and . . . in 1842. . . that it was very unusual for children of the age of the petitioner at the time of Kirby's death to be separated from their parents; but the court excluded the testimony offered from the jury. . . [214] judgment of the Circuit Court . . . reversed, and the cause remanded for another trial."

U. S. v. Copeland, 25 Fed. Cas. 646 (2 Hayw. and H. 402), May 1862. Petition for a writ of *habeas corpus* for the discharge of the fugitive, William Copeland. Refused. Held: the fugitive slave law of 1850¹ is as applicable to this District as to any of the states.

Reed v. Campbell, 20 Fed. Cas. 422 (2 Hayw. and H. 417), October 1862. "the testator was a free colored person" and "the parties claiming the fund in question are free colored persons," "Reed, the executor, is a Christian white freeman" "the testimony of an old [free] colored woman, Kitty Pad . . . was objected to² . . . The objection was overruled." [426] "The decree of the orphans' court is reversed,"

Naylor v. Williams, 8 Wallace 107, December 1868. "Several negroes had been convicted in Virginia of heinous crimes and sentenced to death; but being reprieved by the governor of Virginia, were sold by that State to two persons, Williams and Davis, upon Williams's giving bond to transport them beyond the limits of the United States. Williams did not so transport them, but took them to Louisiana, and was there indicted, convicted, and sentenced to a heavy fine, under a statute of Louisiana, for bringing negroes convicted of crimes into that State. The negroes them-

¹ 9 Stat. at L. 462.

² Act of Md., 1717, ch. 13, sect. 2.

selves, however, were not confiscated, but were sold by Williams for a large sum, to be thereafter received. In this state of facts, Davis (his partner in the purchase from the State of Virginia) assigned, in 1847, by instrument of writing, all his interest in the slaves to one Nailor, . . . and Williams having received the purchase-money for the slaves, Nailor thereupon sued him . . . to recover his share of the proceeds, and called two witnesses to prove the genuineness of Davis's signature to the instrument of assignment, and Williams's acknowledgment of the claim now set up by Nailor. One of them testified that the assignment was shown in the latter part of the year 1867 by the plaintiff to Williams, . . . [108] This witness, on cross-examination, was asked: 'Was not the said plaintiff, at the date of said assignment, engaged in trading in negroes?' The question was objected to, and the objection was overruled. This was the ground of an exception. The next witness was asked on cross-examination: 'Was not he (the witness), at the date of the said assignment, engaged in aiding the plaintiff in trading in negroes?' This question too was objected to, and the objection was overruled; and this constituted a second exception. On these two exceptions the case was brought here. The bills of exception did not show what answers the witnesses gave to the questions above-mentioned," Counsel for the plaintiff in error: "The only tendency and object of the inquiry was to excite in 1867, the prejudices of the jury against a plaintiff who, twenty years before, might have dealt in slaves. The same objections exist with increased force to the similar inquiry regarding the business of the witness, and his aiding the plaintiff in negro trading, and which makes the subject of the second exception. The purpose of the question was, really, to impeach the credibility of the witness by a collateral inquiry into his business twenty years ago, in matters irrelevant to the subject before the jury."

Judgment affirmed: "where a question is asked which is illegal only because it may elicit improper testimony, and the court permits it to be answered against the objection of the other party, the injury done the party is by the answer," Unless he makes "the answer a part of the bill of exceptions, . . . there is no error of which a revising court can take notice. . . . also . . . there is nothing in the bill of exceptions which enables us to say that the questions themselves exceeded the reasonable license which a court, in its discretion, may allow in cross-examination,"

Bouldin v. Alexander, 15 Wallace 131, December 1872. "From about the 1st of September, 1857, a small number of colored persons were in the habit of consociating in prayer-meetings and other religious conferences at the house of one Albert Bouldin, a colored man from Virginia, who had been licensed to preach, and was so styled the Reverend Albert Bouldin; he being always a chief actor in the assemblages. The persons were, at first, few in number, feeble in resources, and without any church edifice. But under Bouldin's leadership they increased in strength, and . . . went to work to raise money to build a meeting-house; Bouldin taking the lead . . . and being at once pastor, collector, treasurer, chief agent, and actor in the enterprise, and getting into his own hands most of the moneys collected. Having bought a lot on which to build a church, he took a deed

for it in his own name, and proceeded to have the church built, . . . now standing, on the corner of Fourth and L Streets northwest. . . [133] April 1st, 1864, he and his wife conveyed a large part of the lot, including that on which the church was built, . . . to four persons, . . . as trustees, to be used, . . . as 'the Third Colored Baptist Church of the City of Washington;' . . . A congregation had by this time been organized with sufficient regularity and in full conformity with the constitution of the general Baptist Church of the United States,"

Hume v. Beale, 17 Wallace 336, December 1872. Berry of Maryland, in 1826, conveyed his farm "stocked with thirty slaves," to Beale in trust for the use of his wife, during her life or widowhood, "and after her death or marriage," to their children. [337] "In the years 1828 and 1829, that is, after the death of Mr. Berry, . . . nearly all the slaves had disappeared from the farm; the slaves were 'not sold in a body but picked off one or two at a time; that is, sent to a place where the traders could get them; locked up there till the traders came.' . . . [342] negro, Johnson, testified: . . . 'not one was left to tell the tale. . . . I have seen the negro-traders there often. Mr. Beale would bring them down there from the city, and have the negroes hiding about like young rabbits. . . . [343] He only told me that he would see that I was not sold to Georgia. . . . I flew the track; they sold me running.' "

DELAWARE

INTRODUCTION

I.

The line which the English mathematicians, Mason and Dixon, drew to the north and east of Maryland in 1763-1767, to settle the boundary dispute between Lord Baltimore and William Penn, divides Maryland from Pennsylvania (which then included Delaware) like a T-square, or rather like a letter Z, whose lowest member is embryonic. Actually,¹ the present state of Delaware lies wholly outside the traditional "pale" of the slave states, yet she was not free. Her air was not too pure for a slave to breathe, nor did her soil impart freedom to the slave who set foot thereon; but the atmosphere was kindlier to him there than in Maryland and further south.

A vital distinction was, that in Delaware a negro was presumed to be free, while in the other slave states he was presumed to be a slave. The first enunciation of the doctrine in the Delaware Reports appears in 1840 in the case of the State *v.* Dillahunt,² though it had been so held prior to that case.³ A colored woman was objected to as a witness "because she was not proved to be a free woman, though it was proved that she acted as such. The court held her competent on two grounds. At the common law there was always a strong presumption in favor of freedom. In the first settlement of this country, the fact of the existence of the negro race in a state of bondage to the whites, and a large majority of that color being slaves, was considered sufficiently strong to outweigh the common law presumption, and to introduce a legal presumption that a colored person is *prima facie* a slave. Yet that state of things has changed; and *cessante causa, cessat et ipsa lex*. There are in this State about 20,000 persons of color; of whom 17,000 are free, and 3,000 slaves. A large majority of all persons of color in the United States are free. In point of fact, therefore, there is no reason to presume slavery from color; in opposition to the strong common law presumption, that every man having the human form is a freeman. And such has been the decision of this court on several occasions. But additionally, it has always been the practice to take reputation as proof of freedom."⁴

The contiguity to Maryland and the large numbers of free negroes offered a great temptation to kidnap them in Delaware and to carry them

¹ Though not figuratively.

² 3 Harrington 551.

³ State *v.* Jeans, 4 Harrington 570 (1845): "it has been repeatedly decided that as a mere presumption, the inclination is in favor of freedom. It was so held prior to the case of Dillahunt, though that is the first case reported."

⁴ As in Maryland.

into slavery in Maryland. In 1793 an act⁵ was passed providing that "every person who shall feloniously kidnap, take and carry away from this state, into any other state, any free Negro or free Mulatto, or shall aid or assist . . . shall be publicly whipped on his or her bare back with thirty-nine lashes well laid on, and shall stand in the pillory for the space of one hour, with both of his or her ears nailed thereto, and at the expiration of the hour, shall have the soft part of both of his or her ears cut off."

In 1826 "a fine of not less than one thousand dollars nor more than two thousand dollars" was added; the lashes were increased to sixty; the ears were left free; but the act provided that the person convicted "shall be imprisoned, in solitary confinement, for a term of not less than three nor more than seven years and at the expiration of said imprisonment shall be disposed of as a servant to the highest and best bidder or bidders for the period of seven years; and every person . . . so offending a second time, upon conviction of such second offence, shall suffer death."⁶ The Act of 1841 reduced the lashes again to thirty-nine, and the term of imprisonment to not less than one year nor more than two. For a second offence, the fine was increased (\$2000 to \$5000), and exile was substituted for death.⁷ Nevertheless the temptation to kidnap was too strong to be resisted, the profits of the business overbalancing the fear of punishment, as the numerous kidnapping cases testify.⁸

Even slaves could not, by the Act of 1787,⁹ be carried out of the state for sale, or sold for export, without a license, on pain of forfeiting one hundred pounds for each offence; and an additional penalty was inflicted by a clause in the kidnapping act of 1793,¹⁰ declaring such slaves free.

About 1799 one Hicks removed eleven of his negroes to Maryland. In 1801 one of them, Amelia, "escaped from the service of Hicks," and returned to Delaware. "Subsequently she was found in the possession of Andrew Allen, who claimed and held her as his slave in this state for nearly thirty years, . . . It was alledged that he purchased her of . . . Alston, but this fact was not established, . . . It was in evidence, however, that this Alston was a negro trader from one of the southern states, and that Hicks actually sold all of the other negroes which he took from this state, to the traders, after he had taken them to Maryland." Amelia's three children, born after her return to Delaware, and her grandchildren,

⁵ Act of June 14, 1793, ch. 22. c. sect. 1 (2 Del. Laws 1093). This act also contained a section (sect. 4) declaring slaves free, who were carried out of the state for sale, or sold for export without a license. The act "was intended to prevent the crime of kidnapping; to restrain the traffic in human beings, and gradually to abolish slavery in this state." *Allen v. Negro Sarah*, 2 Harrington 434 (1838).

⁶ Act of Feb. 8, 1826, Rev. Laws 1829, 131.

⁷ Act of Feb. 18, 1841, ch. 346, sect. 1. Sess. Laws 1841, 400. For further modifications see Rev. Stat. 1852, 473 (ch. 127, sect. 12).

⁸ *State v. Whaley*, 2 Harrington 532, 538 (1836 and 1837); *State v. Whitaker*, 3 Harrington 549 (1840); *State v. Griffin*, *ibid.* 559 (1841); *State v. The same defendant*, *ibid.* 560; *State v. The same defendant and Wilson*, *ibid.*; *State v. Jeans*, 4 Harrington 570 (1845); *State v. Updike*, *ibid.* 581 (1847); *State v. Harten*, *ibid.* 582 (1847).

⁹ Act of Feb. 3, 1787, ch. 145. b. sects. 1, 2. 2 Del. Laws 885.

¹⁰ Act of June 14, 1793, ch. 22. c. sect. 4. 2 Del. Laws 1094.

petitioned for freedom, under the act of 1793.¹⁰ The members of the court were "unanimous in the opinion, that the petitioners are entitled to their freedom;" that such exportation did, *ipso facto*, establish Amelia's freedom; and that the "right and title to freedom . . . attaches the moment the offence is committed, which is prohibited by the statute."¹¹ It was held in 1849¹² that "a prior conviction [of the master] is not requisite; . . . proof of the fact of exportation, contrary to the act, confers freedom."

Conversely, by the Act of 1787, a slave became free if brought into the state, "for sale, or otherwise,"¹³ Even a slave sent by his master in Maryland to haul wheat to sow on his Delaware farm,¹⁴ or to plow on his farm there for a few days,¹⁵ was decreed free.¹⁶

The kidnapping cases together with some cases of assault and battery on free negroes produced one beneficent result: they gave rise to an interpretation of the rules of evidence as to the admission of the testimony of free negroes in cases where a white man is a party, which gave the free negro a bulwark for his rights not vouchsafed him in the other slaveholding states. The statute of Delaware, passed in 1787,¹⁷ provided that no free negro "shall be entitled . . . to give evidence against any white person, or to enjoy any other rights of a freeman, other than hold property, and to obtain redress in law and equity for any injury to his or her person or property." In 1793 a white man was indicted for an assault and battery on Phillis Miller, a negro woman. She was offered as a witness for the State, and admitted. "Negroes are allowed the same redress for injuries to their persons as whites."¹⁸ Indictment is one mode of redress for an injury to the person, principally useful where the party injured is the only witness of the fact necessary to be proved. The act giving to negroes this right of redress must be construed to allow the means absolutely necessary to obtain redress. . . . we do not mean to say that a negro is a witness between two white persons; nor, in cases like the present, where other proof can be procured; but only in the case where justice must otherwise fail."¹⁹ Justice would usually have failed in the kidnapping cases if negro testimony had been excluded.

In 1799 an act²⁰ was passed admitting "free black persons and free mulattoes" to give testimony "in all criminal prosecutions, where it shall appear to the court . . . that no white person or persons competent to give

¹¹ *Allen v. Negro Sarah*, 2 Harrington 434 (1838).

¹² *Anderson v. Thoroughgood*, 5 Harrington 199.

¹³ Act of Feb. 3, 1787, ch. 145, b. sect. 7. 2 Del. Laws 886.

¹⁴ *Negro Guy v. Hutchins*, 5 Harrington 103 n.

¹⁵ *Negro Abram v. Burrows*, *ibid.* 102 n. (1804).

¹⁶ The Act of 1827 obviated this difficulty: "any person . . . occupying a farm . . . through which the line of the State runs, may lawfully employ his . . . slaves upon every part of such farm . . . and pass and repass them over said line for that purpose;" Rev. Laws 1829, 154.

¹⁷ Act of Feb. 3, 1787, ch. 145, b. sect. 8. 2 Del. Laws, 887.

¹⁸ *Ibid.*

¹⁹ *State v. Bender*, p. 217, *infra*.

²⁰ Act of Feb. 1, 1799. 3 Del. Laws 80.

testimony, was or were present at the time when the fact charged is alleged to have been committed, or where such white persons who were present have since died, or are absent from the State and cannot be produced as witnesses," except "against any white man, to charge such white man with being the father or reputed father of any bastard child." In 1840 the negro kidnapped was allowed to give evidence, though there was a white person present who was "implicated" in the crime, but not indicted: "the act [of 1799] contemplated, in excluding negro testimony where a competent white witness was present, not the mere case of competency on the part of the witness, but the sufficiency of his evidence under ordinary circumstances, to produce conviction."²¹ In an assault and battery case, in 1842,²² the negro assaulted was permitted to testify, although there had been two white persons present and "both knew that a blow was struck," but "one of them was drunk, and the other did not see the whole of the fight." [575] "The law of humanity is in favor of the old decisions, . . . Otherwise there will often be a failure of justice, and wrongs may be committed with impunity." [Read, C. J.] As late as 1867 the old act of 1799²³ was relied on to exclude the testimony of a negro man against a white man indicted for assaulting him, there being a competent white witness present; but "the fact that the negro called as a witness, was the person on whom the assault and battery had been committed, having come to the knowledge of the Court, the Chief Justice remarked that his testimony was admissible under the rulings of the Court, on the ground of humanity and necessity, although there was a white witness present,"

The Delaware court agrees with that of Maryland²⁴ in holding that a slave born during the continuance of a life estate in the mother, belongs to the legatee for life: "He who supports the child of the slave in infancy, ought to be justly remunerated for his expense and trouble by its services, and the expectation that he will be so remunerated will insure greater care and attention to the wants of the child. . . the maxim [*partus sequitur ventrem*] is misapplied when it is used to direct us not as to the condition of the issue, but as to the person entitled to the ownership of that issue."²⁵

The maxim, as applied "to the condition of the issue," comes up for interpretation in those cases where a female slave is to become free *in futuro*, and she gives birth to a child or children before the end of the term of intermediate servitude. The Virginia interpretation was generally followed in the slave states:²⁶ that as the mother was not actually free till the future date, her offspring born while she was not actually free,

²¹ *State v. Whitaker*, 3 Harrington 549. Affirmed in *State v. Griffin*, *ibid.* 560: "at the time he was kidnapped, there were white persons present aiding and assisting in the crime."

²² *State v. Cooper*, *ibid.* 571.

²³ "the eighth section of which was re-enacted in 1852." Rev. Code, ch. 107, sect. 4.

²⁴ In the other slave states, the child belonged to the remainderman.

²⁵ *Smith v. Milman*, 2 Harrington 497 (1839).

²⁶ *Maria v. Surbaugh*, 2 Randolph 228 (1824).

but a slave, were slaves; and so it was held in Delaware, in the case of *Jones v. Wootten*, in 1833.²⁷ Judge Harrington dissented: [84] “By the act of manumission [*in futuro*] the mother acquires a vested right. . . . The child follows the condition of the mother. At its birth the mother is not in the condition of absolute slavery, but only of limited slavery, owing services for a limited period; if the child be in the same condition it is that of limited slavery, measured by the term of its mother’s servitude. . . . [86] I regret that I have not been able to bring my judgment into coincidence with that of the other members of the Court. I think the petitioner . . . is entitled to his freedom.” But in 1849 the judgment “of the other members of the Court” was overruled in the case of *Elliott v. Twilley*²⁸ and Judge Harrington’s opinion in *Jones v. Wootten* was followed.

Delaware differed from the other slave states in another particular, unique in the line of reasoning followed by the court and in the conclusion reached. In other slave states there were many cases of free negroes who bought slaves, usually members of their own families, and generally in order to set them free if the law so permitted.²⁹ In Delaware a free negro, who had been “legally married” to a slave and had purchased their son Isaac when he was an infant, bequeathed him to Tindal “until he should attain the age of twenty-five years,” and on Tindal’s death, his executor sold Isaac to Hudson. It was held (in 1838)³⁰ that Isaac was “entitled to his freedom.” Judge Clayton, in delivering the opinion of the Court, says: “we observe one . . . pervading feature [of slavery], that the black is the slave to the white man; . . . this court . . . will not extend slavery beyond what it has been heretofore, . . . to give the free negro a right to hold slaves, would be to institute another and a dangerous species of slavery hitherto unknown.³¹ . . . the negro is not such a freeman as to extend protection; he is . . . almost as helpless and dependent on the white race as the slave himself; . . . We think, therefore, that neither usage, policy, nor the necessary relations of master and slave, will permit free negroes in this state to hold slaves. . . . also . . . we ought not to recognize the right of a father to hold his own children in slavery. Humanity forbids it. The natural rights and obligations of a father are paramount to the acquired rights of the master; and the moment the father purchases his child and these rights become blended in the same person, the lesser rights and obligations are merged in the greater, and the child is free. . . . [443] Humanity revolts at the idea of a parent selling his own children into slavery.”

²⁷ 1 Harrington 77.

²⁸ 5 Harrington 192.

²⁹ See the extraordinary case of the *Guardian of Sally, a Negro v. Beaty*, 1 Bay 260 (1792).

³⁰ *Tindal v. Hudson*, 2 Harrington 441.

³¹ The Act of Va., Oct. 3, 1670, provided that “noe negroe or Indian though baptised and enjoyned [enjoying] their owne Freedom shall be capable of any . . . purchase of christians, but yet not debarred from buying any of their owne nation.” 2 Hening 280.

II.

The judicial system provided for the Delaware State by the constitution of 1776 comprised a Supreme Court consisting of three judges, one of whom was to be chief justice, and a Court of Appeals consisting of a president and six other judges. The constitution of 1792 separated equity jurisdiction from that of the law courts, and instituted a chancellor and a Court of Chancery. The sessions of the Supreme Court were to be held by three or four judges, one of whom was to be resident in each county, and one of whom was to be chief justice. Appeals from it were to go to the High Court of Errors and Appeals, consisting of the chancellor, the judges of the Supreme Court, and those of the Court of Common Pleas.

The constitution of 1831, under which most of the cases which follow were heard, provided instead of the Supreme Court a Superior Court with four judges (one of them to be chief justice), but required that, of the associate judges, there should be one from each of the three counties of which the state consisted, and that no associate judge should sit in the county in which he resided. The chancellor and Court of Chancery were retained. Appeals were to be heard by the Court of Errors and Appeals, which in the case of appeals from the Superior Court was to consist of the chancellor, the associate judge of the Superior Court who had not sat in the case below, and one of those judges of that court who had so sat, while in the instance of a case brought up from the Court of Chancery the appeal was to be heard by a court consisting of the chief justice and his three associates. Criminal cases were heard either by the Court of Oyer and Terminer or by the Court of General Sessions of the Peace and Jail Delivery, composed variously of the chief justice and associate judges. From these two criminal courts there was no appeal to any other court.

DELAWARE CASES

Robinson v. Adams, 4 Dallas xii, September 1788. Will of Thomas Bagwell, dated 1690: "I give to my son John, one negro woman."

Negro Brister v. Dickerson, 5 Harrington 102, 1792. Petitioner was decreed free because he was sold with intent to export.¹

Collins v. Hall, 3 Harrington 574 n., November 1793. "Upon the trial of this cause [between two white persons²], . . . one Levin Thompson, negro, was offered as a witness . . . Thompson was a freeman; that his mother and grandmother had been free; and that they lived in, and he came from, the State of Maryland."

Held: [576] "The witness is incompetent and must be rejected." "There is no doubt but this man must be taken for the issue of a slave; and, though he were made free by the laws of Maryland, he is clearly within the spirit of the act of 1787."³

State v. Bender, 3 Harrington 572 n., December 1793. "The defendant, a white man, was indicted for an assault and battery on Phillis Miller, a negro woman. Phillis Miller was offered as a witness for the State," [574 n.] "*Per Curiam*.—Witness admitted." [573 n.] "her credit to be left to the jury. . . Negroes are allowed the same redress for injuries to their persons as whites. Indictment is one mode of redress for an injury to the person, principally useful where the party injured is the only witness of the fact necessary to be proved. The act⁴ giving to negroes this right of redress must be construed to allow the means absolutely necessary to obtain redress. . . we do not mean to say that a negro is a witness between two white persons; nor, in cases like the present, where other proof can be procured; but only in the case where justice must otherwise fail." [Bassett, C. J., Rodney, J., concurring—McDonough, J. dissenting.]

State v. Farsons, negro, 3 Harrington 576 n., May 1794. "Indictment for an assault and battery upon . . . a white man. David Hutt, a free negro man, was offered as a witness for the defendant. . . Hutt was the only witness present at the transaction"

Held: "We consider him incompetent" "The witness is not seeking redress, and therefore not within the clause of the act of assembly⁵ relied on by the court in *The State v. Bender*."⁶

Negro Isaac v. Ferguson,⁷ 5 Harrington 102, November 1794. Petitioners were decreed free because they had been sold with intent to export.⁸

¹ Wilson's notes 168.

² *State v. Bender, infra*.

³ Act of Feb. 3, 1787.

⁴ Act of assem., Feb. 3, 1787, 2 Del. Laws, 887, sect. 8.

⁵ Feb. 3, 1787.

⁶ *Supra*.

⁷ Cited from Wilson's notes.

⁸ *Negro Jemima v. Ross*, 5 Harrington 102 (1796).

Negro Guy v. Hutchins, 5 Harrington 103 n., 1803(?). [104 n.] “Guy was sent by his master with a cart load of wheat to sow on his farm in Delaware. Decreed free.”¹

Cedar Swamp Case, 5 Harrington 104 n. (c. 1804). “The negro was hired by a person living in Maryland, near the line, of his mistress, who resided in Maryland also. He kept him in the swamp at work; and at one time kept him to work in Wells’ Swamp repairing bridges, for the space of two weeks; but slept in Maryland, and carried his dinner with him. Petition [for freedom] discharged.” [Judge Rodney’s MS. notes.]

Blacksmith’s Shop Case, 5 Harrington 104 n. (c. 1804). “Perhaps negro Tom *v.* Banks. The slave worked frequently, say five or six days, in the Blacksmith’s shop, in which his master was a partner; but did not sleep in Delaware. After argument the court discharged the petition [for freedom]. His domicil appeared to be in Maryland—and no intention to elude the act of 1787 appeared to the court.” [Judge Rodney’s MS. notes.]

Negro Abram v. Burrows, 5 Harrington 102 n., November 1804. “Abram was the property of Edward Burrows, who resided in Maryland, and had a farm in Delaware, on which his brother Lewis lived as a tenant. Abram was sent to plow several days, two or three, and also to save fodder two or three days, in the years 1802-3.” Lewis “returned work to Edward for it; that he came with his master’s plows and horses; . . . Burrows lived three miles from this farm.” Held: “amounted to a hiring or sale; and therefore is a bringing into the State, under the act² so as to entitle negro Abraham to his freedom.”³

Negro Beck v. Holiday, 5 Harrington 101, November 1805. “Petition for freedom. Mrs. Wood.—I heard Edward Holiday say he did not buy Beck for life, but would not tell her so. . . Beck had been in possession of Edward Holiday five years. George Clow.—Has heard Edward Holiday, the elder, say he bought Beck of John Cloud, for life. Holiday gave £30 for her and her child, . . . Cloud lived in Maryland. Cloud said he took a bond from Edward Holiday, that Beck was to be free in six or seven years.” Witnesses for defendant: “Cloud told me he sold Beck for life.” “Cloud lived in Delaware when he sold.” The court adjudged negro Beck free.⁴

State v. Johnson, cited in 3 Harrington 549, 1822. Held: “the person [free negro] kidnapped was a competent witness, though an accomplice [white] in the crime, and present at its commission, was also examined;”

Burton v. Derrickson, 1 Harrington 7, spring 1832. “an action of trover brought for four negro slaves. . . Burton married the daughter of Capt. Wm. Derrickson, who gave these negroes to the wife of Burton. The negroes went into the possession of Burton and remained in his possession after the death of his wife and during all his life. After his

¹ Judge Rodney’s MS. notes.

² Act of 1787.

³ Judge Rodney’s MS. notes.

⁴ Judge Rodney’s MS. notes.

death, they were taken back by Capt. Derrickson." His administrators "have sold them as a part of the estate of Derrickson."

Davis' Case, 1 Harrington 17, spring 1832. Note: [19] "Form of Indenture of a coloured boy" by the father. It differs from the form for a white boy in the following particulars: I. "a negro (or mulatto) boy," instead of "a white boy"; II. "servant" and "servitude" instead of "apprentice" and "apprenticeship"; III. "at the regular expiration of his servitude, to furnish him with two suits of clothes suitable to his condition, and also to pay to the said Y. Z. the sum of — dollars in lieu of schooling, it being inexpedient to stipulate for education in reading and writing." The white apprentice must be given "reasonable education in reading and writing, to wit: — years and — months schooling during his said apprenticeship;" Forms of indenture are also given "of a poor coloured boy under ten years old, by two justices of the peace; or two trustees of the poor; or a justice and trustee" and [20] "of a poor coloured boy, over ten years old."

Gordon, 2 Harrington 528, 1832. "Judy Gordon petitioned for freedom on the ground that her master had sold or exported her to Maryland. The court . . . made an order that the master should enter into recognizance in \$500, with sufficient surety, conditioned for the forthcoming of the petitioner at the hearing, and to pay her wages if her freedom should be decreed; and, if he declined doing so, that the petitioner should be allowed to give a like recognizance on her part."

Negro Ben. Jones v. Wootten, 1 Harrington 77, April 1833. Petition for freedom. [79] "George Vincent by his last will, dated May 12th, 1797, bequeathed as follows:—'I give to my daughter Betsey my negro girl Rhoda, until she arrives to the age of thirty years, then to have her freedom from slavery.' The petitioner Benjamin (now of the age of twenty-seven years,) is a son of Rhoda and was born in 1805, after the death of George Vincent and before his mother attained the age of thirty years, and claims to be free under the act of 1810."

Held: [84] "he was not born free for his mother was then a slave—of course therefore he was born a slave, and that slavery was and is for life, so it is not limited to a shorter period by any valid law which applies to his case, or by the will of Mr. Vincent the master of the mother." [Black, J.] Petition ordered to be dismissed.

Harrington, J. dissented: "By the act of manumission the mother acquires a vested right. . . The child follows the condition of the mother. At its birth the mother is not in the condition of absolute slavery, but only of limited slavery, owing services for a limited period; if the child be in the same condition it is that of limited slavery, measured by the term of the mother's servitude. This is the view I take of the question as it stood before the act of 1810. The principal [*sic*] is no doubt prejudicial to the master and imposes a great hardship on him of maintaining the infant children of his manumitted slaves; but it . . . is a consequence of his own act of manumission. The injustice of such a case as it regards the master was probably the origin of the act of 1810. . . This act was passed on the recommendation of Governor Truitt; and it seems probable, from

the terms he uses in bringing the subject to their notice, that the legislature proceeded rather on the ground of extending the time of service as a compensation to the master than on any idea of restricting any rights that he possessed. . . [85] It is true that slavery is tolerated by our laws; but it is going too far to say that this kind of property in slaves is precisely like every other species of property. The spirit of the age and the principles of liberty and personal rights as held in this country are equally opposed to a doctrine drawn from the ages and countries of despotism, . . . in many, perhaps in most, of these United States it has either been done away or provision has been made for its prospective abolishment. . . there now remain in [Pennsylvania] . . . as appears from a statement lately made by a committee of their legislature, less than one hundred slaves with a certainty of the speedy extinction of slavery there. . . [86] I regret that I have not been able to bring my judgment into coincidence with that of the other members of the Court.¹ I think the petitioner, being now 25 years of age, is entitled to his freedom."

Lockwood v. Burton, 1 Harrington 138, spring 1833. "Replevin for a negro boy . . . valued at \$200 . . . as there was no proof that . . . the first administrator . . . ever paid debts to the amount of the boy or any part of his value, he therefore was not administered, but remained in specie as the property of William Brinkloe and liable to the execution "

Eaves v. King, 1 Harrington 141, spring 1833. "Replevin for a negro woman and two children. . . The def't offered evidence of the freedom of the negroes, but it was rejected by the court. . . the freedom of the negroes cannot be tried in this proceeding."

Murphy v. Countiss, 1 Harrington 143, spring 1833. "The pl'ff was claimed as a servant by . . . Townsend, and the def't being a constable, arrested and put him in prison as such servant. . . it turned out that Townsend had no valid claim to the pl'ff. Whereupon he brought this suit [for trespass, assault and battery, and false imprisonment]. . . The plaintiff had a verdict."

Morris v. Cannon, 1 Harrington 220, fall 1833. "Replevin for a negro boy; an apprentice. . . 'The negro boy . . . was, on the 2d of April, 1830, bound as an apprentice to Margaret Hudson, her heirs and assigns; at the time and before the binding he was a free negro; Margaret Hudson afterwards, became the wife of William M. Morris, who took possession of the said negro apprentice . . . After his death his executor took possession of the boy and hired him to the def't. The negro boy was duly inventoried and appraised in the estate of William M. Morris.'" [222] "Judgment of non suit," "Replevin will not lie for a free man;" "the court intimating an opinion that the pl'ff was nevertheless entitled to the unexpired time of the apprentice."

Chandler v. Ferris, 1 Harrington 454, fall 1834. The will of Thomas Chandler "bore date the 24th May, 1833, and was made when the testator was in his 73d year of age. . . in the hand writing of Benjamin Ferris,

¹ The judgment "of the other members of the Court" was overruled in 1849. Negro Ann Elliott *v.* Twilley, p. 234, *infra*.

who was constituted an executor and trustee. It contained a great number of small bequests, amounting in the whole to about seventeen thousand dollars, most of which were to the testator's relatives; and it then disposed of the rest and residue of his estate, real, personal and mixed, in the following manner. 'And whereas it hath frequently occurred to my mind that the African race or descendants of African natives in the United States, are in a deplorable degraded condition, and considering that neither the federal government nor any other institution has made adequate provision for their improvement in education, morals and industry I have thought that a great and permanent benefit might accrue, not only to that people but to the white population of our country, if a foundation could be laid, though in a small way, of a fund to be appropriated to the promotion of these important ends. With the hope therefore that benevolent individuals who may survive me, may be disposed to aid in this concern, and contribute towards its accomplishment, until a fund may be raised sufficient to commence an institution to carry into effect the views before expressed, so far at least as to educate male children of the African race, so as to render them useful to themselves and the community by a course of instruction in morals, science and productive employment, agricultural, mechanical or otherwise; I do hereby give, devise and bequeath to John Clark, . . . Benjamin Ferris . . . all the rest and residue of my estate, . . . in trust, . . . [456] And it is further my will and a condition of the afs'd devise and bequest to my trustees as afs'd that the estate so given to them in trust shall be appropriated and applied to the uses and purposes afs'd within seven years after my decease; and if within that time no such institution shall be established or commenced, and no other funds raised for the purposes of such establishment, then and in such case all the said residue of my estate shall go to and be equally divided among all the children of my nephews and nieces. . . . Excepting nevertheless out of such bequest the sum of five hundred dollars, part of the said residue, which I do hereby give and bequeath to the African school society of Wilmington, incorporated by the Legislature of the State of Delaware, for the purpose of instructing the descendants of the people of Africa,—the same to be paid to the said society on failure of the said institution and not otherwise.' " He adds an outline of the plan of the proposed institution: " children should be admitted at seven years of age and older, as pupils from any section of the United States, but those from the State of Delaware to have the preference in all cases when it may be necessary from the state of the school to make a choice. Fourth. When pupils arrive at fourteen years of age, having had a competent share of learning to fit them for business, they should be permitted, if they so choose, to be apprenticed to suitable persons at the discretion of the managers, to learn trades, agriculture or other business, in which they may be useful to the community and of advantage to themselves—otherwise they may at the discretion of the managers, be kept on the farm or in the workshops under the care of the institution, until they arrive at the age of twenty-one years. Fifth. The pupils should be maintained and educated without other charge or compensation than their own labor, and should be found in food and good plain clothing during their residence in the institution. Sixth. The

course of instruction should include reading, writing, arithmetic and English grammar—and where inclination and capacity on the part of the pupils are manifest, the course of instruction should extend to the higher branches, particularly those that may be most useful in practice, such as navigation, surveying and the necessary preliminary acquirements. . . [457] The farm ought to be managed in the best manner, and according to the most approved system of agriculture, so as to be a proper model or pattern for others. All the labor should be performed by the students, which should be so regulated that each pupil should do his proper share of labor and have his fair proportion of literary instruction daily. Ninth. As the funds and resources of the institution may authorize, workshops should be built and mechanics employed to teach the pupils in their several branches, such as smiths, shoemakers, cabinet-makers, turners etc., seeing that the elevation of this class of people much depends on their usefulness as members of the community.” The estate “amounted to between thirty and forty thousand dollars.” Witness for the defendant testified that “The execution took place at the house of Benjamin Ferris, who was a scrivener by profession. This witness gave a very decided opinion as to the sanity of the testator. The idea had never occurred to him, nor had he ever heard it suggested by another, previous to the death of Thomas Chandler, that he was not of sound mind.” [458] “Copy of a letter from William Lloyd Garrison, editor of the *Liberator*, to Benjamin Ferris [was read in evidence]. The first page contained printed ‘proposals for establishing a school on the manual labor system for the education of colored youth,’ and a printed plan for such school, in substance similar to the one contained in Chandler’s will. The manuscript was as follows: ‘Boston, Feb. 16, 1833. Respected Friend; I presume the enclosed plan for the establishment and government of the manual labor school for colored youth will be acceptable to you and your benevolent friend. The managers of the anti-slavery society deem it unnecessary to urge upon either of you the importance and need of the contemplated school. It is desirable that whatever is done, should be done speedily. Subscriptions have been commenced, in this quarter, under very favorable circumstances. Your friend, we trust, will add his name to the list of donors. We are cheered in view of the progress of the anti-slavery cause in this country. The example, so long given by the society of friends, is beginning to have its legitimate influence. Your humble friend, Wm. Lloyd Garrison.’ . . the instructions given by Thomas Chandler to Benjamin Ferris for drawing his will” were “in the hand writing of Thomas Chandler. . . [464] Verdict setting aside the will.”

State v. Minos, 2 Harrington 529, October 1834. “Purnel Minos, a free negro, was convicted, under the instruction of the court, for stealing the slave of Charles Polk, although that slave was the wife of the defendant.”

State v. Shockley, 2 Harrington 531, October 1835. Held: “In an indictment against a free negro for larceny, if there be no proof of his being free, or having acted as a free man, he must be acquitted.”

State v. Gray, 2 Harrington 531, April 1836. "Nutter, a free negro, had been convicted of larceny, and sentenced to be whipped and 'disposed of as a servant to any person or persons residing in this state, for the highest sum that can be obtained for such term as shall be necessary, in order to raise the restitution money, and all costs, *or any balance that may remain after such payment as he may be able to make.*' J. S. Gray was indicted for exporting Nutter. In the indictment the words in italics were omitted. The variance was ruled to be fatal, as Nutter could not be sold under the order of the court, if he paid the restitution money and costs."

State v. Whaley, 2 Harrington 532, 538, October 1836, April 1837. "John Whaley was indicted for aiding . . . in kidnapping and taking from the state into Maryland, Robert Ricords, a free negro." [539] "the boy was kidnapped in Kent county and carried into Sussex, and from thence directly on into Maryland, . . . Judgment against the prisoner."

State v. Buckmaster, 2 Harrington 533, October 1836. "Ruled, that an indictment for an assault and battery on a slave could be sustained, such having been the decision and practice under chief justice Booth in the Court of Quarter Sessions; and that the rule there adopted would be recognized as the law of this state."

Saxton's Case, 2 Harrington 533, October 1836. "Sam Saxton, a free negro, was indicted for breaking and entering the store of J. H. Stevenson, in the night time and stealing the goods of J. H. S."

State v. Morris, n., 2 Harrington 534, April 1837. The prisoner, "though not indicted for a second offence, had been convicted of larceny in this court and sold as a servant to pay the restitution money and costs. Before the expiration of his term of service he committed larceny again, and was convicted thereof . . . The indictment was drawn in both cases charging the prisoner generally as a free mulatto." The act of February 8, 1826, sect. 5,¹ provides [537] "that a felon convict, during his servitude, shall not be deemed to be a freeman,"

Held: convict free negroes or mulattoes are not embraced in this section of the act. [536] "distinction between a 'free negro'² and a 'freeman' in this state, . . . [537] If, then, the legislature . . . can be supposed to have declared that such a convict, if a free negro, shall not be deemed to be a free negro during his servitude, they have exempted such negro convicts from all punishment during the term of servitude for every second or subsequent offence. For being thus held to be neither free negroes nor slaves, they would be quite out of the pale of the criminal jurisdiction of any judicial tribunal in the state. . . [538] In this case, as the indictment does not in terms describe the felony as a second offence, we shall not order the prisoner, under the circumstances, to be sold to any person residing out of the state." [Clayton, C. J.]

Rowland v. Burton, negro, 2 Harrington 288, fall 1837. "The plaintiff below [Burton] was sworn on the *voire dire* to prove his books; when he produced as his book of original entries a small stick, cut and notched

¹ Digest 144.

² Act of Feb. 3, 1787: "the charter of their rights in this state,"

in a variety of ways, by which he undertook to prove an account running through two or three years, and consisting of a number of items. He was fully examined on his book, and the accuracy of his entries tested by an account made out from it some time before. They corresponded with the exception of one item; and it was afterwards ascertained that one of the notches had been defaced by the breaking of the stick. . . 1 day working in garden; self, . . . [\$] .75 . . . 3 days work of boy, at .25, . . . [\$] .75 ” The whole amount was \$25.40. “The court permitted the stick to go before the jury, with the party’s oath that the notches were made at the time the work was done, and the plaintiff had a verdict.”

Rice v. Simmons, 2 Harrington 309, 417, fall 1837. “Action on the case for a libel. . . following paper . . . posted by the defendant at the market house in Wilmington. ‘The public are hereby cautioned against receiving from Washington Rice [a white man], or John Agnes, a black man, any papers relating to my business, as sundry papers hath been purloined from my store and fell into the hands of said W. Rice, who hath endeavored to put some of them in claim against me, *viz*: bills and receipts for grain I had bought and paid for,” Counsel for plaintiff: [418] “the association of Rice with Agness [*sic*], who was proved at the trial to be a very low and worthless negro, was designed and calculated to degrade and disgrace Rice.” Judgment for plaintiff.

Phillips v. Short, 2 Harrington 339, spring 1838. “trover for a negro boy, Jerry. . . Hopkins, by his will in 1807, bequeathed the mother of this slave to his daughter, Nancy Short, wife of Wingate Short, for life; . . . [340] On the marriage of Wingate Short with Nancy Hopkins, several years before the death of her father, Bet, the mother of Jerry, then a little girl, went into the family of Wingate Short, . . . Short, by his will made in 1818, bequeathed Jerry to his wife for life, and after her death to his son, Leonard Short, the defendant. . . a bill of sale was produced for one-half of Bet and her issue, in consideration of \$500, . . . the verdict went for the plaintiffs.”

In the matter of Negro Hannah a slave of Richard Cooper, 2 Harrington 365, spring 1838. The trustees of the poor had incurred expenses, to the amount of \$168, “in support of negro Hannah, a slave of said Richard Cooper, discharged from his service after she was thirty-five years of age; and for funeral expenses of the said slave. At the hearing, the order was resisted, on the ground that no one but the master or mistress was liable under the statute,¹ but the court, on the equity of that act, . . . ordered that the . . . widow and administratrix, and the . . . children of Richard Cooper, who were also his devisees and legatees, should . . . reimburse them ”

Allen v. Negro Sarah, 2 Harrington 434, June 1838. About 1799 Hicks brought an action of replevin against the administratrix of his father-in-law, “and recovered Amelia, with ten other negroes, whom he afterwards removed from this state to the State of Maryland, . . . In

¹ Digest 415, sect. 3.

1801, Amelia escaped from the service of Hicks, and returned into this state. Subsequently she was found in the possession of Andrew Allen, who claimed and held her as his slave in this state for nearly thirty years, . . . It was alledged that he purchased her of . . . Alston, but this fact was not established, . . . It was in evidence, however, that this Alston was a negro trader from one of the southern states, and that Hicks actually sold all of the other negroes which he took from this state, to the traders, after he had taken them to Maryland. Amelia had three children, after she returned to this state, to wit: Sarah, Grace and Bayard, three of the petitioners; the other petitioners were children of Sarah and Grace." [440] "The members of this court are unanimous in the opinion, that the petitioners are entitled to their freedom," I. [437] "such exportation did, *ipso facto*, establish her freedom; and that a judicial adjudication upon the facts, was wholly unnecessary to enable her children, born after the exportation, to their freedom. . . . The right and title to freedom . . . attaches the moment the offence is committed, which is prohibited by the statute."¹ II. The act of 1793 is constitutional. [439] "This act was intended to prevent the crime of kidnapping; to restrain the traffic in human beings, and gradually to abolish slavery in this state. . . . The slave has rights. He is under the protection of the law, and it was for his protection, as well as for subserving the principles of humanity, that the law of 1793 was passed." [Layton, J.]

Isaac Tindal v. Hudson, 2 Harrington 441, fall 1838. "Petition for freedom. The petitioner's father, George Long, was a free negro, legally married to Phoebe, the mother of Isaac, who was the slave of a certain Conoway. Isaac was born while his mother was a slave; and whilst an infant he was purchased by his father, . . . His father never manumitted him; but, on the contrary, by will bequeathed him to Minos Tindal, until he should attain the age of twenty-five years. Minos Tindal took possession of Isaac; who, at the death of his master, was sold by the executor to Daniel Hudson."

Held: Isaac is "entitled to his freedom." [441] "we observe one . . . pervading feature, that the black is the slave to the white man; . . . [442] this court . . . will not extend slavery beyond what it has been heretofore. . . . to give the free negro a right to hold slaves, would be to institute another and a dangerous species of slavery hither to unknown. The free negro cannot, in this country, base his right to hold slaves upon the principle of conquest. . . . the negro is not such a freeman as to extend protection; he is . . . almost as helpless and dependent on the white race as the slave himself; he has few civil rights, being merely protected in his person and property by the law, and being allowed in some cases to give his evidence in a court of justice. . . . We think, therefore, that neither usage, policy, nor the necessary relations of master and slave, will permit free negroes in this state to hold slaves. . . . also . . . we ought not to recognize the right of a father to hold his own children in slavery. Humanity forbids it. The natural rights and obligations of a father are

¹ Act of 1793, 2 Del. Laws 1094, sect. 4.

paramount to the acquired rights of the master; and the moment the father purchases his child and these rights become blended in the same person, the lesser rights and obligations are merged in the greater, and the child is free. . . [443] Humanity revolts at the idea of a parent selling his own children into slavery." [Clayton, C. J.]

State v. Milman, cited in 3 Harrington 549, 1838. "the negro was examined though Robert Houston, a white person, was present not at, but after, the kidnapping and taking out of the State, and saw the boy in prisoner's custody in Maryland."

Prettyman v. Dean, 2 Harrington 494, spring 1839. "The plaintiff charged a violent entry of her house" by [494] "the defendant, Steel, as the sheriff's officer, and the others as his *posse*, in executing a writ of replevin . . . for two negro slaves." [495] "and an aggravated assault and battery."

Stephen Smith, negro, by a next friend, v. Milman, 2 Harrington 497, spring 1839. "Petition for freedom. Rachel Marvel by will, dated 27th August, 1791, bequeathed the mother of petitioner, Hessy, to her daughter Ann Smith for life; and, after her decease, to her grand-daughter Nancy Smith, her heirs and assigns forever. And if the said negro Hessy should bear children, she gave to her grand-daughter, Sally Smith, 'the first child that she bears, to be hers and her heirs forever.' After the death of Rachel Marvel, the negro girl Hessy went into the possession of Ann Smith and bore children, the first of whom was either dead born or lived but a few minutes, . . . and the second was the petitioner, Stephen. Stephen was held by Ann Smith, and sold by her to Sally Smith for a term of years, and manumitted in the bill of sale to be free after she [he?] attained thirty-one years of age. Sally Smith lived with Elisha Evans [husband of Nancy Smith, the legatee over] and died in his family, directing verbally in her last sickness that Evans should have the use of Stephen during the remainder of his term of servitude. On the death of Ann Smith, Hessy passed into the possession of Elisha Evans," who "in his lifetime sometimes claimed Stephen as his slave for life, at others declared he had no right to him; and in 1816, by an instrument under seal, declared that he was free. Before that time, however, Evans became embarrassed in his circumstances, and Stephen was levied on by execution process as his property, and was sold . . . for a small sum to . . . Robinson . . . who had never taken possession of him." Decree "for the freedom of the petitioner." I. If [498] "the petitioner was the first child negro Hessy bore . . . he was the property of Sally Smith, . . . If we . . . credit the respondent's witnesses, who say that negro Hessy was the mother of a child before the petitioner was born, then he was the property of Ann Smith, the legatee of Hessy for life, having been born during the life of Ann Smith;¹ . . . He who supports the child of the slave in infancy, ought to be justly remunerated for his expense and trouble by its services, and the expectation that he will be so remunerated, will insure greater care and attention to the wants of the child. If Stephen was the slave of Ann

¹ Delaware follows the Maryland doctrine in this respect.

Smith, then is he clearly free by her deed of manumission. . . the maxim [*partus sequitur ventrem*] is misapplied when it is used to direct us not as to the condition of the issue, but as to the person entitled to the ownership of that issue." [Clayton, C. J.]

State v. Pettyjohn, negro, 3 Harrington 548, October 1839. "the defendant was indicted for selling liquor by the small measure, and in the indictment he was alledged to be a 'free negro,' which the State neglected to prove. . . The court said: The criminal code makes a distinction between white people and free negroes or mulattoes, only in the cases of larceny and receiving stolen goods. . . the punishment being different, . . . [549] We incline, therefore, to the opinion, that the averment in this case was unnecessary, and need not be proved; . . . The defendant was acquitted, and the question was not again stirred."

State v. Whitaker, 3 Harrington 549, April 1840. In an indictment against a white man for kidnapping, the negro kidnapped was allowed to give evidence, though there was a white person present who was "implicated" in the crime, but not indicted. [551] "the act¹ contemplated, in excluding negro testimony where a competent white witness was present, not the mere case of competency on the part of the witness, but the sufficiency of his evidence under ordinary circumstances, to produce conviction." [Bayard, C. J.]

State v. Dillahunt, negro, 3 Harrington 551, April 1840. "Indictment for the murder of William Frisby Green, negro. Charlotte Green, a colored woman, was called as a witness for the State, and objected to because she was not proved to be a free woman, though it was proved that she acted as such. The court held her competent on two grounds. At the common law there was always a strong presumption in favor of freedom. In the first settlement of this country, the fact of the existence of the negro race in a state of bondage to the whites, and a large majority of that color being slaves, was considered sufficiently strong to outweigh the common law presumption, and to introduce a legal presumption that a colored person is *prima facie* a slave. Yet that state of things has changed; and *cessante causa, cessat et ipsa lex*. There are in this State about 20,000 persons of color; of whom 17,000 are free, and 3,000 slaves. A large majority of all persons of color in the United States are free. In point of fact, therefore, there is no reason to presume slavery from color; in opposition to the strong common law presumption, that every man having the human form is a freeman. And such has been the decision of this court on several occasions. But additionally, it has always been the practice to take reputation as proof of freedom. The defence in the case was insanity. . . Verdict of acquittal."

Chase v. Maberry, 3 Harrington 266, fall 1840. "The defendant was a constable of Kent county, and had, together with plaintiff, arrested a runaway slave from Maryland, for which a reward of \$60 was offered. Having obtained from a justice of the peace a permit to take the slave home, Chase left him with Maberry until he should visit the master and

¹ Act of 1799, Digest 407.

negotiate an increased reward, which he effected, the master agreeing to pay \$100, on his delivery in Maryland. Chase expressed his fears to Maberry that the boy would escape, and wished him lodged in jail; but Maberry said he would take care of him and be responsible for him. He placed him in the garret of his house, from which the boy escaped during Chase's absence and was not again retaken. . . The plaintiff had a verdict for \$40.00."

Henry Wilson, (negro) v. Waples, 3 Harrington 270, fall 1840. "Petition for freedom. . . Harry Wilson, the father of petitioner, a free negro, after the birth of Henry the petitioner, bought his wife, petitioner's mother, then and at the time of Henry's birth, a manumitted slave; and took an assignment of the bill of sale of his said wife. That Harry Wilson the father, afterwards, 7th January, 1826, bought the unexpired service of his son Henry, (being a slave until twenty-five years old,) and took a bill of sale for him from his master, George Frame. Having become indebted to Dr. S. K. Wilson in \$20, Harry the father, to pay this debt, sold Henry the son to Dr. Wilson, and on the 5th of May, 1829, assigned the bill of sale which he had received from Frame. Dr. Wilson died, and the boy Henry was sold to Mr. Waples, and the same bill of sale assigned by Wilson's executor. The boy was now eighteen years old. . . The court decreed the petitioner's freedom."¹

State v. Warrington, negro, 3 Harrington 556, October 1840. "Indictment larceny. The defendant was indicted as a 'free negro,' and proved to be a free mulatto, according to general reputation. The Court said it made no difference. The punishment is the same. The law distinguishes between white persons and free negroes or mulattoes in the punishment of larceny, but not between negroes and mulattoes. . . In point of fact this distinction of color between negroes and mulattoes would not be susceptible of proof in many cases. In the case of the present defendant it could not be proved. The color of his skin, made lighter by confinement, places him between the two; while his hair is that of the negro race, and his features those of the mulatto. The defendant was convicted."

Elliott, negro, v. Morgan, 3 Harrington 316, spring 1841. "Turner, negro, had been summoned as a witness by the plaintiff below [Morgan]," Held: "Negro testimony is always received in the courts of our State, in cases between negroes or against a negro."

William Hooper's Case, 3 Harrington 320, spring 1841. "William Hooper, negro [insolvent], applied to be discharged from imprisonment; . . the Court said . . that they must proceed with the hearing of his petition . . and that apart from any fraud they would, on a proper case appearing, adjudge him to serve his creditors. The petitioner was discharged."

Trustees of the Poor v. Hall, 3 Harrington 322, spring 1841. "Richard Howard . . owned a negro slave, Anthony, who was blind when his master died in 1822, and has ever since been a charge on the estate."

¹ *Tindal v. Hudson*, p. 225, *supra*.

Howard's [323] "land was divided . . . and assigned in thirds . . . The heirs at law supported this slave . . . at their joint cost, until recently, when the heirs of Robert Howard sold their third to the defendant, H. F. Hall; and on his refusing to contribute to the expense, the slave was sent to the poor house, and this application was made to charge him under Dig. 416." Held: [329] "Hall is not bound to pay or contribute any part of the expense of keeping or maintaining the aforesaid slave Anthony;"

State v. Griffin, 3 Harrington 559, April 1841. "Indictment for kidnapping Maria Coursey, a free negro woman. Adjudged that the presumption of law is in favor of liberty, and no presumption to the contrary arises from color. A negro called as a witness is *prima facie* free. (Layton, J. dissenting.) Adjudged, that the allegation of freedom, as contained in an indictment for kidnapping, is a substantive allegation and must be proved. Verdict—not guilty."

State v. Same [Griffin], 3 Harrington 560, April 1841 (?). "Indictment for kidnapping Peter Howard, a free negro. Peter Howard was sworn on the *voire dire* without previous proof of freedom; but on his stating that he was born a slave, the court held, that proof of his freedom must be made aliunde. This was done: but it appeared that at the time he was kidnapped, there were white persons present aiding and assisting in the crime, the point ruled in Whitaker's case¹ was again raised. Chief Justice Booth and Judge Milligan affirmed that decision. Judge Layton dissented. The prisoner was convicted."

State v. same and Wilson, 3 Harrington 560, April 1841. "The defendant, Wilson, (the only one now on trial) was indicted with Jacob R. Griffin, for exporting from this State to Virginia, two negro convicts, Emory Hand and James Hickman, contrary to section 17, of the act² . . . Emory Hand was called as a witness, and objected to, on the ground that he was not a freeman." Held: a convict servant is a free man for the purpose of giving evidence, as well as of punishment. "The defendant was acquitted."

State v. Ann Dobson, negro, 3 Harrington 563, April 1841. "Indictmen[t] for larceny of bank notes, . . . The State proved . . . the confession of the prisoner that she stole them, . . . The defendant was acquitted."

State v. Conover, negro, 3 Harrington 565, April 1841. "Indictment for enticing away a negro indented servant to leave the service of her master, contrary to the act of 1837.³ . . . The act of 1827,⁴ . . . authorizes the binding negroes either as apprentices or servants. . . . The girl alledged to have been enticed away by the prisoner, was bound under the provisions of this act as an apprentice, to learn the art, trade and mystery of housewifery."

¹ 3 Harrington 549 (1840).

² Digest 148.

³ 9 Del. Laws 184.

⁴ Digest 34.

Held: "the act of 1837, which is a highly penal act, ought not to be enlarged so as to embrace apprentices, it being in its terms confined 'to negro or mulatto slaves or indented servants.' The prisoner was acquitted on this ground."

State v. Negro Bill Jefferson, a slave, 3 Harrington 571, April 1842. "The prisoner was indicted for an assault and battery with intent to murder. He shot at a negro girl with a gun loaded with shot, and within shooting distance. None of the shot hit her. . . said that he meant to cripple but not to kill." Held: "the intent must be proved as well as the assault;"¹

State v. Cooper, 3 Harrington 571, April 1842. "Indictment, assault and battery on John Oney, negro. John Oney, n. was called to prove the assault and battery and objected to, on the ground that there were white persons present, competent to give testimony. . . They ruled out the evidence of the negro; but, it afterwards appearing that though there were two white persons present, one of them was drunk, and the other did not see the whole of the fight, though they both knew that a blow was struck; the court now admitted the testimony of the negro." [575] "The law of humanity is in favor of the old decisions, and we now go so far with them as to hold that even though white persons were present at the commission of a crime, if they were not in a situation or position to see the act, and did not in fact observe all that happened at the time . . . , the person upon whom the crime was committed, though a negro, is a competent witness to prove it. Otherwise there will often be a failure of justice, and wrongs may be committed with impunity." [Read, C. J.]² The defendant was convicted.

Conoway v. Piper, 3 Harrington 482, fall 1842. "Edward Short . . . devised as follows . . . To Hannah Piper, my daughter, and Naomi West my negro Jinn, . . . that my son Isaac Short, should have my negro Frank,"

Thorn v. Laverty, 5 Harrington 102, October 1842. Cited. "petitioner was decreed free because he had been sold with intent to export."

Davis v. Marshall, 4 Harrington 64, fall 1843. Wilson "was the owner of a sloop . . . of which one Jerry Jeffers, a coloured man, was master, trading from Slaughter creek. Jeffers sailed the vessel for a share of the freights."

Redden v. Spruance, 4 Harrington 217, spring 1845. "The plaintiff proved that his man 'Jerry,' reputed to be his slave, ran away from the service of W. Jones, to whom he was hired, on Saturday afternoon, May 25th, 1839, and was afterwards seen in Philadelphia, but was never recovered. . . Azael Stevens, sworn.—Drove defendants' stages from Milford to Camden in the spring of 1839. Has frequently taken up passengers on the road; the route from Milford to Smyrna is a night route. One night about that time took up a colored man or boy, . . . He called to me; said he wanted a passage; said he was a free man named Peter Clayton;

¹ "The act of assembly provides, that if any negro or mulatto slave shall, with violence, make an assault upon another, with the intent to commit murder, he shall be guilty of a felony,"

² 3 Harrington 575n.

offered me a paper which he said was a pass, which he got from Squire Redden. It was dark and I could not read it. I took him on the box with me; after we passed Canterbury, he offered to sell me a pistol. He said he wanted money to pay his fare. I told him if he had no money he must get off, and I turned him off. . . [218] There was nothing like a runaway about the negro; no concealment. I had no suspicion he was a runaway. . . [219] The Court granted the nonsuit on the ground that there was no proof that the defendants carried the slave off with knowledge that he was a runaway slave”

Dawson Dulany, negro, v. Green, 4 Harrington 285, fall 1845. “Petition for freedom. . . [286] Jesse Green, jr., bought Clansey and her son the petitioner, in 1831, at public sale, as slaves for life, for \$201;” [285] “being about to leave the State, on the 9th of July, 1833, [he] executed his deed of manumission . . . : ‘Now therefore, know all persons, that for and in consideration of her the said negro’s good conduct and behavior towards me, I do hereby discharge her the said Clansey, negro, from me and all persons claiming by, through, or under me after I shall leave this State, to be free, and to enjoy all the privileges of other free negroes, according to the laws of this State in like cases, and that the said Clansey is to have the said Dawson, her son, until such time as I shall call for him, and to be delivered to no other person or persons, neither to be the property of any other person or persons except I myself, in person; and if I should not receive the said boy, for him to be free as his mother aforesaid, according to the laws of this State;’ which deed of manumission was signed, sealed and acknowledged by the said Jesse Green, jr., before a justice of the peace . . . and was afterwards . . . recorded” Green died without claiming Dawson; but his widow claimed him, maintaining that the manumission [286] “was made in a drunken fit, and to defraud creditors;” Petition dismissed.

State v. Peter Frame and David Frame, negroes, 4 Harrington 569, October 1845. “Indictment, larceny of forty bushels of Indian corn in the ear; . . . the defendants were acquitted” on a technicality in the indictment.

State v. Jeans, 4 Harrington 570, October 1845. “The defendant was indicted for imprisoning, with intent to kidnap, a certain Betsey Bungy; she being a free negro. It was argued on the part of the defendant, that the prosecuting witness was incompetent to prove her freedom against a white man: . . . [571] it was argued by the prosecution, that the law presumes every person to be free until the contrary is proved,”

Held: [571] “It was originally considered, though it does not seem to have been adjudged, that in this State persons of color were presumed to be slaves; the presumption being founded as it has been said on the fact, that a large majority of persons of color were slaves. But the fact has long since changed; and it has been repeatedly decided that as a mere presumption, the inclination is in favor of freedom.¹ It was so held prior to the case of Dillahunt,² though that is the first case reported. . . . Ac-

¹ Not so in most of the slave states.

² *State v. Dillahunt*, p. 227, *supra*.

ording to these decisions a person of color is presumed to be free for the purpose of being a witness, but this presumption cannot supply full proof of a material fact . . . [572] a fact necessarily averred in the indictment; necessary to be proved affirmatively by the State, and yet a fact which Betsey Bungy, whether free or slave, is not competent to prove against a white man, it being susceptible of other proof which is unobjectionable and competent." Verdict, not guilty.

State v. Burchinal, 4 Harrington 572, October 1845. "he was in the habit of selling liquor, and permitting it to be drank in his store, about which, there was frequently collected a crowd of persons, black and white, particularly on Saturday nights:"

Webb v. Pindergrass, 4 Harrington 439, fall 1846. "the administratrix, who was a colored woman, was offered to prove a book of original entries, kept by her for her husband, showing the number of bushels of ashes sold and delivered to B. Webb. Her testimony was objected to; 1st, as a person of color;" Held: [440] "We think this woman competent, under the act of 1787, and from necessity,"

State v. Updike, 4 Harrington 581, May 1847. "Indictment, kidnapping William Hogans, negro. . . the jury being unable to agree, after being up all night, were discharged . . . It now came up again before another jury, and the defendant was convicted."

State v. Harten, 4 Harrington 582, October 1847. "On the trial of James Harten, who was indicted with Jacob R. Griffin and others, for kidnapping one Peter Howard, a free negro, with a count for aiding and assisting Griffin to kidnap, it was ruled, 1st. That the record of Peter Howard's discharge on a petition for freedom filed against his former master for selling him out of the State, was sufficient evidence of his being a free negro. 2d. That the general reputation of Jacob R. Griffin as a kidnapper might be given in evidence, to show the intent with which the defendant aided him in binding and carrying off the said Howard. The defendant was convicted."

State v. Burris, n., 4 Harrington 582, October 1847. "Indicted for enticing and aiding slaves to run away." Change of venue denied: [584] "we have every confidence that whatever may be the sense of this community in relation to the offence of aiding the escape of slaves, the sense of justice in the people generally, and particularly in the jury present, is much stronger, and will insure a perfectly fair and impartial trial of any one accused of this offence, however humble he may be." [Booth, C. J.] "The defendant was afterwards acquitted on this indictment, and convicted on two others, for a similar offence."

Sarah Thoroughgood, Negro v. Anderson, 5 Harrington 97, October 1848. "The petitioner belonged to John Thoroughgood, as a slave for life. He purposed to set her free at twenty-eight years of age; and in the mean time sold her to Thomas McIlvaine, and took his bond in \$200, obliging him to free her at twenty-eight. She was actually sold to that time, with the understanding of all parties; though the bill of sale was

general, without specification or limit as to time. McIlvaine sold her to one Stewart, he to Warren and Warren to James Anderson, as it was alledged, to be free at twenty-eight; but the transfer was by endorsement on the first bill of sale, which was general. Thomas McIlvaine executed a manumission in pursuance of his bond on the 20th of March, 1844, some time after Sarah had attained twenty-eight. She filed a petition for freedom on the 18th of November, 1845, against James Anderson, who transferred her to Caleb B. Sipple, his son in law, on the 21st of November. Mr. Anderson appeared to the suit on the 24th of April, 1846, and disclaimed title. The plaintiff filed a petition for freedom against Sipple on the 23rd of October, 1846, and he re-transferred her to Anderson on the 24th, and on the 26th appeared to the suit and disclaimed title. The plaintiff also filed a petition for freedom against John M. Rawlins, another son in law of Anderson, on the 23rd of October, 1846. He appeared on the 25th and disclaimed title. Pending these proceedings the petitioner was taken to Baltimore, to remain, as was alledged on the one side, in the family of a friend temporarily; on the other, for the purpose of evading the judgment, and for exportation and sale." [103] "The Court entered a decree of freedom on the proof of exportation; from which an appeal was taken" The judgment was affirmed.¹

Sipple, Negro v. Adams, 5 Harrington 149, spring 1849. The defendant, Sipple, was discharged from custody. Held: a commitment under the statute against non-resident negroes,² must show the offence, and the judgment in pursuance of the statute.

Page v. Vandegrift, 5 Harrington 176, spring 1849. Action under the statute of January 19, 1826.³ In October 1848, William Clensy, said, in the declaration, to be the slave⁴ of Mary Page, [177] "skulked on board" the steamboat *Zephyr* (of which Vandegrift was captain) "and hid himself from the knowledge and observation of the captain and crew;" and was carried out of the state. Verdict and judgment for plaintiff: "the captain was bound to know every body on board," The judgment was reversed in 1854.

Taylor v. Horsey, 5 Harrington 131, April 1849. Trover "Thaddeus [a boy eight or ten years old] was the slave of . . . Kinney, and as such was bound by execution process in the sheriff's hands against Kinney. . . before the levy, Kinney sold and delivered the boy to . . . Horsey, who had no knowledge of the execution. The boy was afterwards levied upon and sold by the sheriff to . . . Jefferson, who immediately transferred him to plaintiff, who was a son in law of . . . Knowles, a negro trader, and who had until recently lived in the State of Ohio. Jefferson was not present at the sale; and soon after left the State. A witness was asked if Jefferson also was a negro trader; which, though objected to, was allowed; and the answer was that he bore that character."

¹ *Anderson v. Thoroughgood*, p. 234, *infra*.

² Act of 1841, Digest 410.

³ Digest 291.

⁴ He "was not only not a slave, but could not be a slave. He was an Indian; since given up by the claimant as such." *Vandegrift v. Page*, p. 236, *infra*.

Held: [132] “on the question of the intent with which a person bought a slave, his general character as a negro trader is relevant, and admissible in evidence.”

Collins v. Bilderback, 5 Harrington 133, April 1849. Action “under the statute of 1826,¹ against a steamboat captain, for carrying a slave out of the State. . . [135] the plaintiff’s daughter, proved that the negro slave Alice left her father’s house on the 11th of August, 1847, in company with her mother [Mrs. Collins], and went to Leweston; and on Friday morning, August 14th, she went to Philadelphia, on the steamboat *Portsmouth*, Captain Charles Bilderback. She had been held by plaintiff as a slave.” Mrs. Collins “was taking Alice up with her to Philadelphia . . . with the intention of staying; . . . Alice was in her [*sic*] six years old then.” Verdict for plaintiff. Held: [138] “The act imposes the penalty, although the act of transportation is done without knowledge or notice that the negro . . . is escaping from the owner’s service.” “The law is severe, and it is the only one that makes a party criminally liable, without a criminal intent.” [Booth, C. J.]

Negro Ann Elliott v. Twilley, 5 Harrington 192, June 1849. “four cases of petitions for freedom. . . will of George Moore, . . . admitted to probate . . . 1805:—‘Also, I give to my wife . . . one negro man called Isaac, and one negro woman called Bett, to serve her during her natural life, and after that time to go free.’ The petitioners were the issue of Bett, all born after the death of George Moore, and during the life of his widow, . . . The court below gave judgment, (without argument) dismissing the petitions, in conformity with the case of *Negro Ben. Jones vs. Wootten*,² . . . these appeals were taken from that decision.” Decreed in each case that the petitioner is entitled to freedom (overruling *Jones v. Wootten*).

Anderson v. Thoroughgood, negro,³ 5 Harrington 199, June 1849. Held: [200] “a prior conviction [of the master] is not requisite; . . . freedom is not the consequence of conviction, but is by virtue of the act of assembly,⁴ and results from the fact of exportation. . . proof of the fact of exportation, contrary to the act, confers freedom.” Judgment below affirmed. [Johns, Ch.]

State v. York, (Negro), 5 Harrington 493, 1850 (?). “The defendant, an indentured servant, was running away from his master; and, to make good his escape, mounted a horse which he found hitched on the road, and after riding him to Wilmington, put him at a livery stable, and abandoned him.” Held: not larceny. “he ought to be acquitted.”

State v. Anderson, negro, 5 Harrington 493, December 1850. Anderson was indicted for the murder of Joseph Williams, convicted and executed.

¹ Digest 291.

² P. 219, *supra*.

³ For facts see *Thoroughgood v. Anderson*, p. 232, *supra*.

⁴ Digest 154.

Lord v. Horsey, 5 Harrington 317, spring 1851. "Trover for a negro girl slave."

State v. Winsor, 5 Harrington 512, June 1851. [520] "He said he had got Milford Saunders [negro] to conjure for him to get his wife back, but he couldn't succeed;"

Burr's Case, 5 Harrington 351, fall 1851. "*Habeas corpus* to the jailer of Sussex county. The prisoner was committed . . . for non-payment of a fine of \$50, imposed on him, on the information of George Harris, charging him, . . . Burr, free negro, with being a non-resident and being in the State of Delaware, contrary to the statute, . . . The Court discharged the petitioner, on proof that he did not come into the State after the passing of the act of 1851;"

Simpson v. Warren, 5 Harrington 371, fall 1852. "two negroes ran away from the defendant; that he offered \$300 for their arrest and return, or \$150 for either one; and that plaintiff arrested and returned one of them. On the 15th of September, 1850, negro Robert Carlisle fled from his master, Samuel Warren, and embarked on Captain Errickson's vessel, in Murderkill creek, where he represented himself to be a free boy. Before they got out of the creek, Capt. Errickson heard that the boy was a slave; and, giving him in charge of the mate, he started to see Samuel Warren. This was early in the morning of the 16th. On the road he learned that Samuel Warren had gone to Dover, to advertise the boy. He then returned to get him, and take him to Samuel Warren's house; but in his absence, the plaintiff came to the vessel and took the boy away. In the meantime, Warren had notices advertising the reward printed and posted in Dover." Verdict for defendant.

Proctor, negro, v. State, 5 Harrington 387, fall 1852. "the complaint of Major W. Allen stated, 'that Elisha Proctor, a free negro, hath come into this State, after a voluntary absence of more than sixty days from this State; and that the said Elisha was not at the time engaged in any occupaion of mariner or waterman, nor was he absent as a wagoner or messenger in the actual employment of a citizen of this State.'"

Judgment against Proctor, "for the sum of fifty dollars fine, and one dollar and fifty-five cents costs, one-half to be paid to the said State of Delaware, and the other half to be paid to the said Major W. Allen, the informer; and the said defendant was ordered to give surety in the sum of fifty dollars, that he would leave the State in five days from this date. and on his default in both the payment of the fine and costs, and the giving of the security, he was committed to the public jail." Judgment reversed [388] "on the ground that the record did not show at what time the offence was committed; nor against what law, whether the act of 1851 or the Revised Code of 1853."

State v. Turner, 5 Harrington 501, 1853 (?). "The defendant was indicted for exporting a slave; Daniel Webb. . . Turner, his master, took him out of the State by night, and confined him in a private jail, at Salisbury, from which he escaped. Suit was instituted for his freedom, founded on these facts; and a decree of freedom entered, from which the master

took an appeal, which was still pending. The negro boy was called as a witness and objected to. . . The witness was rejected. "A judgment lawfully appealed from, is for the time removed, . . the consequences flowing from it for the time avoided. The effect of this judgment, therefore, in establishing Webb's freedom cannot be, at present, to make him a witness." Turner was found guilty.

State v. Brown, 5 Harrington 505, 1853. "Isaac Nathans, (negro.) . . I have had fifty-one children, by three wives; fourteen by the first, fifteen by the second, and twenty-one by the third, all born alive."

State v. Johnson, free negro, 5 Harrington 507, 1853. Johnson was tried "for breaking and entering a store house and stealing certain goods therefrom." His confession was admitted in evidence.

Vandegrift v. Page,¹ 5 Harrington 439, June 1854. "The plaintiff [Mary E. Page] had a verdict for \$500 and judgment;" Judgment reversed: "the declaration was materially defective, for want of an averment that the plaintiff was a citizen of this State."

Union Church of Africans, 1 Houston 100, June 1855. "In the year 1813 certain free colored people residing in . . Wilmington, associated themselves together as a religious society, . . and . . proceeded to elect . . trustees" [for the purpose of taking care of the temporalities²] who "upon their election took upon themselves the name of 'Union Church of Africans,' . . [104] in process of time, other societies were . . formed in the States of Delaware, New Jersey, Pennsylvania, New York, and Connecticut, in connection with the original society in Wilmington, . . [105] Your petitioner . . became a member of one of the societies of said African Union Church; . . at Christiana, . . about the year 1815; that, soon afterwards, he was duly licensed as a preacher in this church; that, in the year 1835, he was chosen by the elders of his said society to the office of deacon, and was thereupon ordained to said office by Peter Spencer, then elder minister in said church, agreeably to the provisions of the Discipline thereof; that he continued to preach as a deacon in the said African Union Church until the year 1846; in the month of April of which year he was nominated, according to the usage of said church in such cases, by a Yearly Conference,³ . . to the office

¹ For facts, see *Page v. Vandegrift*, p. 233, *supra*.

² Act of Assem. Feb. 3, 1787.

³ [137] "The respondent's position rests on the repeated use of certain expressions in the Articles of Association and Discipline, requiring the consent of the congregations to the induction of a preacher, and showing a fixed opposition to the appointment of preachers over them by a Conference, or any independent power. On this ground they seceded from the Methodist Episcopal Church, which claimed and exercised this power over them, as it still does over all its own societies. The answer to this . . is this: that the Conference, against whose power they were then contending, was a body which was not a part of their own church organization; it was a body composed of white ministers, in which they were not represented; that, while they threw off its authority, they provided for a similar Conference as a part of their own organization, composed of their own official members, but without defining its powers; that, by constant usage from the beginning, this body nominated the elder ministers; leaving it still to the congregations and ruling elders, after trial, to accept or refuse the person nominated; and that the expressions so often repeated, that no preacher should have the right to preach, except to those who were willing to hear him, have reference to a settled and recognized distinction, always existing, between licensed preachers, deacons, and elder ministers."

of elder minister . . . and . . . ordained . . . by Isaac Barney, then elder minister in said church. . . That the said Barney, residing in the city of New York, assumed more particularly the charge of the northern societies in said church; and that the southern societies, including the said original society in Wilmington, fell under the immediate charge and superintendence of your petitioner . . . he has . . . been forcibly excluded from said church, . . . prays . . . a writ . . . of *mandamus*, directed to the said Union Church of Africans, commanding them to admit your petitioner to preach in the said Union Church at Wilmington whenever he may see proper so to do, and to administer the ordinances and discipline thereof, and to exercise a pastoral charge over the same, or to show cause to the contrary.” [127] “the judgment of the Superior Court, ordering the peremptory *mandamus*, ought to be reversed and declared to be of no effect.”

Socum v. State, 1 Houston 204, spring 1856. Held: Section 2, chapter 52, of the Revised Code,¹ does not apply to non-resident free negroes or mulattoes, who were residing in the state at the time the Code went into effect.

Doe d. Short v. Prettyman, 1 Houston 334, spring 1857. Will of Edward Short: “My will and desire is, that my son Isaac should have my negro Frank,” The date of the will is not given, but the context shows that it was earlier than the fall term of the Court of Chancery, 1835.

King v. Phillips, 1 Houston 349, spring 1857. “Replevin for a negro slave, bequeathed by Spencer Phillips to his wife,” during her widowhood.

Horsey v. Horsey, 1 Houston 438, fall 1857. Will of Thomas C. Horsey: “I give, devise and bequeath . . . to my beloved wife . . . one negro woman, named Emeline, until she shall arrive at the age of thirty-four years, which will be on the 25th day of August, 1850, and then to be free.” “to his daughter . . . a negro girl, named Mary, to serve to the age of twenty-eight, and then to be free, and to his son . . . a negro boy, named John, to serve until the age of thirty years, and then to be free.”

State v. Jones, Houst. Cr. Cas. 21, October 1857. Jones, a colored man, was indicted and tried for the murder of Ralston, another colored man. They, with four other colored men, were employed by “a farmer of the county. . . while they were all up stairs, a quarrel arose . . . about a lamp,” The deceased was stabbed. “Verdict—Guilty of manslaughter.”

State v. Anderson, Houst. Cr. Cas. 38, April 1858. “Anderson, negro, was indicted and tried for the murder . . . of . . . Emery, negro, in the month of August preceding. They had met at the camp-meeting near Camden, and having had a quarrel, Anderson told Emory that if he would follow him off the camp ground he would give him satisfaction,” Anderson stabbed him with a pocket knife. Verdict—“Guilty of murder in the second degree.”

State v. Downham, Houst. Cr. Cas. 45, April 1858. “Downham was tried on a bill of indictment found against him . . . for the murder of a

¹ P. 144.

negro man . . . in the forest of Murderkill hundred, . . . 1852. . . [48] Pompey Tribbet [a mulatto] was . . . called and sworn as a witness," Held: by the act of 1799, the prisoner's confession of the crime, committed when no white person was present, may be proved by a negro witness. Verdict—"Not Guilty." [The negro who was murdered had previously shot at the prisoner.]

Windsor v. Boyce, 1 Houston 605, fall 1858. "an action of replevin for a negro slave"

State v. Newcomb, Houst. Cr. Cas. 66, October 1858. The deceased said that he would "kill that man [the prisoner], if he was the last man in the world, and a d—d nigger too."

Doe d. Burton v. Wright, 2 Houston 49, spring 1859. [51] "the counsel for the plaintiff endeavored to impeach and invalidate the marriage of the defendant with Walter Wright, who were both negroes, or mulattoes, and for this purpose he called to the stand Robert Clark, a negro, as a witness."

Held: [52] a "negro or mulatto . . . is competent to testify against a negro, or mulatto in all cases." But witness was rejected on the ground that "if he was the husband of the defendant, he was incompetent for that reason to testify either for, or against her" as "the wife is a party to the suit." [53] The counsel for the plaintiff then called another witness who had known the defendant for twenty-five years, . . . he was present at her marriage with Robert Clark about twenty years ago at her father's house. They were married by Rev. John T. Hazzard, a minister in full standing in the Methodist church, and then rode the circuit in that section of country. She was then very young, only about fourteen years of age. When the marriage ceremony was about to be commenced, she did not appear to come forward very willingly, nor stand very easy during it. Her waiter conducted her up before the minister and she hung back considerably. She and Clark stood up together, however, but when the minister told them to join hands, she would not do it, and when he told them to salute each other, she would not do it. To the questions put to her by the minister in performing the ceremony, she made no answer; and the minister afterward said to him, the witness, that he did not know what to think of it, that he had never seen such a case before and that he could hardly call them married; and that he did not remember that he heard the minister pronounce them man and wife. But witness attributed her conduct at the time to her diffidence and modesty, rather than to aversion, or disinclination to marry Clark. That she did not retire with him that night, nor did they live together for some time; after a while, however, they commenced living together, but soon parted and never lived together afterward. . . [54] The defendant's counsel then called Rev. John Rogers as a witness, . . . did you, as a minister of the Baptist Church, unite in marriage, Walter Wright, since deceased, and Elizabeth Wright, the defendant in this suit? . . . [55] The witness . . . proved the marriage of the defendant to Walter Wright, and that she passed at the time by the name of Elizabeth Clark."

Brinkley v. Jackson, 2 Houston 71, spring 1859. "The proceeding below was at the suit of Jackson against Brinkley, on the provision of the Act of Assembly, Rev. Code, 46 Sec. 18" in regard to free negroes or mulattoes, "not residing within the limits of any town where an election shall be held," who "shall be found within the limits of such town . . . on the day of such election,"

State v. Owens, Houst. Cr. Cas. 72, April 1859. "Mary Owens (n.) was indicted for aiding the escape of an indentured servant girl from her master. She was the mother of the girl and had bound her to the master by an indenture of servitude"

State v. Burrows, Houst. Cr. Cas. 74, April 1859. "Mary E. Burrows, a negro [of a very weak and imbecile mind], was indicted and tried for arson in setting fire to the dwelling house" of her step-mother. "verdict of not guilty."

State v. Oliver, 2 Houston 585, fall 1863. In 1855 "Oliver, a free negro, was indicted and tried for the murder . . . of David Burton. A son of the prison[er] had been duly bound as an indentured servant to a brother of the latter, and in his absence from home, the prisoner went to his house and took his son away from his service, and while on their way from his house, the deceased met them on the public road, . . . took his son away from him and sent him back to his brother's residence. In the meanwhile, first an altercation and then a collision ensued" Burton struck Oliver "twice upon the head with a piece of fence rail, and . . . the same day . . . made a complaint before a Justice of the Peace that the prisoner had drawn a dirk knife upon him on the occasion and threatened to kill him, on which he issued an informal precept . . . to . . . a deputized constable . . . to apprehend the prisoner" who shot Burton from an upper window of his house, when the *posse*, which included Burton, came to arrest him. Verdict of guilty of murder in the second degree.

State v. Gardner, Houst. Cr. Cas. 146, May 1864. "Rosannah R. Gardner, negro, was indicted and tried for the murder of Martha Ann Segreave, negro, . . . the parties were friends. . . Both had been drinking, . . . [150] Verdict—Guilty of murder of the second degree."

State v. Brister, Houst. Cr. Cas. 150, May 1864. "John Brister, a negro boy about fifteen years old, was indicted and tried for the crime of arson in setting on fire the dwelling house of James Davis . . . He had been sent by his master, James Williams, to whom he was indentured as a servant, to Mr. Davis to work for him on his farm, who had whipped him for not working as he should, for which he ran away a few days afterwards," witness [153] "told him [Brister] several times during the night that he must have set fire to it. He however said he did not, but the next morning after Mr. Hayes [for whom Brister had been working] had whipped him, he asked him if he did not set fire to the house, to which he replied that he did —" He was "dragged soon after with his hands tied behind a horse and carriage to Middleton before the Magistrate, . . . Verdict—Not guilty."

State v. Frazier, Houst. Cr. Cas. 176, May 1865. [191] "A colored woman testified that she had lived all her life a servant in the family of the deceased,"

Cannon v. Stuart, 3 Houston 223, spring 1866. [224] "*Habeas corpus* case. . . Mary Cannon (n.) was a minor . . . and was unlawfully restrained of her liberty by . . . Stuart, by virtue of . . . binding by indentures of apprenticeship"¹ [225] "the constable who gave the information required under the act, and upon which the two justices of the peace proceeded to bind the petitioner, gave no notice whatever . . . to the mother of his intention to do so, unless she provided a suitable home for her with some respectable white person in the mean while; and . . . the two justices of the peace . . . proceeded at once to bind the petitioner without delaying it until five days after their hearing of the case, to afford the mother an opportunity of indemnifying the county against the petitioner becoming a charge upon it, as was also required by the act." Held: "the petitioner is hereby discharged from the said indentures of apprenticeship, and from her servitude to the respondent."

State v. Rash, Houst. Cr. Cas. 271, October 1867. Rash "was indicted for an assault and battery committed on Samuel Derry, a negro man. . . 'The first witness called was a negro man, named Berry [Derry]. He took his place at the witness stand ready to testify, when the counsel for the defendant objected to his competency, on the ground of the Act of Assembly of February 3, 1799, the eighth section of which was re-enacted in 1852"² [272] "There was a competent white witness present at the time the alleged assault . . . occurred," The Attorney General "claimed that the evidence of the negro was admissible, . . . insisted that the civil rights bill³ was the supreme law, and as such, was binding on all courts whether state or federal,"

The Court, Gilpin, C. J.: [280] "in so far as the civil rights bill assumes to compel, regulate, or control the admission of evidence in the Courts of this State, it is inoperative, unconstitutional and void. The fact that the negro man called as a witness, was the person on whom the assault and battery had been committed, having come to the knowledge of the Court, the Chief Justice, remarked that his testimony was admissible under the rulings of the Court, on the ground of humanity and necessity, although there was a white witness present,"⁴

State v. Draper, Houst. Cr. Cas. 291, April 1868. "Jesse Draper, a deaf and dumb man, was indicted for the murder . . . of . . . Dickerson. . . [292] the prisoner, who was a negro, about thirty years of age, and deaf and dumb from his birth, had been living for the last seven years in the family of the father of . . . the deceased, working on the farm . . . and had long evinced a strong and peculiar partiality for the whole family, and had never before manifested any disposition to injure any member of it, or fear any of them, except the deceased, who was the only member

¹ Under Rev. Code of 1852, 245, ch. 79, sect. 3.

² Rev. Code, ch. 107, sect. 4.

³ Act of Congress.

⁴ *State v. Whitaker*, p. 227, *supra*; *State v. Cooper*, p. 230, *supra*.

of it capable of mastering him, and who had sometimes had occasion to conquer and chastise him, when in his violent and angry moods actual force was required to overpower and subdue him." In such an encounter the prisoner stabbed the deceased [293] "in fifteen different places with a sharp pocket-knife . . . although the prisoner had never been able to speak or hear, and had never received any instruction or education in the alphabet or language of signs taught in the schools of mutes, he had signs of his own by which he could readily communicate his ideas to and converse with such persons as were familiarly acquainted with him, on many ordinary matters and things, and was possessed of a good deal of intelligence and mechanical ingenuity, and was not only a good hand and workman on a farm, but could make well any article he tried to make that was required upon it, and knew the boundaries of it and the adjoining tracts in the woods better than the owner of it, and knew the difference in the value of our national silver coins, as well as our smaller bank notes, and could be sent to the stores in the town to buy many ordinary articles required on the farm or in the family; and although he had never received any religious instruction, he seemed to have some conception of a future state of rewards and punishment, and to believe that there is a heaven above for the good and a hell beneath for the bad, indicating by appropriate signs that those who shout at religious meetings will go to the former, while the bad would descend to the latter. He also in like manner could make known that he knew the public jail and the whipping post and pillory, and what they were for in Georgetown, and that people who stole were there whipped and imprisoned for it. His previous character had been good, and though evidently conscious of what he had done, he made no effort to escape or attempt to deny it, but seemed apparently to exult over it. . . [302] The verdict of the jury was, not guilty by reason of insanity, or want of criminal responsibility."

Handy v. Clark, 4 Houston 16, spring 1869. "*Assumpsit* for work and labor . . . The plaintiff was a colored woman and had been owned and held as a slave for life by the defendant for many years prior to the adoption of the thirteenth amendment of the constitution of the United States, and afterward voluntarily remained in his service and continued to work and labor in his family as a domestic servant until the 10th day of April 1868, when she voluntarily left it without any complaint or demand of wages, and without any objection, or effort on the part of the defendant or his family to prevent her leaving or to induce her to remain in it. It further appeared that he had never said anything to her, nor she to him, in the meanwhile, in regard to the abolition of slavery or her freedom under the operation of the constitutional amendment, but he knew from her deportment that she was well aware of the fact that she was free, for she left and returned to his house at her will and pleasure, and without saying anything to him about it, which she had never done before, and without any complaint or remonstrance on his part, for he had never requested her to remain, or not to go, but had ever since considered her at liberty to leave his house and service entirely, whenever she pleased. He had in the meantime, however, clothed and maintained her, and paid

for medicine and for the attendance of physicians upon her when she was sick, the same as he had before when she was his slave. The sum demanded by her in the action was at the rate of two dollars per week for one hundred and forty two weeks. In addition to the defendant who was called and examined as a witness for the plaintiff, a daughter and a sister of hers were also called as witnesses for her." Counsel for the defendant objected to their competency "on the ground that they . . . were not admissible under the statute of the State¹ . . . But the Court overruled the objection on the ground that the amendment of the constitution and the act of Congress, entitled the 'civil rights bill,' had removed the disability imposed upon them . . . [18] by our statute, and rendered them competent witnesses in the case." Charge to the jury: [19] "the law would imply a promise on his part to pay her for the services as much as they were reasonably and justly worth . . . but it would be subject to a proper deduction for the clothes furnished and the expenses incurred by the defendant for medical attendance and medicine on her account during the time she was so serving him, . . . The plaintiff had a verdict."

Morris v. Morris, 4 Houston 414, June 1872. Will of Elijah M. Morris, executed 1861: [416] "I give and bequeath unto my son, William . . . the unexpired term of the indentured servant, John W. Pratt (negro). . . unto my son, James . . . the unexpired term of the indentured servant, Alfred Pratt (negro)." Appealed from Delaware Court of Chancery. See *Warren v. Morris*, 4 Del. Ch. 289.

¹ Rev. Code, ch. 107, sect. 4.

PENNSYLVANIA

INTRODUCTION

I.

“ Since the act for the gradual abolition of slavery,¹ [‘ that act which has been the pride of Pennsylvania, as one of the most noble and glorious emanations from the spirit of the revolution, ’]² a number of persons . . . formed a society in Philadelphia, for the purpose of relieving those of their fellow creatures, who are held in illegal slavery.”³ The society was not incorporated till December 8, 1789;⁴ but the judicial records show its activity as early as 1784. In that year Dalby, a resident of Maryland, was “ attended . . . to Philadelphia ” by a slave who “ presented so pure a complexion, that the attention of the society was excited, and a writ of *habeas corpus* taken out at their instance; ” but on the advice of Chief Justice McKean, the case was thrown into the form of an action *de homine replegiando*. On the trial it was proved that the plaintiff was born in Maryland “ of an unmarried *mulatto* woman, ” a slave, and he “ was shewn to the Jury, that they might . . . draw some conclusion, that he was, at least on one side, the issue ” of a white parent. The Chief Justice charged the jury that the rule of the common law of England, that “ the issue follows the condition of the father ” is confined to *villeins* and that “ villenage never existed in America, . . . The contrary practice [‘ authorized by the civil law ’] has . . . been universal ” here. Consequently the jury gave their verdict for the defendant.

In 1795, on the trial of Richards,⁵ charged with violating the seventh section of the act of 1788,⁶ “ it was admitted that the prosecution was carried on by the society for the abolition of slavery, . . . Thereupon the defendant’s counsel insisted, that none of the members of that society should be received as jurors ” and the court declared the “ objection . . . relevant. ” Again the society failed of its purpose, the court deciding that the section applied only to *free* negroes, while the evidence had shown that the negro who had been restored to his master by Richards’s scheme of taking him to New Jersey, was in fact a slave.

In 1811⁷ “ Milnor, for the abolition society, ” obtained the discharge of Hester, who had been committed to prison for absconding from one of those “ ill disposed persons ” whose devices the act of 1788 was enacted

¹ Passed Mar. 1, 1780. 10 Pa. Stat. at L. 67.

² Baldwin 586.

³ *Pirate v. Dalby*, p. 256, *infra*.

⁴ 2 Pa. Stat. at L. 424.

⁵ *Respublica v. Richards*, p. 260, *infra*.

⁶ An act supplemental to the act for the gradual abolition of slavery. 13 Pa. Stat. at L. 54 (56).

⁷ *Commonwealth v. Hester*, p. 270, *infra*.

to circumvent.⁸ Though she had been born in August 1780, her master had never registered her as the act of 1788 provided; but had continued to hold her as a slave till 1798, when she was manumitted by him “and at the same time bound as a servant for ten years.” The court “acknowledged that the . . . binding was void, Negress Hester being at that time . . . a free woman.” As Chief Justice Tilghman had said, in Sylvia’s case:⁹ [371n.] “There is no evidence that . . . [she] had the assistance of friends or counsel, or that she had any idea of a right to freedom, except what was derived from the deed of manumission, which bears the same date as the indenture, and must be considered as being executed immediately before it. Taken together, the two instruments form one transaction.” As she was already free, the manumission was no consideration for the binding.

Manumission also failed as a consideration if the indenture for service was executed *after* the slave was brought into the state by a prospective resident, although the promise had been made previously.¹⁰ It also failed in the case of Sylvia,¹¹ “a black girl, of . . . fifteen years,” who had been taken to Rhode Island in 1808 by her mistress, Madame Bertrand, “one of those unfortunate persons whom the Spanish government . . . compelled to leave” Cuba, and had been brought thence, a few months later, to Philadelphia, where she was manumitted and “on the same day bound herself, by indenture, as a servant to Mrs. Bertrand . . . for thirteen years.” Chief Justice Tilghman stated, when she was brought before him “on a *habeas corpus*” in 1809, that it “has been customary for negroes in Philadelphia, claimed as slaves by persons living in other states, to bind themselves for . . . periods, not exceeding the age of twenty-eight . . . by way of compromise with their masters; . . . These compromises, especially when the negro has acted under the direction of the abolition society, or any of its members, ought, if possible, to be supported.” For “an infant [as Sylvia is] may make a contract for his own benefit; now nothing can be more for his advantage than to commute . . . slavery, for servitude until . . . twenty-eight . . . the act for the gradual abolition of slavery, (sect. 13) does, by necessary inference, affirm the validity of [such] an indenture, . . . Sylvia was not free by the acts . . . of Pennsylvania, when she executed the indenture, because her mistress did not come . . . [371 n.] with a view of settling . . . nor had she been [here] six months . . . at the date of the indenture. But the case turns upon the Act of Congress, passed the second of March 1802, . . . ‘to prohibit the importation of slaves . . . after the first of January 1808.’” Sylvia was free as soon as she set foot on the soil of the United States, so that the indenture was without consideration.

⁸ Preamble to the act of 1788.

⁹ *Commonwealth v. Lango*, p. 268, *infra*.

¹⁰ *Commonwealth v. Cook*, p. 285, *infra*; same *v. Robinson*, p. 268, *infra*.

¹¹ Same *v. Lango*, p. 268, *infra*.

Susan Stephens, "a black woman" who had run away from her Maryland master and had married a free negro in Philadelphia, was apprehended and about to be taken back, when "Clements, at the solicitation of both husband and wife, agreed to pay [her master] . . . 195 dollars, provided he would manumit the wife, it being understood, that [they] . . . [207] should bind themselves as servants to Clements for . . . three years. The indenture of the wife . . . was also executed by William Masters, one of the society for promoting the abolition of slavery, who was styled the next friend of the wife." She sought in 1814¹² to be freed from the service on the ground that she was a married woman and her husband was not a party to the indenture, though he was "present, and consenting." Chief Justice Tilghman declared the marriage unlawful as "she was incapable of entering into a contract of marriage without the master's consent," and she was remanded to the service of Clements.

In 1833¹³ Justice Baldwin, while censuring the conduct of Mr. Ellis, an honorary member of the Pennsylvania society for promoting the abolition of slavery, by whom "their legitimate objects . . . [had] been perverted . . . by [his] contributing money to employ counsel to prosecute a master for lawfully seizing and taking away his runaway slave," declared that "we are well convinced that it has been equally repugnant to the feelings and practice of the members of the society,¹⁴ as it would be to their charter." "No society was ever founded for nobler objects,¹⁵ . . . but it was no part of the design . . . of this benevolent society, to protect or rescue runaway slaves from the claims of their masters. It was provided in their charter that their . . . regulations . . . be . . . not contradictory to the constitution and laws of the state. . . So far as has come to our knowledge . . . this society has acted on the philanthropic principles of its institution, . . . never interfering with the rights of property, . . . they have not infringed the condition of their charter, but pursued their legitimate objects with untiring zeal." The many cases which do not specify that the abolition society was active in instituting them, but which indicate that the records of the registry required by the acts of 1780, 1782 and 1788, had been searched by keen and experienced eyes, to take advantage of defects which would give freedom, lead us to the conclusion that such "untiring zeal" was due to the abolition society.

¹² Commonwealth v. Clements, p. 271, *infra*.

¹³ Johnson v. Tompkins, p. 286, *infra*.

¹⁴ He might have revised his statement twenty years later. In 1853 Mr. David Paul Brown, "being . . . it was supposed, employed by certain societies in Philadelphia, known as 'Friends of Humanity,' 'Abolitionists,' etc.," was forbidden by the court to interfere in the *habeas corpus* proceedings for the discharge of the deputy marshals who had assaulted a fugitive slave in attempting to arrest him. *Ex parte Jenkins*, p. 308, *infra*. The high-handed conduct in 1855 of Passmore Williamson, "secretary of the active committee of the old Pennsylvania Anti-Slavery Society," landed him in jail. *U. S. v. Williamson*, p. 311, *infra*.

¹⁵ "for promoting the abolition of slavery and for the relief of free negroes unlawfully held in bondage and for the improving the condition of the African race," 13 Pa. Stat. at L. 427.

Neither the omission of the county¹⁶ where the owner resided, nor of the words "for life"¹⁷ after "slave" invalidated the registry of Bob or of Hannah under the act of 1780; but Belinda was freed in 1817¹⁸ because her sex was not mentioned as required by that act. "We cannot recognize the name Belinda as being exclusively that of a female," says Judge Gibson.

To slaveholders residing in Westmoreland and Washington Counties on September 23, 1780, the time for registration was extended by the act of April 13, 1782¹⁹ beyond the date (November 1, 1780) required by the act of 1780 to January 1, 1793, as "the boundary between Pennsylvania and Virginia was in dispute [in 1780], and as the inhabitants . . . [19] on the border could not tell to which state they belonged."²⁰ Accordingly, Cassandra and Lydia were declared free in 1797,²¹ and John in 1799²² because their masters had not brought them from Maryland till after September 23, 1780.

Peggy, who was registered on November 10, 1780, nine days after the limit allowed by the act of 1780, claimed her freedom; but the Supreme Court decided in 1815²³ that, as she was held as a slave in Westmoreland County on and before September 23, 1780, the owner had the benefit of the extension of time granted by the act of 1782. Chief Justice Tilghman declares: "I know that freedom is to be favoured, but we have no right to favour it at the expense of property. The only just mode of extirpating the small remains of slavery in the state, would be by purchasing the slaves at a reasonable price, and paying their owners out of the public treasury."

As the act of 1780 was not sufficiently explicit, an act to "explain" it was passed on March 29, 1788.²⁴ By the latter act the children of all registered slaves must be registered on or before April 1, 1789, or "within six months next after the birth," if the master would hold them as servants till the age of twenty-eight.²⁵ The defective registry of John in June 1807, as born the *following* January, was permitted in 1811²⁶ to be explained by parol evidence and he was obliged to continue to serve until twenty-eight years from January 1807, "the real time of his birth." But Judge Gibson in 1817,²⁷ while agreeing with Chief Justice Tilghman that "the construction [of the act of 1780] should be liberal in favour

¹⁶ Cook *v.* Neaff, p. 264, *infra*.

¹⁷ Republica *v.* Findlay, p. 264, *infra*.

¹⁸ Wilson *v.* Belinda, p. 275, *infra*.

¹⁹ 10 Pa. Stat. at L. 463.

²⁰ Marchand *v.* Peggy, p. 274, *infra*.

²¹ Pennsylvania *v.* Blackmore, p. 261, *infra*.

²² John *v.* Dawson, p. 263, *infra*.

²³ Marchand *v.* Peggy, p. 274, *infra*.

²⁴ 13 Pa. Stat. at L. 52.

²⁵ Act of Mar. 1, 1780. 10 Pa. Stat. at L. 67 (69).

²⁶ Commonwealth *v.* Blaine, p. 271, *infra*.

²⁷ Wilson *v.* Belinda, p. 275, *infra*.

of the master," "where there appears to have been an intent to comply honestly" with it, announced that in "every case of registry under [the act of 1788,] . . . I, for one, shall hold the master to a strict . . . execution of everything enjoined, except where express decisions of this Court may have established a contrary construction." "The [latter] act . . . was intended to be exclusively for the benefit of the servant registered, by furnishing him with evidence, conclusive of the termination of the servitude, . . . The servant has nothing to do with either the fraud or mistake of the master, . . . the master, who is the author of the mischief, and not the servant, should suffer."

Accordingly, Bob who had been returned on November 21, 1792, as born "on, or about the 23d May last," was discharged from service in 1818:²⁸ "The report was made in *about six months*, but whether *within six months*, is doubtful."

But even construing the act strictly, the Supreme Court in 1819²⁹ remanded Bell to service though the oath in returning her was taken by her master before a deputy clerk of the peace instead of a clerk of the peace, as the act prescribed; held in 1826³⁰ that "esq." sufficiently designated the occupation of one who combined farming with judicial duties; and in 1825³¹ and in 1829³² that "yeoman" was "sufficiently certain" in describing a farmer. But Frank was discharged from service in 1824³³ because the occupation of the master was not mentioned.

The case of *Stiles v. Nelly*, decided in 1823,³⁴ deserved more consideration than it received at the time. The question then before the court was whether the owner's return, in March 1789, of Nelly's mother, Rachael, "born about the 15th of November, 1780," was certain enough to render Rachael a servant for twenty-eight years, and Nelly likewise. The court held that the "*precise certainty*" required by the act of 1788 with respect to registry within six months after birth, was not required with respect to births before the passage of the act. [371] "All that was necessary . . . was, to show, that Rachael was born *after the 1st March, 1780.*" So Nelly was remanded to the service of her master. Eight years later Judge Kennedy exclaimed: "Although it appeared upon the face of the record . . . that Nelly was the child of one bound . . . until twenty-eight only, it never occurred to her counsel to claim her freedom upon that ground, nor yet to any of the learned judges of the Court."³⁵ Until the decision of *Miller v. Dwilling* in 1826,³⁶ "a directly opposite opinion . . . prevailed, not only with a great portion of the community, but with many

²⁸ Commonwealth v. J. D. Greason, p. 276, *infra*.

²⁹ Same, *ex rel.* Bell, v. W. Greason, p. 277, *infra*.

³⁰ Same v. Vance, p. 282, *infra*.

³¹ Same v. Irvine, p. 281, *infra*.

³² Cobean v. Thompson, p. 284, *infra*.

³³ Commonwealth v. Barker, p. 281, *infra*.

³⁴ P. 280, *infra*.

³⁵ Judge Kennedy, in *Urie v. Johnston*, p. 284, *infra*.

³⁶ See p. 282, *infra*.

of the most distinguished lawyers in the State." In that leading case, Chief Justice Tilghman declared the opinion of the court to be that [446] "no child can be held to servitude till the age of twenty-eight . . . but one whose mother was . . . a slave at the time of its birth." For if, as contended, every child whose mother had to serve till twenty-eight, must likewise serve till he reached that age, "the legislature of Pennsylvania, though it abolished slavery for life, established . . . a servitude . . . which may continue . . . to the end of the world."

A case of similar importance, involving the obligation to serve till twenty-eight, had been decided in 1789,³⁷ the first case under the act of 1780 which came before the Supreme Court of Pennsylvania "upon the arguments of Counsel." The construction of the obscurely worded sixth section of the act was the crux. Chief Justice M'Kean was of opinion that the children, Betsey, Cato and Isaac, who were born before the passage of the act, must continue to serve till twenty-eight "though not registered," and though their "parents had obtained their freedom" in consequence of that neglect. "If the word 'not' . . . had been expunged, I should have been of a different opinion." The three other judges held that the children were absolutely free. Judge Atlee called attention to the preamble of the act which, "among the unhappy circumstances formerly attending these people, mentions their being cast into the deepest affliction by an unnatural separation of husband and wife, from each other, and from their children: . . . to separate these children from their parents . . . appears . . . to clash with the intention of the makers of the law." Judge Rush thinks that in construing the act, the "not" should be "rejected. . . The word in all probability has slipt into the act by inadvertence;" and he derives confirmation of his opinion from other sections.

In addition to cases involving technicalities of registry under the six months clause of the act of 1788, the Supreme Court of Pennsylvania was called on to decide cases based on the six months clause of the act of 1780, which was of quite a different nature. That clause excepted from the benefits of the act the domestic slaves of sojourners whose stay did not exceed six months. In 1794³⁸ the slaves of Mrs. Chambrè [*sic*] who had fled with them to Philadelphia, "on the conflagration at Cape Francois [*sic*]," "asserted their freedom" on the ground that she had retained them in Pennsylvania more than six lunar months, though less than six calendar months. The court "were, unanimously, of opinion, that the legislature intended calendar months." But Joseph, brought, at the age of thirteen, to Philadelphia from Santo Domingo in the spring of 1793, and apprenticed to his mistress in June 1794 for fourteen years in consideration of manumission, was discharged in 1805,³⁹ as there was "no

³⁷ *Respublica v. Betsey*, p. 256, *infra*.

³⁸ *Commonwealth v. Chambrè*, p. 259, *infra*.

³⁹ *Respublica v. Smith*, p. 266, *infra*.

evidence of any terms being agreed upon within six months" after his arrival. The manumission was no consideration for the indenture as the sojourner's exemption had expired and Joseph was already free.

George Taylor, a negro who had run away in 1809 from his master, who had purchased him in New Jersey while residing there, and had removed to Philadelphia in 1808, was discharged from custody,⁴⁰ though his master had taken the precaution of going back with him to New Jersey several times during the first six months of his residence in Philadelphia. The master had ceased to be a sojourner and his "taking him to Trenton several times, can have no operation to disprove the master's residence here."

The court held in 1821⁴¹ that Charity who had been taken by her mistress from Maryland to Pennsylvania for divers sojourns, no one of which, according to the finding of the jury, lasted six months, was not free although, "tacked together," they exceeded that period. "The continuing of a sojourner, must be a single, unbroken one, for six months. . . It was well known to the framers of our Acts for the Abolition of slavery, that southern gentlemen with their families, were in the habit of visiting this State, attended with their domestic slaves, . . year after year passing the summer months with us, . . If these successive sojournings were to be summed up, it would amount to a prohibition—a denial of the rights of hospitality."

The act of 1780 made an exception also of "domestic slaves attending upon delegates in Congress . . foreign ministers and consuls," but in 1806,⁴² in a *habeas corpus* proceeding in the circuit court of the United States for the third circuit, Ben was discharged from the service of Pierce Butler, member of congress from 1794 until 1805, with the exception of two years when he was a member of the South Carolina legislature, "always having Ben with him." For a jury had found, in a special verdict, that Senator Butler, in spite of his official connections, was a resident of Pennsylvania, as "from 1794 . . with the exception of an annual visit to his plantations [in South Carolina and in Georgia] . . he has kept a dwelling house . . in . . Philadelphia, and has *resided* in it." Judge Washington held that the law was with Ben, since a slave brought into Pennsylvania by a resident after March 1, 1780, is free. As to the exception in favor of members of congress, "for two years he . . lost the privilege . . conferred upon him," and Ben had the advantage of that lapse. On the other hand, the slave Lewis was restored to Langdon Cheves of South Carolina in 1814,⁴³ the court holding that the exception in favor of members of congress still applied though the seat of government was no longer in Philadelphia and though the slave had been brought to Pennsylvania during a recess of congress.

⁴⁰ Commonwealth *v.* Smyth, p. 268, *infra*.

⁴¹ Butler *v.* Delaplaine, p. 278, *infra*.

⁴² Butler *v.* Hopper, p. 267, *infra*.

⁴³ Commonwealth *v.* Holloway, p. 272, *infra*.

In 1837⁴⁴ the Supreme Court of Pennsylvania decided that it was [560] “bound to pronounce that men of colour are destitute of title to the elective franchise,” following a precedent of 1795, lodged in the memory of a member of the bar, of which, however, no record could be found. Chief Justice Gibson declared that [556] “an inhabitant of an incorporated place, who is neither servant nor slave, . . . may be no freeman in respect of its government . . . till the instant when the phrase [in the constitution of 1790] on which the question turns, was penned, the term freeman had a . . . specific sense, . . . to denote one who had a voice in public affairs.” “The laws agreed upon in England, in May 1682, use the word in this specific sense, . . . [557] It was foreseen that there would be inhabitants : . . . who, though free as the winds, might be unsafe depositories of popular power; . . . [558] As was justly remarked by President Fox, in the matter of the late contested election, our ancestors settled the province as a community of white men; and the blacks were introduced . . . as a race of slaves; whence an unconquerable prejudice of caste, . . . insomuch, that a suspicion of taint still has the unjust effect of sinking the subject of it below the common level. . . . [560] Their blood, however, may become so diluted . . . as to lose its distinctive character;” and he regretted that “no . . . regulation [similar to that in the amendment of 1835 to the constitution of North Carolina]⁴⁵ . . . has been attempted here; in consequence . . . every case of disputed colour must be determined . . . by the discretion of the judges [of election]; and thus a great constitutional right . . . will be left the sport of caprice.”

The Court held in 1853⁴⁶ that a free negro was not excluded from acquiring a pre-emption right to land. [25] “The right to the fruits of his industry and to invest them . . . as he may deem most conducive to his comfort, is an incident to the grant of his freedom.”

Various cases arose in Pennsylvania under the fugitive slave acts of 1793⁴⁷ and of 1850.⁴⁸ The court held in 1816⁴⁹ that the case of Eliza, born of a fugitive slave about two years after her flight [308] “is not embraced, either by the constitution of the United States, or by the act” of 1793. “It cannot be supposed for a moment, that the child . . . who was not in existence when her mother ran away, . . . was a fugitive.”⁵⁰ In 1817⁵¹ the court decided that the constitution of the United States “is not to be construed so as to exempt [fugitive] slaves from the penal laws of any state where they may happen to be.” “It may be hard on

⁴⁴ *Hobbs v. Fogg*, p. 288, *infra*.

⁴⁵ “No free negro . . . or free person of mixed blood, descended from negro ancestors, to the fourth generation inclusive (though one ancestor of each generation may have been a white person) shall vote for members of the senate or house of commons.” Thorpe 2796.

⁴⁶ *Foremans v. Tamm*, p. 310, *infra*.

⁴⁷ 1 Stat. at L. 302.

⁴⁸ 9 *id.* 462.

⁴⁹ *Commonwealth v. Holloway*, p. 275, *infra*.

⁵⁰ See *Field v. Walker*, III. 172, of this series.

⁵¹ *Commonwealth v. Holloway*, p. 275, *infra*.

the owner . . . but it is an inconvenience to which this kind of property is unavoidably subject." In 1819⁵² the court quashed a writ *de homine replegiando* sued out by a fugitive slave, to whose master had been given, after a *habeas corpus* proceeding, a certificate permitting his removal to Maryland. Chief Justice Tilghman says: [63] "Whatever may be our private opinions on the subject of slavery, it is well known that our southern brethren would not have consented to become parties to a constitution . . . unless their property in slaves had been secured. . . [64] It plainly appears from the whole scope and tenor of the constitution and act of Congress [of February 12, 1793], that the fugitive was to be delivered up, on a summary proceeding, without the delay of a trial in a court of common law. . . the writ has been issued in violation of the constitution of the United States." Justice Washington held in 1822⁵³ that mere obstruction "is no offence under this act . . . unless it be interposed previous to, or whilst the claimant . . . is in the act of seizing . . . the fugitive, or is endeavouring to make such seizure." And in 1824⁵⁴ he declared, in refusing redress to the owner whose slave had escaped from jail where he had put him after receiving a certificate for his removal, that, the magistrate having "no authority to issue a warrant to apprehend the fugitive in the first instance, or to commit him after the examination is concluded, and the certificate given . . . the act is found to be practically of little avail." "An attempt . . . made in congress to correct these glaring defects . . . has not yet succeeded."

In 1834⁵⁵ a New Jersey slaveholder, who, in retaking his slave who had fled to Pennsylvania, had been "attacked with stones and clubs, . . . and kept . . . in custody . . . being refused even a bed," was awarded \$4000 damages in an action "of trespass *vi et armis*, false imprisonment, etc.," which he brought against his assailants, "highly respectable members of the society of friends." Justice Baldwin, in his charge to the jury, declared that under the first article of the constitution of the United States, "slaves are not only property as chattels, but political property, which confers the . . . most sacred political rights of the states, . . . The apportionment . . . of their representatives . . . of direct taxes . . . The number of electoral votes . . . the foundations of the government . . . rest on the rights of property in slaves . . . the whole structure must fall by disturbing the corner stones."

Two important cases under the act of 1793 were decided as late as 1853: *Van Metre v. Mitchell*,⁵⁶ and *Oliver v. Kauffman, Weakley and Breckbill*.⁵⁷ The respective owners of the fugitive slaves won a verdict in both cases, though against only one of the defendants in the latter.

⁵² *Wright v. Deacon*, p. 277, *infra*.

⁵³ *Hill v. Low*, p. 279, *infra*.

⁵⁴ *Worthington v. Preston*, p. 281, *infra*.

⁵⁵ *Johnson v. Tompkins*, p. 286, *infra*.

⁵⁶ P. 305, *infra*.

⁵⁷ P. 306, *infra*.

These results do not support Judge Washington's statement that the act of 1793 was "found to be practically of little avail;" but it is undeniable that it contained "glaring defects," and these the act of 1850 attempted to correct. "Immediately after its passage," "extreme factions [in the North] . . . set themselves to work through the pulpits, the press, through public harangues and secret engines of every kind, to bring about resistance to the law, and to destroy the power of executing it through the force of public opposition."⁵⁸ One of the first fruits was the murder, in September 1851, "by a mob of negroes"⁵⁹ ("between fifty and a hundred")⁶⁰ of a citizen of Maryland while seeking to arrest his fugitive slaves. Hanway, a spectator who had refused to assist the deputy marshal in making the arrests and had declared "that he did not care for that act of congress or any other act,—that the negroes had rights and could defend themselves," was tried for treason and acquitted. Williams, a colored man, who "had come up in the cars with several men who were after slaves, and . . . had conveyed the news" but was not present at the conflict, was also tried for treason and acquitted.⁶¹ In contrast to these opponents of the act, at least one citizen of Pennsylvania gave up being a farmer after 1850 to engage in the "business of *slave-catching* . . . [in which] for some months at least previous to his death [by suicide], he was habitually and very diligently occupied."⁶²

The three cases involving Jenkins and two other deputy marshals,⁶³ who, in attempting to arrest a fugitive slave, "had been obliged to have a violent and bloody encounter with him," and the three Passmore Williamson cases⁶⁴ show the unavailing efforts of abolitionists to override the courts, state and federal, in order to defeat the enforcement of the act.

The fugitive slave clause of the federal constitution was "for the first time, brought before . . . [the Supreme] Court [of the United States] for consideration"⁶⁵ in 1842 when the case of *Prigg v. Pennsylvania*⁶⁶ was removed to that court on a writ of error, "by the co-operation . . . both of the state of Maryland, and the state of Pennsylvania, in the most friendly . . . spirit, . . . so that the agitations on this subject in both states, which have a tendency to interrupt the harmony between them, may subside, and the conflict of opinion be put at rest." *Prigg* had carried a fugitive slave back to Maryland by force, as the state magistrate before whom she was brought refused to take cognizance, relying on the Pennsylvania act "to give effect to the provisions of the constitution of the

⁵⁸ Charge to the grand jury, p. 300, *infra*.

⁵⁹ Justice Grier's description, in *Oliver v. Kauffman*, p. 306, *infra*.

⁶⁰ *U. S. v. Hanway*, p. 301, *infra*.

⁶¹ *U. S. v. Williams*, p. 304, *infra*.

⁶² *Hartman v. Insurance Co.*, p. 310, *infra*.

⁶³ *Ex parte Jenkins*, p. 308, *infra*.

⁶⁴ *U. S. v. Williamson*, p. 311, *infra*.

⁶⁵ *Prigg v. Pennsylvania*, p. 291, *infra*.

⁶⁶ P. 291, *infra*.

United States, relative to fugitives from labour, for the protection of free persons of colour, and to prevent kidnapping," which had been passed in 1826.⁶⁷ The justices of the Supreme Court of the United States were unanimous in holding the state act unconstitutional, but their reasons why were diverse.⁶⁸ Justice Story declared that the power to legislate on the subject of fugitive slaves, whether to help the master or to hinder him, was exclusively federal, and Justices Wayne and McLean agreed with him. Chief Justice Taney and Justices Thompson and Daniel agreed that the Pennsylvania act was unconstitutional because it hindered the master in regaining his slave; but were of the opinion that states might pass acts helpful to the master. Justice Baldwin did not specify in what way he "dissented from the principles laid down by the Court as the grounds of their opinion."

In addition, three of the justices made noteworthy statements. The first is by Justice Story. [622] "As to the authority . . . conferred [by the act of 1793] upon state magistrates, while a difference of opinion has existed, and may exist still . . . in different states, whether state magistrates are bound to act under it; none is entertained by this Court that state magistrates may . . . exercise that authority, unless prohibited by state legislation." This final clause was "seized upon by anti-slavery States as a justification for legislative measures refusing the assistance of their officials to enforce the Federal Fugitive Slave Law."⁶⁹ Justice McLean, on the other hand, holds that Congress may [665] "require appropriate duties in regard to the surrender of fugitives from labour, by other state officers," since, according to his interpretation, it could "require . . . the highest state officer" to cause fugitives from *justice* "to be arrested, etc."⁷⁰ He then comes [666] "to a most delicate and important inquiry . . . whether the claimant . . . may . . . remove [his slave] . . . by force out of the state in which he may be found, in defiance of its laws . . . which are [not] in conflict with the Constitution, or the act of 1793. . . those laws which regulate the police of the state, maintain the peace of its citizens . . . [669] here is no conflict between the law of the state and the law of Congress. . . no power to . . . forcibly remove the slave without claim is given by the act of Congress. . . [671] this state law . . . is a most important police regulation. . . That a slave is property must be admitted. The state law is not violated by the seizure . . . [672] but by removing . . . by force, . . . This force, not being authorized by the act

⁶⁷ 9 Laws of Pa. 95, ch. 5777.

⁶⁸ "everyone of them dissenting from the reasoning of all the rest, and everyone of them coming to the same conclusion, the transcendent omnipotence of slavery in these United States, riveted by a clause in the Constitution." Diary of John Quincy Adams, Mar. 10, 1842. Cited in Charles Warren, *Supreme Court in United States History*, II. 359.

⁶⁹ Warren, *Supreme Court in United States History*, II. 361. See act of Pa. of Mar. 3, 1847, sects. 3 and 4.

⁷⁰ "But will they come when you do call for them?" Chief Justice Taney declared in 1860: "If the Governor . . . refuses, there is no power delegated to the General Government . . . to compel him." *Kentucky v. Dennison*, I. 441, 442, of this series.

of Congress nor by the Constitution, may be prohibited by the state. . . [673] This view . . . removes all state action prejudicial to the rights of the master; and recognizes in the state a power to guard . . . the peace of its citizens. . . In my judgment . . . [the state magistrate] was bound to perform the duty . . . by a law paramount to any act, on the same subject, in his own state. But . . . [his] refusal does not justify the subsequent action of the claimant. He should have taken the fugitive before a judge of the United States, two of whom resided within the state."

Justice Wayne gives a succinct exposition of the theory that slaves are property nationally. [643] "This provision [concerning fugitives from service] is the only one in the Constitution in which a security for a particular kind of property is provided; . . . [645] the property of an individual is not the less his, because it is in another state . . . The provision, then, in respect to fugitive slaves, only comprehended within the general rule a species of property not within it before. . . [646] If this be so, upon what principle shall the states act by their legislation upon property, which is national as well as individual?"

Chief Justice Tilghman had in 1815⁷¹ emphasized the fact that the object of the act of 1780 was "to produce a gradual abolition" only. "If slavery had been deemed altogether incompatible with the public good, freedom would have been purchased by a reasonable price paid to the master ['out of the public treasury'];⁷² . . . But it was thought that no harm would result, from leaving the right of property unimpaired as to existing slaves; provided means were taken by ascertaining, by a public registry, those persons who were either slaves, or servants for 31 years, at the time of the passing of the law." Though the number of slaves was small, "their condition . . . [was] unchanged."⁷³ By 1842 slavery had, "with only here and there a time-stricken relic of former policy, vanished from the soil"⁷⁴ The sweep was made clean by the passage of the act of March 3, 1847,⁷⁵ "the first act for the abolition of slavery in the United States."⁷⁶

II.

An act of May 22, 1722,⁷⁷ established a Supreme Court, consisting of three judges [increased to four by the act of May 20, 1767,]⁷⁸ "persons of known integrity and ability, . . . one of whom shall be distinguished . . . by the name of chief-justice . . . [303] Saving to all . . . persons . . . their right of appeal . . . to His Majesty in council, or to such court . . .

⁷¹ 2 S. and R. 18.

⁷² *Marchand v. Peggy*, p. 274, *infra*.

⁷³ *Johnson v. Tompkins*, p. 286, *infra*.

⁷⁴ 16 Peters 590.

⁷⁵ Laws of 1847, p. 208.

⁷⁶ Edward Raymond Turner, *Slavery in Pennsylvania*, p. 78, note 40. See also pp. 82, 83.

⁷⁷ 3 Pa. Stat. at L. 302.

⁷⁸ 7 *ibid.* 108.

as by our Sovereign Lord the King . . . [304] shall be appointed in Britain, to . . . judge of appeals from His Majesty's plantations." This was "a very expensive, difficult and precarious remedy."⁷⁹ Therefore in 1780, "whereas the good people of this commonwealth . . . are released from this badge of slavery,"⁸⁰ a High Court of Errors and Appeals was erected consisting of [54] "the president of the supreme executive council, the judges of the supreme court, the judge of the admiralty . . . together with three persons of known integrity and ability . . . [with] power . . . to examine all . . . errors . . . assigned or found, in . . . any . . . judgment given in the supreme court, and thereupon to affirm or reverse" them. This act was repealed by the act of April 13, 1791, which provided for a new High Court of Errors and Appeals, consisting of "the judges of the supreme court, the president[s] of the several courts of common pleas . . . together with three other persons of known legal abilities."⁸¹ The act of February 24, 1806,⁸² abolished the High Court of Errors and Appeals, and all its powers were vested in the Supreme Court. The act of March 11, 1809 provided that "in case of a vacancy . . . in the office of a judge of the supreme court, the governor shall not supply such vacancy, unless the number of judges shall be reduced to fewer than three."⁸³ The act of April 14, 1834, provided that the court should "consist of a chief justice and four associate judges."⁸⁴ The constitution of 1873 raised the aggregate number to seven.

⁷⁹ Act of Feb. 28, 1780, 10 *ibid.* 52.

⁸⁰ *Id.* 53.

⁸¹ 14 *ibid.* 110.

⁸² 18 *ibid.* 64.

⁸³ *Ibid.* 966.

⁸⁴ Acts of 1833-1834, p. 341.

PENNSYLVANIA CASES

Pirate, alias Belt, v. Dalby, 1 Dallas 167, April 1786. "Since the act for the gradual abolition of slavery,¹ a number of persons have formed a society at Philadelphia, for the purpose of relieving those of their fellow creatures, who are held in illegal slavery;² and this action is owing to that institution. The Plaintiff, being the supposed issue of white and mulatto parents, attended the Defendant to Philadelphia in the autumn of 1784, and presented so pure a complexion, that the attention of the society was excited, and a writ of *habeas corpus* taken out at their instance. . . the facts being disputed, the Chief Justice advised the Council [*sic*] to throw the case into the form of an action *de homine replegiando*; and . . a declaration was filed of September term 1784, . . Upon the trial . . it was given in evidence, that the Plaintiff was born in Maryland, of an unmarried *mulatto* woman; that the grandmother, and the mother of the Plaintiff, are . . slaves; that he was purchased by the Defendant's agent, . . that the Plaintiff had not been *six months*³ in Pennsylvania when the *habeas corpus* was brought; and the Plaintiff . . was shewn to the Jury, that they might . . draw some conclusion, that he was, at least on one side, the issue of white parents [*sic*]."

Chief Justice M'Kean's charge to the jury: [168] "the rule [in England], that the issue follows the condition of the father; and . . that the bastard is always free; because, in contemplation of law, his father is . . unknown, and . . his slavery shall not be *presumed*, must be confined . . to . . *Villeins*. . . *villenage* never existed in America, . . [169] The contrary practice has, indeed, been universal in America;⁴ . . authorized by the civil law, . . and . . so consistent with the precepts of nature, that we must now consider it as the law of the land." "Verdict for the Defendant."

Respublica v. Negro Betsey et al., 1 Dallas 469, September 1789. *Habeas corpus*. [470] "the first case [under the act of March 1, 1780]⁵ that has come before [the Supreme Court of Pennsylvania] . . upon the arguments of Counsel," [478] "the negro children Betsey, Cato, and Isaac," [472] "were born before the passing of the act, and . . they and their parents were . . the slaves . . of . . Moore . . who neglected to register them agreeably to the directions of the act. In consequence . . the parents have obtained their freedom, and the children now seek it,

¹ Passed Mar. 1, 1780. 10 Pa. Stat. at L. 67.

² "a voluntary society has for some years subsisted [in this state] by the name . . of 'The Pennsylvania Society for promoting the abolition of slavery and the relief of free negroes unlawfully held in bondage,'" Preamble to the act of Dec. 8, 1789, incorporating "The Pennsylvania Society for promoting the abolition of slavery and for the relief of free negroes unlawfully held in bondage and for the improving the condition of the African race." 13 *ibid.* 424.

³ "domestic slaves attending upon . . persons . . sojourning in this state . . [may not be] retained in this state longer than six months." 10 *ibid.* 71.

⁴ Not in Maryland from 1664 to 1681. See introduction to the Maryland cases.

⁵ 10 Pa. Stat. at L. 67.

that they may . . . be under the care . . . of those parents," [469] "The case was twice argued; first . . . [in] 1786, . . . and a second time, in . . . 1789, . . . the Judges delivered their opinions separately, . . . M'Kean, Chief Justice: . . . The question . . . is, whether the negro can be held as a servant until . . . twenty-eight . . . or is she *absolutely* free? On the part of the master, it has been argued, that, . . . by the fourth section, . . . every negro . . . child, born within this state, after the passing of the act, who, in case the act had not passed, would have been born . . . a slave, should be deemed a servant until . . . twenty-eight . . . that the Legislature could not intend a greater favour to negroes . . . born as slaves . . . *before* the passing of that act, than to those born *after*: . . . [470] the sixth [section] . . . comes in by way of . . . restraint upon the fifth. There, the owners . . . of . . . negroes . . . '*though not registered,*'¹ shall be answerable for their maintenance . . . unless . . . [they] manumit them before . . . twenty-eight . . . [471] from the scope of the whole [act] it may be collected, that the . . . intention of the Legislature was, that all . . . slaves . . . within the State at the time . . . under . . . twenty-eight . . . might be detained as servants, until . . . that age, though they should not be registered; . . . If the word '*not*' . . . had been expunged, I should have been of a different opinion; . . . [472] Atlee, Justice: . . . [474] I am . . . of opinion, that the implied construction contended for in behalf of . . . Moore, on a doubtful . . . clause in the act, cannot be admitted . . . against the express letter . . . of its fifth and tenth sections; and, consequently, that these persons ought to be discharged from his service." "The preamble to the act, among the unhappy circumstances formerly attending these people, mentions their being cast into the deepest affliction by an unnatural separation and sale of husband and wife, from each other, and from their children: In the present case, it is attempted to separate these children from their parents, by a construction which appears . . . to clash with the intention of the makers of the law; . . . Rush, Justice: . . . [475] The true intent . . . of . . . sections [five and ten], considered in one view, I take to be, that all negroes and mulattoes born at the time of passing the act, shall be free from every degree of servitude, unless registered by those who had a right to their service for life, or thirty-one years, . . . [476] This construction . . . is corroborated by adverting to the fourth section . . . By this section, in case any *after born* child should be abandoned by its master . . . the overseers are directed to take charge of it:—But why [not] provide . . . for a child born *before* the act in a similar situation? . . . The silence of the Legislature . . . affords a striking argument . . . that they never entertained an idea that children born *before* the act, were to be servants till . . . twenty-eight; . . . But the greatest difficulty . . . is, the sixth section . . . [477] I examined . . . the law signed by the Speaker, and also the recorded act, but found them both correspond with the printed law. I still think, however, in construing the act, *that* word ['not'] should be rejected. The clause then will mean this, . . . It prohibits [the owner] . . . from abandoning his right, unless he does it [by setting the slave free] *before* his arrival at . . . twenty-eight; and

¹ "notwithstanding the name . . . shall not be . . . recorded" 10 Pa. Stat. at L. 70.

where at the time of registering . . he was *above* that age, he can never afterwards abandon his right, but shall remain always liable to support him. . . [478] The word in all probability has slipt into the act by inadvertance; some member mistaking the design . . and moving *that* as an amendment, which has proved the source of so much . . litigation." [477] "This construction of the sixth section is still further confirmed by . . the word *assigns*, . . there can be no assignee of an unregistered negro, because he is free. . . I concur, therefore, with . . Judge Atlee, . . Bryan, Justice: . . hitherto I have agreed . . with the Chief Justice; but I now unite with my brothers Atlee and Rush, . . [479] that it was in the power of . . Moore to have secured the service of the negroes . . and, having omitted to do so, he cannot . . take advantage of his own negligence;"

Cowperthwaite v. Jones, 2 Dallas 55, August 1790. [56] "The action is brought upon a bond, given to the sheriff, upon his executing a writ of *Homine replegiando*. . . [He] was instructed . . not to take the Negro out of the possession of the master; but to leave him in his hands, during the dispute; . . the sheriff . . proved the leaving the Negro in his master's house, when he executed the writ, . . [57] but he says that some short time afterwards, the master brought the Negro to his office, to deliver him up, and he refused to take him; and ordered him to return to his master. There is some evidence of his being afterwards seen at his master's house; but he was finally abandoned, and has never since returned."

Held: "as the *Homine replegiando* was not prosecuted with effect, the plaintiff having discontinued it, and the Negro never returned, the defendants were legally answerable upon their bond; and . . [58] the price of the Negro was . . the proper measure of damages; which, if accepted by the master, will in equity, and perhaps by operation of law too, emancipate the Negro; he having been a party to the *Homine replegiando*, and a full satisfaction, equal to his value, made by his sureties for him."

Jackson v. Robinson, 1 Yeates 101, January 1792. The will of Elizabeth Vanderspigel "directed 200 *l.* to be put out at interest for a black girl who was born in the family, and who was to be taught to read, etc."

Roberts v. Kidd's Executors, 1 Yeates 209, January 1793. "she was the niece of Mrs. Kidd, . . lived in Mr. Kidd's family, . . making clothes for all the family, which consisted of eight blacks and one white girl of ten or eleven . . After many years . . she was . . compelled to leave . . occasioned . . at first by an insult offered to her by one of the negroes,"

Respublica v. Kepple, 1 Yeates 239, January 1793. M'Kean, C. J.: [235] "I know that negro and mulatto children have been often bound out as servants," Bradford, J.: [236] "The children of free negroes and mulattoes might formerly be bound to service. (Act of 1725, sect. 4. New edition of Laws 144.)"

Pennsylvania v. Negress, Addison 8, January 1794. Note to *Pennsylvania v. M'Kee*: "At January sessions 1794, a Negro woman was tried . . for the murder of her bastard child. The circumstances were very

strong, . . . However, the jury did not find the murder, but found the concealment of the birth and of the death. The court gave judgment of confinement for five years."

Respublica v. Gaoler, 1 Yeates 368, April 1794. *Habeas corpus*. "Mrs. Mary Weed the gaoler, made return, that . . . negro Robert was detained . . . under a commitment of . . . one of the alderman . . . as the runaway servant of Anne Tharp, . . . he was brought into the state in 1779, as a slave for life, was not registered, according to . . . the act . . . [of] 1780, . . . 1784, he was bound by indenture by the guardians of the poor . . . to . . . [Tharp] . . . as a servant, to serve . . . from the age of fourteen to . . . twenty-eight . . . now of full age." [369] "Negro Robert must . . . be discharged." "free negroes . . . can be only bound until twenty-one. ['if a female, until . . . eighteen.']. . . But negroes . . . bound in other states, to serve until twenty-eight . . . whose indentures have been executed to liberate them from a longer servitude, or from slavery, and brought into this state, may be holden as servants according to their indentures,"¹

Commonwealth v. Chambrè, 4 Dallas 143, September 1794. "A *habeas corpus* was issued to the jailor of Philadelphia, to bring before Judge Shippen, the bodies of Magdalen and Zare, two negro women, committed as the absconding slaves of Mrs. Chambrè. . . Mrs. Chambrè was a widow lady, in the island of St. Domingo, and owned the negroes in question as slaves; but on the conflagration at Cape Francois, she fled, bringing them with her, to Philadelphia; where she resided five calendar months and three weeks; a period that exceeds six lunar months, in computation of time. She then removed with the negroes to Burlington, in the state of New-Jersey, designing, as it was suggested, to avoid the operation of the act, for the gradual abolition of slavery; but no proof was offered, that she had ever intended to settle in Pennsylvania. The negroes, absconding from Mrs. Chambrè, came to Philadelphia; and now they asserted their freedom, under the 10th section of the act, which declares all unregistered negroes . . . free, 'except (*inter alia*) . . . slaves attending upon persons . . . sojourning . . . provided . . . not . . . retained in this state longer than six months.'² . . . [142] the Court . . . were, unanimously, of opinion, that the legislature intended calendar months; . . . that there was nothing illegal, or improper, in the conduct of Mrs. Chambrè, on the occasion; and that, therefore, the negroes must be remanded into her service."

Pennsylvania v. Montgomery, Addison 262, March 1795. "A writ of *habeas corpus*, for . . . a mulatto woman, having been directed to . . . Montgomery, he returned, that he claimed her as a servant under an indenture, dated . . . 1777, by the overseers of the poor . . . [263] binding her, as the child of a [white] woman an indented servant of his, to him, till the . . . child, born . . . 1775, should accomplish . . . thirty-one years,"³ Young, for the woman: "There ought to have been a previous

¹ Act of Mar. 1, 1780, sects. 12 and 13. 10 Pa. Stat. at L. 72.

² 10 Pa. Stat. at L. 71.

³ "if any white man or woman shall cohabit . . . with any negro under pretense of being married, . . . the child . . . of such . . . shall be put out to service . . . until . . . thirty-one" Act of Mar. 5, 1725-1726, sect. 8. 4 Pa. Stat. at L. 62.

conviction in the county court,¹ . . . [264] The indenture . . . says not, that the father and mother *lived together under pretence of marriage.*" President: [265] "No authority is shewn, but the indenture. That . . . is not sufficient, for a longer term, than till . . . eighteen." "The woman was discharged."

Respublica v. Richards, 2 Dallas 224, April 1795. "This was an indictment, on the 7th section of the act supplemental to the act for the gradual abolition of slavery"² [1 Yeates 480] "Before the jury was sworn, it was admitted that the prosecution was carried on by the society for the abolition of slavery, incorporated 8th December 1789, by law."³ Thereupon the defendant's counsel insisted, that none of the members of that society should be received as jurors. *By the court.* . . . [481] The objection . . . is relevant. . . The negro was the slave of General John Sevier, of the South Western Territory, and was purchased and retained by him as such for eight or nine years. . . put under the custody of . . . his son, to attend him on a visit to Philadelphia, . . . January 1794. In April . . . Toby absconded, but being discovered," [2 Dallas 225] "the defendant told Mr. Sevier [his brother-in-law] that there was no way of managing the matter effectually, but by inducing the negro to go into New-Jersey, and then to lay hold of him; that Toby was forcibly sent by . . . Sevier, to Cooper's-Ferry, whither the defendant went on purpose to secure, and actually did secure him;" [1 Yeates 481] "The negro attempted to escape, but was pursued, and being overtaken, was struck several times by both," [2 Dallas 225] "Sevier . . . demanded Toby's pocket-book, which Toby, however, delivered to one of the witnesses, saying, 'it contains my freedom papers'; . . . the witness delivered the pocket-book to . . . Sevier; and . . . the defendant and . . . Sevier put Toby on board of a boat, and carried him down the river [to Gloucester]. . . several witnesses [for defendant], who had known Toby as a slave for more than ten years, were examined, to repel the idea, suggested by the negro himself, that he had ever been emancipated."

Chief Justice M'Kean's charge to the jury: [227] "we were unanimously of opinion, as soon as it was proved the negro was a slave; that not only his master had a right to seize, and carry him away; but that, in case he absconded or resisted, it was the duty of every magistrate to employ all the legitimate means of coercion in his power, for seizing and restoring the negro to . . . his owner," [1 Yeates 483] "The great design of the [7th section] . . . was to prohibit . . . the nefarious practice of . . . forcing or . . . seducing a *free* negro . . . to other places, with the . . . intention of selling or detaining him as a *slave.*" Verdict, not guilty.

U. S. v. Insurgents, 26 Fed. Cas. 499 (Whart. St. Tr. 102), May 1795. During the "Whisky Insurrection" in July 1794 [504] "General Neville had received warnings for some time previous, that an attack was intended on his house. . . he had had his house prepared for resistance. . . and

¹ "such white man or woman shall forfeit . . . thirty pounds or be sold as a servant not exceeding seven years by the justices of the . . . county court," *ibid.*

² Act of Mar. 29, 1788. 13 Pa. Stat. at L. 56.

³ *Id.* 424.

the negroes abundantly supplied with arms and ammunition." The insurgents came and [505] "were fired upon from the house. They returned the fire; but being unexpectedly attacked by the negroes in the out-houses, they precipitately retired, with six of their number wounded and one killed." The next day the "mansion" was attacked by five or six hundred rioters and "set on fire, and it and the out-buildings were consumed, except a small out-house, which was preserved at the request of the negroes, as containing their bacon."

Respublica v. Mulatto Bob, 4 Dallas 145, June 1795. "Indictment for murder of the first degree." "It appears, that a wedding being fixed for Easter Monday, a considerable number of negroes assembled; and, about 10 o'clock at night, a quarrel arose between mulatto Bob . . . and negro David, the deceased. For awhile, the parties fought with fists; and the prisoner was heard to exclaim 'Enough!' The affray, however, became general, . . . When it was over, the prisoner went to a neighbouring pile of wood, and furnished himself with a club. He was advised not to use it, but he declared that he would, and entered the crowd with it . . . After remaining there about ten minutes, he left . . . without his club; and, again repairing to the wood-pile, took up an axe. Being, likewise, dissuaded from returning to the crowd with the axe, he said 'he would do it;' and striking the instrument, with great passion, into the ground, 'swore, that he would split down any fellows that were saucy.' Accordingly, he mixed once more among the people; a struggle was immediately heard about the axe; the prisoner then struck the deceased with it on the head; the deceased fell; and as he was attempting to rise, the prisoner gave him a second blow on the head with the sharp edge, which penetrated to the brain. After languishing three days, death was the consequence of this wound." [145 n.] "During the trial the counsel for the prisoner offered a negro slave as a witness . . . but . . . he was rejected, without argument: and it was said by M'Kean, Chief Justice, That it was a settled point at common law, that a slave could not be a witness, because of the unbounded influence of his master over him; which was, at least, equal to duress: that the act of assembly was in aid of the common law, not to change its principles: and that it would be difficult to administer an oath to a slave, for want of knowing any religion he professed." Verdict, guilty.

Ruston v. Ruston, 2 Yeates 54, March 1796. Will, dated 1784: "I bequeath to my wife . . . a mulatto female slave, . . . [55] I give to my daughter Louisa . . . three mulatto slaves. . . to my daughter Elizabeth . . . three mulatto slaves."

Pennsylvania v. Blackmore, Addison 284,¹ May 1797. "a writ of *habeas corpus* was directed to Aberilla Blackmore . . . for Cassandra and Lydia . . . whom she held as slaves. . . The return was . . . 'That . . . [they] were slaves to my deceased husband . . . in . . . Maryland, . . . [285] having sold his land in Maryland, he . . . December [1780] . . . arrived with his family . . . in Westmoreland . . . County . . . Lydia was then with

¹ Also reported in 2 Yeates 234.

him, and Cassandra had been sent up about two weeks before, with . . . his sons. . . That "an act" . . . passed 13th April, 1782,¹ enabling certain inhabitants . . . to register their slaves, he registered [them] . . . 19th day of December," Ross, against the return: [286] "The act of . . . 1782, reciting that 'many of the inhabitants of Westmoreland and Washington counties, conceiving themselves under the jurisdiction of Virginia, had no opportunity of . . . registering their slaves,' . . . enacts, 'that it be lawful for all such . . . who were, on the 23d of September, 1780, possessed of . . . slaves . . . to register such' . . . [288] Blackmore . . . had no slaves here to register . . . and, coming in afterwards, he brought in his Negroes under the operation of the law of 1780; . . . [289] I argue this case without recompense, but . . . in the satisfaction of doing a good action." [290] "the judges delivered their opinion, that the Negroes were free."

Respublica v. Gaoler, 2 Yeates 258, December 1797. "Duvivier Jubla . . . had been arrested by the name of M. Gastog, . . . Captain Butler, of the sloop . . . swore, that the contract on which the . . . suit was brought, was made with a merchant of colour, and one of the administration of St. Domingo; that . . . he had . . . accosted the prisoner [in Philadelphia] by the name of Gastog, to which he answered, . . . But . . . other witnesses swore, that the prisoner never acted as a merchant, or as one of the administration . . . that he had a brother who . . . acted in both those capacities, and was called M. Gastog, a name under which the prisoner never passed in the French West Indies; and that the prisoner being deaf, might not have distinctly heard" Discharged.

Lucy (a negro woman) v. Pumfrey, Addison 380, February 1799. "Lucy brought a writ *de homine replegiando* against the defendant, who held her as a slave. It was admitted, that on or before 1st March, 1780, and . . . [till] 1786, . . . Pumfrey was an inhabitant of . . . county of Westmoreland, which in 1781, was erected into the county of Washington, . . . held Lucy . . . as a slave; and since . . . has held her . . . in Virginia; and that, after 13th April, 1782, and before 1st January, 1783, . . . Pumfrey registered . . . Ruth . . . aged 13 years; . . . Simonson, for the defendant, offered parole testimony, that . . . Lucy . . . is the slave registered by the name of Ruth; . . . never known by the name of Ruth."

President of the court: [381] "We do not admit the testimony. It would reduce that certainty of a registry . . . to . . . uncertainty. . . Fraud and perjury would be let in, to . . . make slaves of Negroes really free. The fault lies with the master, and he must bear the consequences." Verdict for the plaintiff.

Giles (a negro man) v. Meeks, Addison 384, March 1799. "On a writ *de homine replegiando*, a certificate of the registration of the plaintiff as a slave, on 19th December, 1782, was produced . . . from the clerk . . . of Washington county. . . evidence, that . . . the master . . . had confessed, that Giles was not registered, till after January, 1783.² . . . [385]

¹ 10 Pa. Stat. at L. 463.

² Act of Apr. 13, 1782.

The defendant offered a witness, who swore, that in 1783, he asked Hull, whether he had recorded his Negro, and he said, he would be very sorry to leave such property in risk; and, that he and . . . Meeks had both had their Negroes recorded. President. . . [386] Every reasonable presumption ought to be made in favour of the certificate. It was not uncommon for one to enter the slaves of another his neighbour or friend, without the knowledge of the . . . master." Verdict for the defendant.

Philip (a negro) and Eve (his wife) v. Kirkpatrick, 2 Yeates 444, May 1799. "Case. The plaintiff declared . . . That whereas . . . Eve . . . June 1788 . . . agreed to serve . . . Abraham . . . four years . . . Abraham . . . did assume to pay . . . what the service . . . should . . . be reasonably worth. . . [445] in proof, that Eve was brought into this state as a slave, . . . October, 1787, and in . . . three or four weeks, was sold to . . . Work, who in the winter following, sold her to the defendant; and that . . . June 1792, a *habeas corpus ad subjiciendum* issued against the defendant, who returned that he claimed her by indenture, . . . September following, the defendant's counsel admitted, that she was entitled to her freedom, and she was discharged from his custody" Nonsuit: the "special promise [must] be shewn."

John (a negro man) v. Dawson, 2 Yeates 449, May 1799. "*Homine replegiando*. . . the plaintiff was born a slave in Maryland, and was brought . . . October 1782, into Westmoreland county, by . . . master, who before the 23d September 1780, was not an inhabitant of Westmoreland or Washington counties; . . . the plaintiff was registered . . . as a slave on 30th December 1782." Verdict for the plaintiff.

Evans v. Bollen, 4 Dallas 342, April 1800. A *qui tam* action in the circuit court of the United States for the district of Pennsylvania, founded on the act of Congress, "to prohibit the carrying on the slave trade, from the United States to any foreign place or country,"¹ Evans "saith that [Bollen in 1797] . . . at the port of New-York . . . was aiding . . . in preparing and sending away . . . a . . . vessel called the *Betsey*, intending that the same should be employed for the purpose of procuring . . . from the coast of Africa, the inhabitants . . . to be transported . . . to the island of Saint Croix, to be disposed of as slaves," Held: no jurisdiction.

Hauer v. Shitz, 3 Yeates 205, September 1801. Will dated 1795: [207] "I give unto my son . . . for his use . . . only, my servant man and servant boy, for all the time of their servitude,"

Negro Peter v. Steel, 3 Yeates 250, September 1801. "The plaintiff . . . was captured during the late revolutionary war, within the British lines, by the defendant then an American officer, and brought into Lancaster county. The defendant there registered him as a slave, and after being six months within the state, he was discharged by *habeas corpus*. The action was brought for remuneration for his services, after he had been six months within the state."

¹ 1 Stat. at L. 347.

Cook v. Neaff, 3 Yeates 259, October 1801. "Case on two . . . notes, the one for 20 *l.* the other for 50 *l.* . . . The defendant purchased a mulatto . . . from the plaintiff as a slave for life. He contended, that the registry of him was imperfect . . . and that he was entitled to his freedom, the entry . . . omitting the county . . . '23d October 1780, Bob, a mulatto slave for life, aged six years, entered by . . . Cook . . . farmer.' . . . *By the court.* . . . we have no doubts of its validity, . . . The defendant then proved . . . that the plaintiff had highly recommended the slave, and sold him as a trusty . . . fellow; and offered to shew . . . that in consequence of his being suspected of felony committed before the sale, he was taken from the service of the defendant. . .

[260] *By the court.* If the mulatto had been convicted . . . the record might have been received in evidence, to shew a want of consideration. . . not done, . . . it must . . . now be presumed, that the circumstances were insufficient to effect a conviction. . . The evidence must be overruled. Verdict *pro quer.* for 60 *l.* 1 *s.* damages."

Respublica v. Findlay, 3 Yeates 261, October 1801. "On a *habeas corpus ad subjiciendum*, . . . negro Hannah was brought before the court, . . . sole question was, whether her registry was invalid, . . . entered as a slave, without subjoining . . . *for life.*" Held: "slave . . . signifies . . . a perpetual servant; . . . the negro must be remanded to her master."

Campbell v. Wallace, 3 Yeates 572, October 1803. "*Indebitatus assumpsit* [[271] 'To recover back the price of two . . . slaves, alledging [*sic*] that the consideration failed?' The defendant, an inhabitant . . . of Westmoreland county, . . . sold to the plaintiff in 1787, a negro wench, named Beck, aged 16 years, and her child for 106 *l.* . . . taken by the plaintiff into . . . Virginia, where she continued with him 11 or 12 years, and then under pretence of not being registered in Pennsylvania, left . . . and took with her five children, . . . went into the north western territory, but occasionally visited the plaintiff, with her children. It appeared by the record of the clerk . . . that the defendant, in December 1782, registered 20 negroes . . . that Bess . . . [was] among the number, then aged . . . [573] 11 years; but no . . . Beck . . . Mr. Ross for the defendant, . . . offered to prove, that . . . he possessed . . . Beck . . . eleven years of age. Some months previous . . . he also owned . . . Bess . . . (who was 20 years of age,) and her two children, but had sold them . . . to . . . M'Mahon, in Virginia, . . . The defendant employed his cousin to make out his return . . . cousin . . . writing . . . in the usual character of his hand writing, . . . Bectz . . . [575] The evidence was . . . received, and the facts . . . were fully proved . . . verdict for the defendant."

Dunning v. Caruthers, 4 Yeates 13, December 1803. [14] "In 1757 or 1758 . . . Dunning erected a small cabin on the land and put a black man and his wife in it."

Wilson v. Rhoades, 4 Yeates 38, March 1804. [39] "On his refusal [to give up the possession in 1770?], Howard ordered his negro to throw the roof off the cabin;"

Stiles v. Richardson, 4 Yeates 82, September 1804. "Ward held two negroes in Maryland, as slaves . . . They ran away . . . into New Jersey. He followed . . . [83] and there executed a bill of sale of them to . . . Pennington. . . 1797, Pennington executed a deed of manumission to them both, in consideration of their engaging to serve him for four years; and Ward declared in their presence, that he had no further claim to them, and they should go home with him. The defendant claiming under Ward, . . . 1798, sold . . . Isaac, to the plaintiff as a slave for life, in consideration of 75 *l.* When the period of his four years services was expired, Isaac was liberated, and the plaintiff brought an action for money had and received; . . . The defendant contended, that the deed of manumission was *pia fraud*, and intended . . . to obtain the possession of the negroes . . . where runaway slaves were harboured . . . and that when the bill of sale was made . . . they both expressed their object to be the procuring of the negroes from their lurking places. . . *Sed per cur.* . . . the laws of New Jersey, were open for obtaining the possession of the negroes. . . The defendant cannot avail himself of the fraudulent pretext, . . . The trick is too gross to receive the sanction of a court . . . Credit must be given for the time . . . Isaac continued in the plaintiff's services," "Verdict *pro quer.* for \$275.50 damages."

Jones v. Executors of Rees, 4 Yeates 109, October 1804. "deceit . . . in . . . affirming negro Will to be a slave for life, and selling him to the plaintiff for 100 *l.* Virginia currency, equal to \$333 33 $\frac{1}{3}$. . . evidence, that the negro was brought into this state in . . . 1781, . . . and sold . . . to Rees. About 1786, Rees sold him, then . . . about 25 . . . to the plaintiff, . . . The negro brought a writ of *homine replegiando* against the plaintiff . . . 1799, and the [executors of Rees] . . . were required to take upon them the defence. . . 1801 . . . a verdict was found for the plaintiff [negro Will], with 254 dollars damages. But the declaration having only laid the damages at \$100, a *remittitur* was entered of 154 dollars, . . . The costs . . . \$18.59, . . . with the damages, were paid by the then defendant, and now plaintiff, Jones."

By the court: [111] "when he obtained his liberty . . . [plaintiff's] right of action accrued against the defendants. The true rule in assessing the damages seems to be, by . . . estimating the yearly services . . . and deducting . . . his clothing, maintenance, and other necessary expenditures. As far as this balance exceeds the . . . interest of the consideration money, it should go towards the payment of the principal . . . For the residue, together with the 100 dollars damages, and 18 dollars and 59 cents costs, and a reasonable sum for defending the action of replevin, and interest . . . the plaintiff appears entitled to a verdict," "Verdict *pro quer.* for \$425 damages."

Elson (a negro) v. M'Colloch, 4 Yeates 115, October 1804. "*Homine replegiando*. The only question . . . was, whether a stranger might register a negro, under the act . . . passed the first March 1780? The court declared, . . . No one . . . except the party . . . intitled to the negro, . . . or a person legally authorized¹ . . . It was agreed that a verdict should be

¹ But see *Giles v. Meeks*, p. 262, *supra*.

entered for the plaintiff for nominal damages only, he having been in the defendant's service but two months, and full costs."

Coulon v. the Neptune, 6 Fed. Cas. 625 (2 Pet. Adm. 356), 1804. "The brig *Neptune*, being American property, . . . was seized by a French armed vessel . . . under pretext of having violated an *arrete* [*sic*] issued by the . . . governor of St. Domingo, interdicting trade . . . with certain ports in the French part of that island, to prevent supplies to the revolted blacks. . . a pretended court of admiralty was held, at sea, on board the capturing cruizer, . . . The brig . . . was condemned. The persons composing this pretended court were then in a state of flight from the island of St. Domingo, then in full possession of the blacks,"

Respublica v. Smith, 4 Yeates 204, March 1805. "*Habeas corpus ad subjiciendum*, to the keeper of the jail . . . to bring . . . negro Joseph . . . The return was, that he was detained under a commitment, as the runaway servant of . . . Conyngham. . . the negro was a slave in St. Domingo . . . of a French lady, who intermarried with . . . Boudineau . . . They came to Philadelphia, the negro led forming a part of the family, in the spring of 1793. In the fall . . . the husband returned to France, . . . June 1794, Joseph [14 years old] executed an indenture to Madame Boudineau for fourteen years, wherein she covenanted to learn him the arts of a cook and house waiter; which she assigned to Mr. Conyngham . . . April 1795, and followed her husband to France in 1804. The indenture . . . [205] was . . . in consideration of the negro's manumission" Held: "He must be discharged." "There is no evidence of any terms being agreed upon within six months after the negro was brought into this state."¹

Conframp v. Bunel, 4 Dallas 419 (1 Wash. C. C. 340), April 1806. "On a rule [on the plaintiff] to show cause, why the defendant should not be discharged on common bail, the following facts were established by the plaintiff: That in . . . 1787, the defendant gave his note for 55,000 livres . . . for value received in 55 negroes. . . several partial payments were . . . indorsed upon it. . . 1789, a suit was instituted at Port-au-Prince, to recover the balance; and a judgment, by default, was entered for 36,666 livres; to recover which was the object of the present action. For the defendant it was shown, that all the parties . . . were French subjects, resident in . . . St. Domingo, . . . that in August 1793, the French commissioners (Polverel and Santhorax) had proclaimed, at Port-au-Prince, the abolition of slavery, and the freedom of the negroes; which the national convention ratified in the February ensuing; . . . that, in consequence . . . the very negroes, who had been purchased by the defendant, had been taken from him; and that with a view to the calamitous situation of the colony, the following laws had been enacted by the French government: 1st. Extract from the law of the 6th of September 1802. 'Sect. 1. Until the 1st of Vendemaire [*sic*] 16th year all suits are suspended . . . for debts contracted prior to the 1st of January 1792, for the purchase . . . of negroes.'"

¹ Act of Mar. 1, 1780. 10 Pa. Stat. at L. 71.

Held: [420] “the suspension of the law, applied as well to the commencement of the suit, as to the issuing of an execution. The rule made absolute.”

Butler v. Hopper, 4 Fed. Cas. 904 (1 Wash. C. C. 498), October 1806. “This case comes before the [circuit] court [of the United States, for the third circuit,] on a special verdict, the material parts of which find; that the plaintiff [Pierce Butler] formerly lived in . . . South Carolina, where, as well as in Georgia, he had a valuable plantation, which he cultivated, and still cultivates, by his overseers and slaves, . . . That from . . . 1794 . . . with the exception of an annual visit to his plantations . . . he has kept a dwelling house in . . . Philadelphia, and has *resided* in it,” Among his domestic servants was Ben “who was his property, as a slave at the time of his coming into this city, and who continued with him . . . until September 1805, when he was discharged from his service, under a *habeas corpus* issued from the court of common pleas of this state. Whilst on his plantation in South Carolina, during these annual visits, the plaintiff kept house, always having Ben with him. From . . . 1794, until . . . 1805, the plaintiff represented . . . South Carolina in congress, except for two years . . . when he was a member of the legislature of that state.” [905] “The plaintiff claims an exemption . . . 1st, as a member of congress; and secondly, as a sojourner.” Held: “for two years he . . . lost the privilege . . . conferred upon him, under the exception in the law.¹ . . . the jury find that the plaintiff was a *resident*, . . . upon this verdict, the law is with the defendant.” [Washington, J.]

Brig Tryphenia v. Harrison, 24 Fed. Cas. 252 (1 Wash. C. C. 522), October 1806. “the slaves were the property of two French ladies, taken on board the brig at St. Thomas, and carried to the Havana, . . . they were not carried for sale or traffic, but as the servants . . . of those passengers.” Held: the laws of the United States, of March 22, 1794,² and of May 10, 1800,³ do not extend to the present case.

Clayton v. the Harmony, 5 Fed. Cas. 994 (1 Pet. Adm. 70), 1807. The *Harmony*, owned by citizens of Pennsylvania, bound from Great Britain to Philadelphia, [995] “was captured by a French corvette . . . the captain of the *Harmony*, the officers, seamen and passengers, were taken on board the corvette, except the libellants, who were suffered to remain in the *Harmony*, on board whereof were put three French officers and seven seamen, who were ordered to conduct her into Rochelle in France.” Forty-eight hours later she was “recaptured by the libellants and the mate of the . . . *Harmony*. . . [998] the male receptors . . . should be classed in the following order. 1. . . the mate. The cook, in a manner highly meritorious, first mentioned to the mate that ‘he did not think it right the ship should go to France.’ . . . the mate, who reproved this venial loquacity in the cook, . . . immediately proceeded . . . to combine and array . . . the dangerous, but successful, attack on the French officers and crew. . . 3. The cook, Stephen Revel, a man of colour,

¹ Act of Mar. 1, 1780, sect. 10. 10 Pa. Stat. at L. 71.

² 1 Stat. at L. 347.

³ 2 *ibid.* 70.

whose merit is very distinguished. His reward should follow the spirited and beneficial exertions of one, whose station in life does not always produce persons of such courage and good conduct. 4. James Bowen, the steward, a black, whose deserts in cheerfully undertaking, and bravely accomplishing, his part of the enterprize, entitle him to share the reward of such hazardous services. I have a pleasure in declaring, that these are not the only instances I have had judicially before me, of virtuous, patriotic, and spirited conduct, in men of the African race. . . [999] I do hereby adjudge . . . 2. Stephen Revel three thousand eight hundred and fifty-three dollars, and forty-one cents. 3. James Bowen three thousand three hundred and fifty-three dollars and forty-one cents." [Peters, J.]

Small v. the Messenger, 22 Fed. Cas. 366 (2 Pet. Adm. 284), 1807. Goods taken from a wreck were libelled for salvage. It was decreed: [367] "James Parker and Robert Sennett, white men, and negroes William, Joe, Europe, Lewis, Jerry and Peter, slaves, all seamen, shall each have one share, or twenty-three dollars, and eighty-seven cents" "The negroes . . . being slaves, are nevertheless to receive their proportion of salvage, as mariners on board the brig *Catharine*, for their own separate use." [Peters, J.]

Commonwealth v. Smyth, 1 Browne 113, September 1809. "A *habeas corpus* was taken to bring . . . George Taylor, a negro, . . . The gaoler returned, that he held him as the run-away slave of . . . Dowers, . . . The facts . . . were, that . . . Dowers, who had resided . . . at Trenton, in New Jersey, purchased the . . . negro boy . . . while he resided at that place, and brought him to Philadelphia, in October 1808, whither he removed . . . and rented a house for six months. . . he told . . . Massey he intended to return within the six months, and to take the boy with him. . . he several times went with him to Trenton, . . . staid a short while . . . After . . . the six months, . . . he still resided in [Philadelphia.] . . . In June 1809, the boy deserted from his master, who then caused him to be apprehended" [114] "Prisoner discharged."¹ "His taking him to Trenton several times, can have no operation to disprove the master's residence here,"

Commonwealth v. Lango, 1 Browne 369 n., 1809. Tilghman, C. J.: "Silvia [*sic*], a black girl, of . . . fifteen years, . . . brought before me, on a *habeas corpus*, is claimed by Elizabeth Lango, as her servant, till the age of twenty-eight . . . Sylvia was formerly the slave of E. Bertrand, a French-woman, who resided in . . . Cuba. . . one of those unfortunate persons whom the Spanish government . . . compelled to leave . . . She came to Rhode-Island in the spring of last year, and in . . . [370 n.] August following, arrived in [Philadelphia,] . . . bringing Sylvia . . . executed a deed of manumission of Sylvia, who on the same day bound herself, by indenture, as a servant to Mrs. Bertrand . . . for thirteen years . . . Mrs. Bertrand covenanted to find her sufficient meat, drink, clothing, washing and lodging. . . Mrs Bertrand, in consideration of two hun-

¹ Act of Mar. 29, 1788, sect. 2. 13 Pa. Stat. at L. 52.

dred dollars, assigned this indenture to Elizabeth Lango, . . . It has been customary for negroes in Philadelphia, claimed as slaves by persons living in other states, to bind themselves for . . . periods, not exceeding the age of twenty-eight . . . by way of compromise with their masters; . . . These compromises, especially when the negro has acted under the direction of the abolition society, or any of its members, ought, if possible, to be supported." For "an infant [as Sylvia is] may make a contract for his own benefit; now nothing can be more for his advantage than to commute . . . slavery, for servitude until . . . twenty-eight . . . the act for the gradual abolition of slavery, (sec. 13) does, by necessary inference, affirm the validity of [such] an indenture, . . . Sylvia was not free by the acts . . . of Pennsylvania, when she executed the indenture, because her mistress did not come . . . [371 n.] with a view of settling . . . nor had she been [here] six months . . . at the date of the indenture. But the case turns upon the Act of Congress, passed the second of March 1802, . . . 'to prohibit the importation of slaves . . . after the first of January 1808.'" [370 n.] "the indenture is void; because she was entitled to her freedom upon her importation . . . the deed of manumission, in consideration of which the indenture was given, was an useless ceremony, which only tended to deceive her. . . [371 n.] There is no evidence that Sylvia had the assistance of friends or counsel, or that she had any idea of a right to freedom, except what was derived from the deed of manumission, which bears the same date as the indenture, and must be considered as being executed immediately before it. . . the two instruments form one transaction: thus situated, an ignorant girl binds herself to serve for thirteen years, for no other consideration than meat, drink, washing and lodging; no education is to be given; no art, trade, or useful business to be taught; she is not even to receive freedom dues. . . Can it be said, that the infant derives any benefit . . . the prisoner must be discharged."

Commonwealth v. Sturgeon, 2 Browne, 205, April 1810. "Negro Henry, being a free man about twenty-four . . . bound himself to the defendant by indenture of apprenticeship, to learn the tanner's trade. . . The only question . . . was, whether a free person of full age can bind himself an apprentice, so as to be held to personal servitude, and subject to the provisions of the act [of September 29, 1770]¹ . . . giving summary jurisdiction in disputes between master and apprentice."

Held: [211] "recourse must be had to the covenants, if any breach of them . . . the summary remedy . . . before a Justice does not apply." "cases, of persons above age, in this state, becoming apprentices, are so rare, that the construction now given can be of little inconvenience; whilst on the contrary, to subject persons, who on equal terms became parties to the contract, to the power of the sessions by a disgraceful punishment for a breach of duty, appears harsh and inexpedient." [Hamilton, P.]

Overseers of Forks v. Overseers of Catawessa, 3 Binney 22, June 1810. [24] "the pauper was the slave of . . . Arndt . . . of Forks township, who recorded him as such, of the age of thirty-five, on the 23d of October,

¹ 7 Pa. Stat. at L. 360.

1780; . . . [25] After . . . some time, the pauper was manumitted by deed not recorded. He afterwards left . . . married, had children, and has lived in various places, but gained no settlement." [23] "He first became chargeable in the township of Catawessa." They [24] "were removed by an order of two justices of the peace . . . to Forks township . . . The overseers of Forks, appealed to the Quarter Sessions . . . who affirmed the order "

[25] "Order of the sessions confirmed." [25] "the pauper is not to be left starving, until the representatives of Arndt can be compelled to maintain him. . . the township, in which the master . . . resides, is . . . in the first instance bound to support him, in case he falls into distress . . . by the old laws of the former province, the person manumitting . . . was obliged to give security to indemnify the township. . . They may take their remedy against the estate of Arndt." [Tilghman, C. J.]

Jack v. Eales, 3 Binney 101, September 1810. "The plaintiff in error claimed the defendant as his servant until the age of twenty-eight¹ . . . produced an authenticated copy of an entry . . . 'Bently . . . enters a female negro child . . . named Eales . . . aged three years and seven months. Oath made before . . . Parker esq. to the age etc. of . . . child, the 1st day of April 1789.'" Held: [102] "the entry was sufficient." A justice of the peace may administer the oath by virtue of his general powers.

Hall v. Vandegrift, 3 Binney 374, March 1811. Will of Sarah Malloves, 1723: "I give unto my negro boy Toby, when he arrives at the age of twenty-four . . . [375] ten pounds lawful money, likewise ten acres . . . during his life."

Commonwealth v. Beck, 1 Browne 277, March 1811. [279] "Negroes often desert their masters, and find protection among their friends. On a *Habeas Corpus* directed to such patron, if the negro fails to establish his claim of freedom, he is . . . delivered over to the owner "

Commonwealth v. Negress Hester, 1 Browne 369, September 1811. "A *Habeas Corpus* was directed to the keeper of the common prison, commanding him to bring . . . Negress Hester, . . . The jailer returned, that he held [her] . . . by virtue of a commitment . . . charging her with having absconded from the service of . . . Matlack . . . to whom she was a servant for years. . . [370] Hester was born . . . August 1780, . . . had never been registered . . . manumitted by Matlack, in 1798, and at the same time bound as a servant for ten years to . . . Murgatroyd. . . some-time afterwards, she absconded . . . and after . . . a considerable time . . . was retaken and committed to prison, and . . . the Mayor's Court . . . 1810 . . . made an order, that . . . Hester should serve . . . Murgatroyd . . . for five years . . . as a compensation for the time she had been absent² . . . afterwards assigned to . . . Matlack, . . . Milnor, for the abolition society, contended, that . . . Hester was a free woman, . . . having been born subsequently to the passing of the Act of 1780, . . . and never having been

¹ Act of Mar. 29, 1788. 13 Pa. Stat. at L. 54.

² Acts of Nov. 27, 1700, 2 Pa. Stat. at L. 55; Mar. 9, 1771, 8 *ibid.* 31.

registered”¹ [373] “*Per curiam*.—Rush, president. . . the original binding was void, . . . Hester being . . . a free woman; . . . Both the original binding, and the order of the Mayor’s Court appear to have been predicated on a mistake” Prisoner discharged.

Commonwealth v. Blaine, 4 Binney 186, October 1811. “To a *habeas corpus* to the defendant, to bring . . . John, she made . . . return: . . . ‘he is my servant to the age of twenty-eight . . . duly registered’ . . . [187] The registry was . . . ‘Sarah E. Blaine, 26th June, 1807, . . . enters one male negro child . . . born’” January 2, 1808. [188] “admitted that . . . John was born . . . 1807,”

Held: “It is a case which may be explained by parol evidence. . . [189] Mrs. Blaine is entitled to hold . . . John . . . from the real time of his birth, till . . . twenty-eight” [Tilghman, C. J.] Gibson, J., who had been counsel for the negro, declared in 1817: “it is a general principle, that where a loss must fall on one of two innocent persons, *it shall be borne by him whose negligence was the cause of it*. . . I then thought, and still think, [the negro] should have been discharged.” 3 S. and R. 162.

Commonwealth v. Snelling, 4 Binney 379, January 1812. “special verdict . . . that David Harrod the prosecutor was met . . . by . . . prisoner. That they jostled . . . That the prosecutor . . . asked the prisoner’s pardon. The prisoner . . . said, you d—n black son of a b—h, what did you run against me for? . . . took the prosecutor by the cravat . . . That the prosecutor was afraid . . . that the prisoner would whip him, . . . That . . . the prisoner . . . took the prosecutor’s [silver] watch . . . from his fob, without the prosecutor’s knowledge” Held [385] “the offence was robbery.”

Ex parte Meason, 5 Binney 167, September 1812. Counsel: [171] “The term *servants* . . . [in the] restricted sense . . . in Pennsylvania . . . embraces only *imported servants* and people of colour, bound to serve to the age of twenty-eight,”

Ex parte Lawrence, 5 Binney 304, December 1812. “Phillips on behalf of Ann Lawrence, petitioned . . . for a *habeas corpus* . . . to . . . Vogdes, to bring . . . Adam Lawrence then in his custody as a slave, whereas, according to the suggestion, he was free. . . the case had been already heard upon a *habeas corpus* by the Common Pleas of Philadelphia county, who remanded the prisoner; . . . no new evidence” Refused: “the party . . . may resort to a *homine replegiando*.”

M’Dowell v. Burd, 6 Binney 198, October 1813. “action of debt . . . upon a single bill given by Burd for 200 dollars, . . . 1808, . . . payable in three months . . . [199] proved, that the consideration . . . was a negro boy sold . . . for a term of years. The defendant . . . offered to prove, that *before, at and after* the time of sale, the negro was afflicted with a disorder which made him of little value. . . admitted” Affirmed.

Commonwealth, ex rel. Susan Stephens, v. Clements, 6 Binney 206, January 1814. “*habeas corpus* issued to . . . Clements, . . . to bring . . . Susan Stephens . . . evidence, that . . . [she] was a black woman, form-

¹ Act of Mar. 29, 1788. 13 *ibid.* 54.

erly the slave of . . . Maxwell . . . of Maryland; and that she ran away . . . to Philadelphia, where she married George Stephens a free black . . . Maxwell . . . apprehended the woman . . . and was about to carry her to Maryland, when . . . Clements, at the solicitation of both the husband and wife, agreed to pay Maxwell 195 dollars, provided he would manumit the wife, it being . . . understood, that [they] . . . [207] should bind themselves as servants to Clements for . . . three years. The indenture of the wife was executed before an alderman . . . her husband being present, and consenting, but not being a party. It was also executed by William Masters, one of the society for promoting the abolition of slavery, who was styled the next friend of the wife. . . . At the time . . . Susan was in a state of pregnancy.”

Prisoner remanded: [209] “counsel for Susan Stephens . . . rests his client’s case on the circumstance of her being a married woman at the time of binding herself. . . . It is . . . a case *sui generis*, to which the common law . . . furnishes no parallel. . . . neither Susan Stephens nor her husband could acquire any rights by marriage in derogation of the rights of her master, . . . [210] same principle which protects a free woman, would oppress a slave, by preventing her acquisition of freedom.” [Tilghman, C. J.] “Whatever may be our ideas of the abstract right of detaining our fellow creatures in slavery, that relation is recognized by most of the states . . . and is tolerated *sub modo* in this government. A temporary servitude . . . has been substituted . . . [211] for the horrors of slavery, . . . this intermarriage was unlawful. . . . she was incapable of entering into a contract of marriage without the master’s consent.” [Yeates, J.] Brackenridge, J.: “I would propose to give the applicant . . . election [as in the case of a man rescued, but injured,] . . . to annul the evidence of her manumission, and procure her indenture to be taken up, and to put herself in her master’s hands, [and then to prosecute her action.] . . . If she [does] . . . not do this . . . her complaint . . . must be dismissed.”

Commonwealth, ex rel. negro Lewis, v. Holloway, 6 Binney 213, January 1814. “a *habeas corpus* to the jailer . . . to bring . . . negro Lewis. . . . agreed, ‘that Langdon Cheves . . . resident of South Carolina, . . . was a member of congress . . . that . . . in March 1813, after congress rose, Mr. Cheves came to Pennsylvania bringing Lewis . . . rented a house . . . and lived there . . . till . . . December . . . when he went to Washington . . . Lewis . . . absconded before Mr. Cheves left’ ”

Prisoner remanded to the custody of the jailer. Tilghman, C. J.: [218] “We all know that our southern brethren are very jealous of their rights on the subject of slavery, and that their union with the other states could never have been cemented, without yielding to their demands on this point. Nor is it conceivable that the legislature of Pennsylvania could have intended to make a law [in 1780 or in 1788], the probable consequence of which would have been the banishment of the congress from the state. I am therefore of opinion . . . [219] that the domestic slaves of members of congress who are attending on the family . . . even during its recess, gain no title to freedom, although they remain in the state more than

six months, whether the seat of congress be in Pennsylvania or elsewhere." Yeates and Brackenridge, J J.] concurred.

Commonwealth, ex rel. Jesse (a black man), v. Craig, 1 S. and R. 23, September 1814. *Habeas corpus*. "the defendant claimed the relator as his servant till 28, under a registry¹ . . . 'enter on record . . . one negro boy named Jesse, born some time in May last, or beginning of June. . . November 5, 1792.'" The owner, General Neville, transferred Jesse's unexpired time to the defendant. [24] "The Court . . . were clearly of opinion that he should be discharged, because . . . it does not appear by the registry . . . whether it was made within six months from the birth"

Wood v. Negro Stephen, 1 S. and R. 175, October 1814. Tilghman, C. J.: "Negro Stephen . . . in a writ *de homine replegiando*, claimed his freedom under the last will . . . of Richard Williams . . . of Maryland . . . dated the 2d April, 1768. . . Wood, gave in evidence an act . . . of Maryland, made in 1752, chap. 1, sect. 3, by which manumissions by last will . . . were declared . . . void. . . evidence also of the continuation of this act, until . . . 1766, and of its repeal . . . 1796, . . . The Court of Common Pleas was of opinion, that this evidence was not sufficient to prove, that the act of 1752, was in force in 1768, . . . I cannot perceive any error . . . The defendant gave further in evidence the record of a petition for freedom by . . . grandmother of . . . Stephen, against Samuel Chase, Esq. . . [176] under the same will . . . and by the judgment of the General Court of Maryland the petition was dismissed. But . . . Stephen . . . claims freedom . . . under his mother . . . also manumitted by the will of . . . Williams. . . affirmed."

Commonwealth, ex rel. Stephenson, v. Vanlear, 1 S. and R. 248, January 1815. "a *habeas corpus* to bring . . . Augustus Stephenson, a black boy. . . 1814, the boy, then fourteen . . . was bound before alderman . . . with the consent of his father, to . . . Duffee [of Philadelphia], for seven years, as a waiter. . . December . . . assigned . . . to Vanlear [of Chester County], . . . The father was not present," Held: [250] "The boy must . . . be . . . delivered to . . . Duffee."²

Green v. African Methodist Episcopal Society, 1 S. and R. 254, January 1815. "the return to a *mandamus* . . . directed to the defendants, commanding them to restore the plaintiff to his standing as a trustee and member" [255] "states, that 'at a special meeting of a select number of members of the African church, called Bethel, . . . being a committee appointed to . . . try . . . Green and . . . Samons, charged with having, contrary to the rules and discipline, entered a law-suit against . . . a member' . . . both . . . were found guilty:" and expelled. A peremptory *mandamus* awarded: "The return . . . does not state, in what manner . . . committee was selected or appointed."

Graham [Simmons?] v. Graham, 1 S. and R. 330, April 1815. "On a *habeas corpus* . . . [331] the court ordered an issue to try whether . . .

¹ Act of Mar. 29, 1788.

² Act of Apr. 11, 1799, sect. 2.

Simmons had a right to hold Shepherd Graham by virtue of an indenture of apprenticeship, . . . until he attained . . . fifteen . . . to be instructed in the art of a chimney sweeper. . . The indenture was executed by the boy and his mother, in the presence of a justice of the peace . . . Both . . . were negroes, . . . the father . . . at the time . . . was a slave belonging to a person in . . . Delaware. After . . . some time . . . he was permitted to go home to his mother, with whom he lived about fourteen months, when she died. . . evidence that . . . [she] had agreed to pay Simmons 100 dollars, and it was contended on the trial, that the indenture was vacated by the consent of master, mother, and apprentice. . . the judge submitted it to the jury . . . with an intimation of his own opinion, that the indenture was cancelled." "the jury found against Simmons," Judgment on the verdict affirmed.

Commonwealth v. Stewart, 1 S. and R. 342, April 1815. [345] "swore . . . that persons of bad repute, . . . black and white, frequented [the house] . . . both by night and day."

Commonwealth v. Kendig, 1 S. and R. 366, July 1815. "A *Habeas Corpus* . . . to . . . Kendig to bring Jane Bantham," "a black girl under . . . eighteen, residing in . . . Delaware, . . . bound to . . . Pearce . . . in this state, until . . . eighteen. . . before a justice of the peace of Delaware, . . . 1813. . . 17th May, 1814, she was bound . . . to . . . Baker . . . of Philadelphia, as an apprentice to learn the art of housewifery, etc. . . Pearce was party to this indenture as the *master and next friend* . . . executed in presence of alderman Bartram. . . 25th May, . . . Baker assigned the indenture in presence of alderman Bartram to . . . Kendig, who paid 35 dollars, . . . divided between . . . Baker and . . . Pearce, . . . Jane Bantham's father is living . . . in . . . Maryland, . . . no evidence of his having taken any care of her for many years."

Apprentice discharged: [367] "I consider the binding to Baker, and assignment to Kendig, as nothing else than a sale by Pearce to Kendig, through the intervention of Baker, who is a broker in this kind of business. . . I think it would be of dangerous consequence to admit, that a man . . . about to sell his apprentice, should take the place of *next friend*, . . . therefore . . . the indenture to Baker . . . was not agreeable to the act of assembly,"¹ [Tilghman, C. J.]

Marchand v. Negro Peggy, 2 S. and R. 18, September 1815. "a *homine replegiando* brought by Negro Peggy," "23d September, 1780, held as a slave . . . [in] Westmoreland county, and . . . for some time before. . . [19] appears on the register . . . 10th November, 1780: . . . contended . . . that she is entitled to freedom, because she was not registered agreeably to the act of 1st March, 1780, (which allows only to the 1st November, 1780,) nor to the act of 13th April, 1782, which has no retrospect."

Judgment for the plaintiff reversed: "The object of the last act was to give time . . . until the 1st January, 1783." [18] "At the time . . . the boundary between Pennsylvania and Virginia was in dispute, and as the inhabitants . . . [19] on the border could not tell to which state they

¹ Act of Sept. 29, 1770.

belonged, it was thought reasonable to allow them further time . . . until the 1st January, 1783. . . 10th November, 1780, was certainly prior . . . I know that freedom is to be favoured, but we have no right to favour it at the expense of property. The only just mode of extirpating the small remains of slavery in the state, would be by purchasing the slaves at a reasonable price, and paying their owners out of the public treasury.” [Tilghman, C. J.]

Commonwealth v. Holloway, 2 S. and R. 305, July 1816. “A *Habeas Corpus* . . . to the keeper of the prison . . . to produce . . . Eliza, a negro child, . . . he returned that he held her by virtue of a warrant of commitment, . . . ‘as being the daughter of Mary, . . . the slave of . . . Corse, of Maryland, and as such, also . . . [his] slave’ . . . it appeared that the mother had absconded . . . and come to Philadelphia, where, after . . . about two years, the child was born.”

Held: [307] “under the act of assembly of this state,¹ and the constitution of the United States, . . . Eliza was born free.” Yeates, J.: [308] “It cannot be supposed for a moment, that the child . . . who was not in existence when her mother ran away, . . . was a fugitive.” “The convention who formed the federal compact, had the whole subject of slavery before them, . . . It was no easy task to reconcile the . . . discordant prepossessions . . . but the business was accomplished by acts of concession and mutual condescension.”

Commonwealth, ex rel. Johnson (a negro), v. Holloway, 3 S. and R. 4, January 1817. *Habeas corpus*. “David Johnson . . . was in custody of Holloway, keeper of the prison . . . on two commitments . . . first as the runaway slave of . . . Frazier . . . of Maryland; second on a charge of fornication and bastardy.

[6] “prisoner . . . remanded to answer the charge of fornication and bastardy.” [5] “fornication is . . . a crime; and where it is accompanied with bastardy, security must be given to indemnify the county against the expense of maintaining the child. It may be hard on the owner to give this security, or lose the service of his slave; but it is an inconvenience to which this kind of property is unavoidably subject. . . . But it is objected, that by the Constitution of the United States, (art. IV. sect. 2.) the slave is to be delivered up to his master. . . . This provision . . . [6] is not to be construed so as to exempt slaves from the penal laws of any state where they may happen to be. . . . These runaway slaves are often guilty of riots, violent assaults and batteries, and other offences, . . . It is necessary that they should be restrained by the fear of punishment;” [Tilghman, C. J.]

Wilson v. Belinda, 3 S. and R. 396, September 1817. “a *homine replegiando*, in which the question was, whether . . . Belinda, the plaintiff below, was duly registered under the act of 1st March, 1780. . . . The return . . . was as follows: Carlisle, ‘September 26th, 1780. . . . negroes belonging to John Montgomery. . . . Belinda, . . . about 23 months old.’ . . . The following was the entry made in a book, kept for the registry of

¹ Act of Mar. 1, 1780.

. . . slaves, in the office of the clerk . . . ‘John Montgomery, esq. . . Belinda, a negro, . . . 23 months.’”

Held: [399] “Belinda is entitled to her freedom.” I. [398] “the registry is good, though it does not . . . say, whether Belinda was a slave . . . or servant for years.” “The act creates a forfeiture of property in case of a defective registry, and therefore, where there appears to have been an intent to comply honestly . . . the construction should be liberal in favour of the master. . . [II.] [399] But I know of no decision which dispenses with the insertion of the . . . *sex*, . . . [III.] The act requires the occupation to be mentioned. . . parol evidence might be given, to shew that Montgomery had no occupation. . . also . . . the addition of *esquire* . . . by the clerk . . . may fairly be taken into consideration.” [Tilghman, C. J.]

Gibson, J.: [400] “As far as cases have already gone, I am willing to go; but not a jot further: . . . [401] But . . . every other particular . . . must be strictly complied with; and for this simple reason, that the act declares the slave shall be free, if it be not. In the paper delivered by . . . Montgomery . . . neither his own occupation . . . nor the sex of the plaintiff, is set forth; and, for both these reasons, I hold the registry to be void. . . We cannot recognise the name Belinda as being exclusively that of a female,”

Commonwealth v. Hambright, 4 S. and R. 218, May 1818. “A *habeas corpus* having issued to . . . jailor . . . to bring . . . negro Tom, he returned, that he held him as the agent of Isaac Law his master [a resident of Pennsylvania], by virtue of an indenture made . . . 1805. This indenture recited, that Law had manumitted Tom, whom he [had purchased] . . . in . . . New Jersey, and who was twelve years old . . . and that in consideration of manumission, Tom had, with the approbation of two justices of the peace of . . . New Jersey, (he having no parents in that state . . .) bound himself to Law to learn the occupation of a husbandman, and to . . . serve him . . . until . . . 1821, in . . . Pennsylvania, or in any other state in which Law might reside. . . Tom was sent to prison by his master . . . until he should consent to go [back] with him to . . . New Jersey, where he intended to reside.”

Prisoner discharged: [221] “To carry the negro there, against his consent, is directly contrary to the law,” “the act of 29th March, 1788, sect. 3,¹ . . . extends to all negro . . . servants for years, whether bound within the state or without.” [Tilghman, C. J.]

Commonwealth v. James D. Greason, 4 S. and R. 425, September 1818. “On a *habeas corpus* . . . to James D. Greason, commending him to bring . . . Bob, . . . it appeared, that on the 21st November, 1792, . . . Gibson returned to the clerk . . . a certain male mulatto child, named Bob, born of his negro wench, named Hannah, on, or about the 23d May last.” Prisoner discharged: [426] “the report was made in *about six months*, but whether *within six months*,² is doubtful.”

¹ 13 Pa. Stat. at L. 52.

² Act of Mar. 29, 1788, sect. 4. 13 Pa. Stat. at L. 54.

Wright alias Hall v. Deacon, 5 S. and R. 62, January 1819. “ the plaintiff [‘ a coloured man ’] having been claimed by . . . Gale . . . of Maryland, as a fugitive from his service, was arrested by him . . . and carried before . . . justice of the peace, who committed [him] . . . to prison, in order that an inquiry might be made . . . The plaintiff then sued out a *habeas corpus*, returnable before . . . Armstrong, . . . an associate Judge of the Court of Common Pleas. . . [He] gave a certificate, that it appeared to him, by sufficient testimony, that the plaintiff owed . . . service to . . . Gale . . . and . . . delivered the said certificate to . . . Gale, in order that the plaintiff might be removed to . . . Maryland.” “ a writ *de homine replegiando* [was then] . . . sued out by the plaintiff . . . against the defendant, who was the keeper of the prison ”

Writ quashed: [63] “ Whatever may be our private opinions on the subject of slavery, it is well known that our southern brethren would not have consented to become parties to a constitution . . . unless their property in slaves had been secured. . . [64] It plainly appears from the whole scope and tenor of the constitution and act of Congress,¹ that the fugitive was to be delivered up, on a summary proceeding, without the delay of a trial in a court of common law. . . the writ has been issued in violation of the constitution of the United States.” [Tilghman, C. J.]

Commonwealth, ex rel. Bell, v. Greason, 5 S. and R. 333, October 1819. “ Negro Bell was registered by William Greason, on his oath as being born of his negro slave named Hannah, . . . 9th March, 1796. The oath was taken before . . . Lyon, deputy clerk of the peace.” Relator remanded: [384] “ Mr. Lyon did not exceed his lawful authority ”

Commonwealth v. Cain. et al., 5 S. and R. 510, March 1820. “ motion for a rule on the defendants, to shew cause why an information in the nature of a *Quo Warranto* should not be filed against them for usurping the office of vestrymen of ‘ St Thomas’s African Episcopal Church of Philadelphia.’ . . . a bye-law [*sic*] made . . . 1819 . . . enacted, that no member . . . whose pew rent was in arrear for a longer time than two years should be entitled to vote . . . the defendants relied on the 2d section [of the act of incorporation] . . . which . . . provided, that the election . . . should be conducted agreeably to certain . . . rules . . . made . . . 1794.”

Held: [512] “ The . . . rule made . . . [513] 1784 [*sic*], is to be considered as part of the act of incorporation, . . . [514] as . . . [the] by-law is reasonable, for the good of the church, and not contradictory to the act of incorporation, . . . it is valid.”

Overseers of Ferguson v. Overseers of Buffaloe, 6 S. and R. 103, June 1820. “ Negro Tom, a pauper, was removed by an order of two justices of the peace . . . from Buffaloe township . . . to . . . Ferguson . . . On an appeal to the Quarter Sessions, the order . . . was reversed . . . It appeared that in . . . 1780, . . . the pauper . . . then thirty . . . was the property of . . . Jenkins, a resident in Buffaloe . . . who, in . . . 1796, sold him to . . . Patton, then residing in what has since become Ferguson township, . . . with whom he continued several years. He then . . . returned . . . and

¹ Act of Feb. 12, 1793, sect. 3. 1 Stat. at L. 302.

maintained himself by his own exertions, until he was far advanced in years. In the record of registry . . . the name of the slave was illegible;”

Order of the Sessions quashed: [104] “a slave has a settlement in the township where his master resides, which is bound to support him in the first instance, and take its remedy over, against the master.”¹ “as the pauper continued to be a slave till after the age of *seventy-eight*, the master [Patton] is bound to afford him a maintenance . . . [105] the pauper was held, at least, by *colour* of right. If, therefore, he continued . . . as a slave, whether ignorantly or voluntarily, until he became unable to make a provision for his old age, it would be inhuman to permit the master to deny the legality of the servitude, and thus get rid of the duties . . . [106] the act of 1780, does not, in express terms, render the servitude of an unrecorded negro, void. Wherever, therefore, there has, by colour of right, been such a servitude as would, if it had been in all respects legal, have gained a settlement, no defect in the registry can be taken advantage of, to deprive the pauper, of the miserable advantages of a state of legitimate slavery, if any slavery can be legitimate.” [Gibson, J.]

U. S. v. Kennedy, 26 Fed. Cas. 762 (4 Wash. C. C. 91), April 1821. “Indictment² for serving on board a vessel employed in transporting a slave from . . . St. Thomas, to . . . Cuba;” Kennedy, the master of the vessel, “took on board, at St. Thomas, a negro boy, which he stated to the witness he had received from the lady with whom he boarded, to carry to Cuba to her brother, for the passage of whom fifteen dollars had been paid him. That after their arrival at St. Jago, the defendant told the witness he had been compelled to sell the negro boy to a Mr. Clark, for three hundred dollars. . . it was said at St. Jago, that the boy had been taken into the country to Mr. Clark, his master.” Verdict, not guilty.

Alexander v. Stokely, 7 S. and R. 299, September 1821. “a *homine replegiando*, brought by Susannah Stokely . . . to try . . . [her] right . . . to the services of a negro girl named Nance . . . [300] the daughter of Milley, a coloured woman. . . The defendant . . . offered in evidence, the record of a judgment . . . in an action of *homine replegiando*, brought against Susannah Stokely, by Milley . . . in which Mrs. Stokely pleaded that she held . . . Milley as a slave duly registered. . . judgment for . . . Milley, . . . This record was rejected by the Court” “Nance was born after her mother became . . . free . . . in account of . . . defect in the registry,” Held: [302] “The Court erred in not admitting” the record. [301] “The child with the record in his hand, cannot be held in slavery or servitude.”

Butler v. Delaplaine, 7 S. and R. 378, October 1821. “Error to the Court of Common Pleas . . . in *homine replegiando* brought by Henry Butler and Charity his wife, and . . . their children . . . Bruce, in 1782, was the owner of . . . land in Maryland, stocked with . . . slaves [including Charity], and demised it, with the slaves to cultivate it, to . . . Cleland,

¹ *Overseers of Forks v. Overseers of Catawessa*, p. 269, *supra*.

² Act of May 10, 1800. 2 Stat. at L. 70.

and removed . . . seventy miles distant . . . Shortly after . . . Cleland entered into a contract with . . . Gilleland respecting Charity. Gilleland, for her services, was to feed and clothe her until . . . sixteen . . . A separation took place between Gilleland and his wife, . . . She . . . went to reside . . . near the [Pennsylvania] line . . . occasionally went into Pennsylvania to work, taking . . . [her infant] child and Charity . . . to nurse it. She returned at intervals to . . . Maryland, which continued her domicil. Whether she ever remained with Charity [in Pennsylvania] at any one time for six months, was a fact left to the jury. She returned Charity to . . . Bruce . . . at the age of eleven . . . The counsel for the plaintiff, requested the Court to instruct the jury . . . [380] that a residence of six months in the whole, although compounded of periods shorter than six months each, with an interval of two or three weeks between them, . . . is a residence of six months, so as to entitle Charity, and her issue born afterwards, to their freedom,"¹ But the court charged: "Different acts of residence, at different periods, cannot be tacked together, so as to make a whole; . . . [381] And if no authority . . . was given by Bruce . . . to remove [Charity] . . . to this State, your verdict should be for the defendant." The plaintiffs excepted. Verdict for the defendant.

Judgment thereon affirmed: I. [383] "We are not at liberty to infer a power of removal, . . . [386] under the 4th article, section 2d of the Constitution of the United States, . . . the slave coming into the State, in any other way than by the consent of the owner . . . cannot be discharged under any law of this State, but must be delivered up on claim of the party to whom his . . . labour may be due." II. [383] "The continuing of a sojourner, must be a single, unbroken one, for six months. . . It was well known to the framers of our Acts for the Abolition of slavery, that southern gentlemen with their families, were in the habit of visiting this State, attended with their domestic slaves, either for pleasure, health, or business; year after year passing the summer months with us, their continuance scarcely ever amounting to six months. If these successive sojournings were to be summed up, it would amount to a prohibition—a denial of the rights of hospitality. The York and Bedford springs are . . . [384] frequented principally, and in great numbers, by families from Maryland and Virginia, attended by . . . slaves." [Duncan, J.]

Hill v. Low, 12 Fed. Cas. 172 (4 Wash. C. C. 327), October 1822. Ezekiel, the slave of the plaintiff, had escaped from Maryland into Pennsylvania. The plaintiff arrested him in Philadelphia to take him before a magistrate, and the defendant obstructed him "in so securing and arresting the said fugitive when so arrested,"² Verdict and judgment for the plaintiff. Reversed and the cause remitted: [173] "Mere obstruction . . . is no offence under this act . . . unless it be interposed previous to, or whilst the claimant . . . is in the act of seizing or arresting the fugitive, or is endeavouring to make such seizure;" [Washington, J.]

Ex parte Simmons, 22 Fed. Cas. 151 (4 Wash. C. C. 396), October 1823. "an application made to Washington, J., in Philadelphia, . . . under

¹ 10 Pa. Stat. at L. 71.

² Act of Congress, Feb. 12, 1793, sect. 4. 1 Stat. at L. 305.

the third section of the act of congress respecting fugitives from justice, etc.¹ . . . for a certificate as provided by that section. The evidence was, that Mr. Simmons came to Philadelphia from Charleston, South Carolina, where he resided, and has plantations, in February 1822, and rented a house for one quarter, which he furnished, and in which he continued to reside with his family for three quarters and six weeks. That he brought with him his slave, as his property, who remained during that period, or the greater part of it, in his service as a domestic, and who has remained in Philadelphia until the present time, . . .

“ The judge refused to grant the certificate . . . 1. . . this is not a case within either the words or the intention of the . . . act . . . under which this application is made. That relates to *fugitives* from one state or territory to another. . . [152] The slave . . . having been voluntarily brought by his master into this state, I have no cognizance of the case, so far as respects this application, and the master must abide by the laws of this state . . . 2. I am of opinion that the alleged slave is free under the [Pennsylvania act of March 1, 1780.]² . . . This man has been retained in the state . . . for a much longer period than six months.”

Stiles v. Nelly (a mulatto), 10 S. and R. 366, October 1823. “ a *homine replegiando* brought by Nelly . . . in which judgment was entered for [her] . . . by consent of parties. . . [Stiles] claimed Nelly as his servant till 28, under a transfer from . . . Duncan . . . the owner of Rachael, the mother of . . . Nelly: . . . On the 27th March, 1789, a paper was filed . . . ‘ Negro Rachael, the property of . . . Duncan, born about the 15th November, 1780.’ ” [370] “ The register contains every particular required by law. Rachael is entered, as a female, born the 15th November 1780, owned by . . . Duncan, of Carlyle, merchant.”

Judgment reversed³ and judgment entered for the plaintiff in error: I. [370] “ It was not necessary that the register of Rachael, who was born before the 29th March 1788,⁴ should be made within six months from her birth. . . [371] All that was necessary . . . was, to show that Rachael was born *after the 1st March, 1780.* . . [II.] [Although] in the paper filed . . . the sex of Rachael, and the occupation of . . . Duncan are omitted . . . they are both inserted in the record. There is not the least appearance of fraud . . . [372] The return of the owner and the record of the clerk may be considered as . . . forming one transaction.” [Tilghman, C. J.]

U. S. v. Haskell and Francois, 26 Fed. Cas. 207 (4 Wash. C. C. 402), October 1823. [208] “ The *Tatler* . . . sailed from Baltimore . . . with . . . a crew consisting of the mate, Smith, the [two] prisoners, and a black boy.” After Smith killed the mate, the captain, finding “ that no hope remained that . . . [the prisoners] would assist him against Smith, . . . ordered Peter, the black boy, and his friend throughout, to bring him his gun.”

¹ Act of Feb. 12, 1793, sect. 3. 1 Stat. at L. 302-305.

² 10 Pa. Stat. at L. 71.

³ See *Urie v. Johnston*, p. 284, *infra*.

⁴ 13 Pa. Stat. at L. 52 (54).

Wike v. Lightner, 11 S. and R. 198, May 1824. "What is the general character of York Frever, negro, . . . Answer.—I do not know him by the name Frever, but I know Black York, . . . he worked for me three days; and . . . I had reason to believe him not to be an honest man."

Commonwealth v. Barker, 11 S. and R. 360, September 1824. "*habeas corpus* to produce . . . Frank, a mulatto boy, . . . The boy was registered . . . April, 1812, . . . 'Barker . . . returns to the clerk a male mulatto child, called Frank, born on or about the 12th day of November, 1811, of a negro woman, called Milla, the property of . . . Barker, and liable to serve until . . . twenty-eight'" Prisoner discharged: [361] "The occupation of the master is not mentioned in the register."¹

Worthington v. Preston, 30 Fed. Cas. 645 (4 Wash. C. C. 461), October 1824. "action on the case for not keeping in safety Tom, a fugitive slave, . . . defendant was the . . . deputy of the sheriff of Bucks county, . . . It was proved by the person who acted under a regular power of attorney from the plaintiff, that on the 19th of September, 1822, he, with the plaintiff's son, seized the said slave in Bucks county, and took him before a state judge, who, after examining witnesses as to the plaintiff's property in Tom, gave to the attorney a certificate for the removal of the slave to . . . Maryland, whence he had before escaped. That he and the son of the plaintiff carried him, the same afternoon, to the gaol . . . and delivered him to the defendant, who locked him in the gaol yard, which is surrounded by a high wall . . . nineteen feet high . . . That upon the agent being informed . . . that the prisoners were all locked up in the evening, he requested that the slave should not be locked up until he had eaten his supper. That the slave was then left by the turnkey and the agent in the yard, where all the other prisoners were, and the door communicating with it was locked, and so continued till after the escape, which took place, over the wall, whilst the turnkey went to the kitchen to procure the supper; . . . No proof was given that any reward was to have been given for the safe keeping of the slave." Washington, J., charged the jury that the act of February 12, 1793² [646] "confers only a limited authority upon the magistrate to examine into the claim of the alleged owner, and being satisfied on that point, to grant him a certificate to that effect. This is the commencement and termination of his duty. He has no authority to issue a warrant to apprehend the fugitive in the first instance, or to commit him after the examination is concluded, and the certificate given. . . . An attempt has been made in congress to correct these glaring defects in the act, without which correction the act is found to be practically of little avail; but the attempt has not yet succeeded. . . . But . . . [in this case] no warrant of commitment was in fact granted." Verdict for defendant.

Commonwealth, ex rel. Annette (a mulatto girl), v. Irvine, cited in *Commonwealth v. Vance*, 15 S. and R. 36 (38), September 1825. Held: "that yeoman was a sufficient description."

¹ Act of Mar. 29, 1788. 13 Pa. Stat. at L. 54.

² 1 Stat. at L. 302.

Miller v. Dwillling, 14 S. and R. 442, September 1826. "action, of *Homine replegiando*, in which Alfred Dwillling . . . was plaintiff, . . . to try the right of the defendant to hold the plaintiff as his servant, until . . . twenty-eight" His [443] "mother . . . was the daughter of a registered slave."

Held: [446] "no child can be held to servitude till the age of twenty-eight . . . but one whose mother was . . . a slave at the time of its birth." [443] "If the argument in favour of servitude be correct, the legislature of Pennsylvania, though it abolished slavery for life, established . . . a servitude . . . which may continue . . . to the end of the world. . . [445] the general expressions, 'who would, in case this act had not been made, have been a . . . slave,' must be . . . modified in such a manner as to answer the intent of the act, as it appears from an examination of . . . its different parts."¹ [Tilghman, C. J.]

Scott v. Waugh, 15 S. and R. 17, October 1826. "*Homine replegiando* at the suit of John Scott, a coloured boy, . . . the child of Negro Nell, who was the slave of Aaron Finley . . . and was regularly registered by [him] . . . as a slave. . . Finley made his . . . will . . . 1793; . . . [died] 1794," [19] "My will is, that Nell continue with Margaret, my wife, during her widowhood or . . . life; and, if she marry, Nell shall be valued at whatever time is to come of twenty years from this date, and the money arising therefrom . . . divided between my children, Maria and William: if her widowhood or . . . life exceed twenty years from this date, then Nell is to be free" [18] "Scott was born . . . May, 1803, . . . and was . . . registered . . . October, 1803. Margaret Finley, in . . . 1809, . . . sold . . . Scott and his unexpired term of service, to William Waugh, and Waugh . . . bequeathed Scott . . . to his son . . . the defendant [who] . . . claims [him] . . . as a servant, until . . . twenty-eight . . . Margaret . . . married a second husband in . . . 1809," Judgment for the defendant. [18] "Stephens, for the plaintiff in error. . . The recording acts operate only on the issue of slaves. Carothers, contra. . . A servant for years is bound to recompense the master for the offence of having children:"

Judgment reversed and judgment entered for the plaintiff: [19] "By the will [of Aaron Finley] . . . Nell ceased on his death to be a slave, and became a servant for [twenty] years. . . [20] consequently, her children [are] as much free as the children of any white woman." [Duncan, J.]

Commonwealth, ex rel. Cribs, v. Vance, 15 S. and R. 36, October 1826. "The return to this *habeas corpus*, directed to . . . the keeper of the gaol . . . at the instance of Pompey Cribs, was . . . that he held him as the servant, till . . . twenty-eight . . . of . . . Brown. . . Pompey was the son of Grace, a registered slave, the property of . . . Maxwell, . . . And the question turned on the legality of the registry of Pompey . . . 'On the 6th of August, . . . 1804, . . . Maxwell, . . . esq., appeared . . . and on his solemn oath returned a mulatto male child, his property, called Pompey, born . . . 24th . . . of February last, . . . to be recorded.' . . . Maxwell was

¹ "in the manner and on the conditions whereon servants bound by indenture for four years are . . . holden," 10 Pa. Stat. at L. 69.

a farmer, and an associate judge” Pompey remanded: [38] “Esquire would, with more certainty, designate this . . . Maxwell . . . where almost the occupation of the whole community was that of farmer.” [Duncan, J.]

Eulogium on Chief Justice Tilghman, 16 S. and R. 437, July 1827. Horace Binney: [453] “Having been asked to take part in a public meeting . . . upon . . . the Missouri question, he thought it expedient to decline. ‘My office,’ he said, ‘compels me often to decide upon this irritating question of slavery; and it is not expedient to take part in a public discussion, that might bring my partiality into doubt. No one who knows the arrangement that I have made with the slaves which belonged to me, will doubt my fervent wish to see the evils of this institution mitigated, and, if possible extinguished.’ The arrangement was an instrument executed . . . 1811, by which he emancipated four . . . immediately, nine others in successive periods of from three to seven years, and the residue, twenty-five in number, together with their issue, on the first day of January after they should respectively attain . . . [454] twenty-eight. There was but one prescribed impediment . . . unlawful absence from duty, wilfully or by imprisonment for crime; in which case . . . freedom was deferred for treble the term of . . . absence. The benevolent proprietor lived to see this emancipation attained by twenty,”

Jacob v. Executor of Jacob, 2 Rawle 204, November 1828. “suit . . . to recover the price of negro Ben, a black servant who had been sold by Jane Jacob . . . to D. R. Jacob, . . . Ben sued out a *Habeas Corpus* . . . 1819, . . . he was discharged. . . Ben was the son of Sall, who belonged to . . . Pierce, and was recorded . . . October, 1780. The return . . . was . . . ‘Pierce . . . returns . . . Black Sall, August 25th, 1761, born,’ . . . [205] The defendant . . . offered the docket entry, . . . ‘Pierce . . . farmer.—Sall, a female . . . slave . . . nineteen years.’ . . . the plaintiff objected, that the entry cannot be given . . . to vary . . . the original return. . . overruled,” Affirmed: [206] “On the authority of [*Wilson v. Belinda*]¹ . . . the registry cured the defects in the return.” “it would be pernicious . . . to overthrow [the decision] . . . now, for a mere speculative error. No lasting mischief can arise . . . as the species of property to which it relates must shortly be extinct.”

Overseers of Point v. Overseers of Lycoming, 2 Rawle 26, July 1829. “suit brought . . . to recover money expended in the support of Charles —, a coloured man, . . . [27] thrown from a horse”

Russell v. Commonwealth, 1 P. and W. 82, October 1829. “a writ of error . . . to remove the record and proceedings upon a *habeas corpus* which issued to . . . Russell . . . for the body of Charity Brogden. . . [She] was a slave for life in Maryland, and there sold at public sale, by the sheriff, on an execution against her master. Mr. Russell, . . . the surety of the master for the debt for which the . . . slave was sold, became a bidder and purchased . . . A deed of manumission was executed by Mr. Russell . . . on consideration of her serving him for a certain term . . .

¹ P. 275, *supra*. But Belinda was freed because neither the return nor the registry stated that she was a female—Ed.

An indenture was then [1821] executed and acknowledged . . . by which she voluntarily binds herself to serve . . . in Pennsylvania, for . . . ten years, . . . Mr. Russell covenants to find her sufficient meat, drink, clothing, washing and lodging, etc. and one dollar when free, etc. Previous to the dispute, Mr. Russell remitted . . . the last three years . . . At the time the deed and indenture were executed, Charity was forty . . . and at the time the writ of *habeas corpus* issued . . . forty-five . . . Upon the single fact . . . of Charity being forty-five¹ . . . the Court of common pleas . . . discharged [her] . . . that to hold Charity under the circumstances, would be contrary to the spirit of the laws of Pennsylvania, for the gradual abolition of slavery." Writ of error quashed, [83] "on the ground that no writ of error will lie to remove a judgment upon a *habeas corpus*."

Cobean v. Thompson, 1 P. and W. 93, October 1829. "The only question . . . is, whether 'Yeoman' is such a designation of the occupation of a master, as is required by the act . . . for the gradual abolition of slavery, to be returned . . . proved that the master was a farmer," Held: "The designation is sufficiently certain."

Hamilton v. Commonwealth, 3 P. and W. 142, September 1831. [143] "The fourth count . . . charges 'that . . . Hamilton . . . with force and arms . . . a certain negro man . . . did cause to be . . . carried away . . . to . . . Virginia . . . with a design . . . of causing [him] . . . to be kept . . . as a slave.'" [142] "found guilty . . . [143] The Court sentenced him 'to pay a fine of five hundred dollars . . . to be confined in the penitentiary for . . . seven years, to be kept to hard labour . . . etc.'" Judgment reversed: [144] "error . . . in not charging [Hamilton] . . . with having caused the . . . negro . . . to be . . . carried away 'by force or violence.'"² Huston and Ross, J. J., dissented.

Urie v. Johnston, 3 P. and W. 212, October 1831. "Sampson Johnston . . . brought in *debetatis* [*sic*] *assumpsit* for . . . services" He is [219] "the son of a negro woman, who was . . . regularly registered a Pennsylvania servant until the age of twenty-eight . . . [220] and she was the daughter of a regularly registered Pennsylvania slave for life. . . [He] was born . . . 8th of July, 1800, during the servitude of his mother, and registered by her master in eight days . . . considered as a servant under the abolition act of . . . 1780, and as such . . . sold, two or three times, and . . . last . . . on the 16th of September, 1816," to Urie for \$550. [212] "7th of January, 1827, he was discharged upon *habeas corpus*, . . . and shortly after this suit was brought." [214] "The plaintiff waives the question on the statute of limitations, by only asking a compensation for five years and six months before suit brought, . . . from the time . . . [he] came of age." [212] "verdict for three hundred and seventy dollars."

¹ The age over which no slave could be freed in Maryland. Act of Md., 1796, sect. 28.

² An act to give effect to the provisions of the Constitution of the United States, relative to fugitives from labor, for the protection of free people of color, and to prevent kidnapping, sect. 1. Passed Mar. 25, 1826. Acts of 1826, p. 150. 9 Laws of Pa. 95.

Judgment thereon reversed: [220] "he was discharged from the service . . . shortly after the Supreme Court . . . had decided in . . . *Miller v. Dwilling*,¹ that the child of one bound to serve to the age of twenty-eight, was not bound . . . for the same period; but was absolutely free. Until this decision, a directly opposite opinion . . . prevailed, not only with a great portion of the community, but with many of the most distinguished lawyers of the State. . . Although it appeared upon the face of the record in [*Stiles v. Nelly*]² . . . that Nelly was the child of one bound . . . until twenty-eight only, it never occurred to her counsel to claim her freedom upon that ground, nor yet to any one of the learned judges of the Court, . . . Considering this state of uncertainty . . . and the extravagant price . . . paid . . . it cannot be presumed that [Urie] . . . doubted that the defendant in error was a servant until twenty-eight. . . [222] [He] was . . . bound in gratitude to make some compensation for the care . . . and expense bestowed, . . . And as his counsel allege that he is a man of considerable merit, it may be presumed that he owes this in part to his good education, . . . [223] Although Johnston . . . could not have been compelled to serve Urie, and . . . satisfy him for the money . . . paid, . . . yet having done so, he cannot claim now to have his character changed into a hireling, and be paid for his labour contrary to the understanding that existed between them during the whole time of such labour" [Kennedy, J.]

Commonwealth, ex rel. Taylor, v. Hasson, 3 P. and W. 237, October 1831. "*Homine replegiando*. . . Owens . . . of Maryland . . . executed [in 1828] the following deed: . . . 'I . . . in consideration of [\$500] . . . set free my negro boy William Taylor, aged sixteen . . . [and] my negro girl . . . aged 11 . . . from . . . the day on which they shall respectively arrive to the age of twenty-eight . . . And . . . I . . . for [\$500] . . . have . . . sold . . . unto . . . Hasson' 'the unexpired time' . . . [238] Hasson . . . brought Taylor into Pennsylvania" Held: "as the transportation of *slaves* only is prohibited . . . and . . . the interest and right of the person sold were . . . advanced, such sale . . . [is] valid."

Commonwealth, ex rel. Hall, v. Cook, 1 Watts 155, September 1832. "*habeas corpus* . . . The respondent returns, that he holds . . . Hannah Hall by virtue of a deed of indenture, executed by [her] . . . with the consent of her mother . . . to serve . . . seven years, to learn the art and mystery of a servant and waiter; in consideration of manumission . . . granted in the District of Columbia, . . . the indenture . . . was not executed until . . . several days after . . . arrival [of Hannah and her mistress] at Pittsburgh, with intention of making it a place of permanent abode." It was assigned to Cook with the consent of her mother.

Relator discharged: being [156] "free at the time the indenture was executed, the indenture is void;³ . . . The only evidence [of the agreement] is the recital in the indenture, . . . [157] The pains taken in the

¹ P. 282, *supra*.

² P. 280, *supra*.

³ Free negroes could "be only bound [like white persons] until twenty-one," "if a female, until . . . eighteen." *Respublica v. Gaoler*, p. 259, *supra*.

indenture to recite the agreement, and the studious care . . . taken to explain the joy with which she acceded . . . are sufficient . . . to create a doubt of the entire fairness of the transaction." [Rogers, J.]

Commonwealth, ex rel. Hall, v. Robinson, 1 Watts 158, September 1832. "Habeas corpus . . . upon the relation of Hannah Hall for her son" "the respondent makes the following return, . . . fully proved . . . 'he holds Francis Hall . . . by virtue of an indenture entered into . . . with the consent of his mother . . . whereby . . . [he] covenanted to serve . . . Williamson, until he . . . should attain twenty-eight years, viz. until July 1852; . . . executed in [Pittsburgh] . . . 1830 . . . in pursuance of a verbal agreement entered into . . . for herself and her son . . . and . . . their mistress [the daughter of Williamson] in . . . Washington . . . [159] a few days previously to leaving . . . made at the earnest request of . . . Hannah Hall, who was unwilling that herself and her children should be sold as slaves. . . indenture . . . was . . . assigned . . . to . . . Robinson'" Held: [160] "to make the contract binding, it must be by indenture . . . or [and?] executed before the . . . negro is brought within the state." [Rogers, J.]

Neide v. Neide, 4 Rawle 75, February 1833. Will, dated 1796: [76] "I give . . . to my molatto [*sic*] boy . . . five pounds"

Johnson v. Tompkins et al., 13 Fed. Cas. 840 (Baldwin 571), April 1833. In 1822 [841] "negro Jack, . . . the property of the plaintiff [[842] 'a farmer of considerable wealth and unexceptionable character'], . . . residing near Princeton, New Jersey, fled to . . . Pennsylvania, in the neighbourhood of Hatborough, commonly called the Billet, and there was hired by the defendants, John and Isachar Kenderdine [[842] 'men of moderate property, also of a fair character, and highly respectable members of the society of friends']. . . On Sunday morning, the 20th of October 1822, the plaintiff, with [three friends] . . . arrived at Kenderdine's, . . . Jack agreed to go at once. He was placed in the wagon with fetters, and . . . an ineffectual attempt [was made] to obtain Jack's clothes, . . . Before they started, Isachar Kenderdine . . . arrived . . . and demanded their authority to take Jack. The taking was conducted so quietly that it was not heard in the sick room up stairs. Before the party had got back to the Billet, they were overtaken by John and Isachar Kenderdine, and a large assemblage of persons, who had been collected; were attacked with stones and clubs; the plaintiff received a blow, which produced a contusion on the side of the head, and the physician pronounced it a serious wound. When they arrived at the Billet, they were surrounded by a mob of forty or fifty persons, and were compelled to go at once to Judge M'Neil . . . to prove their property. The plaintiff being very weak, begged to stay till morning. This was refused, . . . a partial hearing took place, and the judge recommended a further hearing as to the slavery of Jack, and that in the mean time Justice Tompkins should commit Jack to jail, and bind over the plaintiff and his associates to prosecute his claim. John and Isachar Kenderdine went to Justice Tompkins, and entered security in 800 dollars for the appearance

of Jack to answer to the claim of his master. The constable and the mob then conducted the Jersey party back to the tavern, and kept them in custody till the next day. . . [They] were treated with great severity, being refused even a bed. Before daylight on Monday morning, a compromise was agreed to by all the parties who were present, the plaintiff offered to manumit Jack and pay the expenses. A message was despatched to John Kenderdine to obtain his consent, but he peremptorily refused, declaring they should be prosecuted. . . the . . . Jersey men were taken before Justice Tompkins, and security in 6,000 dollars was required of them to answer the charge of kidnapping. . . [842] At the trial . . . before the petit [*sic*] jury, great excitement against Johnson and his co-defendant, prevailed. A subscription was made to employ additional counsel to aid the attorney-general in conducting the prosecution; after a long and arduous trial, the defendants were acquitted, and negro Jack was delivered up to his master," who had [855] "offered manumission to his slave on the first night, and has since [[842] 'his restoration'] executed it," Johnson brought [841] "an action of trespass *vi et armis*, false imprisonment, etc. . . [842] Jack . . . attended . . . court as a witness for the plaintiff,"¹

Justice Baldwin charged the jury: [843] "It is not permitted to you or us to indulge our feelings of abstract right . . . the law of the land recognises the right of one man to hold another in bondage, . . . [847] it was no part of the design . . . of . . . [the Pennsylvania] society [for promoting the abolition of slavery], to protect or rescue runaway slaves . . . they have . . . pursued their legitimate objects with untiring zeal. If they have been perverted by any honorary member, like Mr. Ellis, by contributing money to employ counsel to prosecute a master for lawfully seizing . . . his runaway slave, we are well convinced that it has been equally repugnant to the feelings and practice of the members, as it would be to their charter. . . [848] While the abolition act . . . abolished slavery for life, as to those thereafter born, it did not . . . interfere with those born before, or slaves excepted . . . they were then, and yet are, considered as property; slavery yet exists in Pennsylvania, . . . though their number is small, their condition is unchanged. . . [850] As to all the proceedings . . . of the defendants . . . either for the purpose of taking the Jersey party before the justice or judge to prove the property of the plaintiff or to establish a charge of kidnapping; we instruct you, without hesitation, that they were without any warrant or authority of law, wholly unqualified and illegal. . . [851] The supreme court [of Pennsylvania]² declares that the constitution of the United States would never have been . . . assented to by the southern states, without some provision for securing their property in slaves. Look at the first article, and you will see that slaves are not only property as chattels, but political property, which confers the . . . most sacred political rights of the states, . . . The apportionment . . . of their representatives . . . of direct taxes . . . The number of electoral votes . . . for all these great objects, five slaves are, in federal numbers,

¹ [1850] "He was a competent witness . . . if he was a free man or only a servant for years."

² Wright *v.* Deacon, p. 277, *supra*.

equal to three freemen. . . [852] Thus you see that the foundations of the government . . . rest on the rights of property in slaves—the whole structure must fall by disturbing the corner stones . . . [855] This case illustrates the effects of indulging that false philanthropy which prostrates the law and the constitution in its zeal against slavery; it extends not merely to make the slave free, but freemen slaves.” “Verdict for 4000 dollars damages, and judgment on the verdict.”

Overseers v. Baker's Executors, 2 Watts 280, May 1834. [281] “The act . . . of the 1st of March 1780 . . . enacts in section 6,¹ that unless the owner, before the slave attains his twenty-eighth year, executes and records a deed of manumission, he shall be liable ‘to the overseers of the poor of the city, township or district to which . . . such negro . . . shall become chargeable,’ for the expenses . . . they may be put to through the neglect of the owner. The negro Hope, being twenty-one . . . at the passage of this act . . . [was] set free by . . . Baker, by his will dated in 1798. In 1818 an order was made by two justices of the peace of Cumberland county, to remove him to the poorhouse . . . as a pauper, . . . In 1820 the legislature . . . laid off . . . a new county . . . which included the poorhouse. . . 1824 . . . he was brought back . . . and taken into custody by the overseers of the poor of . . . township” where [280] “Baker . . . had lived and died . . . and maintained till he died, . . . [281] [The overseers] brought this action . . . to recover the money expended” Held: “The want of an order of two justices, adjudicating Hope to be chargeable to the township . . . is fatal to the claim ”

Hobbs et al. v. Fogg, 6 Watts 553, July 1837. “an action of the case, brought . . . by William Fogg [‘a coloured man’] . . . against . . . inspector, and . . . judges, of the general election, held . . . October 1835. . . The declaration set forth . . . [that the plaintiff] being one of the freemen, and citizens . . . above . . . twenty-one . . . and having paid a county tax² . . . he offered to vote, but they . . . refused to receive his vote, . . . [554] the president judge (Scott) charged . . . ‘We know of no expression in the constitution or laws of the United States, nor in the constitution or laws . . . of Pennsylvania, which can legally be construed to prohibit free negroes . . . otherwise qualified, from exercising the rights of an elector. The preamble to the act [of March 1, 1780] . . . fully indicates an intention . . . to make the man of colour a *freeman*. . . the verdict . . . must be in his favour,’ ”

Judgment thereon reversed: [555] “This record raises, a second time, the only [and ‘the *same*’] question on a phrase in the constitution . . . since its adoption; . . . About . . . 1795, as I have it from James Gibson, Esquire, of the Philadelphia bar, the very point . . . was ruled by the high court of errors and appeals against the right of negro suffrage. . . no memorandum of the cause . . . But Mr Gibson’s remembrance is perfect and entitled to full confidence. That the case was not reported, is probably owing to the fact that the judges gave no reasons; . . . the more to be regretted, as a report of it would have . . . prevented much unpleasant

¹ 10 Pa. Stat. at L. 70.

² Constitution of 1790, art. III, sect. 1. Thorpe 3096.

excitement. Still the judgment is not the less authoritative as a precedent. . . [556] But the omission of the judges, renders it proper to show that their decision was founded in the true principles of the constitution. . . an inhabitant of an incorporated place, who is neither servant nor slave, . . . may be no freeman in respect of its government. . . The laws agreed upon in England, in May 1682, use the word in this specific sense, . . . [557] It was foreseen that there would be inhabitants . . . who, though free as the winds, might be unsafe depositories of popular power; . . . till the instant when the phrase on which the question turns, was penned, the term freeman had a . . . specific sense, . . . to denote one who had a voice in public affairs. . . the word . . . was used in legislative acts convertibly with electors, so late as . . . 1798, when it grew into disuse. . . [558] As was justly remarked by President Fox, in the matter of the late contested election, our ancestors settled the province as a community of white men; and the blacks were introduced . . . as a race of slaves; whence an unconquerable prejudice of caste, . . . insomuch, that a suspicion of taint still has the unjust effect of sinking the subject of it below the common level. . . [559] The only thing in the history of the convention [of 1790], which casts a doubt upon the intent, is the fact, that the word white was prefixed to . . . freeman, in the report of the committee, and subsequently struck out; probably because . . . thought superfluous, or still more probably, because it was feared that respectable men of dark complexion would often be insulted at the polls, . . . I have heard it said, that Mr Gallatin sustained his motion to strike out on the latter ground. . . [560] I have thought it fair to treat the question as it stands affected by our own municipal regulations . . . Yet it is proper to say that the second section of the fourth article of the federal constitution, presents an obstacle to the political freedom of the negro, which seems . . . insuperable. . . Every man must lament the necessity of these disabilities; but slavery is to be dealt with by those whose existence depends on the skill with which it is treated. . . interpreting the constitution in the spirit of our institutions, we are bound to pronounce that men of colour are destitute of title to the elective franchise. Their blood, however, may become so diluted . . . as to lose its distinctive character; . . . By the amended constitution of North Carolina,¹ no . . . free person . . . descended from negro ancestors, to the fourth generation inclusive, though one ancestor of each generation may have been a white person, shall vote for members of the legislature. I regret to say, no similar regulation . . . has been attempted here; in consequence . . . every case of disputed colour must be determined . . . by the discretion of the judges [of election]; and thus a great constitutional right . . . will be left the sport of caprice." [Gibson, C. J.]

Lynch v. Commonwealth, 6 Watts 495, September 1837. "executors . . . alleged . . . that the property was sacrificed, and 'proposed to prove the value of one negro woman slave for life . . . levied on . . . 1823,'"

Thompson v. Garwood, 3 Wharton 287, February 1838. Will of Henrietta Ware, 1820: [293] "I do give to Maria Turmell, a black

¹ Ratified in 1835. Thorpe 2796.

woman who now lives with me, one hundred dollars, for her kind attention to me during my illness."

Commonwealth v. Williams, 2 Ashmead 69, March 1839. [71] "Kearney, the deceased, 'a short time before he breathed his last, declared, that black Williams stabbed him.' . . . proved that York, . . . tried with the prisoner [and acquitted], had, on the evening before . . . been . . . unprovokedly knocked down by some persons who fled into Kearney's house, . . . that Williams was with . . . York . . . and . . . swore, 'that he would have satisfaction' . . . [72] the mob . . . breathed nothing but vengeance against the black inhabitants of the neighbourhood." Williams was convicted of murder in the first degree. [89] "The motion [for a new trial] is overruled; and the commonwealth must have judgment on the verdict."

Case of Williams, 29 Fed. Cas. 1334 (Crabbe 243), March 1839. "This was a proceeding under the act of February 12, 1793,¹ by Ruth Williams, claiming the delivery of 'Isaac,' or William Stansbury, as a slave." Hopkinson, J.: Stansbury "has lived among us for more than twenty-three years; has a wife and family of children depending upon him, and a home, from which he must be separated, if the claimant has made good her right. . . . [1335] He was taken suddenly in the street, without any notice or expectation of any such design or danger. . . . George F. Alberti . . . informed her [Mrs. Williams, in a letter dated at Philadelphia, on the 29th December, 1838], that he understood she had a slave named Isaac, alias William Stansbury, who absconded from her about the year 1815. He gives the name of Isaac's mother, and tells her, that his features are just the same as usual, and advises her how to proceed to have him arrested and delivered to her. . . . [1336] in the inventory of the estate [made in 1806], we find a 'boy named Isaac,' about ten years old, appraised at \$200. . . . Beale Duval . . . said that he had no doubt that the respondent is the boy Isaac; he recognized him as soon as he saw him; he has a mark on his forehead, occasioned by a burn when young. . . . had not seen him, until then, for upwards of twenty years;" Other witnesses were equally certain of the identity: "I knew the mother of the boy; . . . she bought her freedom, . . . the respondent is the same man; . . . is not changed; . . . he had a scar over one of his eyes; the witness points to the scar." On the other hand, Melburn [1339] "speaks of the building of the batteries on the west side of the Schuylkill for defence against an expected attack by the British. He says that he and Stansbury went out together with the colored people to assist in that work. . . . and he knew him a year before that. Now, it is a fact of general notoriety that the colored people did go out to work at these batteries, and that this took place in the fall of 1814. . . . Isaac . . . did not leave . . . [Mrs. Williams's] service until February, 1816; . . . Ignatius Beck . . . brother of the mother of Isaac . . . knew Stansbury in 1810, or thereabouts; . . . understood Stansbury to say he came from the northward, somewhere about New Bedford. . . . during the visit of his sister Amy here ten years ago,—a visit which continued for nine or ten months,—he never saw her and

¹ 1 Stat. at L. 305.

Stansbury together. This is incredible, if she was the mother of Stansbury and Beck his uncle. . . [1340] Amy Curry . . the mother of Isaac . . said, pointing to the respondent: 'This is not Isaac, he is none of mine.' She spoke of the mark as being on Isaac's cheek differing from those who said it was on his forehead, as this man's is. . . Captain Whippey . . confined in the debtor's apartment . . where the respondent has also been kept" says that respondent asked him "if I had any recollection of coming from Nantucket in 1810; his naming the sloop and the master's name, brought it to my recollection, that I was a passenger in her. He told me he was a boy at the time on board of her; I don't recollect anything of this man; but there was a colored boy on board, who ran away from the vessel on our arrival at New York; . . Stansbury mentioned to him the year, the season of the year, and the name of the sloop and her master, all correctly. . . [1342] I must refuse the certificate applied for, and order William Stansbury to be discharged from the arrest."

Huston's Appeal, 9 Watts 472, May 1840. Will, dated 1820: [473] "I . . leave to my wife my servant boy Harry;"

Prigg v. Pennsylvania, 16 Peters (U. S.) 539, January 1842. Prigg, [659]. "a citizen of Maryland," [543] "with . . Bemis, . . Forward, and . . Lewis . . were indicted by the Grand Jury of York county, Pennsylvania," [608] "for having, with force and violence, taken . . to . . Maryland, a . . negro woman, named Margaret Morgan, . . contrary to a statute of Pennsylvania, passed . . 26th of March, 1826.¹ . . [609] passed with a view of meeting the supposed wishes of Maryland on the subject of fugitive slaves;"² [543] "Prigg pleaded not guilty. The cause was tried . . May, 1839;" [608] "the jury found a special verdict . . [609] that the slave escaped and fled from Maryland into Pennsylvania in 1832; that . . [Prigg] the agent . . of . . Margaret Ashmore [the owner], in 1837, caused the said negro woman . . to be . . apprehended . . by a state constable, under a warrant from a Pennsylvania magistrate; that . . [she] was . . brought before the said magistrate, who refused to take further cognisance . . and thereupon [Prigg] . . did remove . . the said negro woman and her children out of Pennsylvania into Maryland, and did deliver [them] . . into the . . possession of the said Margaret Ashmore. . . one of the children was born in Pennsylvania,³ more than a year after [the mother] . . had . . escaped from Maryland. . . the Court . . adjudged . . [him] guilty . . A writ of error was brought from that judgment to the Supreme Court of Pennsylvania, where the judgment was, *pro forma*, affirmed. From this latter judgment, the present writ of error . . [was] brought to [the Su-

¹ An act to give effect to the provisions of the Constitution of the United States, relative to fugitives from labour, for the protection of free persons of colour, and to prevent kidnapping. 9 Laws of Pa. 95, ch. 5777.

² *Ibid.* 449n., 450n.

³ See *Commonwealth v. Holloway*, p. 275, *supra*. "the condition of the children removed with the mother, and both without a compliance with the act of congress, was neither discussed by the counsel nor adjudicated by the court, because probably the indictment contained no charge of kidnapping *them*," 9 Laws of Pa. 456.

preme Court of the United States] . . . by the co-operation . . . both of the state of Maryland, and the state of Pennsylvania, in the most friendly . . . spirit, with a view to have those questions finally disposed of by the adjudication of this Court; so that the agitations on this subject in both states, which have had a tendency to interrupt the harmony between them, may subside, and the conflict of opinion be put at rest. . . . the statute of Pennsylvania of 1826, was . . . passed with a view of meeting the supposed wishes of Maryland on the subject of fugitive slaves;”

Judgment [626] “reversed, and the cause remanded to the Supreme Court of Pennsylvania;” [608] “Mr. Justice Story delivered the opinion of the Court. . . . [611] By the general law of nations, no nation is bound to recognise the state of slavery, as to foreign slaves found within its territorial dominions, when it is in opposition to its own policy and institutions, in favour of the subjects of other nations where slavery is recognised. . . . This was fully recognised in *Somerset’s Case*,¹ . . . [612] which was decided before the American revolution. It is manifest from this consideration, that if the Constitution had not contained . . . [the fugitive slave] clause, every non-slaveholding state in the Union would have been at liberty to have declared free all runaway slaves coming within its limits, . . . a course which would have . . . engendered perpetual strife . . . The clause was accordingly adopted into the Constitution by the unanimous consent of the framers of it; . . . The clause manifestly contemplates the existence of a positive, unqualified right on the part of the owner of the slave, which no state law . . . can in any way qualify, regulate, control, or restrain. . . . [616] the act of [congress of] the 12th of February, 1793, ch. 51, (7,) . . . [617] points out fully all the modes [of enforcing the rights of the owner] . . . which Congress . . . have as yet deemed expedient . . . to meet the exigencies of the Constitution. . . . the legislation of Congress, if constitutional, must supersede all state legislation upon the same subject; and by necessary implication prohibit it. . . . [622] We hold the act [of 1793] to be clearly constitutional in all its leading provisions, and, . . . with the exception of that part which confers authority upon state magistrates, to be free from reasonable doubt . . . As to the authority so conferred upon state magistrates, while a difference of opinion has existed, and may exist still . . . in different states, whether state magistrates are bound to act under it; none is entertained by this Court that state magistrates may . . . exercise that authority, unless prohibited by state legislation.² The remaining question is, whether the power of legislation upon this subject is exclusive in the national government, or concurrent in the states, until . . . exercised by Congress. In our opinion it is exclusive; . . . [625] the act of Pennsylvania upon which this indictment is founded, is unconstitutional and void. . . .

[626] “Mr. Chief Justice Taney. I concur . . . that the law of Pennsylvania . . . is unconstitutional and void; . . . But . . . [633] I dissent . . .

¹ See vol. I., p. 14, of this series.

² “seized upon by anti-slavery States as a justification for legislative measures refusing the assistance of their officials to enforce the Federal Fugitive Slave Law.” Warren, *Supreme Court in United States History*, II. 361.

from that part of the opinion of the Court which denies the obligation and the right of the state authorities to protect the master . . . provided the state law is not in conflict with the remedy provided by Congress." [630] "Indeed, if the state authorities are absolved from all obligation to protect this right, and may stand by and see it violated without an effort to defend it, the act of Congress of 1793 scarcely deserves the name of a remedy. . . [631] So far from regarding the state authorities as prohibited from interfering . . . the Congress of that day must have counted upon their cordial co-operation. They legislated with express reference to state support. . . Maryland . . . has continually passed laws . . . for the arrest of fugitive slaves from other states as well as her own. . . [632] as fugitives from the more southern states, when endeavouring to escape into Canada, very frequently pass through her territory, these laws have been almost daily in the course of execution in some part of the state. . .

[633] Mr. Justice Thompson. I concur in the judgment . . . [635] But I cannot concur in that part of the opinion of the Court, which asserts that the power of legislation by Congress is exclusive. . . The Constitution protects the master in the right to the possession . . . of his slave, and of course makes void all state legislation impairing that right; but does not make void state legislation in affirmance of the right. . .

[636] Mr. Justice Baldwin. Concurred . . . in reversing the judgment . . . on the ground that the [Pennsylvania] act . . . was unconstitutional; inasmuch as the slavery of the person removed was admitted, the removal could not be kidnapping. But he dissented from the principles laid down by the Court as the grounds of their opinion.

Mr. Justice Wayne. I concur altogether in the opinion of the court, . . . [643] This provision is the only one in the Constitution in which a security for a particular kind of property is provided; provided, too, expressly against the interference by the states in their sovereign character. . . [645] the property of an individual is not the less his, because it is in another state . . . The provision, then, in respect to fugitive slaves, only comprehended within the general rule a species of property not within it before. . . [646] If this be so, upon what principle shall the states act by their legislation upon property, which is national as well as individual; . . . [650] if experience shows any deficiency in its enactments, Congress will no doubt supply it. . .

Mr. Justice Daniel. Concurring entirely . . . in the conclusions . . . relative to the . . . validity of the statute of Pennsylvania . . . I am constrained to dissent from some of the principles . . . [652] There is a class of powers originally vested in the states, which by the theory of the federal government have been transferred to the latter; . . . which Congress may or may not enforce . . . it may find them for the time beneficially executed . . . under the state authorities. These are not properly concurrent, but may be denominated dormant powers in the federal government; they may at any time be awakened . . . by Congress, and . . . so far as they are called into activity, will of course displace the powers of the states. . . even in instances wherein Congress may have legislated, legislation by a state

which is strictly ancillary, would not be unconstitutional or improper. . . [656] I hold then that the states can establish proceedings which are in their nature calculated to secure the rights of the slaveholder guaranteed [*sic*] to him by the Constitution; . .

[658] Mr. Justice M'Lean. . . I differ on one point from the opinion of the Court, . . [659] This clause of the Constitution is now, for the first time, brought before this Court for consideration. . . [664] It seems to be taken as a conceded point in the argument, that Congress had no power to impose duties on state officers, . . But do not the clauses in the Constitution in regard to fugitives from labour, and from justice, give Congress a power over state officers, on these subjects? . . 'A person charged in any state with . . crime, who shall flee . . and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up' . . In . . the act of 1793, Congress have provided that . . 'it shall be the duty of the executive authority to cause the person demanded to be arrested,' etc. The constitutionality of this law, it is believed, has never been questioned. . . [665] Now, if Congress may by legislation require¹ this duty to be performed by the highest state officer, may they not . . require appropriate duties in regard to the surrender of fugitives from labour, by other state officers. . . [666] I come now to a most delicate and important inquiry . . whether the claimant of a fugitive from labour may seize and remove him by force out of the state in which he may be found, in defiance of its laws. I refer not to laws which are in conflict with the Constitution, or the act of 1793. Such . . are void. But I have reference to those laws which regulate the police of the state, maintain the peace of its citizens, and preserve its territory . . from acts of violence. . . [667] Both the Constitution and the act of 1793, require the fugitive . . to be delivered up on claim being made, . . [669] The act of 1793 authorizes a forcible seizure of the slave by the master, not to take him out of the state, but to take him before some judicial officer within it. The act of Pennsylvania punishes a forcible removal of a coloured person out of the state. Now, here is no conflict between the law of the state and the law of Congress. . . no power to . . forcibly remove the slave without claim is given by the act of Congress. . . [671] there is no provision in the [Pennsylvania] act which embraces slaves. . . it was designed to protect free persons of color within the state. But it is admitted, there is no exception as to the forcible removal of slaves. . . No conflict can arise between the act of Congress and this state law. . . only between the forcible acts of the master and the law of the state. . . It is a most important police regulation. . . That a slave is property must be admitted. The state law is not violated by the seizure . . but by removing . . by force, . . This force, not being authorized by the act of Congress nor by the Constitution, may be prohibited by the state. . . [673] This view removes all state action prejudicial to the rights of the master; and recognizes in the state a power to guard . . the peace of its citizens. It appears, in the case under consideration, that

¹ "But if the Governor . . refuses, there is no power . . to compel him." *Kentucky v. Dennison* (decided in 1860) I. 441 (442), of this series.

the state magistrate before whom the fugitive was brought refused ['under the act of 1826']¹ to act. In my judgment he was bound to perform the duty required of him by a law paramount to any act, on the same subject, in his own state. But this refusal does not justify the subsequent action of the claimant. He should have taken the fugitive before a judge of the United States, two of whom resided within the state. . . My opinion . . . does not rest so much upon the particular law of Pennsylvania, as upon the . . . sovereign power of a state, to protect . . . the peace of its citizens, in any . . . mode . . . which shall not conflict with a defined power of the federal government."

U. S. v. Holmes, 26 Fed. Cas. 360 (1 Wallace jr. 1), April 1842. The American ship *William Brown* struck an iceberg and the boats were lowered. The next night, Holmes [361] "and the rest of the crew began to throw over some of the passengers [from the long-boat] . . . 14 male passengers. These, with the exception of two married men and a small boy, constituted all the male passengers aboard. Not one of the crew was cast over. One of them, the cook, was a negro. . . [362] When one McAvoy was seized, he asked for five minutes to say his prayers, and, at the interposition of a negro, the cook, was allowed time to say them before he was cast overboard."

Blenon's Estate, Brightly 338, April 1843. Will of Peter Antoine Blenon, 1836: [339] "I give . . . to . . . institutions of charity . . . for the relief of . . . those who live under the affliction . . . of privations, without any distinction of sect or religion, . . . the residue of my estate." [344] "It was objected that the testator never meant to include . . . societies ['composed of negroes or people of colour'], and that under the authority . . . of *Hobb v. Fogg*,² . . . they are destitute of the rights of citizenship. The auditors find nothing on the face of the will to warrant such a construction, . . . [345] and the decision of the supreme court goes solely to the question of their political . . . rights." Decreed by the orphans' court: "That all societies for the alleviation of the privations . . . of individuals whether white or coloured, are entitled" Affirmed.

Reed v. Bias, 8 W. and S. 189, December 1844. "action of trespass *vi et armis* . . . against . . . Reed and others for pulling down 'the Coloured Temperance Hall of Moyamensing.'" [190] "The hall had been erected under the patronage of the 'Moral Reform Society of Philadelphia,' by contribution. The building was pulled down in pursuance of orders from the corporation of Moyamensing. There was a riot in progress, and the destruction of this building was believed to be one object of the rioters." [189] "The property was threatened and fired twice, so that the adjoining property was in danger."

Jones v. Murphy, 8 W. and S. 275, December 1844. Tittermary's testimony: [281] "I was sent over for [in April 1837] by Mrs. Shade's black girl . . . to witness the will. . . [282] I called . . . having been sent for by a coloured girl. . . [283] I do not recollect when . . . the black

¹ 9 Laws of Pa. 455.

² P. 288, *supra*.

girl called," Green testified: "I witnessed a will for Peter Shade . . . in . . . June or . . . July 1837." "He sent his little coloured girl for me . . . she said her master wanted to see me." Mrs. Green testified: [285] "I know the black girl came"

In re Pennsylvania Hall, 5 Pa. St. 204, May 1847. "June 1838, Webb and others, members of the board and trustees of the Pennsylvania Hall Association, presented their petition . . . setting forth the act of June [16], 1836, relating to compensation for the destruction of buildings . . . by a mob or riot . . . and averring that the association . . . had erected a building . . . [205] dedicated and occupied for free discussion of liberty, slavery, etc. That on the 16th of May [1837], the hall was assailed by a mob, . . . whereupon the petitioners applied to the mayor and sheriff, . . . but . . . no attempt at resistance of the mob was made by them, and . . . the building was . . . burned by the mob . . . In June, 1843, . . . inquest reported . . . that the damage . . . was \$22,658.27, and that the owners . . . had not any . . . active participation in the . . . riot." [210] "Proceedings affirmed."

Beltzhoover v. Costen, 7 Pa. St. 13, September 1847. Wallace's will, 1803: [14] "it's my will that my wife . . . shall keep any negroes that I may have at my death, during her lifetime or marriage, and after either, to be divided between my . . . legatees"

Clellans et al. v. Commonwealth, 8 Pa. St. 223, June 1848. "an indictment against . . . Clellans and thirty-six others for a riot, accompanied with the aggravation of riotously rescuing from their owners . . . fugitive slaves from . . . Maryland, who had been arrested in Cumberland county . . . and where at the time . . . in the lawful custody . . . of their owners, . . . The jury returned a verdict of guilty against . . . Clellans and twelve others . . . and not guilty as to the other defendants. The sentence . . . [224] passed upon [Clellans and] . . . ten others" "was . . . 'Sept. 7, 1847. . . suffer punishment by . . . solitary confinement at labour in the State Penitentiary . . . for . . . three years; . . . pay a fine of one dollar [each] . . . and the costs' . . . The other [two] . . . were . . . sentenced to imprisonment in the jail"

Held: [229] "Our laws do not authorize the sentence inflicted [on Clellans and ten others] . . . and the judgment is reversed. As the prisoners have been confined in the . . . Penitentiary about three-fourths of a year, we deem this as severe a punishment as if they had been confined in the county jail, where they legitimately should have been sent, for two years. They are discharged." [Burnside, J.]

Overseers of Milton v. Overseers of Williamsport, 9 Pa. St. 46, July 1848. "Louisa Finly had acquired a settlement by hiring in Milton. She then married Deems, who had acquired a settlement in Chester county." [47] "deserted . . . and . . . partially deranged. She required relief in Milton," [46] "The overseers . . . wrote [in August] to the overseers of Williamsport [in Lycoming County], alleging she was chargeable on that township." [48] "puerile letter . . . enclosing a copy of the affidavit of . . . Louisa's husband, and desired the overseers of Williamsport to

make provision to have Louisa and her *child* removed," [46] "No answer was received" [48] "Instead of regarding the act of Assembly [of 1836], or the dictates of humanity, . . . [the overseers of Milton] permit this unfortunate deranged woman, in an inclement season of the year [November], . . . to wander from . . . Milton." "The next we hear of Louisa . . . [the] overseers of [New Berlin] . . . wrote to the overseers of Williamsport, that a coloured woman, apparently of unsound mind, was wandering in their streets without any means of support, and . . . they had to pay fifty cents a day for her keeping. Shortly after this, Louisa is found wandering in the streets of Williamsport. The day after . . . she was removed to Milton by order of two justices, who adjudged Milton as her last place of settlement. . . Milton appeals" [47] "Anthony, P. J. [of the Quarter Sessions of Lycoming], was of opinion that, as they had failed to prove that Williamsport was . . . chargeable, the order of removal was correct."

[49] "Decree of Sessions is affirmed." [48] "the overseers of Milton . . . not only neglected their duty as officers, but as men." "it was their duty to have provided for Louisa until they found, in a legal manner, her last place of settlement." [Burnside, J.]

Overseers of Baldwin v. Kline, 9 Pa. St. 217, September 1848. "The overseers of the poor . . . brought an action against Kline, to recover the cost of the maintenance of a [non-registered] negro who had been held by him as a slave and also to recover the value of her services while so held. It was in proof that the negro had been bought . . . [218] as a slave, and reputed as such for fifty-six years, and had lived with defendant for many years."

Held: I. "the plaintiffs . . . [are] entitled to recover the cost . . . [of] maintenance of . . . Sylph, from the time that she became a charge to the township until the commencement of this suit,¹ . . . [II.] the plaintiff [sic] has no right to recover, on a *quantum meruit*, compensation for the services of Sylph, . . . [219] Judge Gibson remarks,² that the act of 1780 does not, in express terms, render the servitude of an unrecorded negro void. Sylph was at least held by a claim of right. There is not the slightest reason to believe that the defendant knew that she was entitled to her liberty, in consequence of the omission to register her name. . . Had he known the true state of the case, *non constat* that he would not have dispensed with her services altogether." [Rogers, J.]

U. S. v. Brown, 24 Fed. Cas. 1245 (cited in 1 Brightly Dig. 809), 1848. Held: ownership of the vessel engaged in the slave trade, by a citizen, if the accused be not himself one, or citizenship of the accused, if the ownership be not in a citizen, is an essential ingredient of the offense described by the act of May 15, 1820, section 4.³

Kauffman v. Oliver, 10 Pa. St. 514, May 1849. "the plaintiffs' declaration set forth, that they were owners of . . . slaves held under the laws

¹ *Overseers of Ferguson v. Overseers of Buffaloe*, p. 277, *supra*.

² *Ibid.*

³ 3 Stat. at L. 600.

of Maryland; that the slaves escaped into Cumberland county, . . . that the defendant . . . did . . . assist them to escape . . . Defendant pleaded that the courts of the United States had exclusive jurisdiction. . . plaintiffs demurred, . . . judgment for plaintiffs."

Plea to the jurisdiction sustained, and judgment reversed: [516] "as by the compact ['of union'] the slave is not discharged from his service by escaping into a free state, the owner . . . may . . . take him, without . . . breach of the peace, by manucaption . . . in any place where the compact is obligatory, just . . . as if the recaption was in the slave territory. . . But if the fugitive is harboured, . . . the owner must make the claim . . . by legal process, according to . . . the laws of the United States. . . Congress has regarded this claim, to the service of the fugitive, as a right of property, . . . [517] and it must be made by one person . . . against another . . . in a court of justice. It is, therefore, a controversy between parties, arising under the constitution and laws of the United States, and must be referred to the forum having jurisdiction of such controversies." [Coulter, J.]¹

Ferris v. Henderson et al., 12 Pa. St. 49, September 1849. "The bill . . . was preferred by Thomas Ferris, . . . born in 1774, the slave of Joseph Becket, the ancestor of the defendants." [52] "He records him in 1781, and pretends to hold him under the Act of 13th April, 1782,² . . . but Becket never took the oath required . . . He sells Ferris and buys him back," Ferris charges, "that notwithstanding . . . [53] Joseph . . . [knew] that . . . [Ferris] was free, he . . . fraudulently concealed the same . . . and held him in . . . slavery until . . . 1810, under pretence, and a threat, that if . . . [he] did not faithfully serve . . . until [1810] . . . Joseph, would hold [him] . . . a slave for life." A deed of manumission, executed in 1802 when Joseph was twenty-eight,³ "is appended . . . It recites that . . . Joseph, from motives of benevolence and humanity, agrees to set free his *mulatto man* . . . on condition that he will serve seven years.⁴ The bill further alleges that the plaintiff was forced to serve one year [more] . . . under the pretence that that was the true meaning of the act of manumission. . . that the plaintiff was free at the time he was manumitted, but . . . was totally ignorant of that fact until . . . 1846," [49] "The bill prayed an account and discovery, and satisfaction in respect of the services . . . defendants . . . put in . . . a plea of the statute of limitations. . . sustained by the Court below, and the bill was dismissed with costs."

[55] "decree . . . reversed, and the record remitted, with instructions that the defendants answer over to the plaintiff's bill." [54] "the complainant . . . belonged to a caste in which ignorance, submission, and oppression was the badge of their tribe. . . [55] why shall the condition of the plaintiff not account for a want of knowledge as to the facts which made him free? . . . it would seem . . . that the knowledge was acquired after he was put on the township for support, when the defendants refused to remunerate the overseers." [Coulter, J.]

¹ See *Oliver v. Kauffman*, p. 306, *infra*.

² 10 Pa. Stat. at L. 463.

³ Act of Mar. 1, 1780. 10 Pa. Stat. L. 67 (70).

⁴ *Id.* 72.

The Malaga, 16 Fed. Cas. 535 (2 Am. Law J. 97), 1849. In accordance with the act of congress of March 3, 1819¹ and with the treaty of Washington (between the United States and Great Britain in 1842) [536] "the president of the United States, on the 20th December, 1844, ordered Commodore Skinner to proceed with a squadron to the coast of Africa, to cruise there for the suppression" of the slave trade. Instructions of the secretary of the navy: "The cunning of the slave trader is constantly framing new disguises to elude detection . . . They take especial care to put on the appearance of honest traders, . . . It is their practice to run into some river or inlet, where they have reason to believe that slaves may be obtained, make their bargain with the slave factor, deposit their handcuffs and other things calculated to betray them, and then sail on an ostensible trading voyage to some neighboring port. At the appointed time they return, and, as the slaves are then ready to be shipped, they are taken on board without delay, and the vessel proceeds on her voyage. Thus the slavers do not carry within themselves any positive proof of their guilt, except before they reach the coast, and after they leave it with the slaves on board." Lieutenant Bispham, commander of the brig *Boxer*, one of the squadron, "was directed [1846] to cruise in the vicinity of Kabenda, 'where,' said his orders, 'our flag, it is believed, is frequently employed to cover the designs of slavers.' Immediately on his arrival" his suspicions were directed, by the commander of a British frigate, to an American vessel in the bay, and he boarded her the next day. She "proved to be the American brig *Malaga*, of Beverly, Massachusetts, with a cargo of farina, rice, rum, gunpowder, etc. . . [537] Her consignee at Kabenda was a noted slave factor, named Da Cunha; the port was one devoted exclusively to the slave trade and its tributaries; and the cargo was entirely suited to the exigencies of that traffic. . . She was under charter to Manuel Pinto de Fonseca, . . . the great employer of American vessels in the Brazilian slave trade, . . . and the rate of charter (about 1400 dollars a month, paid for the first month in advance, the vessel being of less than 184 tons) implied that the voyage was one of peculiar hazards. The vessel, moreover, when leaving the United States for Rio, had laid in a stock of provisions for a year; . . . [539] According to the mate, 'she had on board some three or four hundred bags of farina and rice.' The former . . . is a coarse flour, used almost exclusively for the diet of slaves on the passage to Brazil. . . that circumstance" "standing by itself unexplained, would go far to justify the arrest of the *Malaga*. . . which in an English court would condemn the ship." ² [537] "The *Malaga*, having arrived in the United States in charge of a prize crew, was libelled . . . Subsequently . . . it was ordered by the court that 'said libel be discontinued, and said brig *Malaga* be delivered to . . . captain thereof;'" A year later (July 1847) the captain and owners of the *Malaga* instituted a libel against Bispham, to recover damages for the alleged unlawful detention of the brig. Libel dismissed, with full costs: [539] "the whole case is pregnant with suspicion."

¹ 3 Stat. at L. 532.

² Act of 2 and 3 Vict. c. 73, sect. 4.

Commonwealth, ex rel. Miller et al., v. Cornish, 13 Pa. St. 288, March 1850. "By the charter ['of the African Methodist Episcopal Bethel Church, in . . . Philadelphia'] . . . granted in 1796, it was declared . . . that the trustees and members . . . acquiesced in . . . the rules of the Methodist Episcopal Church . . . That the elder of the [latter] . . . in . . . Philadelphia . . . should nominate the preacher who . . . was authorized to license exhorters and preachers from among the members . . . By an amendment . . . in 1807, the board of trustees were authorized to nominate a preacher, reserving the right to the elder . . . [289] as theretofore, to preach once on Sunday and once during the week. In 1816, the African M. E. C. separated from the white methodists . . . an amendment to the charter of the Bethel church in 1837 [1817?] . . . provided that the trustees, ministers, exhorters and leaders . . . should have power to elect from their own body, a presiding minister . . . In 1816, Allen was elected the first bishop . . . and from the date of the amended charter to his death continued to be the minister in charge of Bethel church. The bishop, his successor, occupied the same office until 1844. At the conferences of that year and of 1845, 6, 7, the bishop appointed the minister in charge. In . . . 1848, the bishop appointed the present respondent, . . . Dissensions having arisen, the board of trustees . . . elected S. Bassit, a licensed preacher of their own body, to be the minister in charge"

Held: [292] "The respondent . . . is the legally inducted elder in charge; and the trustees who were expelled by him . . . have no standing in court." [291] "a congregational election of a presiding elder could be neither" legal nor canonical.

Robson v. the Huntress, 20 Fed. Cas. 1060 (2 Wallace jr. 59), April 1851. "The *Huntress*, an American brig, bound on a trading voyage to Sierra Leone, and other places on the west coast of Africa, . . . [gave a] signal of distress. . . her captain had died . . . and . . . the first mate . . . was . . . near his end. The crew was composed of five coloured men and one white man, the second mate."

Charge to the grand jury on the law of treason, 30 Fed. Cas. 1047 (2 Wallace jr. 134), September 1851. [1048] "On the 18th of September, 1850,¹ congress, in order to give effect to a provision of the constitution, passed a law to enable the owners of fugitive slaves to recover them when found in the states to which they had fled. Slavery, the abolition of slavery, this law, or any law for the recovery of slaves, had been for some time prior to the passage of the act, the themes of passionate and fanatical debate by extreme factions in the Northern and Southern states. The country was convulsed by party rage, and that 'unity of government which constitutes us one people,' had itself become endangered. Not content with resisting the passage of the act, the northern part of the faction, immediately after its passage, set themselves to work through the pulpits, the press,² through public harangues and secret engines of every kind, to bring about resistance to the law, and to destroy the power of executing it through the force of public opposition. In this circuit, everywhere,

¹ 9 Stat. at L. 462.

² "especially in New England." *U. S. v. Hanway*, p. 301, *infra*.

owing to the energy of this court, and of the commissioners and officers appointed by it to execute the provisions of the act, the law was generally enforced with integrity. 'As the Lord liveth, and as my soul liveth,'—declared Mr. Justice Grier, just after its passage, and in the midst of an assemblage whose murmurs of violence were disturbing his administration of justice,—'this court will administer this law in its full meaning and genuine spirit till the last hour that it remains on the statute book.' In one of the interior counties, however, it was successfully resisted. Mr. Edward Gorsuch¹ . . . of Maryland, who had come to Christiana, in Lancaster county, Pennsylvania, to reclaim his slaves, was met by a body of armed men, assaulted, beaten and murdered. His son who was with him, was at the same time, beaten, robbed and stabbed, and his life endangered. An officer of the United States was driven back by . . . violence while proclaiming his character and exhibiting his warrant. The time and manner of these outrages, their asserted object, the denunciations by which they were preceded and the concerted action of the persons, evinced, it was thought, a combined purpose forcibly to resist the statute. And it was stated that for some time before this, gatherings of people had been held from time to time at West-Chester, a town near the place of the outbreak, at which denunciations of the law were made as unconstitutional and of no obligation against 'the higher law of every man's conscience:' the judges of the United States who would enforce it denounced as Scroggses and Jeffrieses, and exhortations made and pledges given to defy its execution to the last. The murder of Mr. Gorsuch, under such circumstances, caused a deep feeling throughout the whole country: and it being stated to the court that several bills of indictment for treason against the United States would be laid before the grand jury, that body was thus charged on the law of treason, by Kane, J. . . . If it has been thought safe, to . . . instigate others to acts of forcible oppugnation to the provisions of a statute . . . to represent the constitution . . . as a compact of iniquity, which it were meritorious to violate . . . the mistake has been a grievous one; . . . successfully to instigate treason, is to commit it."

U. S. v. Hanway, 26 Fed. Cas. 105 (2 Wallace jr. 139), October 1851. [106] "Hanway was indicted for treason² . . . A number of other persons also . . . for the same offence . . . The bill charged Hanway with intending to resist, in a treasonable way, the execution of an act of congress, passed September 18th, 1850,³ . . . commonly called 'The Fugitive Slave Law.'" The principal case: [110] "On the 9th of September, 1851, Mr. Gorsuch, of Maryland, having procured from a commissioner of the United States . . . warrants to arrest some fugitive slaves of his, went with Kline, an officer appointed by the commissioner, to Christiana, in Lancaster county, Pennsylvania, to take them. The place was inhabited by people, who, in general, were strongly opposed to the fugitive slave law; many of them being violent and fanatical on this subject. Mr. Gorsuch's son, nephew and some relatives, went with the officer. The fact that the writs had

¹ See *U. S. v. Hanway*, *infra*.

² See charge to the grand jury, p. 300, *supra*.

³ 9 Stat. at L. 462.

issued, became known to Williams,¹ a negro in Philadelphia, who preceded Kline and his party to the neighbourhood of Parker's house, where the slaves were lurking, and gave notice that the arrests were to be made, leaving with another person the names of Mr. Gorsuch's slaves, on a piece of paper. On the 11th, the officer and the others went over to Parker's, which they reached about daylight. While proceeding along the road, their attention was arrested by the sound of horns and the blowing of a bugle. After watching about Parker's house for a short time, one or two negroes were seen coming out of it. On discovering Kline and his party, they fled back into the house, and on pursuit being made by him, ran up stairs. These negroes were recognized by Mr. Gorsuch as his slaves. Kline entered the house, and almost immediately ascertained that a large number of negroes were concealed in the upper part of it; he nevertheless went to the stairway and called the keeper of the house to come down, stating that he was desirous of speaking to him. The negroes at this time were heard loading their guns. Kline, hearing the noise, said to them that there was no occasion for arming themselves,—that he designed to hurt no one, but meant to arrest two men who were in the house, and for whom he had warrants. Some one replied they would not come down. Mr. Gorsuch then went to the stairway, called his slaves by name, and stated that if they would come down and return home, he would treat them kindly, and forgive the past. Kline then read the warrants three times, and afterwards attempted to go up stairs, when a sharp-pointed instrument was thrust at him, and an axe afterwards thrown down, which struck two of the party below. Mr. Gorsuch then went to the front door of the house, and looking up to the window, again called to his slaves by name, when a shot was fired at him from the window. To show that his party was armed, Kline fired his pistol. At this period a horn was blown in the house, which was answered by other horns from the outside, as if by preconcerted action. The negroes then asked fifteen minutes time for consideration, which was granted to them. At this moment a white man was seen approaching the house on horseback. It turned out to be Hanway. Kline walked towards him, and inquired if he resided in the neighbourhood. According to the testimony of this Kline, who was not a person of the best character for veracity, his answer was . . . 'It is none of your business.' Kline replied, by letting him know he was a deputy marshal of the United States, gave him the warrants to read, and called upon him, in the name of the United States, to assist in making the arrests. Hanway replied 'he would not assist—that he did not care for that act of congress or any other act,—that the negroes had rights and could defend themselves, and that he need not come there to make arrests for he could not do it.' By this time another white man had arrived on the ground (Lewis),² who walked up to Kline, and asked him for his authority to be there. Kline showed his papers to him also. . . Lewis, after reading the warrants, said, 'the negroes had a right to defend themselves.' Kline then called upon him to assist him in making the

¹ See *U. S. v. Williams*, p. 304, *infra*.

² [113] "Lewis was not included in the *present* indictment."

arrests, when he refused, and would not even tell his name. Kline then asked Hanway where his residence was? He replied, 'You must find that out the best way you can.' . . . By this time the blacks had gathered in very large numbers around the house, armed with guns, which they commenced pointing towards the marshal. At this juncture, Kline implored Hanway and Lewis to keep the negroes from firing, and he would withdraw his men, leave the ground, and let the negroes go. Hanway instantly replied, 'they had a right to defend themselves, and he would not interfere.' Kline's answer was, 'they were not good citizens, or they never would permit the laws to be set at defiance in this way.' One of Mr. Gorsuch's family then remarked, 'that all they wanted was their property, and that they did not wish to hurt a hair of any one's head.' Lewis replied, 'that negroes were not property;' and . . . [III] walked away. By this time another gang of negroes had arrived, armed with guns and clubs, and Hanway rode up to them and said something which was not heard. He moved his horse out of the way of the guns; the negroes shouted, and immediately fired from every direction. Hanway rode a short distance down the lane leading from Parker's house, and sat on his horse watching the blacks. Kline then called to Lewis, telling him a man was shot, and begging him to come and assist, which Lewis refused to do. The number of negroes assembled at this time was between fifty and a hundred. Before the firing commenced, Mr. Gorsuch was struck with a club on the back part of the head, and fell forward on his hands and knees. As he was struggling to rise, and in the act of getting upon his feet, he was shot down amid frantic yells and howlings; and when prostrate on the ground, was cut on the head with a corn cutter, and beaten with clubs. His son . . . immediately rushed to his assistance, when his revolver was knocked out of his hand, and he himself shot in various parts of the body, rendering him utterly helpless. A nephew was attacked at the same time, and defended himself with his revolver, which he twice snapped at his assailants, but the powder being wet it would not go off. He was also struck down, beaten and maltreated. When the firing commenced, Kline . . . escaped into a corn-field, but on seeing Mr. Gorsuch's son struggling, apparently wounded and bleeding, went to his assistance, and placed him under the shelter of a tree until aid could be procured. Two . . . others of Kline's party were at the time making their escape. The negroes overtook one . . . knocked him down with a gun, beat and bruised him. . . . A number of shots were fired at others, . . . these last rushed towards Hanway, . . . besought him to prevent the negroes from pursuing farther. He said he could not. They then asked for permission to get upon his horse, which would afford the means of making their escape. He refused . . . and . . . rode off at full speed. Several of the United States party were subsequently carried to houses in the vicinity, and were a long time recovering from their wounds. Mr. Gorsuch was killed. . . . Hanway was a native of one slave state, had resided long in another, had been a resident of a part of the country far distant from Pennsylvania, and had been living in the neighbourhood of Christiana for only three years past, and while there was evidence that anti-slavery conventions had been held at West Chester, a place near Hanway's residence, where the fugitive slave

law was denounced as unconstitutional, wicked and of no force against 'the higher law of every man's own conscience,' and denunciations made against every judge, who would enforce it, as governed by the spirit of Jeffries and Scroggs; there was no evidence that Hanway attended these meetings. As to the events of the morning of the 11th of September, the defence showed that about sunrise of that day, Lewis . . . was informed by a person, who . . . called at his house, that there were 'kidnappers at Parker's house.' And starting at once for this place, as he passed, gave the information to Hanway, who was just getting up. Hanway . . . rode over, and at the place met Lewis, . . . In regard to this matter of 'kidnappers,' it was not easy to gather the exact facts of the case. It was certain that in September, 1850, and in March, 1851, men of bad character . . . not professing to have any warrant of law, had in a rough way come to Christiana, and carried away at night, out of the houses where they were, two negroes, then residing there, who never again returned. But whether these negroes were runaway slaves, now taken home by men, who expected to be paid by the owners, or to get a reward publicly offered; or whether they were free persons of colour, stolen by 'kidnappers' in the legal sense of the word, was not proved. [112] The term was perhaps a slang one . . . which had been frequently applied with others, as bad, to persons who came from the South, to recover their runaway slaves. It appeared, however, that the events excited some alarm in the place, which had many persons in it opposed to the fugitive slave law, and that there was some feeling of insecurity professed among the people of that neighbourhood." The jury found for the defendant, and the prisoner was discharged.

U. S. v. Williams, 28 Fed. Cas. 631 (4 Am. Law J., n. s., 486), February 1852. Indictment under the seventh section of the fugitive slave law.¹ The defendant, a colored man, [634] "went up in the cars on the night of the 9th of September (the outbreak near Christiana being on the morning of the 11th,) as far as Penningtonville, arriving there about 2 o'clock on the morning of the 10th, . . . went after day-light . . . to the house of a witness, whom he did not know, some three miles from Parker's house, saying that he had mistaken it for the house of another man, whom he wished to inform that he had come up in the cars with several men who were after slaves, and he requested the witness to let the slaves know; that he said one of the slaves was named Nelson, and that the names of the others were on a paper that he had left at Christiana, . . . he got into the cars about 9 o'clock in the morning, and returned to Philadelphia; and that when arrested for treason some five days afterwards, he said to the officer . . . that he had conveyed the news to Christiana, and would do so again if he was at liberty, and that he considered it his duty to do so. . . [There had been] anxieties and alarm for some weeks before among the colored population of the neighborhood, in consequence of attempts made to kidnap free persons near them, some of which had been successful, as was proved," Verdict not guilty.

¹ 9 Stat. at L. 462 (464). See *U. S. v. Hanway*, p. 301, *supra*.

U. S. v. Brune, 24 Fed. Cas. 1280 (2 Wallace jr. 264), April 1852. "an indictment¹ . . . charged that Brune, being second mate of the brig *Fame*, owned by a citizen . . . of the United States, . . . did . . . aid . . . in . . . detaining on board . . . 400 negroes with intent to make them slaves, . . . The fact that the defendant had been engaged in a slaving voyage, was perfectly proved: and to prove that the vessel was owned by a citizen . . . of the United States, the prosecution . . . offered the ship's registry,² and evidence of general reputation of ownership,"

Held: [1281] "The registry . . . is not even *prima facie* evidence of [ownership] . . . in a criminal prosecution like this; nor would common reputation be." [Grier, J.] Footnote: "the court charged in favour of the prisoner. The jury found a verdict of 'Not guilty under the charge of the court; but guilty in point of fact;' . . . which the court obliged them to alter to one of not guilty."

Van Metre v. Mitchell, 28 Fed. Cas. 1036 (2 Wallace jr. 311), October 1853. [1037] "Jared and another negro ran away from their master in Virginia, and came without stopping to the defendant Mitchell, in the town of Indiana . . . in Pennsylvania [about the last of April, 1845]. Why they made their way to that place, or by whom they were directed to make application to the defendant, did not appear. But there, as in a few other parts of Pennsylvania, it was matter of common knowledge—though not perhaps capable of the *clearest* proof—that fanatics, 'friends of humanity,' were banded together under professions of conscience and philanthropy, and vows of propagandism to disregard the constitution and laws of the country, which secure to our Southern citizens a right to follow and reclaim their runaway slaves. A regularly organized association existed there, as in some other places, to entice negroes from their owners, and to aid them in escaping to the North. And there was a good deal of evidence to prove the connection of the defendant with these persons. He appeared, if the evidence against him was true, to be a 'Philanthropist' by distinction, 'a Friend of the Black Man.' He discoursed intemperately against Southern planters as kidnappers, dealers in human flesh, monsters in men's form, and emissaries of hell. When a Southern planter came to Indiana to see if his slaves were there, Mitchell gave out to black people that 'Indians were abroad,'³ and paid the negroes in his employ their wages forthwith. When requested by a supposed agent of an owner for leave to visit his farm, leave was granted only on condition that he would not molest any man of colour upon it. He cautioned persons—such supposed agents—to be careful how they interfered with any negroes in Indiana, as they were armed, had guns and knives, and were able to take care of themselves, and most likely would fight. When one of them was arrested, and the defendant was asked about the others, and if they had best leave the place, he said that they had been apprised of their danger that evening, and were safe: that they were safe where they were, being armed. On one occasion he had a meeting of 'Friends

¹ Under the act of Congress of May 15, 1820, ch. 113, sect. 5. 3 Stat. at L. 601.

² Wallace, Reporter: "I have reason to think that it was a ['copy or'] certified copy of the registry which was offered in evidence."

³ [1041] "a slang phrase, well understood in the country as a warning to be on their guard, and make their escape."

of the Black Man,' in his house, a runaway negro being secreted in a back room; and a committee was appointed to *protect and counsel* the fugitives, and to have them paid wages whenever necessary. When Jared and his companions arrived at Indiana, the defendant sent them with a letter to his tenant residing on his farm, about nine miles from town. They were directed to take possession of a vacant house on the defendant's farm, and were furnished with bedding, cooking utensils, grain, a cow, and axes. They were employed by the defendant to labour on his farm in making fences and otherwise, and also hired themselves to work for the neighbours. The defendant gave them money with which they bought ammunition and gun caps, and they had guns and dirks. They remained . . . in this way about four months; and the defendant well knew that they were fugitive slaves, and that Van Metre, the plaintiff, owned them. But no notice, that is to say no formal or specific notice, was ever given by the plaintiff to the defendant of that fact. It was well known to people in the town . . . and in the neighborhood . . . that these slaves were on Mitchell's farm; and except that he once asked a partner of his, who had a saw mill some distance from town, if he could not find employment for the negroes at this mill, alleging as a motive, 'that they would be out of the way if they were there'—there was no evidence that Mitchell desired to conceal their place of retreat, . . . Two counts of the declaration charged the defendant with 'harbouring *and* concealing;' two others with harbouring.' " ¹ Grier, J., charged [1040] "'notice' as used in this act . . . means knowledge. . . [1042] If . . . you believe . . . [defendant] has afforded shelter . . . to the fugitive to further his escape, . . . you will find for the plaintiff \$500." Verdict accordingly. Motion in arrest of judgment overruled.²

Oliver et al. v. Kauffman, Weakley, and Breckbill, 18 Fed. Cas. 657 (1 Am. Law Reg. 142); 678 (2 Wallace jr. 324), October 1853.³ [678] "This suit was not, like the last,⁴ for the \$500 penalty, but an action on the case for damages"⁵ caused by the illegal harboring and secreting of the plaintiffs' fugitive slaves by the defendants. Oliver [658] "had formerly resided in Maryland, and removed to . . . Arkansas, where he died in . . . 1846. . . Twelve slaves, consisting of two husbands and their wives and their children, were allotted to the plaintiffs [his children]. In May, 1847, the mother returned to Williamsport, Maryland, taking with her the plaintiffs . . . and their slaves. On their way they passed through Pennsylvania, on the National road between Wheeling and Cumberland. In October, 1847 . . . these slaves fled to Pennsylvania, and were pursued by the agent and [the] friend of the plaintiff[s] for the purpose of capturing them and taking them back. In this attempt they were unsuccessful. The fugitives were traced through Chambersburg into Cumberland county." [678] "to the defendant's barn"⁶ . . . it rather appeared

¹ Act of Congress, Feb. 12, 1793, sect. 4. 1 Stat. at L. 302 (305).

² *Van Metre v. Mitchell*, 28 Fed. Cas. 1042 (1044).

³ See *Kauffman v. Oliver*, p. 297, *supra*.

⁴ *Van Metre v. Mitchell*, p. 305, *supra*.

⁵ "saving . . . to the person claiming such labour . . . his right of action . . . on account of the said injuries" Act of congress, Feb. 12, 1793, sect. 4. 1 Stat. at L. 302 (305).

⁶ They were secreted first in Kauffman's barn, later in Weakley's.

that *before* they got there, the plaintiff[s] had lost the track of them . . . and that although the defendant had harboured or concealed them, this was not the cause of the plaintiff's [*sic*] loss of them." Grier, J., charged the jury: [658] "The odium attached to the name of 'Abolitionist' . . . should not be suffered to supply any want of proof of the guilty participation of the defendants . . . Beware also, that the occasional insolence and violent denunciation of the South be not permitted to prejudice your minds against the just rights guaranteed to them by the constitution and laws of the Union. An unfortunate occurrence¹ has taken place . . . which, as it is a matter of public history, and as such has been introduced into the argument of this case, it becomes the unpleasant duty of the court to notice in connection with this portion of our remarks. A worthy citizen of Maryland, in attempting to recapture a fugitive, was basely murdered by a mob of negroes on the southern borders of our state. That such an occurrence should have excited a deep feeling of resentment in the people of that state, was no more than might have justly been expected. That this outrage was the legitimate result of the seditious and treasonable doctrines diligently taught by a few vagrant and insane fanatics, may be admitted. But by the great body of the people of Pennsylvania, the occurrence was sincerely regretted, and an anxious desire was entertained that the perpetrators of this murder should be brought to condign punishment. Measures were taken, even at the expense of sending a large constabulary and military force into the neighborhood, to arrest every person, black and white, on whom rested the least suspicion of participation . . . [659] A large number of bills of indictment were found against the persons arrested for high treason, and one of them was tried in this court. The trial was conducted by the attorney general of the state of Maryland; and although it was abundantly evident that a riot and murder had been committed, by some persons, the prosecution wholly failed in proving the defendant, on trial, guilty of the crime of treason with which he was charged. But, however much it was to be regretted that the perpetrators of this gross offence could not be brought to punishment, the court and jury could not condemn, without proof, any individual, to appease the justly offended feelings of the people of Maryland. Unfortunately, a different opinion with regard to our duty in this matter, seems to have been entertained by persons holding high official stations in that state; and certain official statements have been published, reflecting injuriously upon the people of Pennsylvania and this court, which have tended to excite feelings of resentment, and to keep up a border feud, which, if suffered to have effect in our courts, or in the jury-box, may tend to prejudice the just rights of the people of Maryland, and of the plaintiffs in this case. . . . It is your duty to treat with utter disregard ignorant and malicious vituperation of fanatics and demagogues, whether it comes from North or South, . . . [663] If in your judgment, the hypothesis of the defendants' counsel is supported by the evidence; if Mr. Breckbill was merely a spectator, . . . if Mr. Weakley did not participate . . . at all, you should find them not guilty. If you believe, also, that Kauffman . . .

¹ See *U. S. v. Hanway*, p. 301, *supra*.

merely fed them out of charity, and suffered them to rest for a few hours in his barn; that they were brought there without his knowledge, consent, or approbation, and taken away without his assistance, or any act of his, to enable them to elude the pursuit of their owners, or to further their escape, your verdict should be in his favor also. If, on the contrary, you find . . . they were received by him . . . and secreted in his barn, then taken by him . . . after night, in order to assist them to escape, . . . transferred by him, with the . . . assistance of Breckbill, to the barn of . . . Weakley; if Weakley kept them secreted . . . and removed them on the following night to places unknown . . . you should find for the plaintiffs the full value of the slaves in damages, as against all . . . or such of them as you believe . . . to have had an action participation ”

[664] “ The jury, failing to agree, were discharged, standing ten for the plaintiffs, and two for the defendants.” [679] “ On the second [trial] they found a verdict of guilty as to one of the defendants and damages of \$2800 against him. The other defendants they found ‘ not guilty.’ ”

Ex parte Jenkins et al., 13 Fed. Cas. 445 (2 Wallace jr. 521), October 1853. First case: “ Jenkins, Wynkoop, Crossin and Keith, deputy-marshals of the United States, in executing, in Luzerne county, Pennsylvania, a warrant . . . to arrest one William Thomas, a negro boy, as ‘ a fugitive from labour,’ had been obliged to have a violent and bloody encounter with him, in which the negro, being encouraged by certain people in the neighbourhood, . . . escaped . . . One Gildersleeve . . . was induced to go before a county Justice of the Peace, and swear to the facts necessary to procure a warrant as for an assault and battery, with intent to kill. . . the constable of the borough . . . arrested the deputy-marshals and put them in gaol. On a petition from the prisoners . . . a *habeas corpus* from this [circuit] court [of the United States] was applied for . . . Mr. David Paul Brown . . . objected¹ . . . [446] that, as . . . the deputy was a prisoner . . . under legal process from *the state* magistrate, it was useless to proceed;² . . . The writ . . . having been granted, notwithstanding, and the constable having . . . made a return . . . Mr. Brown, after reading for him the return, was going on to argue as counsel against the discharge; but, being then called upon . . . to state for whom he appeared, said . . . for the *constable*. The court informed him that he had already performed his duty to his client in making that officer’s return . . . also . . . [that] on the application for the writ, it had announced . . . from the Bench, that if he or any other . . . appeared by authority from the Governor, or Attorney-General of Pennsylvania . . . the court would be . . . happy to hear him . . . But as the court had . . . no reason to believe that . . . those officers had shown any countenance to such proceedings, and as the negro . . . had confessed the justice of his arrest by fleeing . . . it would not permit mere volunteers to interfere for the purpose of embroiling the state of Pennsylvania against her will, with the United States, nor permit that any association, however respectable some of its members might be in private life, should assume to be the guardians of *her* peace and dignity.

¹ “ The court . . . allowed Mr. Brown to speak as *Amicus Curiae*, without . . . inquiry as to who had authorized him.”

² Act of Congress of Sept. 24, 1789, sect. 14. 1 Stat. at L. 82.

Mr. Brown . . . being in fact, it was supposed, employed by certain societies in Philadelphia, known as 'Friends of Humanity,' 'Abolitionists,' etc., was not permitted to speak. . . the District Attorney of the United States . . . stated that the writ had not . . . been . . . granted under the old . . . powers given by . . . the Judiciary Act" [447] "but . . . under special powers conferred by the act of congress of 2d March, 1833, (chapter 57, sect. 7,)¹ . . . [448] the order of the court is, that the prisoner [*sic*] be discharged."

Second case, February 1854. "Some time after . . . the negro, Thomas, brought a civil suit in the Supreme Court of Pennsylvania against . . . the same deputy marshals. The negro . . . filed no affidavit of his cause of action, but . . . two affidavits [were] filed by other persons. They showed, that on the day of the attempted arrest . . . Thomas . . . came out of a hotel in Wilkesbarre, wounded, bleeding and faint—that he was pursued—that there was a cry of 'Shoot him,' and the sound of pistol shots—that he made his way to the river, and plunged in, declaring 'that he would never be taken,'—that he subsequently came out, but was driven back again to the water's edge, by a presented pistol—that there were many persons on the river bank, some of whom were menacing, and some who are spoken of as the 'pursuers' and 'the officers;' that among the persons on the bank" were Wynkoop, Crossin, and Jenkins. "a judge . . . allowed a *capias ad respondendum* in trespass, *vi et armis*, . . . All four officers were arrested by the sheriff . . . and not giving bail, committed to prison. In a suit of the United States, at their relation, against . . . the sheriff, they now presented their petition for a *habeas corpus*, . . . [450] Relators discharged."

Third case, May 1854. "The prisoners had not been discharged very long before they were arrested a third time, by the sheriff . . . under a bench warrant of outlawry . . . based on an indictment . . . charging them with riot, assault and battery, and assault with attempt to kill; but not setting forth that the parties indicted were officers of the United States, nor that . . . they were acting . . . in pursuance of a law of the United States, . . . The prisoners had recently presented a petition for a *habeas corpus*, in which . . . they averred, that all their action . . . was lawful . . . and in pursuance of a legal warrant directed to them by a duly constituted commissioner of the United States, . . . indorsed by one of the justices of the Supreme Court. On the return . . . the petitioners offering to prove these facts, it was objected, by Mr. D. P. Brown, that they were concluded by the warrant and indictment, and that this indictment not setting forth any case which could give this [federal] court jurisdiction to interfere under the act . . . [451] of . . . 1833 . . . the court could not go behind it;" Kane, J.,: [May 9, 1854] "I cannot be restricted to the evidence which may be found among the records of another court. . . [452] it is my duty to hear and determine, notwithstanding the proceedings . . . before a state court, just so far as may bear upon . . . the relators' right to a discharge under the laws of the United States. . . If the evidence . . . shall show that these relators . . . have transcended the rightful limits

¹ 4 Stat. at L. 634, 635.

of their authority, . . no considerations . . will press upon this court to rescue them from punishment, by withholding them from the tribunal which demands their presence. . . [453] I must therefore proceed to hear the case on its merits . . and . . must receive the evidence . . offered by the relators."

Hood's estate, 21 Pa. St. 106, 1853. [107] "Hood . . was born in Philadelphia, in 1786, . . In about 1818, he purchased land and servants in . . Cuba, and made a coffee estate,"

Hartman v. Insurance Co., 21 Pa. St. 466, 1853. [467] "action . . founded on a policy of insurance . . dated . . March, 1851. . . the night following . . the insured . . committed suicide." "The company . . plead that . . Callender misrepresented his occupation, stating that he was a farmer; whereas . . he was engaged in the business of *slave-catching*." [476] "It was shown on the trial, that the assured had not for many years been a farmer; that he had been at Wilkesbarre in search of fugitives, and had gone to Hagerstown to bargain for the apprehension of others; that he was at Harrisburg in pursuit of negroes whom he spoke of running over to Frederick without a warrant. In short, the evidence is very strong that for some months at least previous to his death, he was habitually and very diligently occupied at this business. . . [477] he told a person at Hagerstown, a few days before he effected the insurance, that he was engaged in that business and had a man at Harrisburg who knew all the slaves that ran away from that part of Maryland." The clerk of the insurance company testified: [471] "we would not take a person at any price if it was known that he was engaged in slave-catching. I consider it a much more perilous occupation than farming—liable to be shot down or assassinated:" Verdict for defendant. Judgment thereon affirmed.

Foremans v. Tamm, Grant 23, 1853. "action of trespass *vi et armis quare clausum fregit*, brought by Tamm, a colored man, . . [who] claimed title to the *locus in quo*, by virtue of being a pre-emptor under the Act of Assembly,—that the land was . . vacant . . and that he had settled . . 'with a manifest intention of making it a place of abode and the means of supporting a family.'¹ Foremans defended on the ground that a colored man was not within the meaning of the Act . . The Court . . instructed . . that a colored man might acquire a pre-emption right under the Act . . and a verdict was rendered for the plaintiff."

Judgment thereon affirmed: "The question has no relation to the political rights of the colored population. Whenever the white population, who settled this Commonwealth, under a charter and laws derived from a government established by a similar caste . . think proper to admit into political partnership either the black population of Africa or the red aborigines of America, they have a right to do so. Until this be done, the negro and the Indian must be content with the privileges extended to them, without aspiring to the exercise of the elective franchise, or to the right to become our legislators, judges and governors. . . [24] There

¹ Act of Dec. 30, 1786. 12 Pa. Stat. at L. 351.

is nothing in the principles of the common law, or in the former condition of the colored population, which excludes them from acquiring . . . freedom and the right to purchase property, by the consent, . . . express or implied, of those who had hitherto held them in bondage. . . [25] The effect of . . . [the] act of manumission [of 1780] is to give to the colored man the right to acquire . . . and dispose of lands . . . as fully as the white man . . . an incident to the grant of his freedom. There is nothing in the Act [of 1786] . . . or usages of the State, in relation to pre-emption rights acquired by settlement, which excludes the colored man . . . Without doubt there are many titles to land held by colored people, without dispute. Within sight of the courthouse in which this question was first raised, there is an island in the Susquehanna, the title to which was taken out of the Land Office by a colored man, whose right we have never heard disputed." [Lewis, J.]

Fulton v. Moore, 25 Pa. St. 468, 1854. Cooper's will, 1821: [469] "To his wife . . . the two black boys,"

Fontain v. Ravenel, 17 Howard 369, December 1854. Will of Frederick Kohne, of Charleston and Philadelphia, dated 1829: [382] "I . . . empower my executors . . . [383] after the decease of my . . . wife, to dispose of [the remainder of all my estate] . . . for the use of such charitable institutions in Pennsylvania and South Carolina, as they . . . may deem most beneficial to mankind, and so that part of the colored population in each of the said States . . . shall partake of the benefits thereof." "no such appointment having been made . . . during the lifetime of the executors . . . [391] we are not satisfied that the fund . . . ought to be withdrawn from . . . the heirs of . . . Kohne."

Passmore Williamson's Case, 26 Pa. St. 9, 1855. See *infra*.

U. S., ex rel. Wheeler, v. Williamson, 28 Fed. Cas. 682 (3 Am. Law Reg. 729), July 27, 1855; 686 (4 Amer. Law Reg. 5), October 1855. [26 Pa. St. 11] "Colonel John H. Wheeler, of North Carolina, the United States' minister to Nicaragua" "presented his petition to the District Court of the United States, . . . setting forth that he was the owner of . . . Jane [and her two children] . . . and that they were detained . . . by . . . Passmore Williamson, . . . prays for a writ of *habeas corpus*, to be directed to . . . Williamson, commanding him to produce their bodies . . . granted . . . 18th July" [28 Fed. Cas. 682] "On the 19th, no return being made, and it appearing that . . . [Williamson] was absent from the city, Mr. Wheeler's counsel applied for an *alias* writ . . . allowed, . . . On the following morning, Williamson appeared" and [684] "made return, that the persons named . . . [685] 'nor either of them . . . was . . . at any . . . time, in . . . [his] custody, power or possession' . . . [Judge Kane] allowed the relator to traverse this return; and several witnesses . . . testified" Wheeler's evidence: [682] "I left Washington . . . the 18th . . . under orders from my government to proceed to . . . Nicaragua . . . was upon my [way] . . . to take passage from New York, in company with my three servants, [[26 Pa. St. 10] 'Jane, aged about thirty-five . . . her sons, Daniel about twelve, and Isaiah . . . about seven,'] [[687]

'stopped at . . . Hotel . . . went to dinner; and while . . . absent . . . [Jane] informed one of the waiters . . . (a colored woman) that she and her children were slaves.'¹ [[684] 'Still, a colored man, . . . clerk at the Anti-Slavery office in North Fifth street' 'informed [Passmore Williamson] . . . secretary of the active committee of the old Pennsylvania Anti-Slavery Society.']]² . . . On going on board . . . I retired with my three servants to the hurricane deck . . . Williamson . . . came up . . . and asked if he might speak to my servants. I replied that I could not imagine what business he could have with [them] . . . and that if he had anything to say I was the proper person to say it to; Mr. Williamson then pushed past me, and asked the woman (Jane) if 'she was a slave, and if she knew she was in a free country,' . . . and then, 'if they (the servants) would like to be free;' "³ [684] "Mr. W. [Wheeler] reminded her of her children at home, and asked if she wanted to leave them; she replied that she did not, but that she wanted to be free; Mr. Wheeler insisted that the woman did not want to go; there was an excitement and the children cried."³ Williamson "was followed by some dozen or twenty negroes, who by muscular strength carried the slaves to the adjoining pier; two of the slaves . . . if not all three, struggling to release themselves, and protesting their wish to remain with their master; two of the negro mob, in the meantime, grasping Col. Wheeler by the collar, and threatening to cut his throat if he made any resistance. The slaves were borne along to a hackney-coach that was in waiting, and were conveyed to some place of concealment; Mr. Williamson following and urging forward the mob, and giving his name and address to Col. Wheeler, with the declaration that he held himself responsible towards him for whatever might be his legal rights, but taking no personally active part in the abduction after he had left the deck."⁴ [683] "after the negroes had got off the boat, Mr. Williamson walked behind the crowd, and said something in a whisper to a large burly policeman, who was standing near." Wheeler "spoke to the policeman in a whisper, asking him to observe the people who were committing the outrage, but . . . [he] refused to have anything to do with the matter, as 'he was not a slave-catcher.'" Wallace testified: "I am an officer. . . saw several negroes forcing along a colored woman, who was holding back with all her strength, and two boys who were also struggling; they were all crying; . . . the defendant whispered to me . . . that they were slaves,—they were getting away,—and asked me to protect them; I said that I would have nothing to do with the matter." Mr. Vandyke, district attorney, "moved for an attachment against the respondent, for contempt in making a false return to the writ. . . Williamson was then affirmed: . . . 'I have had no control over them, nor have I had any hand in their escape; . . . I saw [Still] . . . this morning . . . he said they were safe, and that they would not return under any circumstances;' . . . [684] Kane, District Judge, said that the case was of so grave a character . . . that he was desirous to take time to consider"

¹ Statement of Jane Johnson in her petition, p. 313, *infra*.

² Testimony of Williamson.

³ *Id.*

⁴ Judge Kane's summary.

[691] "urged . . . that if practicable, the negroes should . . . be brought before the court. But the negroes were not produced. . . afterwards . . . by a process of a Pennsylvania state court, they or some of them were brought forward . . . in this city, to testify for Mr. Williamson or some of his confederates. But before the court of the United States, . . . at the distance of perhaps a hundred yards, it was not thought . . . expedient or practicable to produce them. . . The decision was announced at the end of the week. It was, that Mr. Williamson's answer was evasive and untrue;" [685] "He was the person by whose counsel the so-called rescue was devised. . . [686] Let Mr. Williamson . . . be committed to the custody of the marshal without bail or mainprise, as for a contempt of the court in refusing to answer to the writ of *habeas corpus*" "United States Marshal Wynkoop took the prisoner . . . and conveyed him to . . . prison," On July 31 Williamson [26 Pa. St. 11] "applied to . . . Chief Justice [Lewis of the Supreme Court of Pennsylvania] . . . for a writ of *habeas corpus* . . . refused."¹ In August he applied [9] "to the Supreme Court [of Pennsylvania] sitting in banc" Writ refused: [23] "the District Court had power to punish for contempt . . . the prisoner is convicted of such contempt—and . . . the conviction is conclusive upon us." [22] "Mr. Williamson stopped the investigation *in limine*; . . . There is no reason to believe that any trouble whatever would have come out of the case if he had made a true, full, and special return of all the facts;" [Black, J.] [28 Fed. Cas. 686] "October 3, 1855, . . . Mr. Townsend and Mr. . . Read, presented to the [district court for the eastern district of Pennsylvania] . . . a paper purporting to be 'the suggestion and petition of Jane Johnson, [[694] "now in Massachusetts"];' on which they moved for a rule to show cause why the writ of *habeas corpus*, issued against . . . Williamson, should not be quashed. The paper . . . was in the following form: . . . [687] 'Your petitioner was very desirous of procuring freedom . . . and before she left Washington determined to make an effort to do so, if . . . Wheeler should take her North. . . Williamson . . . informed [her] . . . that if she wished her liberty, she could go ashore . . . [She] voluntarily . . . left the boat, and . . . has never seen him since . . . was not at . . . any time . . . in the custody . . . of Mr. Williamson, . . . prays . . . that the . . . writ of *habeas corpus* . . . may be quashed, and . . . that . . . Williamson may be discharged from his imprisonment.'"

Held: [695] "The application to enter this paper among the records of the court, must . . . be refused." [694] "She has . . . no status whatever in this court."² [691] "Mr. Williamson . . . is now undergoing restraint, not punishment. . . 'during the contempt:' . . . it had appeared from the defendant's declarations . . . that he supposed Mr. Wheeler's slaves to have become free, . . . incorrect, . . . By the common law, as it came to Pennsylvania, slavery was a familiar institution. . . The counties of New Castle, Kent, and Sussex, which were . . . [692] for many years . . . annexed to Pennsylvania, and governed by the same law,

¹ See *Williamson v. Lewis*, 39 Pa. St. 9.

² [694n.] "Neither the petition for the writ of *habeas corpus*, nor the writ itself, names Jane Johnson."

continue to recognize slavery up to the present hour. It survived in our commonwealth, as a legally protected institution, until some time after the census of 1840; . . . The act of 1847 repealed so much of the act of 1780 as authorized . . . owners of slaves to . . . retain [them here] . . . for any period of time whatever. But it . . . left the right of transit for property and person, over which it had no jurisdiction, . . . as it stood under the constitution of the United States and the law of nations. . . . the right of every citizen of a friendly state. . . . what is to be deemed property . . . refers itself necessarily to the law of the state from which the citizen brings it: . . . no man in the convention . . . thought of making the right of transit a subject of constitutional guaranty. Everything . . . about the constitution implies it. . . . [693] when the constitution was formed in 1787, slaves were recognized as property, throughout the United States. The constitution made them a distinct element in the distribution of the representative power and in the assessment of direct taxes. They were . . . returned by the census, three years afterwards, in sixteen out of the seventeen states . . . and as late as 1830, they were found in every state of the original thirteen. How is it possible then . . . to regard slave property as less effectively secured by the provisions [of the constitution] . . . than any other property which is recognized as such by the law of the owner's domicil? . . . We revolt in Pennsylvania . . . at this association of men with things as the subjects of property; for we have accustomed ourselves for some years—now nearly fifteen—to regard men as men, . . . *sub modo*, however; for we distinguish against the negro much as our forefathers did; and not perhaps with quite as much reason. They denied him civil rights, as a slave: we exclude him from political rights, though a freeman.” [Kane, J.]

U. S. v. Darnaud, 25 Fed. Cas. 754 (3 Wallace jr. 143), October 1855. [755] “Darnaud . . . who had been engaged in a slaving voyage on the *Grey Eagle*, was indicted.¹ . . . five distinct charges were made . . . 1st, receiving [five hundred] negroes on board . . . on the coast of Africa; 2d, confining and detaining on board . . . 3d, aiding . . . in confining and detaining . . . 4th, delivering on shore at Cuba . . . having previously sold; 5th, delivering on shore . . . with the intention of selling. . . . counsel of the prisoner . . . moved that the prosecution should be made to elect on which of the counts it would proceed;” Grier, J.: [756] “I think . . . that the selling and delivering . . . on the Cuban coast is a distinct transaction.” The district attorney “elected . . . [to strike] out all which charged with crime on the coast of Cuba.” Statement of facts: “The *Grey Eagle* was an American built vessel; . . . Marsden [a citizen of the United States] . . . concluded a purchase of the vessel for \$9,100, . . . March 4th, 1854. . . . commenced the active preparation . . . for a voyage. . . . employed the rigger, the carpenter, and sailmaker; bought the coppers which were put on board the vessel for cooking purposes; purchased 28,000 pounds, upwards of 10 tons, of rice; 12 or 14 barrels of beef, and half the number of pork; 24,000 gallons of water; in short he, and he alone,

¹ Under the act of Congress of May 15, 1820, ch. 113, sects. 4 and 5. 3 Stat. at L. 600, 601.

had the vessel prepared for the voyage. . . [751] The vessel, by the agency of Marsden, and by the assistance of Darnaud [the captain], . . . was ready . . . 25th of March to be put afloat. . . Marsden employed a broker to make a bill of sale to . . . Gray . . . a citizen of the United States. . . crew list has appended to it the oath of a notary public that he has received sufficient proof of the American character of the vessel and of the crew . . . The position of the prosecution was that the transfer from Marsden was a mere fraud . . . to get Marsden's name as owner from off the custom house registry. . . that Marsden was still owner . . . On the other hand there was . . . evidence . . . that Marsden was a man of no property . . . and . . . that all the funds came to him from . . . Machado, . . . naturalized here, . . . merely the agent of another Spaniard *not naturalized*, one Rivero, who . . . [was] on board . . . during her voyage to Africa, as one of her two or three captains;¹ . . . So far as concerned the citizenship of the prisoner—a matter important only in case the vessel was . . . not owned by an American—it appeared that . . . [he] was a native of France, and came to this country twelve or fourteen years before this voyage; . . . represented himself as a Frenchman . . . [758] when arrested . . . [but] had hailed for twelve or fourteen years as from the United States . . . and had acted as captain of a vessel which he knew was registered as American; a privilege allowed by law to American citizens only.” Judge Kane's charge to the jury: [760] “Piracy is essentially an offence against the universal law of the sea. . . The slave trade, however horrible it may be, is not within that category. . . It is only within a few years . . . that the first declaration was made by national authority that it was a crime. . . there are nations professing to be civilized, Christian nations, that have refused peremptorily to unite in so recognizing it. . . [761] The element, therefore, of citizenship . . . is an essential condition . . . of the crime . . . charged; . . . [762] [I.] You are to judge . . . whether the . . . ownership . . . not according to the paper title . . . but . . . in point of fact was in Marsden, . . . were a different doctrine to be held by our courts, there would be scarcely any protection whatever against the arts of slave traders. If the paper title . . . indicated what was the ownership . . . no one American, base enough to engage in the slave trade, would ever be found on . . . a vessel with an American register, . . . she would be sold to some Rivero, or some anonymous Portuguese; the Portuguese flag would be hoisted, and the American owner . . . would exult under the protecting fraud of an alien flag, and a fabricated bill of sale. . . [II.] it is an essential element, that the accused was a citizen of the United States . . . [763] It is citizenship, such

¹ [755n.] “Slave vessels sail with two or three, or four captains. One captain clears her in a United States port, and swears that he is an American citizen. Another, belonging to a different country, in connection with the first, when she arrives at the coast of Africa receives the slaves on board. Another, after the slaves are received, takes charge of them and commands the vessel, and makes one of the former captains the doctor, mate, steward, or something else. Another delivers the slaves on shore. This is done . . . to enable the vessels to seek the protection of a flag which the cruiser hailing them will . . . regard . . . when a American cruiser comes in sight, the Portuguese or Spanish flag is run up, and the false Portuguese or Spanish papers are produced. In the present instance, when a British cruiser hove in sight, the American flag was run aloft . . . and when that flag was seen the cruiser went off.”

as yours and mine . . . if by common reputation, . . . his nationality was recognized as in accordance with his declarations . . . then surely his uncontradicted declarations are entitled to some credit. . . [764] So far as I remember them, those papers from the custom house contained no proof at all as to the citizenship of the accused." [765] "Verdict, not guilty."

Clingan v. Mitcheltree, 31 Pa. St. 25, May 1857. In 1852 [27] "Sally Polk, the black girl, came in, and was putting some wood in the stove, and Mrs. Mitcheltree told her to clear out of that, for she was always gaping to hear all she could hear;"

Hoff and Tucker's Appeal, 28 Pa. St. 51, 1857. Will of John Hoff: [53] "Sixth item. 'In the event that the Pennsylvania and other African Colonization Societies of the United States, do succeed in establishing the free blacks from the United States in an independent government in Africa, so as to enable the emigrants to purchase and hold lands, . . . I bequeath \$10,000 for the purchase of lands adjoining those already obtained by the United States societies.' Then follows a description . . . of the character of the emigrants to be sent out, concluding thus: 'This tract . . . to be designated "The State or District of Hoff," . . . The good we do ought to live after us, saying to our successors "Go and do likewise."' This \$10,000 was unclaimed,"

Stephen Smith's Appeal, 30 Pa. St. 397, 1858. "1844, . . . Smith . . . was appointed guardian of the estate of Thomas Y. and William Savage, two colored children, who resided with their mother in Philadelphia. John M. Savage, the father . . . died in Monrovia, in Africa, in 1840, leaving a will, . . . to his wife one-fourth . . . and a fourth to each of his children, a daughter and the two sons . . . The guardian filed an inventory in 1845, showing that he had received \$14,150, belonging to the sons. . . 1854, Thomas Y. Savage, who had been studying medicine in Canada, determined, with the consent of his mother, to visit Europe for the purpose of completing his medical education. . . 24th June, he accompanied his guardian . . . and his uncle, John Henderson, to the office of a conveyancer, when the following bond was executed . . . 'Know . . . that I, John Henderson, . . . of New Jersey, gentleman, am . . . bound unto . . . Smith, . . . [398] in the sum of \$3000, . . . Whereas . . . Smith . . . at the special . . . request of . . . Henderson, hath this day advanced unto . . . Savage . . . \$1500, . . . Henderson . . . shall cause . . . Savage, on his arrival at . . . twenty-one . . . to pay . . . Smith . . . with . . . interest, . . . then this obligation to be void,' . . . Smith advanced to Henderson \$1500, . . . Henderson gave \$500 of it to Savage, who then proceeded to Europe. Savage became of age . . . November, 1854, . . . drew on Smith for \$500 in favour of Henderson . . . [who] afterwards absconded." Thompson, J.: [400] "the misfortune of the guardian consists in his inability to show anything over . . . \$500 . . . applied to the object in view; and to this extent we think the guardian should have been allowed. . . Savage . . . now sets up that on coming of age he paid it back to Henderson, who is worthless, and looks to his guardian to pay it over again to him. . . [401] We hold him to the duty of paying to the proper party, his guardian, who will then be the loser of over \$1000."

Missionary Society's Appeal, 30 Pa. St. 425, 1858. Will of Elliott Cresson, dated October 7, 1853: "I . . . bequeath to the mission and schools of the Episcopal Church, about to be established at or near Port Cresson, . . . five thousand dollars; in the disbursement of which . . . I desire . . . that the pastor of the church of St. Andrews . . . shall enjoy a full and equal voice. Should a collegiate department for the benefit of the natives and citizens be added . . . I hereby add . . . five thousand dollars." The testator died in 1854. [426] "one of the executors, testified that, in 1834, a portion of territory on the western coast of Africa, known as Bassa Cove, and within the state of Liberia, was purchased by the action of the Young Men's Colonization Society of Pennsylvania, the testator contributing one thousand dollars . . . and that the American settlers, upon their arrival . . . [427] resolved to call their town Cresson. . . . At the north-western end [of the cove] . . . is . . . the native village of Bassa, . . . having a population of 400 or 500, all black, except a missionary and his wife. . . . In 1835 . . . the . . . town of Cresson, or Port Cresson, was attacked by the natives, and the settlers were driven off. There is no evidence as to a rebuilding . . . In . . . 1853, the legislature of Liberia gave the name of Port Cresson to an anchorage . . . in front of the old town of Cresson. . . . [428] the testator . . . used the term . . . as extending to the surrounding region," [426] "For about the last twenty years, . . . the original [missionary] society [of the Protestant Episcopal Church], or the present corporation, has established or continued missions and mission schools . . . on the western coast of Africa; and . . . during the fall of . . . 1853, . . . a mission and school were established . . . at or near the place meant . . . by the testator as Port Cresson. . . . [428] the Rev. Jacob Rambo, a missionary of the Protestant Episcopal Church, is stationed at Bassa, . . . [429] engaged [in 1855] in organizing a school, . . . two lads, one a native, the other a colonist, . . . were to be pupils" "The outbuildings were finished, and the main building was in process of erection." "a collegiate department . . . would . . . be altogether premature."

Held: [436] "the appellants, being 'The Domestic and Foreign Missionary Society of the Protestant Episcopal Church' . . . [437] are legitimate claimants . . . to the legacy of five thousand dollars. The additional bequest . . . was given upon a condition which has not been complied with, . . . will fall into the residue of the estate."

Pennsylvania v. Ravenel, 21 Howard 103, December 1858. [106] "Mrs. Kohne¹ continued to reside alternately in Charleston and Philadelphia, . . . until . . . 1850, when she left Charleston, to return there no more, and came to Philadelphia, followed soon after by her whole Charleston household, (except one old female servant,) all of whom remained with her in Philadelphia until her death, . . . 1852, . . . These were Emma and her husband, Jacob, Peter, Margaret, and Carolina, servants or slaves."

U. S. v. Buck, 24 Fed. Cas. 1289 (17 Leg. Int. 181), 1860. "an indictment against Jeremiah Buck for an attempt to rescue from the custody

¹ See *Fontain v. Ravenel*, p. 311, *supra*.

of the marshal a fugitive slave." [1291] "a fugitive slave had . . . been brought . . . before a judge¹ . . . the right of the claimant had been established, and the certificate . . . issued, when the claimant's affidavit that he had reason to apprehend a forcible rescue was regularly made; . . . the marshal, therefore, . . . retained the fugitive in custody, and was in the act of removing him from the court house, . . . There was in the street a crowd chiefly composed of colored persons. More than fifty officers of the city police . . . to keep the passage clear. . . Three deputies . . . took seats inside of the carriage [with the fugitive] and another . . . by the driver. . . colored persons . . . crowded forward . . . once or twice, if not three times. The speed of the horses was increased as they approached Chestnut street, . . . some colored persons . . . rushed from both footways into the carriage way, seized the head of the horses . . . [1292] Several witnesses heard the word 'rescue' shouted. . . Seven witnesses . . . positively identify the defendant as one of the three principal actors in the scene . . . when the horses were forced upon the pavement. . . [1293] colored persons of good character, whose usual deportment was quiet and orderly, were not able to command their feelings . . . so as to abstain from acts of lawless violence. . . That colored persons generally were excluded from the court room seems to be true. . . the colored clergyman, who was refused admittance, says that he had 'quite a squabble' with one of the marshal's deputies." Verdict [1297] "that the defendant is guilty on the first count² . . . of the indictment."

¹ Under the act of Congress of Sept. 18, 1850. 9 Stat. at L. 462.

² [1294] "The first count, after stating the warrant of arrest, and subsequent proceedings is the granting of the certificate, avers that the affidavit of apprehension of a rescue was afterwards made by the claimant, and lays the offence as an attempt to rescue from the custody of the marshal, and the persons employed by him"

NEW JERSEY

INTRODUCTION

I.

No uncertainty marked the beginning of slavery in colonial New Jersey, but as the institution waned a curious situation arose out of a somewhat inconsistent combination of constitutional and statutory provisions which are cited in the cases.

While slavery was commonly practised in New Jersey, there was from earliest days considerable anti-slavery sentiment in the colony. By act of 1713-1714,¹ it was provided that every man who manumitted his slaves should furnish security to the Queen in the sum of 200 pounds to insure that he would pay each manumitted slave 20 pounds annually; evidently the colony did not propose to give relief to those who by age, infirmity, or sloth, could or would not support themselves after manumission. A similar act of 1769 conditioned the validity of the manumission upon a 200-pound bond to the King. In 1798,² it was enacted that every slave should continue to be such unless manumitted in the manner prescribed by law. In the *Emmons* case (note 1), it was held that the instruments of manumission were fatally defective for lack of two subscribing witnesses as required by the act of 1798.

The case of the *State v. Post*³ brought to light an apparent conflict between the New Jersey constitution of 1844 and legislative acts of 1804 and 1820. By writ of *habeas corpus* directed to the slave-holder, the question whether the constitution of 1844 abolished slavery was squarely raised. By a divided court it was held that the institution of slavery had not been destroyed by that constitution. On behalf of the plaintiff it was contended that slavery was abrogated by Article I., section 1, declaring that "all men are by nature free and independent, and have rights, among which are those of enjoying . . . life and liberty, . . . property," but it was urged by defendants that by Article X., schedule, section 1, declaring that "all writs, actions, . . . claims and rights of individuals and of bodies corporate shall continue," slavery was to continue like other property rights. Attention was directed also to the act of 1804⁴ which provided that every child born of a slave after July 4, 1804, should be free but should remain the servant of the owner of the mother until the age of twenty-five in the case of males and twenty-one in the case of females. This act was re-enacted in 1820,⁵ with added provisions. The court held that the constitutional provision cited by the plaintiff never was intended

¹ *State v. Emmons*, p. 328, *infra*.

² Rev. Laws, 1833, p. 374.

³ 1 Spencer 368 (1845).

⁴ Statutes, 29 sess. 1, p. 460.

⁵ Rev. Laws, 1821, p. 579.

to abolish slavery. A concurring opinion by Randolph, J., discusses the problem in considerable detail. Hornblower, C. J., dissented.

The New Jersey legislature removed all doubt on April 18, 1846, by an act ⁶ which formally abolished slavery as such, but retained its essence by holding the old slaves to service, thereby removing the odium of slavery while preserving the vested rights of the owner to the services of former slaves. Notwithstanding the state's policy of gradual emancipation of slaves, an act of December 26, 1826,⁷ made provision for the return of fugitive slaves found in New Jersey. This act was amended in 1837⁸ to provide for the trial of such cases before a court of three judges, with the privilege of a trial by jury.

In 1797 the Supreme Court held that Indians might be slaves in New Jersey.⁹ There was no necessity for special legislation covering Indian slavery since no distinction existed.

In 1821,¹⁰ the act of March 14, 1798, imposing penalties for transporting slaves out of the state, was invoked by the plaintiff in an action to recover the value of a slave carried as a passenger from Elizabeth to New York on a ferry-boat belonging to the defendant. The Court of Errors affirmed the judgment of the state Supreme Court in favor of the plaintiff, in spite of the fact that actual knowledge of the slave's status and intent to carry him out of New Jersey were not proved affirmatively. It was considered that the color of the man was sufficient evidence that he was a slave.

II.

Prior to the constitution of 1776, the colonial courts of New Jersey were rooted in the county court, from which appeal might be taken to the provincial court, thence to the governor in council, and finally to the crown.

Under the state constitution of 1776, supreme judicial power rested in the Court of Appeals composed of the governor and council. The state Supreme Court, from which appeal could be taken to the Court of Appeals, was composed of judges selected by the council and assembly for five-year terms. The county courts were, of course, vested with original jurisdiction.

Under the constitution of 1844, the judicial power of the state was vested in a Court of Errors and Appeals, a Court of Chancery, a Supreme Court, circuit courts (corresponding to county courts), and such inferior courts as then existed. The Court of Errors and Appeals consisted of the chancellor, the justices of the Supreme Court, and six judges of the Court of Errors and Appeals itself. The circuit courts were to be presided over by one or more of the justices of the Supreme Court. Litigants could go from the circuit court to the Supreme Court, or directly to the Court of Errors and Appeals by writ of error.

⁶ Rev. Stat., 1847, p. 382.

⁷ Compilation, 1833, p. 145.

⁸ Digest, 1838, p. 531.

⁹ *State v. Van Waggoner*, p. 327, *infra*.

¹⁰ *Gibbons v. Morse*, 2 Halsted 253.

NEW JERSEY CASES

State v. Lyon, 1 Coxe 403, April 1789. "This was a *habeas corpus*, commanding the defendant to bring up the body of Margaret Reap, whom he detained and claimed as a slave. . . Williamson, for defendant, moved to quash the writ, on the ground that it had been issued *improvidè*, without any affidavit being filed or cause being shown. . . it is necessary and highly reasonable that some [404] grounds should be shown to satisfy the court that it is proper and necessary." Held: "There must have been some ground exhibited to the judge who allowed this writ, or . . . he would not have done it."

"For the defendant it was then moved that he should not be compelled to answer the writ until security was given that the [405] costs should be paid in case the negro should be adjudged a slave. . . [406] In support of the claim to freedom preferred by the negro, various testimony was produced, some of which being parol—"

Per Curiam: "It has been the constant practice of the court in cases of this kind to hear *vivâ voce* testimony when offered. The general principle in the admission of evidence is, not that courts are restricted by narrower rules in receiving testimony than juries are, but that they being able to discriminate between that which ought to be listened to, and that which should be disregarded, are not prohibited from hearing any evidence which they may think calculated to illustrate the subject before them. . . [407] The evidence . . . on the part of the negro was—1st. A deed of gift . . . from Zaccheus Moyen . . . to Lucy Little, by which he conveyed to her his title to Flora, a negro girl, the mother of Margaret. 2d. That . . . Lucy Little, . . . intermarried . . . with . . . Dr. Joseph Eaton, and that they came . . . to Shrewsbury, . . . and brought Flora with them. 3d. Dr. Eaton, . . . sold Flora, . . . to John Worthley, who, . . . conveyed her to John Williams. 4th. Williams sold Flora again to Dr. Eaton, . . . It was further proved, . . . that Dr. Eaton, . . . repeatedly . . . declared that he was principled against slavery; that he never intended Flora to belong to his estate, nor should any of his children be entitled to hold her as their property. Lucy Eaton survived her husband, and, . . . sold a spinning wheel . . . saying that she had no further use for it, having set Flora free, . . . Since that period, Flora has been considered, . . . as a free woman. No claim to hold her as a slave was heard of for seventeen years. She worked as a free woman, in the neighborhood of the widow Eaton, and occasionally for her, and for the wife of John Eaton, the eldest son of the doctor, who always paid her wages. . . she married Joseph Reap, a free negro, . . . Flora, . . . [408] had two children, . . . These children lived with their parents, . . . until Margaret [daughter of Flora] was seized and carried away forcibly. . . The only evidence offered on behalf of the defendant, was an affidavit taken *ex parte*, . . . its admission in evidence was objected to by the attor-

ney general. . . [415] We have maturely considered the questions involved in this case, and are of opinion that the negro must be discharged. It is true, . . . that negroes claiming their freedom, must prove themselves entitled to it; . . . we think there is sufficient evidence to establish her freedom. The declaration made by Dr. Eaton at so early a period, the apparent dereliction of every claim after his death, the express declarations of his widow, . . . and unmolested enjoyment of freedom, . . . are *prima facie* evidence of the freedom, not only of the mother, but the daughter, sufficient to put defendant on proving a strict legal property. This he has not done, and the court are warranted in granting the discharge prayed for. Negro discharged."

State v. Administrators of Prall, 1 Coxe 4, April 1790. "a *habeas corpus cum causa* had issued . . . to the defendant, commanding him to bring up the body of negro Tom. The administrator . . . brought up the negro, and claimed him as a slave of the intestate, at the period of his death. . . From the testimony of several witnesses . . . it appeared that, about three years before his death, the intestate declared that Tom had been a faithful servant to him; . . . that he should never serve another master, but be free at his (the intestate's) death. . . that these declarations had subsequently to this period been made repeatedly and to different persons, and that the intestate always manifested and expressed a peculiar affection for Tom. During his last illness, when he was asked what should be done with his negroes, he ordered them all to be sold, with the exception of Tom, who he said should be free. . . Tom had ever been a faithful and affectionate servant."

Held: [5] "The proof in this case amounts to an actual manumission by the master, to take effect on the happening of a certain event, viz., his own death. It appears that Prall, the intestate, frequently declared that Tom should have his freedom—that the other negroes should be sold, but Tom should be free. These declarations mean something more than an intention hereafter to enfranchise. If, however, the evidence be considered in the light contended for by the counsel for the defendant, as proving nothing more than a promise to liberate at some future period, still we think the obligation of this promise is binding on his representatives, and that the negro cannot under such circumstances be detained in slavery. Negro discharged."

— *v. Gaston*, 1 Coxe 52, April 1790. "This was an action of debt, to recover the penalty for trading with Gaston's negro. The justice gave judgment for £4 1 s. 6 d., in favor of Gaston." Held: "Reverse the judgment. The action should have been *qui tam* on the act, and the judgment only for the penalty of 20 s., to the use of the poor,"¹

State v. Anderson, 1 Coxe 36, September 1790. "This was a *habeas corpus* to bring up the body of negro Silas. . . it appeared that John Horsfield was possessed of two negro girls, . . . slaves. By his will, . . . he devises thus: 'Item, my two negro girls, Betty and Nelly, I leave to be sold by my executors, for . . . fifteen years, and at the end of that term,

¹ Act for regulating slaves, 1713-1714.

to be free; and the money arising thereby to be equally divided amongst my daughters.' He further ordered, that if the said girls became chargeable or misbehaved, it should be at the risk of the buyer. The executors, . . . sold the two negroes for the term . . . to one Covenhoven, who sold them to the present defendant. During the term Betty had a child, [Silas, the negro in question,] who was now of full age. Anderson claims him as his slave, contending that his mother continued in a state of slavery until the expiration of the fifteen years. The court were of opinion that Silas was not born a slave, and discharged him from the service of Anderson. The Chief Justice, . . . said, that . . . the purchasers . . . could acquire only a temporary, . . . interest in these girls. On the death of the testator, they ceased to be slaves; . . . Their time of servitude was limited to a definite period; they were therefore servants for a term of years, and entitled to their freedom. The issue born during that period, therefore, could not be slaves; they follow the condition of the mother, who was not one. The issue of servants are free. The hardship pretended by the defendant, does not alter the case; the loss he may have sustained by the temporary incapacity of the mother ought not to be recompensed by the slavery of the child. . . . the will directs that the risk shall be upon the purchaser. . . . [37] the purchaser had no interest in Betty beyond her service for fifteen years; he cannot, therefore, pretend to any rights which result from the mere condition of slavery. Negro discharged."

State v. Farlee, 1 Coxe 41, November 1790. "a *habeas corpus* to bring up the body of negro Joe. *Leake*, for Farlee, . . . insisted that this being a claim of property, no man could, under the constitution and laws of the state, be ousted of his property, . . . unless by the intervention of a jury . . ."

Held: [42] "We have no power in such a case to order a jury. This is not directly a case of property—it is one of personal liberty—it is a writ of right, intended for the protection of individuals against arbitrary or illegal detentions, and we are to decide upon it in our constitutional capacity, . . . the court had refused similar applications."

State v. Beaver, 1 Coxe 80, April 1791. "A *habeas corpora* was directed to defendant for Abraham, a negro, and his wife, Dolly. . . . Defendant returned that they were his slaves for life, and prayed it might be inquired of by the country. For the trial [81] by jury, *Leake* insisted that a *habeas corpus* was not a summary proceeding, and that error would lie on it,"

Held: "This point is settled in the case of *The State v. Farlee*: take nothing by your motion. The court remanded the negroes to the administrators. There was some evidence of declarations by the master, manifesting an intention to liberate them, but the testimony was not satisfactory."

State v. Pitney, 1 Coxe 165, May 1793. "On *habeas corpus* for negro Prince. It appeared that Jasper Smith, . . . by his will manumitted all his slaves, of whom the mother of Prince was one. The administrators . . . to whom all the personal estate was bequeathed, joined in the sale of Prince

to Pitney." Held: "The boy is entitled to his freedom, whether the administrators have given the security required by the act or not."

State v. Shreve, 1 Coxe 230, September 1794. "*Habeas corpus* to bring up the body of negro James. It appeared that the mother of the negro had bound or sold the boy until he should be twenty-seven years of age, and that the negro was more than twenty-one years old." Held: "The parental authority to dispose of a child's services ceases when the latter arrives at the age of twenty-one; and in this case, the negro, being above that age, is entitled to his freedom. Negro discharged."

State v. Justices, 1 Coxe 244, November 1794. "By an act of . . . 1792, the sheriff . . . is directed to advertise an election, for fixing on a place where the jail and court house for the county shall be erected; . . . the election shall be by ballot, . . . These proceedings have been brought before this court by a *certiorari*, issued on the application and complaint of some [245] of the inhabitants . . . the following facts . . . appear: 1st. The inspectors or some of them objected to some of the voters, and demanded that they should be put to the test required by the act of assembly. Instead, . . . the bare declaration of the voter was received as conclusive evidence of his being qualified; . . . 2d. A negro man was admitted to vote, who had no legal residence; and his declaration that he had been manumitted in another state, was received as sufficient proof of his being entitled to a vote. . . . [254] if a vote is objected to, it shall not be received, until the person who offers it takes the oath of allegiance, and, if required, that he is worth £50, and has resided within the county one year. The provision is a good . . . one; . . . The bare word of one man that he was qualified, the affirmation of a black man that he had been manumitted, were held sufficient to entitle these persons to vote for the place where the court house and gaol were to be erected. . . . [255] We are, therefore, unanimously of opinion that the election is illegal and void, and must be quashed."

State v. Frees, 1 Coxe 259, November 1794. "On *habeas corpus* to bring up the bodies of Henry, Dinah, and Susan, negroes, detained as slaves by the defendant, who claim their freedom. . . . the negroes had been the property of Robert Patterson, who appeared to have had an intention of setting them free, and in casual conversation with third persons, and sometimes in the presence of the negroes themselves, had declared this intention. No express promise or understanding was proved; Patterson made his will, devising all his real and personal estate, without mention of his negroes' freedom. His executors sold the slaves to Frees for £157. The court disallowed the claim, and remanded the negroes, holding that these casual . . . declarations, unaccompanied with any particular act or formality, were insufficient to give them their freedom. . . . And as testator had devised away all his real and personal estate, they must go with the other property, and legally belonged to the defendant. *Leake*, for Frees, the master, moved for a rule upon the abolition society of Salem (which society was endorsed as the prosecutor of the writ,) to show cause why they should not pay the defendant's costs and expenses.

. . . refused by the courts, . . . it was a laudable and humane thing in any man or set of men to bring up the claims of these unfortunate people before the court for consideration."

State v. Mount, 1 Coxe 292, April 1795. "On *habeas corpus* to bring up the body of negro Grace. A *habeas corpus* had issued in the vacation, . . . It appeared that one Mary Pope, being the mistress and owner of the negro, conveyed her, by a bill of sale legally executed, . . . for the consideration of £5, to Thomas Kerlin and his wife, to hold to them and their heirs forever. At the end of the bill of sale followed these words: 'And the said Thomas Kerlin doth covenant and agree, that if the said Grace shall serve him ten years without having children, then at the end of the said ten years to offer her her freedom. . . about four years after the sale, (Grace having had an illegitimate child within that time,) Kerlin sold her to Mount as a slave, after which, and within the period of ten years, she had several more bastard children."

Held: [293] "The first bill of sale was absolute; she was actually sold a slave, and the condition in her favor was a condition precedent, which she was bound fully to comply with before she could claim the benefit arising out of it. Unless she performs this condition . . . the conveyance becomes absolute, and the property of the master is not divested. . . she was bound to inform herself of the condition in her favor, her mistress having sold her on these terms, without any stipulation in the bill that Kerlin should give her notice of the fact. Negro remanded."

State v. Heddon, 1 Coxe 328, May 1795. "A *habeas corpus* had in this case been directed to Heddon, the gaoler of Essex county, . . . it appeared that Cook was committed to gaol in October, 1793, . . . on the supposition of his being a runaway slave; . . . he had been kept under . . . restraint from that period, without any commitment by a justice. He was claimed by Snowden as his slave,"

Held: [329] "Mr. Snowden now comes forward and claims him as his slave. . . to make out this title to him he produces a bill of sale . . . from I. Heard, executed, I think, since the commitment. Capt. Thomas, . . . swears that Heard and himself together, . . . bought this lad from one Conner, in Philadelphia, for forty guineas: that the boy lived with him about a year, when he conveyed his right . . . to Heard, with whom he lived until he ran away. . . Two witnesses prove that Conner had the negro in his possession at New York, and that Heard had him in New Jersey. On the other hand, it has been proved that, . . . before the surrender of New York to the American army, . . . this boy, then about twelve or thirteen years of age, was in the service of Colonel Tarleton, . . . he belonged to the regiment, and was considered as a prisoner, and not as a slave. When Tarleton went to England, he left this boy with a servant woman, . . . it appears to me that whether Cook is a freeman or not, is a question upon which this court are not, at present, called upon to give any opinion. Whether Snowden has made out his claim so as to entitle him to the order of the court, that the boy should be delivered to him, is another upon which it is necessary that we should give our decision. . . It is a notorious fact . . . [330] that Lord Dunmore, in order to distress

the State of Virginia, . . . attempted to arm the negro slaves against their masters; . . . and, to induce them to this measure, he proffered them their freedom. . . . many were so far seduced by his promises, as to leave their masters and join his forces. . . . If the negro, originally, went voluntarily to the British, as to them he was undoubtedly entitled to his freedom; . . . if he was plundered, or taken as the property of an enemy, some authority should be produced to warrant the robbery, or the decision of some court to sanction this alleged transference of property from the original owner. . . . In either of these points of view I am unable to perceive the justice of Snowden's claim, or the propriety of sustaining it, . . . [331] Nor can any inference be derived from the possession and the acquiescence of the boy. If his going originally to the British was voluntary, the fear of punishment might have induced him to submit to almost anything, in preference to a return to his American master. If taken by force, his conscious inability to prove the compulsion might have suggested the same apprehension. . . . The claim of Snowden is, in my opinion, therefore, not proved with sufficient clearness to warrant me in saying that he has any property in the boy. No other claim has been preferred, and after so great a length of time he ought to be liberated from his confinement," Negro discharged.

Dissenting: "I think we may reasonably infer that there is scarcely a probability that a negro boy of thirteen or fourteen . . . should be entitled to his freedom in Virginia. . . . Whether the black is entitled to his freedom, therefore, we are without the means of ascertaining. No claim to detain him in gaol seems to be supported, . . . What is to be done with him? is the next question. . . . a person applying for his freedom, must show that he is free, . . . and whenever the negro applying has failed in doing this, he [332] has been remanded to the custody of the person in whose possession he was, . . . I am therefore of opinion that he should be delivered to the person in whose possession he has so long been—I mean Heard, or those who claim under him." [Chetwood, J.]

State v. M'Donald and Armstrong, 1 Coxe 332, May 1795. "*Sur habeas corpus* to bring up the body of negro Phillis. . . . The case, . . . appeared to be as follows: That, in 1776, Sarah Linn, the mother of witness, purchased the negro from the executors of her husband. After this, Mrs. Linn frequently told witnesses that Phillis should serve no one but herself, and that after her death, the negro should be free. In 1783, Mr. Hanna addressed witness' mother, and afterward married her; but, previous to the marriage, witness heard his mother tell Hanna of her intentions with regard to Phillis, that she should be free. In 1785, Mrs. Hanna died. The negro then left Hanna's house, and went to live with Mrs. Armstrong, a daughter of Mrs. Hanna, at whose house, . . . she worked as a free woman, until about two years since, when she quitted Pearson's, and has since worked at different [333] places for herself, until last February, when she was seized by M'Donald, under a bill of sale from Hanna, conveying all his right to her. During the period between 1785 and 1795, . . . Phillis had married a free negro, and had three children by him."

Held: [335] “ This negro woman was a slave of Mrs. Hanna, and during the period of her ownership, and before her marriage, she frequently declared that Phillis should be free at her death, and that she should serve no other person. She made use of the same language to Mr. Hanna, . . . and in fact after her death, which was in 1785, Phillis became free, and was allowed to remain free until 1795, when, for the first time, a claim asserted under Hanna’s bill of sale, and this woman and her three children are seized by these speculators in human flesh, and claimed as slaves. We are of opinion that these declarations of the mistress, Hanna’s acquiescence for so long a period of time, and the circumstance of the negro’s having enjoyed her freedom from [335] the death of the mistress, are sufficient evidence of her right to liberty at the death of Mrs. Hanna. In equity, a thing agreed to be done is looked upon as done; and in a case where the liberty of a human being is involved—where the promise is coolly and deliberately made—it ought to receive from this court a similar construction. It is far better to adopt this rule than to suffer promises thus made, in a matter of so great consequence to a human creature, to be violated or retracted at pleasure. Negro liberated.”

State v. Van Waggoner, 1 Halsted 374, April 1797. “ This was a *habeas corpus*, which had issued to bring up the body of Rose, an Indian woman, claimed as a slave. Brown, whose affidavit was read, swore that he knew the mother of Rose, who was an Indian woman, and lived with one Vangeson. Vangeson, never . . . claimed her as a slave, but called her a North Carolina squaw. . . . On the part of the defendant, it was proved that the mother was purchased as a slave, and had continued in that capacity for fifty-five years; that both mother and daughter were considered as slaves, and stated by the person under whom the defendant claimed to be such.”

Held: [376] “ The *habeas corpus*, in this case seems to have been sued out under the supposition that an Indian could not be a slave under our laws. But this idea is contradicted by various acts of assembly, some of which have been cited on the argument,¹ and indeed it cannot be urged with any shew of reason. They have been so long recognized as slaves in our law, that it would be as great a violation of the rights of property to establish a contrary doctrine at the present day, as it would in the case of Africans: and as useless to investigate the manner in which they originally lost their freedom. With regard to the proof . . . that . . . adduced on the part of the state appears to have been almost exclusively founded upon the supposition . . . shewn to be erroneous. The defendant has proved, that the mother of Rose was purchased as a slave many years ago; that for upwards of fifty years the mother and daughter have been held as slaves, and no claim for freedom was ever thought of before the year 1796. The slender circumstances and vague expressions on the other side are insufficient to overturn this testimony. We therefore think that the slavery of Rose has been sufficiently proved, and that she must be remanded to the custody of her master.”

¹ Act of Mar. 11, 1713-1714; Act of May 10, 1768.

State v. Emmons, 1 Pennington 10, May 1806. "The claims of freedom in the above causes, are founded on two manumissions, purporting to be signed, one by John Emmons, and to bear date on the 16th day of June, 1803, declaring the freedom of the negro Richard, otherwise called Dick. And the other by John Emmons, and Mary his wife, and to bear date on the same day, declaring the freedom of negro Phebe, . . . The defence set up, questions the validity, in point of law, of the said manumissions; and also, that the said manumissions were respectively obtained by fraud, or by forgery. Now it is agreed that the question of law arising on the said manumissions, whether effectual to enable the [11] negroes named . . . to a discharge on the present *habeas corpus*, as free persons, be submitted to the Supreme Court, . . . at the . . . September Term."

Held: "The case stated for the opinion of the court, places the claim of these two black people, to their freedom, upon two certain deeds of manumission, . . . These deeds were not executed in [12] the presence of two witnesses, as the act of 1798 requires; and for this cause alone, their validity is questioned; . . . The defendants . . . rest upon the decisions . . . on the acts of 1713-14, and 1769. The act of 1713-14 recites that it is found by experience that free negroes are an idle slothful people, and prove very often chargeable to the place where they are; and, therefore, enacts that every master manumitting his slave shall give security to the Queen, in the sum of 200 pounds, that he will pay yearly to the slave . . . the sum of 20 pounds—and that upon refusal so to do, the said manumission shall be utterly void, and of none effect. . . . The giving of the bond, . . . intended for the benefit of the township, . . . the court so construed the act, as to make this particular intent limit the generality of the words in the last clause; yet in all controversies between the person manumitting and the master, [13] it should be valid, . . . The object . . . was to secure the townships against the expense of maintenance; . . . But . . . the manner of manumitting was not prescribed by those acts, and the courts, in favor of liberty, had gone a great way in supporting manumissions, which were not very precise and determinate; and . . . as frequent applications were made for discharges, on the ground of loose conversations, conditional promises, . . . to the . . . expense of those who had lawful right; . . . the Legislature, in 1798, thought proper to take up the subject anew, and expressly enacted, that every negro, Indian, mulatto or mestee, within this State, who . . . was a slave . . . should continue to be such, unless manumitted and set free in the manner prescribed by law. . . . It is to be by writing, under hand or seal, executed in the presence of at least two witnesses; . . . When . . . I see the Legislature enact that every slave . . . shall continue to be a slave . . . unless manumitted in the manner prescribed by law; and when I see the same Legislature, . . . prescribe that manner, . . . [14] I hold myself bound to say, that the instruments in question cannot prevail."

Dissenting: "It is contended that these deeds not being executed in the presence of two subscribing witnesses, . . . are 'void to all intents and purposes; and so far as respects the State and the master, . . . this

declaration is undoubtedly correct. . . Taking up then, these three acts, . . . I confess, that although our legislators have made use of different modes of expression in their formation, and have according to the progress of humanity . . . made the terms of [15] manumission more safe and easy for the master, and beneficial to the slave, as far as respects this question, I see no difference in the construction to be put on them. . . And as it has . . . been decided by this court, that proofs of partial freedom, abundantly less than that now before us, . . . were amply sufficient to discharge the slave from all claims of the master, . . . to the actual service of him, with whom the contract of partial freedom was made. For the sake of uniformity in our decisions, as well as in the aid of liberty and humanity, . . . I cannot but believe that the instruments in question, completely exonerate the blacks, Dick and Phebe, from all claims of personal service."

Concurring: [17] "I take it for granted, that these negroes were slaves . . . in 1798, . . . and if they were, the only inquiry under that statute would be, have they been manumitted in the manner prescribed by the act of 1798; they certainly have not, in which case, according to the terms of the act, they must continue slaves, and cannot be deemed and adjudged to be free; but their manumission is absolutely void and of no effect. . . [19] That the deed of manumission should be executed in the presence of at least two witnesses, appears to me, to be a solemnity introduced by the Legislature, for the purpose of preventing fraud and perjury, . . . [20] If the law is a hard one, be it on those who made it; I had the honor of a seat in the Legislature when it passed, and opposed my feeble abilities to the section on which the defendants ground their defence; but I was not so fortunate as to induce the house, to which I belonged, to think with me. It, therefore, became a law, and sitting as a judge, I feel myself bound to give it its full operation and effect. Judgment for the defendants."

State v. Quick, 1 Pennington 413e, March 1807. "On *habeas corpus*, for negro Dick. The defendant returned that he was entitled to the services of negro Dick, as his slave, during life. . . it appeared in evidence that negro Dick was formerly a slave in . . . New York, . . . and while the said negro was a slave, and residing with his master in the State of New York, Sir James Jay, . . . purchased him of his master. . . That he passed through the hands of several masters, when at length the defendant bought him."

Held: [414e] "Dick claims his freedom, because, . . . under the laws of . . . New York, he is made free; if so, it must be that he was free before he was brought into this State; for the [415e] State of New York cannot extend into this State . . . nor does the law of New York intend any such thing. If he is free by . . . act of . . . New York, it is because Sir James Jay purchased him with intent to bring him into . . . New Jersey, and here sell him. . . Sir James keeping him in his own employment for at least two years, and then not selling him until after there

was a difference between him and the negro, is to my mind, evidence of a contrary intent. . . Verdict for defendant."

Den, Lloyd v. Urison, 1 Pennington 212, May 1807. "Joseph Wright, called Joseph the first, was seized in fee of the premises . . he made his last will . . and devised . . his estate in the following manner:—To Joseph Wright, his son, he gave £200 [213] and a mulatto. To his son James Wright, he gave all and singular the lands . . he bought of Margaret Keniman. To his son, Thomas Wright, he gave the plantation and tract of land . . and a negro boy. In the devises to Thomas and James, he provides, that in case either of them should die before he arrived at the age of 21 without issue that in such case, the plantation so devised to the son so dying under age without issue, should go to his son Joseph Wright. . . testator died seized of the land . . Thomas, . . entered . . and . . died intestate without issue . . Joseph, . . devisee in remainder, . . entered on the premises; and . . died intestate, leaving issue Thomas the second, and another child named James, . . James . . died intestate, without issue, in the lifetime of the said Thomas . . who thereupon entered on the remainder of the said premises, and was seized in fee of the whole. . . Thomas . . died, seized in fee of the premises, intestate, and without issue. That Joseph Wright, the second, father of the said Thomas, . . intermarried with Lydia Lambson, by whom he had issue the aforesaid, Thomas Wright, the second. . . after the death of . . Joseph, . . Lydia intermarried with Isaac Bilderback, by whom she had issue one child, Margaret, one of the lessors [214] of the plaintiff. . . on the death of Thomas the second, James Wright, . . uncle to the said Thomas . . entered on the premises . . claiming the same as heir-at-law to . . Thomas . . That the lessors of the plaintiff demised the said premises to John Den, who entered and was expelled by the defendant," Held: [220] "On the whole, . . I am of opinion, that the *postea* be delivered to the defendant."

Heirs of Potter v. Potter's Widow, 2 Pennington 415 0, May 1808. "The plaintiff demands of the defendants one hundred dollars, for keeping Jin, an old and infirm black woman, who was the property of the said Caleb Potter at the time of his death, and for finding her meat, drink, and clothing, for six years since the death of the said Caleb, when according to the statutes and customs of the State of New Jersey, the said defendants, heirs as aforesaid, were bound to support and maintain, at all times after the death of the said ancestor, the black woman; but which upon demand, they the said heirs refused to do; [416 0] and therefore, the plaintiff . . brings this suit. The defendants pleaded verbally that they owed nothing. The plaintiff obtained a judgment for \$40.08. The defendants brought this *certiorari* to reverse the judgment. The counsel for the plaintiffs in error raised . . objections, . . The one on which the court decided the case was, that it did not appear by the state of demand, that the maintenance of the wench was at the request, or by the direction or authority of the defendants; that even if the defendants were liable to support the slave, which he denied, yet that it did not lay in the power of any person

to furnish that support without their approbation or request, and then bring an action against them for it. . . The Court gave no opinion as to the persons liable to support the slave, or the manner of compelling it; but were clearly of opinion, that the plaintiff below could not take upon herself to maintain the slave, and then bring an action for such maintenance; and reversed the judgment."

Prall v. Patton, 2 Pennington 570, September 1809. "Patton was the plaintiff below, and brought an action of *assumpsit*, against Prall, on the warranty of two female negroes, sold by Prall to Patton, at Baltimore, . . . Patton alleged . . . that Prall warranted the negroes to be slaves, but that the negroes were free. . . After Prall had left Baltimore, the negroes found friends, who set up their freedom under the laws of Maryland, . . . A record of a judicial proceeding had in the County Court of Hartford county, Maryland, between the negroes and Hicks was offered in evidence by the [571] plaintiff below. . . this evidence was objected to by the defendant . . . Prall; but admitted by the court. A bill of exception was taken to the proceeding below; . . . this writ was brought."

Held: [574] "As the record from Maryland is between other parties, it was *res inter alios acta* and *prima facie* inadmissible. . . The issue below, was freedom of the negroes at the time of the sale. . . [575] after the departure of Prall from Baltimore, Hicks interested himself in favor of the negroes and at his instance they were taken out of the hands of Patten [*sic*], and were taken to Hicks' house; and while there, the negroes petition the court, stating that they were free, and that Hicks unlawfully held them in servitude, Hicks . . . says, that he cannot deny the fact, and the negroes have judgment. This record was offered . . . to prove . . . the freedom of the negroes at the time of the sale. . . it was inadmissible . . . and was calculated to mislead the jury. . . the record from Maryland, (putting out of view the evident marks of collusion) at most, goes to establish this fact, that the negroes were free at a time subsequent to the sale, by Prall to Patton; this might all be true, and yet they may have been slaves at the time of the sale; . . . Judgment of the Common Pleas reversed, and a *venire de novo* awarded."

Anonymous, 2 Pennington 576, September 1809. "Application . . . for *mandamus*, to two justices of the peace, and two overseers of the poor, to compel them to make a certificate for the manumission of a slave. The application was made on the part of the executor, to enable him to comply with the will of his testator. The facts . . . were, that application had been made to the justices and overseers of the poor, who had met, heard the application, and decided against it,"

Held: "All we can do, is to compel the justices and overseers of the poor, to proceed to the examination of the slave, and to exercise the discretion rested in them by law: . . . they have done that already. *Mandamus* refused."

Brooks v. Farmer, 2 Pennington 640, February 1810. "The action below, was an action of debt, brought for a penalty under the sixth section

of the act respecting apprentices and servants; for enticing away the servant of the plaintiff below, the defendant in this court; who obtained a verdict and judgment for \$30, the penalty given by the act. It appeared . . . that the servant enticed . . . [641] from his master, was slave for life. That the justice, . . . sustained the action, . . . 'that although all servants were not slaves, he considered all slaves as servants.' "

Held: "The justice has mistaken the law; the act respecting apprentices and servants cannot, . . . be construed as extending to slaves; the penalty created by that act for . . . enticing away any clerk, . . . or servant, does not embrace the case of slaves; it must be confined to the subject matter of the act, which is wholly aside from slaves; . . . the act respecting slaves, has made provision on the same subject by creating a penalty for employing, harboring, or concealing a slave. Judgment reversed."

Nixon v. Story's Administrators, 2 Pennington 991, February 1813. "The action below was brought on the following state of demand: To carrying away black servants into Pennsylvania, \$50.00; To cash paid Rodford Job, 25.00; To do. paid John P. Conover for their expenses, 25.00. The justice tried the cause, and rendered judgment against the defendant below, \$50. The insufficiency of the state of demand was assigned for error. Ewing, for the defendants in error, . . . endeavored to support this . . . demand, by considering the first charge as for work and labor, in carrying black servants for the defendant below, and the two following charges, as expenses incident to it." Held: [992] "That will not do. It was probably intended as a charge for enticing away the servants of the plaintiff below; but it is vague and uncertain. Judgment reversed."

Potts v. Harper, 2 Pennington 1030, May 1813. "The error assigned . . . was, that on the trial of the cause in the common pleas, the court admitted a black man to be sworn as a witness, without evidence of his freedom. The fact was, that the man had been considered and reputed by his neighbors, to be free from his childhood; but it was contended, that nothing short of proof that he was born free, or that he had been manumitted, and the instrument of manumission produced in court, would have been sufficient." Held: "We think the Common Pleas did right. Let judgment be affirmed."

Smack v. Warford, 1 Southard 306, February 1816. "The declaration on a sealed bill, . . . for \$55.25 with lawful interest, . . . The defendant pleaded payment, . . . the defendant offered to prove, that in 1798, plaintiff gave him a letter of attorney to pursue and arrest a negro of plaintiff's who had run away, and agreed if defendant would go in pursuit, and bring him back or cause him to come back, he would pay him one-half the negro; that he did pursue, but did not see the negro; that in consequence of the pursuit, the negro returned, and the plaintiff afterwards sold him for a certain sum. . . . [307] The jury rendered a verdict, . . . and found for the plaintiff 118 dollars, 17 cents, with six cents costs."

Held: [310] "the jury, before whom the cause was tried, should balance the accounts of the parties, and render their verdict for that balance

only. . . it is enacted, that if there be plea of payment, . . . then upon the trial, if it shall appear that any part of the debt has been paid, it shall be the duty of the jury to discount so much, and to find a verdict for the balance, for which the plaintiff shall have judgment. . . [311] the verdict is right, and the judgment is right."

State v. Aaron, 1 Southard 231, September 1818. "The defendant was indicted in the Court of Oyer and Terminer . . . for the murder of Stephen Conelly, a child, little more than two years old. . . being an infant and a slave, the court, assigned L. H. Stockton, G. D. Wall and Joseph W. Scott, esquires, as counsel to defend him. . . [232] It appeared in evidence, that the prisoner was born in July 1806, was of the ordinary size, and in the opinion of some witnesses, possessed the common capacity and intelligence: by the testimony of others, he was more cunning, and smarter in his play than was usual for boys of his age. Stephen Conelly, was a stout, healthy child, and on the 26th of August . . . was found in a well, about . . . 19 feet deep, having a curb two and a half feet high, so that he could reach the top with his hands, and it was in such a state that all the witnesses supposed it impossible for him to get over it. The well was about one hundred rods from two public roads, and the same distance from the house, in which, Stephen lived; . . . Stephen was seen playing . . . with the prisoner, a short time before he was missed by the family; and when they were searching for him, the prisoner was up in a cherry tree. Being asked if he had seen him, he said 'yes he is gone up the road;' . . . After the body was found and taken out of the well, he came up and seeing it lying there, he said 'so, you've found Stephen.' There was yet nothing in his manner, which excited attention or suspicion. That night he went to bed earlier than usual, and without his supper. The next morning he told a young lad, . . . that he saw Stephen fall into the well; that he was ten or twelve paces off; that he then went up and saw Stephen splash the water, and then went on to pick up apples, which his master had directed him to do. Being asked why he did not tell of it, he gave no answer. The counsel for the prisoner, objected to any evidence of his confessions, as improper and incompetent, he being under the age of twelve years, . . . [233] the court admitted the confessions in evidence. It then appeared that . . . the jury went to the well that he might shew them, how Stephen got over. He shewed them. His master and one of the jurors then took him aside, . . . He told them he had done it; that Stephen went to the well and put his hand on the curb, and he took hold of his legs and threw him over; . . . [234] The case was ably argued, and the court gave a minute charge to the jury. The prisoner was found guilty. A motion was then made for a new trial, and it being desired by the court, that the opinion of the Supreme Court at bar, upon the several questions might be known,"

New trial granted: [245] "Were the confessions of the prisoner legally admitted? . . . we do not understand that there was, at the trial, proof of promises or threats to induce the confession, but a decided denial of both. . . Were the prisoner an adult, his confessions, . . . would be competent. . . [246] The confessions of any one, especially of one so very

young, and in an offence so highly penal, ought to be received with the strictest caution, and investigated with a desire to obviate their force. . . [247] In reviewing the propriety of admitting the confessions . . it will be recollected that evidence had been submitted to the jury, . . to prove both his capacity and the fact charged . . This evidence laid such a foundation for his confessions, that the court did not feel authorized to withhold them from the jury. . . Was Levi Solomon a competent witness? By the law of this state, . . blacks born after 4th July 1804, are placed in all respects in the situation of persons bound to service by the overseers of the poor. Levi Solomon was not then the absolute owner of Aaron. Aaron was not the absolute slave of Levi Solomon. They stood in the relation of master and apprentice. And without further remark as to the consequences of a conviction to the master, there is no doubt that he was a competent witness in this case. His exclusion furnishes proper ground for a new trial. In this opinion the court unanimously concur."

Den v. Vancleve, 2 Southard 589, September 1819. [617] "told witness [daughter of the defendant] to go with her sisters into the kitchen and help the black woman shell peas, which witness did, . . The black woman had the charge of getting dinner, and Mrs. Stevens never before gave witness such a direction." [620] "he asked a little black boy, belonging to defendant, where his master and mistress was?"

Gibbons v. Morse, 2 Halsted 253, November 1821. "This was an action of trespass on the case, brought by Morse against Gibbons under the 'act respecting slaves,' passed the 14th of March, 1798, to recover the value of a certain slave, the property of the plaintiff, and who had been taken passenger in one of Gibbons' ferry boats from Elizabeth Town to New York, and afterwards ran away and was lost. . . [255] Plea, not guilty. The cause was tried before his honour, the Chief Justice, . . and a verdict found for the plaintiff for . . \$250, and a judgment rendered thereon. Upon this judgment two bills of exceptions taken at the trial, which were as follow: . . the plaintiff, . . produced in evidence Jonas Marsh, who said, that, that he knows Harry, the slave of the plaintiff; . . Zodoc Tooker, a free black man, testified that he knew Harry, . . that witness went to New York on the 4th of July, 1818, in the boat of Mr. Gibbons called the *Nonpareil*, and that Harry went in the said boat along with witness; that a black man, named Cato, was the captain and sailed the boat, and was . . [256] in the employ of Mr. Gibbons, and sailed her to New York; . . [259] The defendant, . . offered Cato Williams, a free black man, as a witness, who . . said—that he sailed the *Nonpareil* on the 4th of July, 1818; that he was not acquainted with Harry Morse, and did not see him about the dock on that day, or on board until they had got under way; . . that Mr. Gibbons told the witness not to carry persons he knew to be slaves without a pass; . . [261] the court charged the jury as follows:— . . [262] it is a settled principle, that the judges are to settle questions of law, and the jury questions of fact. . . the slave in question was the property of the plaintiff; . . he was carried from New

Jersey to New York in the defendant's boat, without the consent . . . of the plaintiff . . . that he who carried him . . . is liable . . . in damages . . . If the matter rested here, therefore, there could be no doubt. But, . . . to exonerate himself . . . the defendant alleges— . . . That the plaintiff, . . . secretly connived at, . . . the going away of this man, . . . If you think . . . the plaintiff did secretly connive . . . then you will do well, . . . to find . . . for the defendant, . . . [264] that neither he nor his agents knew this man to be a slave. . . . in New Jersey, . . . black men, . . . are *prima facie* slaves, . . . that this man, . . . by stealth entered into his boat, and then concealed himself . . . If from the evidence you should find this allegation to be well founded, I think the law is with the defendant. . . . The jury rendered a verdict for the plaintiff for \$250, . . . and a writ of error brought," Affirmed: [271] "The court of Errors affirmed the judgment."

Chatham v. Canfield, 3 Halsted 52, September 1824. "The township of Chatham . . . brought an action of debt before a justice of the peace, against the executors of Samuel Canfield, to recover the amount of moneys . . . expended by said township, for the support of a negro named William, alleged to have been the property of the said . . . Canfield, . . . On the trial of the cause before the justice, a judgment was rendered in favor of the township. . . . an appeal was taken to the Common Pleas, by whom the judgment . . . was reversed; and to review this judgment of the Common Pleas, this *certiorari* was brought. The facts . . . agreed upon . . . were as follows:—'The plaintiffs gave in evidence an original order, . . . on the overseers of the poor . . . of Chatham, to pay to the said negro William, one dollar per week for and towards his support . . . ' They also gave in evidence a notice from one of the overseers . . . of Chatham, . . . informing the defendants, 'that negro William, formerly belonging to their testator, was a pauper and unable to support himself, and that unless they . . . provided for his maintenance they should consider them responsible for his support;' . . . And also a transcript . . . of the will of Samuel Canfield, deceased, which . . . contained . . . the following clause: 'I hereby give . . . to my sons John and Benjamin, two thirds of the residue of my real estate, provided they indemnify, from any charge, the rest of my heirs, for the maintenance of my negro William; but if they neglect or refuse to comply therewith, I hereby empower my executors to [53] sell and convey as much of their land as will indemnify said heirs.' . . . negro William . . . was a cripple from his birth, and although able to do some light work, never earning his subsistence, . . . and when said negro was about twenty years of age, he went to live with Samuel Canfield, . . . That said Canfield died, leaving a good farm of upwards of one hundred acres, and a good stack of farming utensils. He left a large family . . . after the death of Samuel . . . William was kept for some time by his sons John and Benjamin, alternately, . . . William lived in the family of John, and in his service until the spring of 1821, when he was thrown upon the township of Chatham. . . . It further appeared, that . . . the township . . . had paid the full amount . . . for the relief . . . of the said negro . . . and that the said sum was no more than a reasonable compensation for the same.' "

Held: "The court are of opinion, that negro William was, . . the slave of Samuel Canfield, and therefore the judgment of the Court of Common pleas ought to be reversed. Judgment reversed."

South Brunswick v. East Windsor, 3 Halsted 64, November 1824. "Two justices of the peace of the county of Middlesex, at the instance of the overseers of . . South Brunswick, removed a negro man named Jack as a pauper from that township to the township of East Windsor, . . East Windsor appealed to the General Quarter Sessions by whom the order of removal was quashed. Jack, the pauper, is the slave of John Mount, who . . prior to, . . 1802, resided . . in the township of E. W., from which . . he removed into . . New York, where he now resides, and is of sufficient ability to . . maintain the said slave. It is conceded . . that the overseers of the poor of a township where a person needs relief, must provide for him, unless and until they can find some other person or township legally chargeable, and that the township . . cannot change their burden to another, unless a legal establishment in such other township can be established. On the part of S. B. it is shewn that the settlement of John Mount, the owner of Jack, was . . in . . East Windsor, and it is contended that the legal settlement of Jack is therefore in that township, . . the slave acquiring a derivative settlement from the owner. . . [65] our legislature have made provision, and to their enactment alone we must therefore resort for our guide. By the 25th section of the act respecting slaves,¹ . . it is enacted that the legal settlement of every slave manumitted . . who shall be likely to become a public charge, shall be in that township . . where the owner . . shall have a legal settlement . . By the 26th section . . that the owner of any negro or other slave not manumitted . . shall be obliged at all times to . . maintain such slave, provided, that if any such owner shall become insolvent . . then such slave shall be deemed a pauper, whose legal settlement shall follow the legal settlement in this state of his or her owner. . . [66] it is clear that unless a settlement can be shewn in E. W. in this case under the 26th sec. the slave not having been manumitted, no settlement exists. . . It is said the owner is not within the state, he has no property here, that a suit cannot be maintained against in the courts of New York where he resides and has sufficient property, . . The courts of . . New York would entertain a suit and enforce a recovery for the maintenance of the slave. . . [67] Every person unable to . . maintain himself is, *prima facie*, a pauper entitled to relief. . . In ordinary cases the township must provide for a pauper needing assistance, though he may have no other claim than his poverty on their bounty.—So in case of a slave. . . [68] On the whole, the slave, Jack, had no legal settlement in E. W.—the order of removal was unduly made. Let the order of the sessions, quashing the order of removal, be affirmed, with costs."

Cutter v. Moore, 3 Halsted 219, November 1825. "an action of trespass on the case . . to recover the value of a certain slave of the plaintiff, who was carried out of the state by the steam-boat of which the defendant

¹ Rev. Laws, 375.

was the captain, and afterwards ran away and was lost. . . Upon the trial of the cause before the Court of Common Pleas . . a verdict was found for the defendant under the charge of the court; to this charge the [220] following bill of exceptions was taken . . to this court,"

Reversed: [223] "Upon the trial in the court below of this action which was brought on the 5th section of the act of the 14th of March, 1798, . . the court, after the evidence of the plaintiff was closed . . charged the jury, 'that the plaintiff, had given no evidence to entitle him to recover.' . . It was fully proved at the trial, that Michael, the negro . . was the slave of the plaintiff; that he left the service of his master without consent; that he was put, in the same manner as other passengers, on board the steam-boat *Olive Branch*, . . and that he had been . . unsuccessfully sought for by his master, . . [224] Proof that the defendant was captain at a particular time, . . is *prima facie* evidence that he was then on board. Such was his duty, . . Proof that the defendant was captain and on board, is also *prima facie* evidence that he knew Michael, the negro in question, was conveyed . . from Amboy to New York. . . [225] Upon the authority of . . *Gibbons v. Morse*,¹ then I am of opinion the plaintiff had given evidence to entitle him in the absence of any contradictory evidence on the part of the defendant to recover, the charge was erroneous, and the judgment should be reversed."

Fox v. Lambson, 3 Halsted 275, May 1826. "The plaintiff seeks to set aside the verdict [276] rendered for the defendant . . upon several objections to evidence admitted on the trial. I. The admission of Abel Comency. His testimony was resisted on the testimony of Hannah Keasby, and on the presumption of slavery arising from his color. Hannah Keasby testified, that her husband bought Abel of Henry Loomis's estate for a number of years; . . she could not say he was a slave—he said his master gave him a manumission in the presence of his mistress— . . the testimony of the declaration of Abel is to be laid out of the case. . . For if Abel himself, because a slave, could not be examined as a witness . . his declaration even to shew his condition could not be legally received as evidence . . [277] It is a settled rule . . that the black color is proof of slavery, . . which must be overcome before the witness can be received. . . Jonathan Hildreth testified that he knew Abel when in the service of Keasby and Reeves, as one bound for a term of years and not as a slave; that he served out his term with the latter, left him and was reputed free, had married and for more than 20 years had been in full and actual possession of freedom. And this testimony was . . abundantly sufficient. . . Color is not an absolute . . proof, but affords a presumption of slavery. . . [278] A long fruition of all the rights and privileges of a freeman raises a violent presumption of freedom. . . I am . . of opinion that Comency was rightfully admitted, . . [279] The remaining objection relied on for setting aside the verdict, is the admission of an entry . . in a book kept in the clerk's office . . of a certificate of manumission dated in 1797, for the purpose of shewing the manumission . . of Jubilee Sharp, a colored person offered as a witness. . . [280] An

¹ P. 334, *supra*.

entry by the clerk in a book in his office, of an instrument not previously acknowledged . . . or otherwise authenticated . . . does not in case the instrument is invoked as a matter of evidence stand in the place of the instrument . . . unless such efficacy is given by . . . statute. . . [282] The book containing the entry of the certificate of manumission was in my opinion improperly admitted. Let the verdict be set aside and a new trial ordered.”

Boice v. Gibbons, 3 Halsted 324, September 1826. “This was an action of trespass on the case, brought by George Boice against Thomas Gibbons, . . . for conveying away and assisting to convey away the slave of the plaintiff. . . [326] To this declaration the defendant demurred specially, and shewed to the court here the following causes of demurrer to the said declaration— . . . That there is no averment that the defendant has been found guilty of conveying . . . the said negro man Tom, . . . That there is no averment that the said defendant was guilty of conveying . . . the said negro Tom, . . . that . . . no allegation . . . that the defendant . . . knew . . . Tom to be the slave of the plaintiff. . . [327] To which there was a joinder in demurrer.”

Held: “The first objection is that the declaration contains no averment that the defendant had been found guilty of conveying away . . . the slave; . . . Neither in the language . . . nor in the cases cited, do I find any support for this objection. . . [329] The second objection is, . . . no averment that the defendant was guilty of conveying . . . away the slave. . . Guilt implies knowledge and intention. . . To bring the defendant within the purview of the section . . . he must have known the person to be a slave, and must have intended to carry him away. . . all black men . . . are *prima facie* slaves and are to be dealt with as such. . . [330] I think it clear that the words of the declaration . . . are not of the same import and would not require the same proof as the language of the statute,’ . . . The essential quality . . . of knowledge or intention is not either directly or indirectly expressed with sufficient certainty. . . [331] there is no allegation the defendant knew the negro to be the slave of the plaintiff. Nor is it at all necessary such allegation should be made, . . . The offence consists on conveying a slave— . . . [333] The second cause of demurrer is sustained. The others are declared to be insufficient.”

Fox v. Lambson, 3 Halsted 366, September 1826.¹ “In the term of May last, the verdict which had been rendered for the defendant, was set aside and a new trial awarded. . . Jeffers, on behalf of the defendant, now moved for judgment as in case of nonsuit against the plaintiff, because he had not carried the cause down for trial at the last Salem circuit, which was held on the second Tuesday of June last. Dayton, for plaintiff, opposed the motion. He said that there was not time between the delivery of the opinion of the court at the last term awarding the new trial, and the circuit, to notice the cause and prepare for trial, without he had imme- [367] diately upon the delivery of the opinion of the court, written to his client and given notice of trial! The opinion . . . was delivered on

¹ Same *v.* same, p. 337, *supra*.

the eleventh day of May, and the Salem circuit commenced on the thirteenth day of June, so that to give twenty days' notice, . . . would have left him but one week to transact his business at the Supreme Court, return home, communicate with his client and give notice of trial—this was too short a time. Justices Rossell and Ford, (the Chief Justice being absent from indisposition,) ordered judgment as in case of nonsuit."

State v. Guild, 5 Halsted 163, September 1828. "The jury having been sworn and affirmed, the prosecutor introduced his evidence, by which it appeared:—That Catharine Beakes, . . . resided in . . . Hopewell . . . in a small house . . . on the side of a public road. She was . . . sixty years of age, and in good health; her family consisted of herself, her son, . . . and a grandson, . . . her son went to work . . . her grandson went to school, and she was left alone in the house. [164] The prisoner was a colored boy, . . . the servant of one Joshua Bunn, . . . his house being situate . . . on the opposite side of the road. There was a cornfield . . . across the road . . . in which the prisoner was that afternoon engaged, alone, in cutting up corn. . . M'Coy, . . . saw the prisoner about twenty yards from the road, . . . He halloed to witness . . . and appeared in a good humor, . . . Having some errand at the house, witness . . . knocked; nobody answered. Witness concluded he could do his errand on his return, and left the door. . . and returned about five o'clock; . . . he met the little boy coming home; . . . He stepped into the door and flew back. Witness entered and saw her. She lay in the corner of the fireplace, her head near the back, but did not touch it. . . 'I put my finger on the top of her skull, and it appeared to be mashed in. I looked around and saw the yoke . . . about, four feet off. There was some blood on the yoke.' . . . [165] a coroner's inquest was held . . . A constable went for the prisoner and he was brought up. He was asked if he knew anything how the old lady came to her death. He denied knowing. . . Daniel Cook, . . . testified that 'the next day, . . . I met some persons who told me they had got the murderer; that he had made confession. . . I had him put on my wagon. . . I asked him, Jim, did you kill the old lady? yes, said he, I did. . . I took his examination in writing. . . [168] The court excluded the written examination, . . . Mr. Halsted offered to prove confessions made by the prisoner . . . five months after the first; . . . the confessions [were] permitted to be given in evidence. . . [171] Gentlemen of the jury, James Guild is indicted for . . . murder . . . [175] The jury . . . returned a verdict of guilty. . . Mr. Scott, . . . moved the court, . . . to take the advisory opinion of the Supreme Court upon several questions of law . . . This motion was acceded to by the court,"

Held: [178] "The first question . . . respects the admissibility of certain confessions of the prisoner . . . [184] we find no reason to disapprove of the conclusion in point of fact, . . . to submit these confessions to the jury; . . . [185] We are now to examine, . . . whether the evidence . . . was sufficient, . . . to warrant the conviction of the prisoner. . . [189] The age of the prisoner was earnestly pressed . . . by his counsel, who strenuously insisted he was too young to be exposed to punishment on such evidence. At the perpetration of the offence he was aged twelve

years and somewhat more than five months. . . In regard to a youth of the years of the prisoner, the law most wisely requires the utmost circumspection from the jurors; and [190] . . . the jury were distinctly reminded of their duty. . . Under a deep sense of responsibility, . . . and feeling the strongest impression of the tenderness due to the life of a fellow creature, we hold ourselves bound to advise the Court . . . not to grant a new trial, but to proceed to discharge the solemn duty which remains to them, by pronouncing the sentence of the law on the crime of murder. The prisoner was sentenced and executed.”

Upper Freehold v. Hillsborough, 1 J. S. Green 289, February 1833. [291] “A *certiorari* was directed to Andrew Howell, esq. to bring up a pass warrant, made by him as a justice of the peace of the county of Somerset, under the 33d section of the act for settlement of the poor,¹ . . . The return shews, that a constable of Hillsborough in that county, apprehended and brought before him a colored girl named Jenny, and complained that she had strolled from her place of legal settlement, and was begging from house to house . . . the justice took her examination in writing, . . . touching her vagrancy, and place of settlement, and found the complaint to be true, and adjudged her place of legal settlement to be in . . . Upper Freehold . . . A motion is [292] made on behalf of the overseers of the poor of Upper Freehold to quash this warrant. A pass warrant contains the opinion of a justice, touching the vagrants place of legal settlement, founded on the examination of the vagrant herself, in the absence of all parties interested. . . It is not an order for the overseers of Upper Freehold to provide for her maintenance. If they do not admit her settlement to be in their township, they may have her removed in due form to the proper place. . . The question is, did the justice draw a fair conclusion from the evidence . . . Upon her examination there was no room to hesitate; she was about fifteen years old and had lived the last ten years . . . in Upper Freehold in the family of David Hay. . . a probability she owed service to him and was to have support from him. This probability became evident by the deposition of Mrs. Cornell, representing that David Hay was under contract to keep her till the age of twenty-one, for her services; . . . Hay had carted her from Upper Freehold into Somerset, and set her down there in the highway, and left her to beg for subsistence. . . [293] I cannot say that there is any irregularity in the proceedings of the justice, or that he drew a wrong conclusion from the evidence before him. Therefore let the warrant be affirmed.”

Stoutenborough v. Haviland, 3 J. S. Green 266, February 1836. “The declaration before the Justice contains two counts— . . . The second count sets out an exchange of a negro boy and twenty dollars, for a wagon, and warranty by the defendant below, ‘that the said boy was bound to serve according to the laws of New Jersey, till he was twenty-five years of age, . . . that the defendant had good right and title to said boy, and to make sale and disposition of him.’ . . . ‘that the said negro boy was a free boy, and that the defendant had no right and title to him, and to

¹ Rev. Laws 48.

dispose of him, in consequence of which he became of no value to plaintiff.' ”

Held: “ Before the court below, two principal questions were made, which have been reviewed here. Does the declaration contain a sufficient specification of a legal cause of action? Was it supported by proofs? [267] I am of the opinion that the second count in the declaration, is sufficient to support this action . . . although it does not show any disposition of the boy; . . . But the most important question in the case is, whether a person in possession of a colored boy under fifteen . . . and selling him as ‘ his boy,’ is by the law of this State, held to an implied warranty, a right to dispose of him, until he attain the age of twenty-five . . . It was once the doctrine of this court, that every colored person was presumed a slave till the contrary was shown. . . I have more than once expressed an opinion, that this presumption ought no longer to be admitted, both from the . . . fact, that the generality . . . are not in truth held as slaves now, as well as from the natural consequence which must be supposed to follow our statute for the gradual abolition of slavery, yet it by no means would follow that a person . . . would not be affected by an implied warranty of title. . . such a property may exist in New Jersey; . . . Much more . . . may the seller of such a boy . . . be held to an implied warranty . . . Such a boy cannot be a slave here. . . It further appeared in evidence, that the boy was, . . . an indented servant, bound to serve to the age of twenty-one years. But that would not authorize a sale in this manner. . . [268] the evidence is, that on the discovering of the true situation of the boy, the plaintiff offered to restore . . . him to the defendant, and demanded the wagon again. It was refused . . . and the boy was abandoned by the plaintiff. I hold that the plaintiff was not bound to expose himself to an action for false imprisonment, wherein the recovery . . . might be extended in the discretion of a jury, . . . [269] This is a hazard to which the defendant has no right to expect the plaintiff to submit. . . Judgment affirmed.”

Stille v. Jenkins, 3 J. S. Green 302, May 1836. [304] “ The plaintiff brought this action in the year 1833, and declared on his possession of a certain colored boy who was bound to serve him until the year 1837, and that the defendant, knowing the premises . . . harbored said servant in his steamboat at New Brunswick, and . . . conveyed him to . . . New York, whereby the plaintiff wholly lost the said servant . . . for the term . . . then unexpired. After a verdict . . . for the plaintiff, the defendant moves in arrest of judgment, because the action is for . . . future damages, . . . that will not have accrued until August 1837. . . [305] It is objected that . . . a total loss is laid in the declaration, which is more than the plaintiff could possibly prove. But the jury have found it total as it is laid. . . The plaintiff can never maintain a second action for this same injury, and all the damages he ever can recover must be awarded to him in this one. The jury had a right to consider [306] . . . whether it was a total loss or not, and to award damages commensurate with what they believed to be the truth of the case. . . the rule to show cause why the judgment should not be arrested must be discharged.”

Stillwell v. Pease, 3 H. W. Green 74, July 1837. [75] “ Then I will that my son, John Pease, should come in, . . with my beloved wife, Martha Pease, to live; . . and that my colored man Jacob, and Hester his wife, should remain on said farm with said Martha and John Pease in co-alike in their maintenance, and clothing, and sickness and death, and that to be done for them as long as my beloved wife, Martha Pease, should live and remain my widow, c.”

Force v. Haines, 2 Harrison (N. J.) 385, February 1840. “ Henry Force sold the custody and services of his adult slave Minna, unto Elizabeth Haines, by deed, to be holden from September, 1822, till June, 1826, when the slave was to be returned to him. Elizabeth Haines, at the expiration of the time, . . tendered the slave to Mr. Force, and on his refusal either to receive . . Minna, or be accountable for her maintenance, she maintained the slave about two years herself, and then turned her out of doors. After . . about six months, Minna returned again to Mrs. Haines, who . . maintained her about seven years more; and then, . . declared against said Force, 1. . . she had furnished board, [386] clothing and necessaries for the slave . . that he afterwards promised to pay . . 2. That being indebted to her in \$2000, . . The defendant pleaded *non-assumpsit*, and the statute of limitations. At the trial, the plaintiff proved the tender of the slave, . . his refusal to receive . . her . . that the plaintiff had maintained the slave, . . that she had a very bad temper; that she had lost the sight of one eye, by intemperance, and was partially . . blind of the other; that her services were of little or no value; and that her maintenance was worth a dollar and a half a week. There was no evidence of her being requested by Force, to maintain the slave, or that he ever promised to pay for it. . . the court refused a motion, . . for a non-suit, . . a verdict for the plaintiff, and damages to the amount of \$300. . . Now the great and leading rule of law is, to deem an act done for the benefit of another, without his request, as a voluntary [387] courtesy, for which, no action can be sustained. . . The rule of law, that an act done for the benefit of another, without his request, will not maintain an action, need be traced no further back than the year, 1767, . . ‘ Even a moral obligation on the defendant to do the act, will not render him liable without an express promise to pay.’ . . [393] The situation of Elizabeth Haines cannot be relieved without upholding this action for maintenance of a slave against the owner’s will; without his request or any promise to pay for it, and in a case of no emergency; which would legalize interference with the private business of others, in a manner subversive of law, and mischievous to society. She ought not to have harbored the slave; but if actuated by pity towards an old servant, should have notified the overseers of the poor, who would have found a ready mode of compelling the owner to do his duty. The court erred also in not charging the law explicitly to the jury, as they were requested to do, and on both grounds, the judgment ought to be reversed.” [Ford, J.]

Dissenting: [402] “ This cause . . makes no appeal to our discretion or our sympathies—it presents for our consideration, an abstract question

of law: we are not called upon to say, whether the jury did write [*sic*] or wrong; but simply, whether upon the pleadings and evidence in the cause, the plaintiff below was entitled to recover at all. . . [403] The question then arises whether upon these facts, Mrs. Haines, was entitled to recover in this action, any thing, . . . That she was so, . . . I have not the least doubt. Not only, by the law of our nature, but by . . . our statute, every master is bound to provide for, and support his slave. . . The law has not left it to the humanity, the averice [*sic*], or the caprice of the master, to say, whether he will or will not, support his helpless slave; nor yet, whether he will do it himself, or compel the public in the first instance to furnish such support, and then look to him for remuneration. . . That such is the principle of law, in the case of husband and wife, and of parent and child, will not be denied: and why it should not be so, in the case of master and slave, I cannot conceive, unless we are to degrade the slave to the condition of a brute, and deny to him those sympathies, which the law recognizes in relation to human beings. . . [404] suppose . . . the overseers of the poor had received the slave, and afforded her relief; at whose expense . . . There is no such thing in the [405] law, as an order . . . on a master, for the maintenance of his slave. But how could the overseers . . . maintain such action, upon the implied request of the defendant, . . . any more than Mrs. Haines could? . . . [410] in my opinion a man cannot excuse himself from paying, what by law he is bound to pay, by simply refusing to do so. . . I am . . . strongly of opinion, that the judgment in this case ought to be affirmed." [Hornblower, C. J.]

Chance v. Teeple et al., 3 H. W. Green 173, January 1842. "The complainant holds a second mortgage upon the premises, and Grant, one of the defendants, a third mortgage. . . The only question is, whether the defendant, Grant, at the time of taking his mortgage, had actual notice of the complainant's mortgage: . . . The answer of Grant denies notice; . . . There is the direct evidence of one witness, a colored man, who proves that Grant called on Chance prior to the date of Grant's mortgage, and told him not to press Teeple, for he, Grant, would take the place next spring. . . [174] The master has probably felt himself bound by the principle, that two witnesses are necessary to overcome the answer of the defendant. This is not universally true; one witness and corroborating circumstances are sufficient. . . Decree accordingly."

Perth Amboy v. Piscataway, 4 Harrison (N. J.) 173, September 1842. [174] "James Bruen the pauper was formerly the slave of Joseph Stille of Piscataway, and was sold by him as a slave to Isaac Stille jr. of the same place, by a bill of sale, . . . 1816. . . in 1825, Isaac Stille jr. sold the negro man either as a slave for life, or for a term of years, to M. Bruen of Perth Amboy. Whether this sale was, for life, or only for a term of years, is a fact in dispute between the parties. . . [175] counsel for Piscataway, produce the manumission papers of the negro, and M. Bruen's deed of manumission, . . . 1832, in which he describes himself as the owner of the negro James, whom he thereby manumits and sets free. . . if James . . . never was the slave of M. Bruen, then he has

never been manumitted, and is not a pauper subject to be removed by an order; at least not so long as his master Isaac Stille is able to provide for him. . . the court . . . were the proper judges of this fact; and they have decided that James was the slave of M. Bruen. . . [176] All we have to do therefore, is to inquire whether the Sessions arrived at those conclusions by lawful evidence. . . Admitting therefore, that the deed of manumission, was some evidence, . . . as against Bruen, that he owned the slave, was it evidence against the township of Perth Amboy? I think not. I cannot make a city or town liable for the support of a negro, by simply executing to him a deed of manumission. Whoever seeks to make the city liable, must . . . prove, that he was my slave when I executed the deed. . . [177] The deed has no subscribing witness. The statute, Elm. Dig. 523, sec. 21, requires that the deed of manumission shall be executed in the presence of 'at least two witnesses.' . . Admitting, therefore, that M. Bruen was the absolute owner of the slave, he never manumitted him according to law; or in any such manner as to make him a public charge; . . . Upon this ground alone then, . . . the order of removal and the order . . . must be quashed. But there is another fatal objection to these orders. . . an order was made . . . removing this same negro man from Piscataway to Perth Amboy. It was executed . . . the overseer of Piscataway abandoned that order, and certified . . . that the order had been improvidently made, and that the pauper was not chargeable to Perth Amboy, and he thereby agreed to take back the pauper and [178] relieve Perth Amboy from the charge without an appeal, . . . that desertion of the order did not preclude Piscataway from sending the pauper to any other place where his settlement might be found to be. For both these reasons therefore, I am of opinion both orders must be reversed, with costs."

State v. Post; State v. Van Beuren, 1 Spencer 368, May 1845. "Two writs of *habeas corpus* were sued out and returned to the May Term . . . The object of these writs was to present for adjudication the questions, whether the constitution, adopted in 1844, abolished slavery in New Jersey, as well as the involuntary servitude of [369] the children of slaves under, the 'Act for the gradual abolition of slavery,' passed in 1804, and re-enacted in 1820. By the writ directed to Post, a slave was brought up, born previous to the 4th day of July, 1804; and by the writ to Van Beuren, the child of a slave born since that period, and held in servitude under the provisions of that act."

Held: "This proceeding is designed to present . . . the question, whether slavery can exist within the limits of this state under its present constitution and laws; and it derives . . . solemn importance from its bearing upon a class of human beings, . . . held in slavery, . . . much of the argument seemed rather addressed to the feelings than to the legal intelligence of the court. The first inquiry . . . is: Has the relation of master and slave, or has the institution of slavery ever existed by law in . . . New Jersey? And if it has: Has it ever been abolished by constitutional or legislative enactment? . . . [370] The legislative records . . . prove not only that slavery existed . . . but that it was recognized . . . as

a legal institution. . . In proof of this, I refer to the grants . . . as early as 1664. . . [371] whilst we were yet a colony of Great Britain, the relation of master and slave existed here, . . . sanctioned and regulated by law. . . in the year 1798, the legislature by statute declared, that every negro who was then a slave, should remain so for life; unless manumitted in the mode prescribed by that statute. . . How far these laws have been wise, . . . or . . . consistent with principles of humanity and natural and inherent right, it is not our province, . . . In 1804, the legislature . . . passed an act declaring, 'That every child born of a slave, after the 4th of July of that year, should be free, but remain the servant of the owner of the mother, . . . until he or she should arrive at a specified age.' This law was re-enacted in 1820, . . . Under the operation of these . . . laws . . . slavery has become nearly instinct [*sic*] in this state and must soon pass entirely away. . . [372] I think it sufficiently manifest, that when the new constitution came into operation, slavery existed by law in this state. . . [377] Upon the best consideration . . . I am of opinion, [378] First, That the relation of master and slave existed by law, at the adoption of the constitution in 1844. Secondly, That the constitution has not destroyed that relation, or abolished slavery. Thirdly, That the colored man William should be remanded to the custody of the defendant, and for similar reasons I think a like order should be made in the case of *The State v. Van Beuren*; which is the case of a colored apprentice, under the act of 1820, for the gradual abolition of slavery."

Franklin v. Bridgewater, 1 Spencer 563, January 1846. "The pauper—a black girl, called Sarah Brocaw—was born on the 25th of February, 1819, . . . [564] in the township of Bridgewater, . . . the child of a female slave of Autun. . . The pauper served Margaret McCain, in Bridgewater, . . . until . . . Mrs. McCain sold her time of service . . . to one Bergen Brocaw, of . . . Franklin . . . The pauper . . . served him till she became twenty one years of age. . . An order of removal of the pauper was made, charging the township of Franklin,"

Held: [565] "The place of birth is, in ordinary cases and *prima facie*, the place of settlement. Children follow the settlement of their parents. In the peculiar case of children of slaves, born since the 4th day of July, 1804, provision has been specially made by statute. . . [566] By the 6th section of the act of the 10th of June, 1820, Elm. Dig. 416, 417, such children 'who have not been bound out to service by trustees or overseers of the poor, . . . shall after the males arrive at the age of twenty-five, and the females to twenty-one years, be deemed settled in the township . . . in which . . . born; . . . The pauper not having been bound out to service by trustees or overseers of the poor, . . . and having [567] arrived to the age of twenty-one years, must be deemed settled in Bridgewater, where she was born. Besides, having duly served the owner of her mother, . . . in the same township, for more than seven years, she further obtained by this service a legal settlement in Bridgewater; and is still chargeable to that township, . . . Her service in Franklin, . . . was for a period much less than seven years, and her settlement in Bridgewater remains unaf-

fect and unchanged. The order of removal was erroneous and with its affirmance in the sessions on appeal must be quashed."

Franklin v. Bridgewater, 1 Spencer 567, January 1846. "An order of removal of a pauper colored woman, from Franklin to Bridgewater, was made by two justices. Lavinia King, the pauper, who had become sick and chargeable to Franklin, was the child of a female slave, and was born since the 4th of July, 1804. In 1815, when an infant of about six weeks old, with her mother, she was purchased by a Mrs. Morris, and served her in Bridgewater, until arrived at . . . fourteen years . . . and never acquired a settlement in any other place. On appeal the sessions quashed the order of removal, because it did not set forth the age of the pauper."

Held: [569] "It is not necessary that the order of removal should state the age of the pauper. The approved forms used in this state, do not require the age to be set out in the order, and the reason for such requirement in the present case fails. . . . In regard to the second objection to this order, it is said to have been ruled . . . that legal settlement and last legal settlement are the same thing, because by every new settlement the precedent is discharged. In accordance with this authority and sound reason, the Supreme Court of New York held, . . . 'that the legal settlement of the pauper is in Vernon,' to be sufficient . . . The order of the Sessions must be quashed and the order of the two justices affirmed."

McBride v. Elmer et al., 2 Hals. Ch. 107, March 1847. "The bequest . . . is as follows: 'I give to the Bridgeton trustees for free schools one thousand dollars, the interest to be applied annually for ages as far as may be practicable for the tuition of poor children, without regard to denomination or color, in the elements of English literature.' [112] The Chancellor delivered an opinion, orally, declaring the bequest good as a trust to be executed. That the only difficulty was a mistake in naming the trustees; and that the court would appoint trustees,"

State v. Post,¹ 1 Zabriskie 699, January 1848. "To a writ of *habeas corpus* allowed at the bar of the Supreme Court, commanding Post, the defendant, to bring up the bodies of a colored man named William and of a colored woman named Flora, whom he illegally detained. Post returned that he held them as Slaves by virtue of the laws of New Jersey, under a bill of sale. To this return there was a demurrer and joinder, the real question raised and argued being whether Slavery and all involuntary servitude was not abolished by Sec. I, of Article I, of the State Constitution of 1844. The Supreme Court . . . held the return sufficient, and overruled the demurrer. . . . [700] The court affirmed the judgment below."

Pennington v. Van Houten et al., 4 Hals. Ch. 272, June 1850. "Abraham Van Houten, the elder, by his will, first gives to his wife, Rachel, if she survives him, the use of his farm and dwelling-house where he then lived; . . . also his family of colored people, together with his household and kitchen furniture . . . until his son . . . should arrive at the age of twenty-one years;"

¹ Court of Errors and Appeals. See *State v. Post*, p. 344, *supra*, for decision of Supreme Court of New Jersey.

Van Houten v. Pennington, 4 Hals. Ch. 745, March 1852. "The testator first gives to his wife the use of his farm and dwelling-house with his farming utensils, stock, household servants . . . [748] The devisee was the testator's only child, and at the date of the will an infant of very tender years. . . After making suitable provision for his wife, and making bequests to the relatives of his former wife and to his slaves, the testator gives the whole residue of his estate, . . . to his only child in fee simple,"

Shanck v. Arrowsmith et al., 1 Stockton 314, May 1853. [315] "The bill alleges that John Arrowsmith, . . . died possessed and seized of considerable real and some personal estate; that at the time of his death he left the following will, . . . [316] I also give unto my said wife my black girl, named Isabel, during her term of servitude; but if my wife should die before her term of servitude expires, then it is my will that the same Isabel should serve the remainder of her term with my daughter, Maria Arrowsmith."

Freeman v. Staats, 4 Hals. Ch. 814, June 1853. "Isaac Staats exhibited his bill against Reuben H. Freeman and Margaret, his wife, . . . the complainant intermarried with one Martha A. Ross, by whom he had one child, . . . named Margaret. That his said wife died . . . That his daughter, . . . intermarried with Reuben H. Freeman, a man with pretensions to education . . . but . . . destitute of the means to support . . . his wife. That the complainant took said Freeman and his wife into his house and supported them . . . [815] That . . . the complainant intermarried with Maria Matthews, . . . That soon after . . . said marriage, the said Freeman and his wife insinuated . . . that the said Maria . . . was a bad woman, and would ruin the complainant and strip him of all his property. . . [816] That . . . while the complainant was in a state of gross intoxication, . . . the complainant executed a deed to his said daughter, . . . for the farm . . . and . . . gave his note to the said Freeman for \$1600, . . . [819] The bill prays that the said Freeman and wife may be decreed to reconvey, . . . and prays an account of the said personal estate, . . . Freeman denies that . . . he was entirely destitute . . . [827] also deny that . . . at or before the execution of the deed . . . the complainant was in a state of gross intoxication. . . [832] deny that the complainant ever applied for . . . a reconveyance of said farm, . . . [837] Elizabeth Giles, . . . says: I lived with Mr. and Mrs. Staats . . . the clothing of the servants about the house, and their rooms, were very comfortable; there were three colored servants about the house—one woman and two boys; . . . [839] he bought each of his three black boys a Sunday suit, and each two every-day suits; I never knew them to be scanted in any way while I lived there; . . . [843] Peter Clickener being again called . . . says: . . . what little I saw of the clothes of the blacks they were quite indifferent; . . . they seemed to be quite raggy. . . [844] Doct. Robt. S. Smith, . . . says: . . . I am the family physician; . . . my impression is that the blacks about the house were not very nice, but I am not positive; . . . [848] I thought it best for Isaac to go home because I thought Mrs. Freeman

would nurse him with more judgment than his wife; . . . her family consisted of herself and child; a colored family occupied the back part of the house; . . . [855] Richard Staats, a witness . . . says: I formerly lived with Isaac Staats; . . . I had but one shirt during the time, and that one I borrowed of Harry, . . . I wore that shirt three weeks before it was washed; . . . [856] I had one pair of pantaloons, which were all in pieces; . . . I had no coat, but had to wear my master's coat; . . . I could not get my clothes washed and mended properly; Mrs. Staats was too lazy to wash them; there was a black woman there to wash, . . . she was busy with other things; . . . [857] Lewis Smock, Betty, Jack and Frank lived with Mr. Staats while I lived there; they are all colored people; . . . [858] Jack Staats, a witness . . . says: . . . I lived with Isaac Staats . . . while Mrs. Staats lived there I had one shirt; . . . my clothes, generally, were ragged; my meals were pretty good; . . . I have known Mrs. Staats to sleep in the kitchen several nights; I have known her to use the chamber pot while we were at our meals; in the same room; . . . [859] she would swear at him (Freeman;) sometimes she would swear at me; she would call me a damn nigger, frequently when she got out of humor with me; . . . she said she wanted the niggers to obey her; . . . [865] Jane Doty, . . . says: . . . when Mrs. Staats left the negroes had not any shirts; they wore their winter coats in the summer time to cover their ragged shirts; me and my sister assisted in making shirts for the negroes after Mrs. Staats went away; . . . I am a sister to Isaac Staats; . . . [876] Lewis Smock, a colored man, . . . being sworn, says: I lived with Isaac Staats at the time he married his present wife; . . . he had two black boys; they were not in good condition for clothing when Mrs. Staats came; . . . Jack was in a very bad condition when I was there; his clothes were ragged and he was filthy and lousy; . . . Dick's clothing was very poor; . . . Mrs. Staats . . . had Jack cleaned . . . I slept with the boys before Mrs. Staats came; . . . there were plenty of bugs in the bed, . . . my woman came there to live and Mrs. Staats made a bed for us up stairs. . . . [877] I never did see Dick change his shirt but once; . . . Diana Staats, a colored woman, . . . says: Lewis Smock is my husband; . . . I was at Isaac Staats for two weeks . . . the black boys had very poor clothing . . . but they were clean; . . . [878] Jane Staats, a colored woman, . . . says: I went to work for Mr. Staats after he was married; Mrs. Staats sent for me; . . . I see lice on Jack; . . . I washed one shirt for him; . . . Jack is my son; . . . I heard Mrs. Staats tell Jack to wash himself; . . . [880] Phineas F. Annin, . . . says: . . . [881] I lived with Reuben H. Freeman; . . . I went frequently with Isaac Staats to Bound Brook, to Mrs. Staats house, . . . [882] during the time that I lived there I have seen Isaac Staats sober; . . . [883] at the instance of both parties, a special jury was struck, . . . and . . . [884] the same was tried . . . and the said jury, by their verdict, found that the said deed was and is invalid, and that the said Isaac Staats, at the time of making and executing the same, was incapable of conveying or assenting to any conveyance by reason of extreme intoxication, and that the said deed was obtained from the said Isaac by fraud, covin and misrepresentation, and that the said

promissory note and warrant of attorney . . . were obtained . . . by fraud, . . . an application was made . . . for a rule to show cause why the verdict should not be set aside on the ground that it was against the evidence. And the Chancellor, after argument, refused the rule. . . a decree was signed by the Chancellor, . . . that the said deed was . . . void, . . . and that the said note . . . are . . . void, . . . an appeal . . . was taken to this court." Held: [885] "The decree of the Chancellor was unanimously reversed."

Williamson v. Chamberlain, 2 Stockton 373, May 1855. "Amos Hoagland died in 1807. By his will, he disposed of his property as follows: . . . Lastly. I give unto my said wife a certain negro girl, named Rose, now living with a certain James Lake, to be to her and her heirs for ever."

Morris v. Warren, 2 Dutcher 312, June 1857. "Two justices . . . of the township of Warren, in the county of Somerset, made an order removing a pauper to the township of Morris, . . . upon the ground that his father had been a slave of one Solomon Cooper, who died . . . in the last-named township. The pauper, a colored man aged twenty-four years, resided, . . . with his father, in . . . Warren. Where he was born did not appear. The father was the slave of one John Manning, . . . he was sold, . . . in 1804, and purchased by Cooper. He served Cooper fifteen or twenty years until he was married, when Cooper gave him a certificate of freedom, and he left him, afterwards residing in different townships, but not gaining a settlement. . . a slave acquires no settlement, except when legally manumitted or in case of the insolvency of the master. The pauper was not himself a slave, and his father, who was, never had any settlement in Morris, Cooper never having legally manumitted him, and not having become insolvent. The child, not having been born in Morris, had no settlement there, and the order of removal, being illegal, must be set aside."

Emery v. Van Syckel, 2 C. E. Green 564, March 1867. "The object of this bill is to restrain the defendant, Van Syckel, from proceeding in an action of ejectment, [565] . . . to recover possession of a farm, and wood lot adjoining, devised to the complainant by George Apgar, her father, by his will, . . . The testator died in 1846, leaving him surviving, . . . Lydia, the wife of Nicholas Emery, who is his only child. In . . . 1861, four several judgments were recovered at law against Nicholas Emery by his creditors, one of which was assigned to Van Syckel, . . . Upon these judgments executions were issued, and . . . the right, title, interest, and estate of Nicholas Emery, . . . were levied on and sold by the sheriff . . . to the defendant, Van Syckel, . . . and on the next day, . . . the action of ejectment was commenced against Nicholas Emery, to recover possession of the lands. . . The general ground of relief claimed is, that, by the will, there is a separate equitable estate in the wife that cannot be reached by the creditors of the husband, and which it is the duty of a court of equity to protect. . . [566] The will then gives to Lydia, all the testator's books, and the remaining two-thirds of the household and kitchen furniture, and live stock, and proceeds . . . 'I also give and bequeath to my daughter, Lydia, . . . during . . . her natural life, my farm, . . . and after her death, I do give, devise, and bequeath the same to her

children, . . . [567] It is my will, that if my daughter, Lydia, should be dispossessed of the farm . . . then I do order . . . my executors, . . . to take charge of her estate, both real and personal, . . . and pay over to her the rents and interest . . . and her receipt, and hers, only, shall be sufficient for the same. The testator then gives to a black girl her freedom, a bed, bedding, chest, and one cow; also the sum of twenty-four dollars a year, so long as she will support herself without the assistance of that sum and no longer, to be paid to her yearly by his executors; and adds, 'and for the certain payment thereof, my real estate is hereby charged and made liable.' . . . [574] No power of sale, or appropriation of the yearly proceeds of the land, . . . is given to the executors by the will. The provision of \$24 a year to the black girl, [575] Phillis, is also of the same character, and is only a charge upon the real estate. . . . [576] By the deed from the sheriff, . . . Van Syckel, acquired all the . . . estate of Nicholas Emery, in . . . the lands devised. . . . [578] Under the very peculiar circumstances of this case, Emery will be considered in possession as trustee from the delivery of the deed. The contingency then, within the contemplation of the will, happened, and the trust estate for the sole and separate use of the wife began. Henceforward, during her life, she has such an estate. It being the duty of the Court of Chancery to protect it, the complainant is entitled to have the suit in ejectment enjoined, and the relief as prayed for in the bill. The decree should be reversed."

NEW YORK

INTRODUCTION

I.

Slavery was established in New Netherland by the Dutch West India Company, and continued throughout the English period of the colonial history. The earliest slaves bore Portuguese names and seem to have been procured from Brazil or Curaçao. In later decades the importations were mostly made from the West Indian islands or the other colonies of Great Britain, to a minor extent directly from Africa.¹ The number of negro slaves in the province in 1723 is stated as 6171. The census of 1790 showed 21,324. At the maximum, the slave population constituted about one-seventh of the total.

During the Dutch period, and still more during the English, much legislation designed for the purpose of regulating slavery and the conduct of slaves found its way to the statute-books of the colony or of the city of New York. A lingering fear that the slave might endanger the social order accounts for denying to slaves the privileges of trade, for refusing to receive the testimony of a slave against any person except another slave, for close restrictions on the defence permitted a slave charged with the crimes of murder, arson, or rape, the punishment being death upon conviction, and for such apparently trivial ordinances as those forbidding a negro or Indian slave from going abroad into the streets an hour after sunset, or going more than forty miles from the city of Albany, without his master, or meeting in groups of more than three. The act of 1730 "for the more effectual preventing and punishing the conspiracy and insurrection of negroes and other slaves, for the better regulating them, and for repealing the acts therein mentioned, relating thereto," practically finished New York's legislation relating to slaves, prior to the Revolution.²

The effects of the Revolution on the minds of New York were like those observed in other states. In 1788 it was enacted that "if any person shall sell as a slave within this state any negro or other person who has been imported or brought into this state, after the 1st June, 1785, he shall be deemed guilty of a public offence and forfeit 100 *l.* and the person so imported or brought into this state, shall be free." Thereafter a rather steady stream of legislation demonstrated the trend of public opinion toward emancipation and freedom for the negro, though the right of

¹ Miss Donnan's lists of cargoes for 1715-1740, *Documents Illustrative of the History of the Slave Trade*, III. 462-506, show less than a fifth of the slaves imported into New York to have come directly from Africa.

² Laws, 1752, ch. 560. See A. J. Northrup, "Slavery in New York," *N. Y. State Library Bulletin, History*, no. 4, and E. V. Morgan, "Slavery in New York," in *Papers of the American Historical Association*, V.

colored men to vote continued, even under the Constitution of 1822, to be severely restricted.

In 1799 an act was passed for the gradual abolition of slavery, providing that any child born of a slave mother in the state of New York after July 4 of that year should be deemed to be born free, but should serve the legal proprietor of the mother until such servant should reach the age of twenty-eight years if male, twenty-five if female. Importation of slaves was forbidden by act of 1810. By act of 1817, all negroes born before July 4, 1799, should be free after July 4, 1827.³ Thus slavery in New York was extinguished.

Perhaps the most convincing evidence that public sentiment on the whole, subsequent to the Revolution, tended constantly toward liberality of treatment of slaves is to be found in the statutes, beginning with the act of February 22, 1788, already mentioned, and the construction placed upon those statutes by the courts of New York. In *Sable v. Hitchcock*,⁴ it was rather apologetically held that that act, quoted in part above, did not apply to the sale of slaves by the executor of an estate, because it was not within the spirit of the act to prohibit such sales, and because it would be injurious to creditors to prevent the sale of slaves and the application of the proceeds to the debts of the deceased. The same statute was involved in another case,⁵ also decided in 1800. This time, however, the slave had escaped from his master in New Jersey, and was arrested by order of the defendant, who purchased the slave plaintiff from his New Jersey owner. By a divided court, the plaintiff was declared to be free although the original owner had by contract merely let the plaintiff to the defendant for twenty years, with full power over the slave as the owner himself had prior to said contract.

The voluntary manumission of slaves was encouraged by statute. The comment of Justice Woodworth⁶ indicates that even prior to 1788, the owner of slaves could manumit his slaves by will or certificate, that by the act of 1788⁷ the owner could manumit his slave by will or otherwise, but such owner was liable thereafter for the support of a manumitted slave unable to support himself. By the act of March 29, 1799, the owner could manumit by certificate, and apparently the earlier liability for an indigent manumitted slave was abolished. The dictum found in the case of *Smith v. Huff*, that no writing was required to manumit a slave under the 1788 law, is repudiated without specific reference in *Trongott v. Byers*,⁸ where it is said: "The parol agreement of Paff, to manumit Peter, if he served faithfully for 5 years, was not a valid manumission. Such a manumission can only be in writing."

³ Acts of 1799, ch. 62; of 1810, ch. 115; of 1817, ch. 137.

⁴ P. 355, *infra*.

⁵ *Fish v. Fisher*, p. 357, *infra*.

⁶ *Smith v. Hoff*, p. 379, *infra*.

⁷ 2 J. S. Green 88.

⁸ P. 382, *infra*.

Sympathy for the slave was not allowed to override legal principles. Where a testator⁹ by his will gave Nan her freedom at his death, but sold her as a slave during his life-time, she was denied her freedom under the manumission laws, on the grounds that the testator had changed his mind, and that the sale was *pro tanto* a revocation of his will.

The question whether a slave¹⁰ was eligible to receive a patent to land as a gift under the act of March 27, 1783, to those serving in the Revolutionary War, was decided in the affirmative, and the heirs of one Peter Stringerland, a slave, were permitted to succeed to his rights.

Perhaps the most bitterly contested issues involved the problem of the fugitive slave. The legislature of New York by successive acts complied with the spirit as well as the letter of the federal Constitution,¹¹ requiring each state to deliver to the owner any person held to service or labor in another state. The 1829 edition of the *Revised Statutes* of the state¹² contains a group of sixteen paragraphs entitled "Of the Importation into this State of Persons Held in Slavery, of their Exportation, of their Services, and Prohibiting their Sale." The same edition¹³ contains another group of eleven sections entitled "Of Persons held in Service," dealing with the status of slaves and their progeny within the boundaries of New York, and limiting the time during which any slave or child of a slave might remain a slave under the law.

An excellent illustration of the temper of the times is found in a case¹⁴ in which Jack, a former slave owned by Mary Martin, of Louisiana, sued out a writ alleging that Mary Martin had detained him in New York as a slave. At the hearing it developed that Mary Martin had been given possession of the negro plaintiff under the act of Congress,¹⁵ pursuant to the provisions of the federal Constitution. Judgment was, of course, given for the defendant in the Supreme Court. The case then went to the Court of Errors,¹⁶ where it was again urged that the plaintiff was a free man under the laws of New York. The judgment of the Supreme Court was affirmed on the ground that "the right of the master to reclaim his fugitive slave is secured to him by the federal constitution" and further that no good citizen "will interfere to prevent this provision from being carried into full effect." The extent to which the highest court in New York was willing to go in 1860,¹⁷ is found under peculiar circumstances, in which the owner of slaves, a woman resident of Texas, *en route* to that state from Virginia with eight slaves, and waiting for a vessel, was deprived of her property in that the slaves were declared free

⁹ In the matter of Nan Mickel, a negro girl, p. 373, *infra*.

¹⁰ Jackson *v.* Lurvey, p. 382, *infra*.

¹¹ Art. IV., sect. 2, subs. 3.

¹² 1 Rev. Stat. 656.

¹³ 2 Rev. Stat. 156.

¹⁴ Jack a negro man *v.* Mary Martin, pp. 389, 391, *infra*.

¹⁵ Act of Feb. 12, 1793, 2 Laws of U. S. 165.

¹⁶ 14 Wendell 507.

¹⁷ Lemmon *v.* People, p. 405, *infra*.

under sections 1 and 16 of the act of 1829.¹⁸ Three dissenting opinions featured this case. It is difficult, if not impossible, to reconcile the decision with *Jack v. Martin*,¹⁹ and it seems to ignore the plain terms of the constitutional provision,²⁰ as well as the act of 1793.²¹

II.

Under the Dutch regime the highest judicial tribunal consisted of the governor, a council of five members, and the schout fiscael, an officer whose duties correspond to those of the modern sheriff and prosecuting attorney. Appeals were theoretically permitted to the Amsterdam chamber of the West India Company, but were difficult to perfect, because of governmental interference. Under the early English regime, the Duke's Laws of 1665 created, as the highest tribunal, the court of assizes, composed of the governor, his council, and several justices of the peace. The bulk of litigation, both civil and criminal, was tried in the courts of sessions before juries; trivial cases were heard by the town courts. In 1691, the Act for Establishing Courts of Judicature reorganized the judicial system of the province. Thereafter the highest ordinary common-law court was known as the Supreme Court of Judicature, but by writ of error cases adjudged in it could be brought before the governor and council, and there was a court of chancery, a prerogative (probate) court, and an admiralty court.²²

The Revolution effected no immediate change in this system. The constitution of 1777 left all these courts in existence, save that of the governor and council, but added above them a court for the trial of impeachments and correction of errors, consisting of the president of the senate, the chancellor, the three justices of the Supreme Court, and the senators.²³ The constitution of 1821 retained this court for the trial of impeachments and correction of errors and the Supreme Court of three judges.²⁴ The constitution of 1846 substituted for the former a Court of Appeals of eight judges, four of them elected from the state at large and four from among the judges of the Supreme Court, and for the latter and the chancellor a Supreme Court of thirty-two judges, of law and equity both.²⁵

¹⁸ P. 353, note 12, *supra*.

¹⁹ P. 353, notes 14 and 16, *supra*.

²⁰ P. 353, note 11, *supra*.

²¹ P. 353, note 15, *supra*.

²² Julius Goebel's chapter, "The Courts and the Law of Colonial New York," in *History of the State of New York*, ed. Flick, vol. III.

²³ Art. XXXII.

²⁴ Art. V., sects. 1, 4.

²⁵ Art. VI., sects. 2, 3, 4.

NEW YORK CASES

Lewis Morris v. Lewis De Bois, New York Hist. Soc. 1912, p. 5, October 1680 (General Court of Assizes). "An appeal from the Judgment of the court of Mayor and Alderman Given the 13th of January 1679 about the negroes taken by the Dutch and sold in vandue att the Esopus to the Defend't and runaway from him to the appeal't who Detained them; which the appeal't was Ordered to Deliver with Damage. The proceedings of said Court being Read and partyes fully heard the Court Reversed the Judgment in the Mayors Court, And give Judgment for the Appeal't that he keep the said two Negroes. The Def't to pay Costs of suite."

Cases of Robert Seary and Mingoe, N. Y. Hist. Soc. 1912, p. 34, October 1682. "Upon Information Given by John Colier Sheriffe of the Citty of New Yorke That the Said Two Negroes by name Robert Seary and Mingoe Are Runn awayes from Virginia And Maryland And have been A Long time in his Custody and Putt him to Greate Charges for their Maintenance and in Apprehending them Againe when Broake Prison And Escaped and though Notice Given to their Mas. or Owners Noe Care is Taken for their Releasement and Payment of the Charges. It is Ordered That upon Notice Given to their Mas. or Owners If in the Space of two months noe Care be taken for their Releasement And Payment of the Charges of their Imprisonment and Prosecucon That then the Said Negroes be Exposed to Sale att A Publique Outcry by the Said Sherriffe to Sattisfie the Same and the Over Plus if any to be Returned to their Mas. or Owners." . . .

"Robert Seary A Negro Man Being Indicted and Arranged for Breaking Prison and Stealing A Boate which he with Others Runn Away with out of the Mould or Harbour of this Citty on his tryall Pleaded not Guilty Butt Being Found Guilty by the Jury was Sentenced to be Tyed to a Carts Arse and to Receive tenn Lashes or Strips on the Bare back att Each Corner Round the Citty And to be Branded in the forehead with the Letter R." . . .

"Mingoe A Negro Man Being indicted and Arranged for the Like Crymes and Found Guilty by the Jury Received the Same Sentence."

Sable v. Hitchcock, 2 Johns. Cas. 79, October 1800. [82] "On these pleadings, the question is whether the disposition made of the plaintiff, by the executors of Samuel Ellis, to the defendant, was a sale, within the meaning of the act of the 22d February, 1788, by which 'in order to prevent the further importation of slaves into this state, it is enacted, that if any person shall sell as a slave within this state, any negro or other person who has been imported or brought into this state, after the 1st June 1785, he shall be deemed guilty of a public offence, and forfeit 100 l. and the person so imported or brought into this state, shall be free.' 1. I consider the disposition of the slave, made by the executors

as equivalent to an absolute sale. It was probably made . . . under an apprehension that . . . the plaintiff came within . . . the act, and with a view to elude the prohibition. It gives to the defendant a complete authority over her as his servant, and unlimited in its duration. . . [83] But, 2. I am of opinion, that the sale by the executors was not a sale within the spirit of the act. The objects of the act are sufficiently answered, if it be restrained in its operation to the ordinary traffic or sale of slaves, brought into this state, by persons acting in their own right, and for their own emolument. It ought not . . . apply . . . to those who act . . . for . . . others, and in performance of a trust imposed by law. . . [84] In all cases, therefore of persons acting in *autre droit*, as executors . . . and trustees on whom the duty devolves, by . . . law, I think the act cannot apply. It would be highly injurious to creditors . . . and extremely embarrassing to persons acting in these capacities. . . They are not bound to keep them as their own, and if kept as the property of the estate . . . it would be impossible to convert them to any valuable purpose . . . By selling them, they would incur a heavy penalty, besides the forfeiture of the slaves. . . In the present case the removal of the testator into this state, without a consequent sale by him, created no forfeiture. The property of the slave continued lawfully in him; and, unless extinguished by his death, was transmitted to the executors, and became assets in their hands. If so, they had a right to dispose of her for the benefit of the estate of their testator, and the sale was not within the act. I am, therefore, of opinion, that there should be judgment for the defendant. [Radcliff, J.]

Held: [85] “ While slaves are regarded and protected as property, they ought to be liable to an essential consequence attached to [86] property, that of being liable to the payment of debts. . . By considering the sale mentioned in the act, as confined to a voluntary disposition of the slave, for a valuable consideration, by the owner himself, we are enabled effectually to reach the mischief in view, the importation of slaves for gain, and we take away every such motive to import them. . . For these reasons, I am inclined to think, that slaves so imported, may be held as assets by creditors on execution, and consequently, that judgment must be for the defendant.” [Kent, J.]

Dissenting opinion: “ The question is whether a slave, so imported, or brought into the state, and remaining unsold, can, on the death of the master or owner, be sold by his executor? . . . [88] should the slave be adjudged transmissible to the executor, namely, that the goods of the testator coming to the executor, subject to a power and trust to sell them, he may sell the whole of them, . . . and it not being passible to deduce or conceive his life or any other given time, as the limitation of a term for which only he may sell, he may therefore sell in perpetuity, and if so, then there may be a sale of a slave, as a slave, and neither the seller be liable to the penalty, nor the slave be free, which is contrary to the express provision of the act. For these reasons, I am of opinion, that the plaintiff is entitled to judgment.” [Benson, J.] Judgment for the defendant.

Fish v. Fisher, 2 Johns. Cas. 89, October 1800. “*In homine replegiando*. . . The plaintiff was the slave of one Van Voorst, who resided . . . in . . . New Jersey. He ran away from his master, and came to the city of New York. Van Voorst came to New York on the 26th of February, 1795, and entered into an agreement with the defendant, . . . by which, for . . . 225 dollars, he let the plaintiff, who was twenty-five years of age, to the defendant for twenty years, with authority to correct, imprison, and exercise all such lawful authority over him, as he, Van Voorst, himself before that time might do. The defendant, who lived in New York, then took the plaintiff into custody.” . . .

Held: [90] “By the act of the 22d of February, 1788, in order ‘to prevent the further importation of slaves into this state,’ it is enacted, that if any person shall sell as a slave within this state any negro or other person who has been imported or brought into this state after the 1st June, 1785, he shall be deemed guilty of a public offence, and forfeit 100 *l.* and the person so imported or brought into this state shall be free. 1. The first question is, whether the slave was brought into this state within the meaning of the act. 2. Whether the letting to hire, as above stated, was a sale within the act. With respect to the first question, . . . the slave eloped from his master. He certainly could not be said to be brought into this state, if the master . . . had not sanctioned his coming by . . . disposition of him to the defendant. He thereby made the change of the residence of the slave his own act, and the slave by the consent of his master, became domiciled here. This is the same, . . . as bringing him, . . . 2. I think the letting of the slave to the defendant was a sale, designed to be in evasion of the act. . . [91] I am . . . of opinion, on both points that . . . plaintiff is entitled to judgment.” [Radcliff, J.]

“I am also of opinion that the case of a slave running away from his master into this state, and followed by the act of the master here in selling him within the state is . . . a constructive bringing into the state, within the . . . act. . . On the second question . . . I think the judgment . . . must be, . . . that it is a sale within the act. . . judgment ought to be given for the plaintiff. Lansing, Ch. J. was of the same opinion. [92] Benson, J. dissented. He agreed that where a slave runs away . . . and is retaken here and sold, the slave is to be considered as imported or brought in, and sold, within . . . the statute. But for the reasons given by him in . . . *Sable v. Hitchcock*,¹ he did not think the agreement in the present case was to be so understood . . . as . . . in fraud or evasion of the act, . . . or so as to produce the effect of making the slave free by law; but that, . . . it was good for twenty years, if Van Voorst should so long live. Lewis, J. also dissented. Judgment for the plaintiff.” [Kent, J.]

Giles v. Bradley, Executrix, 2 Johns. Cas. 253, April 1801. “On the 19th November, 1798, the plaintiff purchased of the defendant’s testator a negro slave for 200 dollars, for the payment of which sum the plaintiff executed to the defendant’s testator a single bill, payable in five months, with interest; and the bill was afterwards paid by the plaintiff. At the time of the purchase, it was agreed . . . that if the plaintiff or his wife

¹ P. 355, *supra*.

did not like the boy, the testator would take him back, upon his being returned at any time within five months from the time of the purchase; and that the testator would . . . refund the purchase money . . . [254] The plaintiff, not liking the boy, returned him to the testator within five months . . . assigning as a reason that the plaintiff did not like the boy; but the testator refused to receive him, or to refund the purchase money."

Held: "This action is well brought. . . The convenience of parties, in cases like the present, may often require such terms; and there are frequent instances of such agreements being held valid in law. . . [255] The subsequent payment of the bill, connected with the circumstance, that the period of five months, at the expiration of which it was made payable, was the same within which the negro was to be returned, might afford the presumption that the plaintiff had thereby made his election, and determined the contract. But in answer to this, it is expressly stated, that the testator agreed that the money should be refunded on the return of the negro. The agreement to refund controls the presumption, and shows that a payment was . . . optional in the plaintiff, before the expiration of the five months, . . . without prejudice to his right of returning the negro. . . [256] plaintiff is entitled to judgment." [Radcliff, J.]

Hitchcock v. Sable, 2 Johns. Cas. 488, February 1802. "This cause came before this court by writ of error from the supreme court, (see ante, p. 79,) and after argument the court ordered and adjudged, that the judgment of the supreme court be affirmed, with costs, . . ." ¹

Deas v. Smith, Col. and Cai. Cas. 221, August 1803. "Issue had been joined in this cause, in 1800, and two commissions had been sued out; one had been returned, but a long time having elapsed, the defendant gave notice, for the last term, that he would then move for judgment, as in case of nonsuit. On its being brought on, the plaintiff stipulated to try, at the next sittings, or circuit court, reserving to himself the right of applying to the court, for a renewal of the stipulation, in case the other commission, then pending, should not be returned. [222] Benson now renewed the application for judgment, on an affidavit, stating, that a few days after the above stipulation was entered into, the commission to which it alludes, arrived, and that the cause had been duly noticed for the last sittings, but had not been brought on. Woods, contra, read an affidavit by the parties, on account of whom the plaintiff had effected the policy of insurance, on which the present action was brought. . . that the cause was, . . . noticed for trial, under an idea of proving interest in . . . the cargo by one York Wilson, who, . . . deponent believed to be resident in New York, . . . but had lately gone to the East Indies; . . . [223] Benson offered a counter affidavit to show that York Wilson was a slave, and therefore the want of his testimony could never have prevented the cause from being heard, because, had he been present, his evidence could not have been received." [224]

Held: "The application is for judgment, as in case of nonsuit: this is opposed by a deposition . . . disclosing facts, to rebut which, the defen-

¹ See *Sable v. Hitchcock*, p. 355, *supra*.

dant offers a counter affidavit: a question is made whether it can be received . . . the court finds the practice . . . against its reception. . . [225] The want of a witness is alleged, and no diligence shown to procure him. . . [226] In the meantime, judgment of nonsuit must be entered."

Link v. Beuner, 3 Caines 325, November 1805. "This was an action to recover the amount paid for the services of a negro man named Bartley, . . . By an act of the legislature, passed in 1788, proprietors introducing slaves into this state, after the 1st day of June, 1785, were prohibited from selling them as slaves, and such persons, if 'sold contrary to the true intent and meaning of the act,' were declared to be free. In 1794 . . . the former owner of the negro . . . brought him into this state. On the 8th of April, 1801, . . . it was enacted, 'That if any person . . . shall . . . sell as a slave, or transfer for any period whatever, any person who shall hereafter be imported . . . as a slave,' . . . [326] 'shall be free.' On the same day it was ordained by another statute, . . . that 'all acts . . . heretofore passed . . . which come within the purview . . . of any of the acts passed during the present session of the legislature, . . . are hereby repealed . . . provided, however, that such repeal shall not affect any act done, right accrued, . . . previous to . . . the first day of October next,' . . . In March, 1803, when the negro . . . was 18 years old, Parsons . . . transferred to the defendant his services for 20 years, . . . In April, 1804, the defendant, for . . . 225 dollars, . . . assigned the residue of the term to the plaintiff, into whose service the negro entered, but on the 15th of August following deserted it, claiming to be free. It was now submitted to the court whether, under the above circumstances, he was entitled to freedom? if so, the right to recover was admitted." [329]

Per Curiam: "The sale in this case is not within the principle of *Fish v. Fitcher*, and an evasion of the act of 1788. Under that law, the negro acquired a right not to be sold; an important right which secured him against a change of master; he also acquired a further right of being free if the right was invaded. These rights, the proviso of the repealing act of 1801 continued to him unimpaired, for it is not possible to suppose that the legislature intended to leave all slaves imported between June, 1785, and October, 1801, out of the protection of every law. Judgment for the plaintiff."

Gurnee v. Dessies, 1 Johnson 508, August 1806. "On the return to the *certiorari* in this cause, the only error assigned was, that the justice had refused to admit the evidence of a free black man, as to facts which took place while he was a slave. The cause was submitted without argument." *Per Curiam*: "A free black man is a competent witness to prove facts which may have happened while he was a slave. The judgment below must be reversed."

De Fouclear v. Shottenkirk, 3 Johnson, 170, May 1808. "action of *assumpsit*. . . From the evidence . . . it appeared that a conversation had taken place between the plaintiff and the defendant, relative to the sale of a negro slave, belonging to the plaintiff, and that the price was mentioned to be 300 dollars. The slave not appearing satisfied with the change of masters, the plaintiff's wife said to him that he might go a day or

two, and see how he liked the defendant. . . [171] that the plaintiff, after the negro ran away, said 'he had lost 300 dollars, for in a day or two he had sold him.' . . The judge charged the jury, . . that if, . . satisfied that the sale of the negro was absolute, the plaintiff would be entitled to their verdict; but if . . of opinion, . . that it was a sale upon trial, that then, while the slave remained in the possession of the defendant, he was bound to take as good care of him, as he would of his own slave; . . if he had not done so, the plaintiff was entitled to a verdict; . . that if the sale was not absolute, it was incumbent on the plaintiff to show, clearly, on what terms it was made; . . verdict for the defendant." . .

Held: [173] "Was the property of the negro, at the time he ran away or subsequently, in the plaintiff or defendant? . . [174] The negro was in the possession of the defendant, but whether as being sold to him, or put into his possession until he should signify his assent to buy, or return him, will depend on the facts in the case. . . The plaintiff rests upon circumstances from which to infer the fact; these the defendant has rebutted by . . proof of the acknowledgment of the plaintiff, that the negro was his when he ran away. I cannot see that the jury have decided against the . . evidence, . . and I am, therefore, unwilling to disturb the verdict. . . [175] Rule refused."

In the case of Tom, a negro Man, 5 Johnson 365, February 1810. "A *Habeas Corpus* . . directed to Adolph Walradt, commanding him to bring up a negro . . Tom, detained in his custody, . . as a slave. The negro was now brought up, and his master made a return to the *habeas corpus*, stating that the negro was born a slave in the county of Montgomery, . . held as such by Johannes Walradt, of whom he, Adolph Walradt, purchased [366] him as a slave, some years ago; that since the death of . . Johannes, the negro claims to be free, by virtue of a certificate . . given to him by . . Johannes, . . in which . . Johannes sets forth, that he thereby 'manumits . . Tom, from and after the death of . . Johannes, in spite of all bills of sale, or last will by him thereafter to be made,' which certificate was given before the sale . . to Adolph . . On this return, it was submitted to the court, whether the negro was entitled to his freedom or not." *Per Curiam*: "We think the negro is free, by reason of the certificate of manumission given by Johannes Walradt, in his life-time; and he must, therefore, be discharged."

Quackenboss v. Lansing, 6 Johnson 49, May 1810. "action for a breach of covenant. The declaration stated, that the defendant, . . by his deed, sold and delivered to the plaintiff, a negro female slave, . . Nanny, aged about 18 years, for . . 40 pounds, paid by the plaintiff to the defendant, . . and that . . defendant 'the sale of the said slave . . against all persons . . [50] would warrant and forever defend,' . . that at the time of the sale, the defendant had no . . title in the girl, . . but that she was free, and not a slave; . . The defendant demurred to the declaration, because. 1. The plaintiff has not set forth any breach of the covenant of warranty; . . 2. Because, . . the plaintiff puts in issue, . . the fact, whether the negro was a slave or free, at the time of the sale."

Per Curiam: "There is a sufficient assignment of a breach. . . The defendant was to warrant and defend the sale; . . by the averment, . . the sale was null and void, . . The substance of this covenant was, that the defendant would warrant the sale; and if the negro was free, the sale was void, and the covenant [51] immediately broken. . . The averment, that she was free, was equivalent to showing an eviction; for it showed that the plaintiff was ousted of all right and lawful possession. Judgment for the plaintiff."

Ketletas v. Fleet, 7 Johnson 324, February 1811. "action on the case, to recover the price of a negro boy sold by the plaintiff to the defendant. . . [325] At the trial, the plaintiff proved the sale . . for . . 250 dollars, and the delivery of the negro to the defendant; . . The defendant offered in evidence a writing, under the hand and seal of the plaintiff, . . stating that he did promise . . to give his boy Tom free in eight years, from the 1st day of April, 1804, upon condition that Tom conducted himself as an industrious, honest and faithful servant, during that period. This writing was . . admitted and proved. It was also proved, that the negro left it in the hands of a third person, for safe keeping. The defence was, . . defendant had no knowledge of this contract, and that it was fraudulently concealed from him. . . The defendant proved, that eight or ten days after the sale, he went to the house of the plaintiff to deliver back the negro, on account of that contract, and to pay wages for the time he had the boy. . . that he was informed of the existence of the writing . . about eight or ten days after the sale, and that the plaintiff had applied for [326] the instrument, stating that the boy was sold, and that the instrument was of no consequence. . . The judge charged the jury, that if the defendant knew that the plaintiff had agreed to give the boy free in eight years, yet if he did not know of the writing, they ought to find for the defendant; and the jury found accordingly. A motion was made for a new trial,"

Per Curiam: [330] "The covenant of the plaintiff to manumit the negro in eight years, on condition of faithful service, was one that the slave could avail himself of, if the condition was fulfilled. . . The statute . . allows [331] the master to manumit his slave . . The manumission does not rest upon the principles of a contract, . . but it is an act of benevolence, sanctioned by the statute, and made obligatory, if in writing. . . If, then, the covenant was unknown to the defendant at the time of the sale, and if, under an ignorance of the writing, he purchased the negro as an absolute slave for life, he had a right to return the negro as soon as the fact was discovered, and rescind the contract. The jury have found the fact of his ignorance of the writing; and the concealment of it from him, when the sale was made, was a fraud that will vacate the contract. . . Motion denied."

Bayley v. Bates, 8 Johnson 185, August 1811. "action on the case, for a false return. The declaration stated, that a judgment was obtained in February, 1809, in favor of the plaintiff, against R. B. on which a *fi. fa.* was issued, . . and delivered to the defendant, as sheriff . . That

the defendant had not the moneys . . . but falsely, maliciously, and deceitfully returned on the *fi. fa.* that he could find no goods or chattels, lands or tenements, of . . . R. B. . . Plea, the general issue. . . On the *feri facias* . . . the defendant had endorsed a return of *nulla bona*. It was proved, that . . . the defendant had levied on a negro boy, said to be a slave of R. B., . . . who brought the negro into this state in 1803, . . . [186] and had filed in the proper office, the affidavit and certificate required by law in such case. . . The plaintiff gave notice to the defendant, that the negro was the property of R. B., and offered to indemnify the defendant if he would sell the negro; and protested against a trial of the question of property by a jury, . . . The offer of indemnity was verbal, . . . The defendant summoned a jury . . . and by an inquisition . . . the jury found that the negro was not, in fact, the property of R. B. . . The Chief Justice charged the jury, that the inquisition was conclusive in favor of the defendant, unless the plaintiff proved that the defendant had acted dishonestly and fraudulently; . . . and that it was for the jury to decide whether the defendant had acted impartially and with good faith, in taking the inquisition. . . verdict for the defendant. [187] A motion was made to set aside the verdict,"

Per Curiam: [188] "The question is, whether the defendant was protected under the inquest of office from the charge of a false return. It is found that he . . . conducted the inquest with impartiality and good faith; . . . that the plaintiff had due notice of it, and that there was not any regular indemnity offered to the sheriff, in case he would sell the negro. . . [189] In the present case, there are no circumstances to deprive the sheriff of the protection which the inquisition ought to give, and the motion for a new trial is denied."

Glen v. Hodges, 9 Johnson 67, January 1812. "action of trespass . . . for taking the plaintiff's negro man slave out of the plaintiff's possession, and carrying him away. . . [68] The plaintiff proved that, in February, 1808, he bought of one Deoffendorf, a negro man, named Harry, who, at the time of such purchase, was a runaway, and had been gone about two years. Deoffendorf went with the son of the plaintiff, who had a power from his father, to take the negro in the state of Vermont, and they found him in Rutland. The negro was taken by Jacob S. Glen, in behalf of his father, the plaintiff; and while the negro was in the custody of the plaintiff's son, a constable came and arrested him, by virtue of a writ of attachment, at the suit of the defendant and his partner. The son of the plaintiff claimed the negro as a slave; but the constable took him by force, carried him away, and committed him to the gaol of the county. . . [69] It was admitted, that by the constitution and laws of Vermont, slavery was wholly prohibited. The judge declared his opinion on the law and the evidence, that the plaintiff was not entitled to recover, and the plaintiff submitted to a nonsuit, with liberty to move the court to set it aside, and to grant a new trial."

Per Curiam: "There is no doubt that the negro was the property of the plaintiff, and had run away from service into Vermont. He was held to service or labor under the laws of this state, when he escaped, and the

escape did not discharge him, but the master was entitled to reclaim him in the state to which he had fled. This is according to a provision in the constitution of the United States (art. 4. s. 2,) and the act of congress of the 12th of February, 1793, . . . prescribes the mode of reclaiming the slave. It not only gives a penalty against any person who shall knowingly and willingly obstruct the claimant in the act of reclaiming the fugitive, but saves to such claimant his right of action for any injury he may receive by such obstruction. The plaintiff was, therefore, in the exercise of a right . . . and the single question is, whether the defendant is not responsible in trespass, for rescuing the slave, . . . under the form and color of an attachment for a debt . . . The negro, being a slave, was incapable of contracting, . . . A contrary doctrine would be intolerable, so far as respects the security of the owner's right, and would go to defeat the provision altogether. . . . The fact being established that the negro was a fugitive slave, the attachment was no justification to the party who caused it to be [70] sued out. . . . the interference of any private individual, by suing out process, . . . under the pretence of a debt contracted by the negro, was an act illegal and void. . . . A new trial is, therefore, awarded, with costs to abide the event. Motion granted."

Wells v. Lane, 9 Johnson 144, May 1812. "Lane brought an action of debt against Wells, . . . under the act concerning slaves, for harboring the slave of the plaintiff, named Betty, . . . The plaintiff, who was a free black, proved that he purchased Betty and her mother, about twenty-four years ago, and that he married the mother when Betty was about a year old. Betty and her mother were born slaves. The plaintiff declared to one witness, that he had purchased his wife and child from bondage, and that they were received among their society (quakers) as free persons; . . . to another witness he expressed a determination to have a free family, and said that his wife had assisted in procuring her and her daughter's freedom, and that he always called Betty his child. . . . The jury found a verdict for the plaintiff, for twenty-five dollars, on which the justice gave judgment."

Per Curiam: "In determining whether the negro woman, Betty, is . . . the slave of the plaintiff below, we must look at the law, as it stood at the time of the purchase, . . . upwards of twenty years since. Our present statute . . . would seem to require . . . some instrument in writing, [145] These terms are more limited than those used in the statute of 1788, . . . which are, that if any person shall by last will or otherwise, . . . set free his slave, such slave shall be considered as freed . . . the provision, in the third section of the present statute, was intended to confirm manumissions informally made. It declares, that all the manumissions of slaves made by the people called quakers, . . . before . . . 1798, although not in strict conformity to the statutes then in force, relating to such manumissions, shall be valid from the time they were made. . . . And if parol manumissions were binding, the plaintiff's declarations fully show he never considered Betty as his slave, nor did he purchase her as such. . . . After such declarations and such a lapse of time, to authorize the plaintiff to claim her as his slave, would be extremely unjust; and unless she was his

slave, there is no ground upon which he could maintain the action. . . The judgment must, therefore, be reversed.”

Hopkins and Mudge v. Fleet and Young, 9 Johnson 225, August 1812. “Fleet and Young, . . as overseers of the poor . . brought an action against the plaintiffs in error, as executors of Thomas Hopkins, for twenty-five dollars and fifty-nine cents laid out . . for the support . . of a certain slave, belonging to the said Hopkins, in his life-time. . . [226] At the trial, it was proved that the slave . . Jordan, belonged to the testator . . that the defendants . . had expended the sum demanded, as being requisite for the support of the slave, . . The defendant . . then offered in evidence the following certificate in writing: . . ‘We do hereby certify that the bearer, named Jordan, the property of William Hopkins and Co. appears to be under the age of fifty years, and of sufficient ability to get his own living. We do hereby manumit the same. . . Overseers of the Poor.’ . . but the court refused to admit the certificate as evidence. The defendants . . then offered in evidence the will of Thomas Hopkins, . . but the court . . rejected the evidence. The defendants . . then offered to prove by parol . . their intention . . to manumit the slave by the said certificate, . . but the court rejected the evidence, and charged the jury, that the matters offered in evidence by the defendants . . were incompetent . . and that the jury ought to find a verdict for the plaintiffs . . for the amount stated in their declaration, and the jury found a verdict accordingly. A bill of exceptions was tendered . . and signed by, the court below.”

Per Curiam: [227] “The certificate . . was conclusive evidence of the age and ability of the slave, and sufficient to charge the town with his subsequent maintenance as a pauper. . . That certificate would, probably, be sufficient evidence of manumission, to conclude the owner, but the town have no further concern with that question, after having given the certificate required by law, and which the statute renders conclusive to exonerate the owner. Judgment reversed.”

The Executors of Rogers v. Berry, 10 Johnson 132, May 1813. “action of trover for a negro girl. . . At the trial, the plaintiff offered a negro man, named Adam, as a witness. The defendant objected to his competency, and proved that he was the slave of the testator at . . his death. The plaintiffs then proved that . . the testator bequeathed the slave, . . to his son, Walter, . . until the 17th of April, 1817, on which day and year the testator gave the slave his freedom, . . Walter, . . in writing . . dated the 8th of January, 1811, . . considering the impropriety of holding Adam longer in servitude, . . he thereby, from principles of benevolence, . . manumitted and set him free from the date of the instrument. It appeared that Walter was eighteen years of age at the time he executed this instrument of manumission, and that his guardian endorsed thereon his written consent to the act of manumission. The objection to the witness was still insisted on, on the ground that the instrument . . being executed by an infant, was voidable, . . The judge deciding against the competency of the witness, a verdict was found for

the defendant. A motion was made to set aside the verdict, and for a new trial." . . .

Per Curiam: [133] "The manumission by the infant was voidable when he should come of age. . . But, in the mean time, the sale, gift, or transfer, is valid, and the interest . . . vests. . . the witness was not, at the time, a slave, and the objection to his competency was not well taken. He must be a slave at the time, to come within the disqualification prescribed by the statute. The power which the infant had of revoking the gift . . . would, . . . have a strong . . . bias on the . . . witness, but this would be an objection to his credit only. . . The verdict must, . . . be set aside, and a new trial awarded,"

Dunbar v. Williams, 10 Johnson 249, May 1813. "Williams brought an action against Dunbar before the justice, for medicine administered by the plaintiff . . . and attendance as a physician, on a negro slave, belonging to the defendant. The defendant pleaded *non assumpsit*. The plaintiff proved the bill to be reasonable, . . . and that the person he attended was the slave of the defendant. It was proved that the slave had a foul disease, which he concealed from the defendant, and that he applied to the plaintiff who cured him. No request of the defendant, nor promise by him to pay the plaintiff, was shown. The justice gave judgment for the plaintiff, for seven dollars and sixty-eight cents,"

Per Curiam: "If medical aid or other assistance be rendered to a slave in a case of necessity, which does not admit of a previous application to the master, the person so rendering the assistance, would, probably, be entitled to compensation from the master; . . . [250] But the case of the slave in the present instance, was not one that required instant and indispensable assistance. . . It was not a case *in extremis*; and if the plaintiff did not choose to apply to the master, or to take care that his assent was obtained, the service must be deemed gratuitous. It would be dangerous to the rights of owners of slaves, to allow them to charge their masters with medical assistance, when the case was not so urgent as to prevent a previous application to the master for his direction. The judgment must be reversed."

Cramer v. Bradshaw, 10 Johnson 484, October 1813. "This was an action of covenant. The plaintiff declared on a bill of sale, by which the defendant, in consideration of one hundred and seventy-five dollars granted, bargained and sold to the plaintiff, 'a negro woman slave, named Sarah, aged about thirty years, being of sound mind and limb, and free from all disease, to have and to hold, . . . And the defendant, . . . covenanted to warrant and defend the slave, so sold to the plaintiff, against the defendant and all persons. The plaintiff alleged as a breach of the covenant, that the slave was unsound, and affected with divers diseases, to wit, fits, etc. The defendant, after craving oyer of the bill of sale, demurred to the plaintiff's declaration. The point raised on the demurrer was, that the bill of sale did not contain any such covenant, as to the soundness of the slave, but only a warranty as to the title."

Per Curiam: "The words in the bill of sale, 'being of sound mind and limb, and free from all disease, are an averment of a fact, and import

an agreement to that effect. The words were not used as a mere description of the slave; they amount to an express, not an implied, covenant; to a warranty of the soundness of the slave. . . Judgment for the plaintiff."

Caesar v. Peabody, 11 Johnson 68, January 1814. "A Motion was made for a *mandamus* . . directed to I. Peabody, commanding him to manumit . . Caesar, a black man, held by him as a slave. . . Caesar was brought into this state, about nine years ago, from Virginia, by one Hallam, as his slave, and the requisite certificate obtained and filed, according to the 4th section of the act passed the 8th of April, 1801. . . A judgment was, afterwards, obtained against Hallam, and a *fi. fa.* issued thereon, under which Caesar was sold . . to one Perkins, who afterwards sold him, at private sale, to Peabody, who now holds him as a slave. It was agreed that if the court should be of opinion that the sale by Perkins to Peabody was void, and the slave, under the act, was free, . . that then a peremptory *mandamus* should issue."

Per Curiam: "According to the decision of this court, in *Sable v. Hitchcock*,¹ . . the sale of the slave on the execution was valid; but the subsequent sale by the purchaser to Peabody, was contrary to the act, being a voluntary sale by the master of a slave, imported or brought into the state. That sale was, therefore, void; and, according to the agreement of the parties, a peremptory *mandamus* must issue. Rule granted."

Babcock v. Stanley, 11 Johnson 178, May 1814. "Stanley brought an action against Babcock, before the justice, . . he declared on an agreement, stating that B. agreed to purchase of him the service of a certain negro woman, for four years, at ten dollars per annum, which S. agreed to accept; and that B. had refused to perform the contract. B. pleaded the statute of frauds. There was no evidence that the negro woman was delivered, or offered to be delivered, by S. to B., or that any earnest money was paid, or a note or memorandum in writing made of the agreement. . . judgment for the plaintiff."

Per Curiam: "It may be questionable whether the contract for the sale of the service of the negro woman could be considered as a sale of goods, etc. within the statute for the prevention of frauds: but it was incumbent on the plaintiff below to show a performance on his part, by an offer of the wench to the defendant, before he called upon him for the payment of the money. . . No such offer appears to have been made. The judgment below must, therefore, be reversed."

Methodist Episcopal Church v. Jaques, 1 Johns. Ch. 65, June 1814. [67] "The personal estate of which Mrs. Jaques died possessed, was alleged to consist of moneys, and securities for moneys, . . horses, carriages, and slaves." See same *v. same*, p. 369, *infra*.

Dickey v. The United Insurance Company, 11 Johnson 358, August 1814. "This was an action on two policies of insurance, one on the schooner *Minerva*, and the other on the cargo on board of the same vessel, . . In the order for the insurance, the defendants were informed,

¹ P. 355, *supra*.

that the cargo consisted of soaps, wines, etc., and that the schooner would have on board some negroes, bound to the Havanna. The policy contained a written warranty, 'free from loss, if not permitted to entry, in consequence of having negroes on board.' . . . [359] a verdict was taken for the plaintiff for 7,000 dollars, subject to the opinion of the court on a case made, the amount of the verdict to be reduced as the court might direct. The *Minerva* sailed from St. Bartholemew's on the voyage insured the 10th of October, 1810, having on board forty-five African negroes, . . . From the 19th to the 23d, she experienced violent winds, and on the evening of that day anchored near the Moro Castle, . . . which was the usual place for vessels having negroes on board to come to. Vessels loaded in whole or part with slaves are not permitted, by the laws of Havanna, to come to the usual places for landing other cargoes, until they have been visited, and the slaves are landed. On the 24th of October, the usual petition was presented by the consignees, in behalf of the *Minerva*, to the proper officers, praying she might be visited and examined, . . . previous to landing the slaves. The weather on the 24th October, was . . . tempestuous, . . . On the 25th of October, a violent hurricane prevailed, . . . During the gale, she was run against by another vessel and was driven ashore among the rocks, and was wrecked, . . . one of the negroes only being lost."

Held: [363] "It appears that the port of Havanna consists of an outer harbor . . . used . . . for the landing of slaves, . . . and of an inner harbor at the city, where vessels having cargoes, other than slaves, usually anchor . . . and which inner harbor is a place of safety. . . As it regards the vessel and that part of the cargo insured by these policies, I am of opinion that the voyage insured was to end at the inner harbor; and, . . . that the *Minerva* was not 'moored twenty-four hours in good safety' . . . The underwriters were expressly informed by the assured, before they signed the policy, that the schooner would have on board some negroes bound for the Havanna. . . [364] The defendants seek protection under the special clause in the policy, viz. 'Warranted free of loss if not permitted to entry in consequence of having negroes on board,' and the . . . question is, whether the vessel failed to complete her voyage in safety, by reason of 'not being permitted to entry in consequence of having negroes on board.' I think the cause of loss intended to be guarded against, and excepted by these policies, did not occur in this case. . . By the laws of Havanna, vessels having negroes on board were 'permitted to entry;' and while going through the forms necessary and usual for that purpose, the vessel and cargo insured were destroyed by the tempest, before they arrived at the end of their voyage. The plaintiff is entitled to recover. Judgment for the plaintiff."

Mann v. Executors of Mann, 1 Johns. Ch. 231, September 1814. "The testator, . . . devised . . . and, also, bequeathed to her all the rest, residue and remainder of the moneys belonging to his estate at the time of his decease; and, also, his negro slaves, horses,"

Gelston v. Russell et al., 11 Johnson 415, October 1814. "The plaintiff demanded of the defendants three hundred dollars, being the amount

of the wages of Peter Latham, a black man, as a seaman on board of the vessel of the defendants, and who was the slave of the plaintiff. It was proved, that in 1798, Peter lived with the plaintiff. The sheriff having an execution against James Latham, sold all his right and title to Peter, at auction, and the plaintiff became the purchaser under the sheriff's sale. Peter lived with him some time before, and some time after the sale. . . before Peter was born, the father of James Latham went into Canada, leaving all his property here with his wife and children; and he died in Canada . . . subsequent to the sale of Peter to the plaintiff. One of his sons, James Latham, took the management of his father's estate, . . . There was no other proof of the property of the plaintiff in Peter. . . [416] His honor, . . . directed the plaintiff to be nonsuited,"

Held: [417] "The question in this case is, whether the evidence is sufficient to establish the plaintiff's property in the slave. The mother of Peter was the slave of the father of James Latham. By the statute, . . . he followed, from his birth, the state and condition of his mother; and, consequently, he was the slave of Latham the father of James; unless, after going to Canada . . . the master has been attainted of adhering to the enemies of the country, which would operate as a lawful manumission of the slave. . . But such attainder and conviction, if any, has not been shown. In 1798, the time when Peter was sold by the deputy sheriff, it appears . . . the father, of James, was living . . . in Canada; . . . The abandonment of his family and property could not divest him of his right to the slave; and . . . possession could not create such an interest in . . . his son, as to subject the slave to be seized and sold for . . . his debts. The plaintiff, Gelston, having only purchased the right and title of James Latham from the deputy sheriff, he cannot, now, under that sale, establish his claim to him, as his slave, who, if not a freeman altogether, must be considered as part of the estate of Latham, the owner of the slave's mother, and subject to the disposition and control of his executors and administrators, in the same manner as the other personal property of the deceased, unless otherwise directed by will. The plaintiff having no claim to the services of Peter, the nonsuit was properly granted by the judge; and the motion to set it aside must be denied."

Cook v. Husted, 12 Johnson 188, May 1815. "Sarah Husted, the plaintiff below, sued Cook, and declared against him for work, labor, and services performed by a negro girl, alleged to be her property. . . It was proved on the part of the plaintiff, that the girl was born the slave of Mary Pugsley, of whom the plaintiff, two or three years before the trial, had purchased her, and that Mary Pugsley, until the time of such sale, had the . . . exclusive control of the slave; . . . a bill of sale had been given, . . . was admitted to be read in evidence, after the handwriting of Mary Pugsley had been proved. The defendant below claimed to have purchased the slave from Israel Pugsley, a son of Mary; and Israel Pugsley . . . swore, that when he was about fourteen years old, his mother told him, that if he would procure the women to assist at the birth of the child, she would give him the child, but whether he did so or not does not appear; . . . It was proved . . . that the child was called Israel's in

the family. . . the slave was in the defendant's service about a year and a half, and some evidence was given to show that her service was not worth more than her living. . . judgment for the plaintiff for ten dollars."

Per Curiam: [189] "If the slave was the property of the plaintiff, the law will raise an implied promise on the part of the defendant to compensate her for the services of such slave. Both parties claim under Mary Pugsley, as once being the owner of this slave; and there is no sufficient evidence . . . to show that she ever parted with her right to Israel Pugsley, . . . He could not be considered as a purchaser, no consideration whatever having been given by him, and he acquired no right to the slave as a gift. A delivery of possession was essential to change the property, and this never took place; . . . Mary Pugsley continued to have the . . . absolute control of the slave, until she sold her to the plaintiff; . . . the handwriting of Mrs. Pugsley being proved, was sufficient to authorize the reading of the bill in evidence, which, according to the return, vested the title to the slave in the plaintiff. The judgment must, therefore, be affirmed."

Methodist Episcopal Church v. Jaques, 1 Johns. Ch. 450, June 1815. [453] "The defendants, . . . admitted that Mary Jaques, . . . was possessed of personal property, consisting of slaves, household furniture, horses, . . . amounting to about twenty-two thousand dollars." See same *v.* same, p. 366, *supra*.

Concklin v. Havens, 12 Johnson 314, August 1815. "the question . . . was whether the plaintiff was the slave of the defendant. . . One Joseph Concklin was the owner of a negro slave, named Maria, and her daughter Cloe Concklin, by his will . . . bequeathed all his personal estate to the defendant, . . . and by a subsequent clause, . . . 'Item—I give my negro wench, Maria, her time; and I also give to Maria her daughter Cloe, during her natural life.' After the death of the testator, and during the life of Maria, Cloe had several children, of whom the plaintiff was one."

Held: "In my view, . . . the plaintiff cannot be deemed the slave of the defendant. . . By our laws, . . . slaves are protected, . . . yet they are considered, . . . as goods and chattels, . . . Not to enforce this doctrine in the present case, when on other occasions, it is applied to slaves as personal property, would be manifestly unjust; and [315] I rejoice that an instance has occurred, by which the law, . . . will operate in favor of personal liberty. According to the general principle of law, a person hiring an animal is entitled to the increase, . . . If this is the case where there is a hiring for a time, the doctrine applies with greater force in favor of a person having a right, or who is proprietor during life. The children of Cloe were born during the lifetime of Maria, . . . they, therefore, belonged to her, and in case of her decease, to her legal representatives; and if there should be no such representative, which probably is the case in this instance, . . . they of course have become free. The plaintiff being one of those children, if not entitled to his freedom altogether, at all events, cannot be claimed by the defendant in this cause. Judgment for the plaintiff."

The Overseers of the Poor of the City of Hudson v. the Overseers of the Poor of the Town of Taghkanac, 13 Johnson 245, May 1816. "Two justices of the peace of the town of Taghkanac, . . . made an order for the removal of Elizabeth Heydon and her four children, paupers, from that town to the city of Hudson. . . . About forty years ago, one Catreen Race, an inhabitant of the town of Livingston, . . . charged one Adam Heydon, a freeholder . . . of Hudson, with being the father of a bastard child with which she was then pregnant. Heydon married her, but refused to cohabit with her, and she continued to live in Livingston, and he in Hudson, where he still resides. Three months after their marriage, Catreen Race was delivered of a male black child, (both parties being white persons,) which Heydon refused to acknowledge. The child went by the name of William Heydon, and was, when about two years old, bound out by his mother, . . . to one Phillips, . . . inhabitant of Livingston, until he should arrive to the age of 21. The child continued with Phillips, . . . six years in the town of Livingston, and about twenty months more in that part of Livingston which is now Taghkanac, and then removed with his master into the state of New-Jersey, where he completed his term of service, and then returned to Taghkanac, where he married and died, leaving a widow and four children, the paupers in question. . . . the Court below decided that William Heydon, . . . was the child of Adam Heydon; that his residence followed his father's, and was, therefore, in Hudson; and that, having gained no legal settlement elsewhere, his widow and children were chargeable to Hudson. The admission of evidence as to the color of William Heydon, [246] and his offspring, was objected to, but the objection was overruled by the Court below."

Held: [247] "If the return had stated that Catreen Race, a white woman, had been delivered of a mulatto child, instead of a black child, there could be no question on the subject of illegitimacy, because it would have appeared impossible for Adam Heydon, a white man, to have been the father; and the law, in such case, would pronounce the child a bastard; . . . but, whether Catreen Race was delivered of a legitimate or a bastard child, is rendered immaterial, as respects the liability of the overseers of Hudson, because . . . the child was bound out . . . to . . . Phillips, . . . His last place of residence, . . . in this state, was Taghkanac; but the binding, and first habitation, under the indenture, were in . . . Livingston. . . . so that, . . . [248] the town of Livingston would be chargeable with the maintenance of the paupers in question; and if William Heydon could even be deemed legitimate, yet the apprenticeship stated was sufficient, . . . to exonerate the overseers of Hudson; . . . If Adam Heydon had objected to the binding, . . . the overseers of . . . Tag[h]kanac might have been justified in the attempt to make the overseers of . . . Hudson chargeable, but the full . . . service having been rendered, . . . the objection . . . ought not to prevail; . . . The overseers of Hudson are, therefore, exonerated from the maintenance of his widow and children, the paupers in question. The judgment of the Court below must, consequently, be reversed, and the order of the justices quashed."

Scidmore v. Smith, 13 Johnson 322, August 1816. "Smith, the defendant in error, brought an action of trespass . . . against the plaintiff in error, to recover damages for seducing and harboring his man servant. It was objected that the action should have been debt, . . . but the exception was overruled, and judgment was given for the defendant in error."

Per Curiam. "The statute penalty, for harboring slaves or servants, is cumulative, and does not destroy the common law remedy. Judgment affirmed."

Oatfield v. Waring, 14 Johnson 188, May 1817. "This was an action of *assumpsit*, brought to recover a compensation for supporting the defendant's slave. . . . It was proved on the part of the plaintiff, that the slave, . . . was the property of the defendant's wife, at the time of her intermarriage with the defendant, in 1810, and had lived with the plaintiff, in the city of Albany, and been supported by him from the time of the defendant's marriage until . . . 1815, when he was demanded, and the day after received, by the defendant, from the plaintiff. The defendant lived in the city of Albany, and knew that the slave was kept by the plaintiff; but no proof was given of any express request on the part of the defendant, to the plaintiff, to keep the slave, nor of any express notice given by the plaintiff that he expected any compensation. It was proved that the plaintiff was the grandfather of the slave, and had himself been the slave of the father of the defendant's wife; that the wife of the plaintiff was formerly a slave of the same family; that when the plaintiff moved from the house of his late master, in 1810, the slave went with him, and that about the same time the defendant and his wife removed to Albany. . . . [189] The judge left it to the jury to determine from the evidence, whether any request from the defendant to the plaintiff to support his slave could be inferred. The jury found a verdict for the plaintiff for 143 dollars. A motion was made, on the part of the defendant, to set aside the verdict, and for a new trial."

Held: [192] "The defendant makes two objections to the verdict. 1st That the facts proved do not justify an inference that the maintenance of the defendant's slave was at his request. 2d. That the plaintiff is a slave, and is incompetent to maintain the action. The judge submitted it to the jury, whether a request on the part of the defendant, that the plaintiff should keep, provide for, and maintain his slave, had not been made out, and they find that there was a request. . . . I am decidedly of the opinion, the circumstances well authorized the conclusion drawn by the jury. As to the second point. The fact, that the defendant had himself sued the plaintiff for harboring his slave, goes a great way in establishing that he was free; at all events, it is a very solemn concession of the defendant that he was so. . . . [193] Motion denied."

Skinner v. Fleet, 14 Johnson 263, August 1817. "action of trespass on the case. The declaration stated that the plaintiff was possessed of a negro slave called Primus, and . . . the defendant, being sheriff of the city . . . of New-York, by . . . a writ of *pluries homine replegiando*, caused Primus to be replevied; . . . that the defendant, . . . suffered him

to go at large, without surety . . . for his return, . . . that Primus did make default, . . . and that Primus, . . . was eloiigned whereby he could not be returned to the plaintiff. . . . It was admitted that the defendant had replevied and set at liberty Primus, . . . The material testimony . . . of the plaintiff was . . . Edward Chapple was the owner of the slave in question, and was an inhabitant of . . . Connecticut. In April, 1802, Primus ran away from him, and was gone until January, 1804, when Chapple accidentally met him in . . . New-York, and took him into custody. The plaintiff, . . . also an inhabitant of Connecticut, was then in New-York, and the master of a vessel bound to London. The defendant [plaintiff] agreed to take Primus to sea with him as his cook, and allow his master wages, but told him that unless he had some writing to show when in London, the boy might claim to be free, and leave him, and proposed that Chapple should give him a bill of sale, to be given up on his return home. A bill of sale was . . . given, and Primus went the voyage, and returned . . . to New-York; and in . . . 1804, a soon as Chapple had heard of the . . . return, he offered to sell him the boy, and proposed, . . . that he should keep the bill of sale . . . [264] The defendant [plaintiff] agreed . . . and sent Chapple the purchase money, together with the wages due him. The plaintiff owned . . . Primus as his slave, . . . for . . . years after that time, and took him to New-York . . . when he went to sea. . . . It appeared on the part of the defendant, that a bond had been given . . . to . . . the defendant in this suit. . . . The obligors in the . . . bond were members of the manumission society in the city of New-York. . . . [265] The judge charged the jury, that this could not be likened to a case of property; . . . recourse must be had to the laws and customs of England in relation to villeins; that the sheriff ought to have brought Primus into Court, . . . that if they believed the testimony of Edward Chapple, the sale of Primus was made . . . in New-London; the plaintiff being then on business in New-York, and both being . . . citizens of Connecticut; . . . and that the only question for the jury would be as to the damages. The jury found a verdict for the plaintiff, and the defendant moved for a new trial."

Held: [267] "the questions arising on the case are, 1st. Whether the sheriff performed his duty on the writ of *homine replegiando*? [268] . . . 3d. Whether Primus became free in consequence of the sale to the plaintiff? 4th. Are the damages excessive? . . . The judge, . . . ruled correctly, that the sheriff ought to have brought Primus into Court, on the *homine replegiando*, and returned that he was claimed as a slave. . . . [269] By the act concerning slaves . . . it is . . . unlawful to sell as a slave . . . any person who shall be imported or brought into this state; and every person so imported, or sold, is declared to be free. . . . The facts here are widely . . . different. The slave ran away from his master in Connecticut, and was sold to the plaintiff, a resident of that state; and it cannot be said that the domicil of the slave was changed to this state, . . . This case, therefore, is not brought within the purview [270] of the statute, . . . We have no facts before us authorizing us to grant a new trial for excessiveness of damages. We must infer from the case, that the plaintiff

has wholly lost his slave. His value, and the damages sustained by the loss, were questions for the consideration of the jury, and we are without data on which to pronounce their verdict incorrect. . . Judgment for the plaintiff."

In the matter of Nan Mickel, a negro girl, 14 Johnson 324, August 1817. "This case came before the Court upon the return to a *habeas corpus*, directed to Samuel M'Callen, who held, and claimed, a negro girl, named Nan Mickel, as his slave. Henry Michael, the owner of the negro girl, by his last will and testament, . . . declared . . . 'I manumit and give freedom to my negro woman Mott, and her daughter Nan, immediately after my decease.' The testator, however, soon after the date of his will, sold Nan as a slave to one Cook, from whom M'Callen derived his title. The testator, . . . afterwards died. The question . . . was, whether, under these circumstances, the negro girl Nan was entitled to her freedom."

Per Curiam: "The sale made by the testator, after making his will, was, *pro tanto*, a revocation of the will. This would certainly be the operation as to the disposition of any other property owned by him, and there can be no solid reason why it should not be so with respect to this wench. . . A will has no effect, or operation, until the death of the testator. No person can claim any right, or interest, under it. It is completely under the control and direction of the testator. . . In all the cases we have had before us on this question, the certificate of the master has either been delivered to the slave, or to some third person for his benefit, and the act has thereby become consummated. But in the case before us, it must be considered as only resting in intention. No act has been done that is binding on the master. We are of opinion, therefore, that the girl is not entitled to her freedom. Judgment accordingly."

Livingston v. Livingston, 3 Johns. Ch. 148, December, 1817. [149] "The will . . . authorized his executors, . . . to sell all his real estate and slaves out of the parish of St. Mary's;"

Overseers of the Poor of the Town of Claverack v. the Overseers of the Poor of the City of Hudson, 15 Johnson 283, August 1818. "Two justices of the peace for the city of Hudson made an order for the removal of Sarah, a negro woman slave, from the city of Hudson to the town of Claverack, from which order the overseers . . . of Claverack appealed to the Court of Sessions of Columbia County, which affirmed the order. It appeared . . . that the slave . . . formerly belonged to Peter Van Renssalaer, of Claverack, . . . who, on or about the 20th December, 1814, executed a bill of sale of the slave to Asel Woodworth, . . . of Claverack, a very poor man, and wholly unable to maintain her, and . . . paid him forty dollars to take her off his hands, the slave being infirm, subject to fits, and incapable of performing labor. . . Van Rensselaer disclosed to Woodworth her true situation, and all her infirmities were fully set forth in the bill of sale. Soon after, Woodworth, sold the slave to . . . M'Kinstry for ten dollars, . . . M'Ki[n]stry, a few days after, sold her to Isaac Hatch, . . . who soon after sold her to . . . Curtis, who sold her to . . . Jacobs, who lived out of this state. Hatch and Curtis were freeholders

in . . . Columbia county; . . . The return also stated, that the slave was . . . left in the street in the town of Claverack, from whence she [284] wandered into the city of Hudson. The Court below decided that the sale . . . to Woodworth was void, and affirmed the order of removal.”

Held: “ By the 14th section of the ‘ act concerning slaves and servants,’ . . . it is enacted, ‘ that if any person shall, by fraud or collusion, sell, or pretend to sell, or dispose of, any aged or infirm slave, to any person who is unable to maintain such slave, such sale or disposition shall be void,’ . . . And by the 33d section of the ‘ act for the relief and settlement of the poor,’ . . . it is enacted, ‘ that it shall be lawful to remove any slave who shall have left his master, or shall have wandered from town to town, to the place of settlement of his master, etc., if such place of settlement can be found in this state; and, if none can be found, then to the place . . . whence such slave shall have last come,’ . . . I incline to the opinion that the facts present a case within . . . the 14th section of the act; and that the sale from Van Rensselaer to Woodworth, . . . must be deemed collusive and void. If so, the justices who made the order of removal had a right . . . to consider either Van Rensselaer, or Jacobs, as the master of this slave; . . . [285] If Van Rensselaer may not be regarded as the present master of the slave, on the ground that his transfer was . . . void, then I think Jacobs is . . . the owner. . . . Allowing, then, . . . that Jacobs is . . . the true owner, then, I think, the order of removal may be sustained; for the return states, that . . . ‘ Sarah wandered from the town of Claverack, into the city of Hudson; which presents a case expressly provided for in the 33d section, . . . On either ground, . . . I am of opinion, that the order of the Sessions was correct, and ought to be affirmed.”

Smith v. Kniskern, 4 Johns. Ch. 9, January 1819. “ Bill for a partition. Jacob Kniskern died possessed of a large real and personal estate in Schoharie, and by his last will, . . . he gave to his wife, ‘ all his beds and bedding, together with all his household furniture, his negro wench S. and negro boy J. and her comfortable support and maintenance out of his estate, . . . and the privilege and use of one room in his dwelling-house during all such time as she should continue to be his widow, and no longer.’ . . . The bill prayed for a partition, and that the widow might be decreed to elect whether to take the provision under the will, or to claim her dower. [10] The widow, in her answer, insisted, that she was not bound to make an election, but if she was bound, she elected to take the provision under the will.”

Held: “ The charge of a ‘ comfortable support and maintenance,’ falls, probably, upon the real estate, as well as the personal. . . . I do not perceive, however, that the provision destroys the right to dower. . . . It is sufficient that he has not made any declaration of his will on the subject, . . . [11] The rule is, that the widow takes both provisions, unless the estate is insufficient to support both, or such an inconsistency appears between the provisions in the will, and the dower, as to make the intention clear and indubitable, that both provisions were not to be taken. I shall accordingly declare, that the widow is not to be put to her election.”

Helm v. Miller, 17 Johnson 296, January 1820. "plaintiff gave in evidence a note executed by the defendant, . . . 'For value received, four years after the date hereof, I promise to pay to William Helm, or order, three hundred and fifty dollars, with interest until paid. This note is executed in consideration of a negro man, named John, this day delivered by said Helm to said Miller; and it is the express understanding of the parties, that if, in consequence of any law of this or of the United States, the said negro man shall be legally discharged or liberated from the possession of the said Miller, previous to the payment hereof, then this obligation to be void. This provision is not, however, to extend to any laws to be passed hereafter for the emancipation of slaves; dated October 21, 1813.' It was proved that the defendant purchased the negro man of the plaintiff; . . . it was agreed, [297] . . . for greater caution that the plaintiff should confess a judgment in favor of the defendant; and that an execution should issue by . . . which the negro should be sold; which was accordingly done, and a bill of sale was executed by the sheriff to the defendant, . . . the negro man was brought from . . . Virginia by P. Thornton, who owned him, at the time of his death, in 1806; and by his will, . . . he devised to his wife all the property he possessed in the state of New-York, including his negro slaves, and appointed his wife executrix, . . . Previous to the giving of the . . . note the plaintiff married the said Susan Thornton. . . The judge ruled that the action was not sustainable and nonsuited the plaintiff. A motion was made to set aside the nonsuit, and for a new trial."

Held: [299] "The case of *Sable v. Hitchcock*,¹ decided, that the sale of a slave imported into this state since the . . . act of 1788, in the course of administration, . . . would not be within the act, so as to subject the vendors to the penalty, or to emancipate the slave, if the sale was free from collusion. In the present case, the facts show that the sale was not made by the plaintiff as executor of Thornton. . . So far does the sale of the slave appear to have been unnecessary in the administration of Thornton's estate, that the note . . . was disposed of to pay the plaintiff's private debt. . . The lapse of time, too, since Thornton's death, precludes the idea that it was necessary to sell the slave to pay his debts. The acts of the plaintiff are decisive, that he did not sell the slave as executor, but in his private right, and as part of his property acquired by his intermarriage with Mrs. Thornton. The motion to set aside the nonsuit must be denied."

Brush v. Wilkins, 4 Johns. Ch. 506, June and August 1820. "Ichabod Brush, the testator, formerly of Demarara, South America, but late of Huntington, [New York] . . . [507] made his will, . . . dated March 6, 1807, by which he directed, (1.) That his plantation, slaves, and effects, in the colony of Demarara, be sold by his executors: (2.) That his executors pay to Miss E. Wilkins 20,000 dollars, in five annual payments, and in case of her death, to her parents: (3.) That they pay to the plaintiff, his sister, 500 dollars, annually, during her life. . . In June, 1808,

¹ P. 355, *supra*.

the testator married Miss E. Wilkins; and . . . made another will, . . . March 14, 1809, in which he revoked all former wills, and made various bequests . . . giving to the plaintiff an annuity of 300 dollars, . . . and to his wife, jointly with the child of which she was then enseint [*sic*] his estate at Huntington, etc., . . . The testator died at H. the 1st of August, 1809, leaving one child; and the second will, subscribed by him, but not published in the presence of witnesses or attested, was found with the first will, sealed up in the same envelope, among his valuable papers. The defendants treated the first will as a nullity, and . . . proved the second, . . . The bill charged, that the defendants had . . . the personal estate of the testator, in this state and in Demarrara, and . . . the produce of the real estate; and prayed that the defendants might be decreed to set forth the situation, and to account” . . .

Held: [509] “The first question arising . . . is, whether the will of . . . 1807, was revoked by operation of law, by reason of the subsequent marriage and birth of a son. . . [510] It had become a settled rule of law and equity, . . . that marriage and a child, taken together, . . . did amount to an implied revocation, . . . [516] I have no hesitation, therefore, in declaring, that the will of . . . 1807, was revoked by the subsequent marriage, and the subsequent birth of a child. . . [520] The will of 1809 was not executed with the solemnities requisite . . . to pass real estate, and so far the estate descended to the child, as heir at law, subject to the dower of the wife . . . , the slaves . . . attached to the plantation in Demarara, passed as appurtenant to it, . . . to the heir.”

U. S. v. Andrews, 24 Fed. Cas. 815 (1 Brun. Col. Cas. 422), September 1820. Andrews “was indicted under the second section of an act of congress, passed the 10th of May, 1800,¹” Stringham [816] “being attached to the *Cyane* sloop of war, a ship of the United States, in the capacity of lieutenant, on the 6th of April last, . . . boarded the *Endymion*, commanded by the defendant at Cape Mount, on the coast of Africa. He found on board an American register, . . . The vessel had a berth deck, a large quantity of water, two large cabooses, and provisions, but no cargo; and the witness found in the hold a quantity of hand-cuffs. . . the defendant admitted that she was a lawful prize to the first officer of the *Cyane*; . . . that he had sent home by another vessel one hundred and fifty; that he had made enough by those he had sent home to clear the owners from the loss of the vessel; and that had he not been taken, he would have cleared two hundred thousand dollars. His wages, he admitted, were two hundred dollars a month, and those of the crew forty dollars; whereas . . . [817] the usual wages on board merchant vessels is but fifteen dollars a month. . . after the arrival of the prisoner here, he admitted that he had made about fifteen thousand dollars, was willing to give any lawyer two thousand dollars who would free him from his embarrassment; and that he had been inadvertently drawn into the affair at a dinner party at Baltimore.” Held: on an indictment for engaging in slave trade, it is not necessary that the vessel to which the accused belongs should actually have had slaves on board.

¹ 2 Stat. at L. 70.

U. S. v. Malebran, 26 Fed. Cas. 1145 (1 Brun. Col. Cas. 426), 1820. "The defendant, a foreigner, and resident in this city, was indicted under the act of congress, of 1818.¹" Stringham "testified that in April last, being a lieutenant on board the *Cyane* sloop of war, he boarded the schooner *Science*,² at Cape Mount, on the coast of Africa, and found on board two several letters, written in French, by the defendant; the one dated in this city, on the 31st of December, 1819, directed to Francisco Mathieu; and the other, on the 1st of January, 1820, to Capt. Adolphus La Cost. It appeared from the translation of this last mentioned letter which, with the other, was read in evidence, that it was a letter of instructions to the captain, in reference to an agreement previously made, directing him to proceed to Porto Rico, where the vessel was to be changed into Spanish; and after procuring shackles, handcuffs, etc., to proceed on the contemplated voyage. Another person, at Porto Rico, was to assume command of the vessel. He was to be the captain on paper; but La Cost, the real captain, who was to receive further directions from the brother of the defendant, Don Pedro Malebran, at Trinity de Cuba. To this place the merchandise, to be obtained on the voyage, was to be carried; and the letter states the agreement between the defendant and La Cost to be that the latter was to receive a specific sum per head; but the word 'slaves' was not mentioned. It was then proved by James B. Leonard and Joshua Phillips, clerks at the custom-house, that on the 31st of December, 1819, the *Science* cleared from this port for Porto Rico. Stringham, on being again called, testified that he found on board the *Science* fifty pair of irons, some of which were shackles, and some handcuffs: and he also found muskets, tobacco, and calicoes, the usual cargo for the slave trade." For [1146] "uncertainty in the indictment, the judge advised the jury to acquit the defendant, and he was acquitted. . . [He] [1147] was bound over for his appearance at the next term."

Van Alst v. Hunter, 5 Johns. Ch. 148, February 1821. "He also devised to them his negroes, furniture, and stock on his farm,"

Petry v. Christy, 19 Johnson 53, May 1821. "a verdict was taken for the plaintiff, subject to the opinion of the Court, on the following case: the declaration was on a promissory note for 100 dollars, drawn by the defendant, and payable to the plaintiff, . . . By a special endorsement, the note was assigned by the payee to Frederick Getman, to be collected at his own risk and expense. Getman was, therefore, the real plaintiff. The defence was . . . want of consideration . . . or failure of the condition on which it was given. The facts . . . were, that Petry sold a negro man (Tom) and his wife and child, as slaves, to Frederick Getman, and Getman's note for the price. . . in the fall of 1815, Getman told the negro (Tom) that if he would procure good notes to amount of 200 dollars, payable to Petry, to whom Getman was indebted for the negroes, and would give his own note to Getman for 75 dollars, he would immediately manumit the negro and his wife and child. The negro . . . procured good notes to the amount of 200 dollars, payable to Petry (of which the note

¹ 3 Stat. at L. 450.

² See *U. S. v. La Coste*, p. 497, *infra*.

in question formed a part,) and delivered the notes to Getman, . . . Petry, . . . approved the notes . . . and agreed . . . to accept them, to be applied on Getman's note to him. On the 7th of November, 1815, Getman made out a formal instrument of manumission for the three slaves, and subscribed his name to it; and, on the same day, procured from the overseers of the poor, a certificate that the slaves were of sufficient ability to provide for themselves. But Getman refused to deliver the instrument of manumission, and kept the papers . . . until . . . 1818, when he delivered them to the town clerk to be recorded. During the time that he so held the papers, Getman exercised control . . . over the negroes, as his slaves. [54] He hired out Tom, and received part of his wages. He told the negroes that 'they were as much his slaves as ever they were;' . . . It was proved that during that time he did offer to sell them."

Held: "The note . . . was undoubtedly given by the defendant, in consideration of the promise, of Getman, that he would 'immediately' manumit the negroes; and although the note is made payable to Petry, yet it is clear that the original contract was made by Getman, the present assignee, and holder of the note; and there is no evidence that the note was ever delivered to Petry. The . . . presumption . . . is, that it has remained in the hands of Getman, ever since it was given. . . . An assignee of a promissory note in the usual course of business . . . without notice of a defect . . . is protected . . . But it would be an outrageous perversion of the rule, to consider Getman as standing in that situation. . . . The promise . . . of Getman was to manumit the slaves immediately on receiving the notes, . . . yet he in fact refused to manumit the slaves, until two years and five months afterwards; . . . in the mean time, treated them as his slaves. . . . [55] Their freedom was the consideration for this note; of that freedom he wrongfully deprived them; and it would be an insult to the law, and to common sense, to say, that his restraint of their liberty was illegal, . . . when he claims the price of that liberty. The defendant is, therefore, entitled to judgment."

Bay v. Tallmadge, 5 Johns. Ch. 305, July 1821. [318] "on the 5th of October, 1798, he issued another *fi. fa.* to the sheriff of Columbia, for the purpose of levying on two negroes and some timber,"

Van Horne v. Fonda, 5 Johns. Ch. 388, July 1821. [398] "he took possession, as executor of Jellis F., of three negroes, and disposed of them, according to a schedule annexed."

The Overseers of the Poor of the Town of Marbletown v. the Overseers of the Poor of the Town of Kingston, 20 Johnson 1, May 1822. "Francisca, the mother of the pauper, was born in 1800, in . . . Marbletown, of parents who were slaves, in the house of J. H. Hasbrouck. Her master, . . . on the 10th of December, 1801, abandoned her to the overseers of the poor of M. . . . about [2] four years since her grandmother purchased her time, and she came to reside with her at Kingston. In 1817, she married the slave of H., residing at K. By her husband, she had a child, named Dinah, born in K. Francisca and her husband cohabited together, as husband and wife, until her death, which happened soon after

the birth of Dinah, and about a year ago. The husband of F., . . . resided with his master, an inhabitant of Kingston. After the death of her mother, Dinah became a town charge, and was removed from K. to the town of M., as the place of her last legal settlement. The question was, whether the settlement of the pauper was in K., by virtue of the marriage of her mother in K., or by birth, or otherwise."

Held: "It is clear, that by . . . the statute of 1801, the mother was a pauper of Marbletown, and the child, Dinah, would follow the condition of the mother, unless her marriage with a slave in Kingston makes a difference in the case. . . [3] It is a rule, that children follow the condition of the mother, where both parents are slaves, and *a fortiori*, it ought to be so where the mother is free and the father a slave. . . I cannot admit that by such a marriage, a free wife subjects herself to the custody and control of the slave husband. . . The husband is not emancipated, nor is the wife enslaved by such a marriage. I am inclined to listen to the suggestions of policy and humanity, which I think dictate the rule, that the children of such marriages shall follow the condition of the free mother as to all their civil rights and duties, and that she shall have the exclusive custody and control of them, as though their father were dead; . . . I think the most consistent rule will be, to consider the children of such marriages as belonging to the town in which the mother had her legal settlement, without any regard to her slave husband. We are, therefore, of opinion, that the order of the justices for removing the pauper to Marbletown ought to be affirmed. Order of Sessions affirmed."

Oothout v. Thompson, 20 Johnson 277, October 1822. [278] . . . "This is an action for fraud in the sale of a negro wench, in fraudulently representing her health and capacity for work. The pleas were not guilty, and not guilty within six years. The jury found a verdict for the plaintiff, on the question of fraud. The judge reserved the question on the operation of the statute of limitations, . . . a witness, testified, that he drew the note given by the plaintiff to the defendant, on the sale of the wench. It is dated on the 4th day of October, 1814, . . . and he thought the sale took place on the day the note was executed. . . The writ, in this case, was tested the 23d day of October, 1820; so that there were more than six between the sale and the commencement of the suit. In 1815, it appears that the plaintiff charged the defendant with cheating him in the sale of the wench; the defendant did not deny it, but said he was willing to do what was right. . . The question then is, whether, if we consider the defendant as admitting the fraud, within six years, and declaring [279] he was willing to do what was right, such admission and declaration can take the case out of the operation of the statute. . . it is inconceivable, how an admission of the fraud within six years, can render the party guilty of committing it anew. It was consummated when the sale took place, and any subsequent confession relates back to that period. . . [280] Judgment for the defendant." [Spencer, Ch. J.]

Smith v. Hoff, 1 Cowen 127, May 1823. "*Assumpsit*, on a promissory note, made by the defendant, payable to the plaintiff. The consideration was a negro man, purchased by the defendant of the plaintiff, February

15th, 1815. In 1800, the plaintiff and Peter Smith owned the negro. He asked permission to work for his freedom; for which they agreed to take £80, payable in 3 years; . . . He accordingly left their service, and afterwards paid \$31.75, previous to Feb. 19th, 1801. Nothing more being paid, the plaintiff ordered him to return to his service. He refused to obey, and was confined in jail. While there, the plaintiff sold him to the defendant. He never lived with the plaintiff, or P. Smith, since he first left them, . . . [128] The plaintiff proved, that when he was sold to the defendant, he promised to serve him faithfully, and urged the defendant to buy him; that the plaintiff had imprisoned him twice before, and let him go on his promise to pay the money."

[129] Held: "It is contended on the part of the defendant, that the agreement was a manumission; that to enable the negro to perform his part of the contract, it was necessary he should have all the rights of a freeman, . . . If it is to be understood, that the plaintiff actually parted with his right to the services, in consideration of the promise to pay £80, . . . I incline to think it . . . a manumission; but . . . it was evidently conditional. . . he did not intend to relinquish his hold. He consented that he might earn the money by his labor, and pay it over. . . This case is analogous to that of *Kettletas v. Fleet*,¹ . . . where the owner of a slave gave a written promise to manumit him in eight years, on condition of his faithful service during that period; it was held to be a conditional manumission, . . . By the act relative to manumissions, the owner may manumit a slave, . . . The cases decided . . . [130] seem to consider a writing as necessary, . . . on the whole, I am of opinion that the negro continued a slave, not having complied with the agreement, upon which his emancipation depended. The plaintiff is entitled to judgment."

U. S. v. Jones, 26 Fed. Cas. 644 (Brun. Col. Cas. 462), April 1824. "The brig *Holkar* sailed from the port of N. Y. in Oct. 1818, under Captain Brown, and a coloured crew, with the exception of one man. . . for Curacoa," Oliver King, a mulatto (who had been three years in the state prison for grand larceny and had served his time out), testified that at Curacoa, Robinson (*alias* Jones), the prisoner, had been [645] "taken up for stealing part of a barrel of beef from the vessel, and remained in prison till the brig sailed. The night before, [three others] . . . ran away, but were taken up and carried on board, the morning she sailed." The white member of the crew was left at Curacoa. "Capt. Humphries came passenger in the brig," The crew murdered Captain Brown, Captain Humphries, and the mate, threw them overboard, and scuttled the vessel. The prisoner [648] "was found guilty and sentenced to be executed"

The Plattsburgh, 10 Wheaton 133, March 1825. [135] "The *Plattsburgh* was duly registered at Baltimore as an American vessel . . . in October, 1817. She cleared out . . . under the command of Captain Joseph F. Smith, in December, 1819, having . . . an assorted cargo on board, on a voyage ostensibly for St. Thomas . . . but in reality, for St. Jago, in the island of Cuba. . . [136] a bill of sale of the schooner was

¹ P. 361, *supra*.

executed to Stark, by all the owners, to enable him to convey the same to any purchaser. . . [137] At the time of the equipment of the *Plattsburgh* at Baltimore, . . the brig *Eros* . . was also fitting out at that port for St. Jago de Cuba, with a cargo suited for the slave trade, under the management of Stark, as charterer for the voyage. This vessel was at first detained by the collector upon suspicion, but he, being satisfied, upon inquiry, that the owner of the *Eros* had no intention of having her engaged in slave trade, afterwards released her, taking out some few of her equipments. The *Plattsburgh* first dropped down the Chesapeake bay, and, afterwards, (if the witnesses are to be believed,) some grape, canister, and round shot, were taken on board, and, on stowing them away, a barrel of irons, or handcuffs, was discovered, which was not contained in the manifest of the cargo. The vessel then sailed down to New Point Comfort, and there waited ten or twelve days for the *Eros*, and as soon as the latter appeared, after taking on board Mr. Stark, the *Plattsburgh* sailed in company with the *Eros*, directly for St. Jago de Cuba. The crew on board are represented to have distinctly understood, soon afterwards, that the voyage was designed ultimately for the African coast for slaves." After an ostensible sale to Marino, "a Spanish subject, and a resident merchant of St. Jago de Cuba," [138] "the *Plattsburgh* underwent repairs . . and was in due form made a Spanish ship, with Spanish national documents; and the usual preparations were made, and the usual passports obtained, to equip her for a slave voyage to the coast of Africa, under her new owners. A part of the cargo of the *Eros* was taken on board of the *Plattsburgh*, and particularly about 300 casks of gunpowder. The original crew were, apparently, discharged, but Captain Smith, two of the mates, and six or eight of the men, together with Stark, still remained on board, and accompanied the vessel to the coast of Africa, she being, during that voyage, under the nominal command of a Mr. Gonzalez, with the assumed name of the *Maria Gertrudes*. She was captured, while lying on the coast of Africa, north of the line, by the boats of the United States ship of war *Cyane*, . . was brought into the port of New-York for adjudication, and was there finally condemned by the District and Circuit Courts;"¹ Decree affirmed.

The Overseers of the Poor of the Town of Guilderland v. the Overseers of the Poor of the Town of Knox, 5 Cowen 363, February 1826. "Two justices made an order, . . removing Patience York, a free woman of color, and her children, from Knox to Guilderland, . . Guilderland, . . gave notice of an appeal . . [364] The respondents . . proved that 13 years before the hearing, Patience was married to Ichabod, a black man, in the town of Berne; and lived with him there. They also proved that Ichabod was bound by his father and mother to . . Williams, by indenture, in Connecticut, about 30 years before the hearing; and he then removed . . to . . Berne, Ichabod being about three years old. . . he assigned him, . . to John Howard, of Guilderland, . . till 21."

Held: [367] "The question then arises, was the settlement in Guilderland? This will depend on the settlement of Ichabod, the husband. He was the apprentice of Williams, who lived in Berne. Williams gave the

¹ Acts of Congress, 1794, ch. 11; 1800, ch. 205.

indenture to Howard, who lived in Guilderland, for \$40; . . . The apprentice was placed in a situation to gain a settlement in Guilderland, if he continued to serve the time required by the statute, . . . I am of opinion that the apprentice gained a settlement in Guilderland; and that the order of the sessions be affirmed."

Jackson, ex dem. The People v. Lervey, 5 Cowen 397, February 1826. "Ejectment, to recover possession of 50 acres of land, . . . as escheated land. . . Lot number 26, . . . was drawn by Peter Stringerland, a soldier in the revolutionary war. Stringerland was a slave; and died during the war, leaving a child born of a woman, between whom and Stringerland the ceremony of marriage had taken place, previous to the birth of the child; and the defendant derived title, *bona fide*, from the child of Stringerland. The mother . . . was also a slave; and the child was born before the revolutionary war." . . .

[400] Held: "J. Peter Stringerland, . . . died . . . leaving a child . . . From him the defendant is a *bona fide* purchaser. The lot in question was drawn by Stringerland. The act of 1790 directed the patents to issue in the names of the persons who had actually served, and to their heirs and assigns forever; and . . . should be deemed to have vested in the grantees and their heirs, on the 27th March, 1783. The act of April 5th, 1803, declared that patents made to persons, who were dead in 1783, vested in those persons at the time of their deaths respectively. In my opinion the question here presented will depend on a just construction of the patent, and . . . acts of the legislature; and not on the question, . . . whether a slave has capacity to take, hold or transmit to heirs by descent. . . . The gratitude of the country [401] was due to the defenders of our rights . . . It was directed to the men who had rendered the service, whether citizens, aliens, or slaves. . . . The remuneration was intended to apply equally to all. . . . The patents are to issue in the names of the persons who served; and to vest in them and their heirs. . . . The soldier being dead when the patent issued, it was in effect, a grant to his heirs. . . . [402] I think we are called on to decide, that the disabilities of the patentee and the heir, arising from a state of slavery, are removed by the acts authorizing the grant. . . . it is contended, that the marriage of a soldier had not been legalized, and consequently the child not legitimate. . . . [403] The act declares, that all marriages contracted, . . . wherein one of the parties was, or might be slaves, shall be considered equally valid as though the parties . . . were free, and . . . children of such marriages shall be deemed legitimate. . . . If I am right . . . then the child of the soldier was legitimate, and became the heir of the father; . . . [404] and being such, the legislature intended to remove the disabilities incident to slavery, so far as to permit the issue to take an estate of inheritance; and transmit it, in the same manner, as if no disability had existed. I am of opinion that the defendant is entitled to judgment."

Trongott v. Byers, 5 Cowen 480, May 1826. "*Assumpsit* for the work and labor of the plaintiff, by his slave. . . . It was proved . . . that Peter Gilbert, a black man, . . . worked for one Paff, as a slave, and Paff claimed

him as such, about $2\frac{1}{2}$ years. That Paff then promised him that if he would stay and work on his farm (which he had then leased to the plaintiff) 5 years, he should be free. The lease . . . contained an agreement between Paff and the plaintiff, that Paff should leave Peter with the plaintiff during his natural life; and that if he should be sold in two years, one half the purchase money should be paid to Paff. The lease . . . was for $2\frac{1}{2}$ years. Peter worked . . . for five years, (in the service of the plaintiff, who [481] continued his possession,) . . . with a view to his freedom; but no written manumission was shown. After this, Peter left the plaintiff's service, and worked for the defendant. . . the jury found for the plaintiff,"

[482] Held: "The evidence, was, . . . sufficient to establish the fact that Peter was the slave of Paff. . . That the contract between Paff and the plaintiff amounted to a sale of the negro there can be no doubt. The latter was to have . . . Peter during his natural life; but if he sold him within two years, he was to pay one half . . . to Paff. . . The plaintiff did not sell him; and his interest became absolute . . . [483] The parol agreement of Paff, to manumit Peter, if he served faithfully for 5 years, was not a valid manumission. Such a manumission can only be in writing. . . New trial denied."

The Overseers of the Poor of the Town of Owasco, v. the Overseers of the Poor of the Town of Oswegatchie, 5 Cowen 527, May 1826. "Two justices made an order for the removal of the children of Diana, a black woman, by her husband, Peter, from Oswegatchie to Owasco, in St. Lawrence county. . . It was admitted, . . . that Peters had never gained any settlement in Owasco, or elsewhere in this state; that Diana, the mother, was born in Owasco, and the order of removal was made on this ground, as the residence of the children would follow that of the mother. Daniel Kellogg was sworn . . . and testified that . . . [528] Diana, . . . then single, came to reside with him . . . That there was a writing made between the witness and the mother of Diana, under which she served; but which he had lost, . . . But the court refused to hear any parol evidence of the contents of the contract."

Held: "The court below clearly erred in rejecting the parol evidence offered, . . . The objection was, that it was executed by the mother, and not by the father. . . She served her time out with Kellogg, and the father does not appear ever to have interfered, or manifested any disapprobation of the binding. . . [529] a binding by a voidable indenture, and a service under it for two years, gives an apprentice a settlement in the town where he serves; and it is not competent for the town to object to the validity of the binding. Though Diana, was born in Owasco, an offer was made of competent evidence, to show that she subsequently acquired a settlement in Marcellus. This having been rejected by the court below, their order must be reversed."

Livingston v. Ackeston, 5 Cowen 531, May 1826. "*assumpsit* for work and labor by Ackeston against Livingston; . . . verdict and judgment was for the plaintiff, . . . Those facts were, that Ackeston, a black man, worked for Livingston from the spring of 1819 till June, 1820, when he sold him

to one Benn. That Livingston had bought him of one Ham, as a slave or servant, at \$200; and that he was to serve till he was 28 years old. That he became dissatisfied, and procured Benn to purchase him of Livingston. That Ackeston was born of black parents, who kept house and acted for themselves as long ago as 1798, in which year he was born. The parents had be- [532] fore been slaves to one Dings."

Held: "The plaintiff, . . . must be considered as . . . freeman, during the period he was in the service of the defendant. But the defendant purchased him as a slave in perfect good faith, for a . . . valuable consideration. The plaintiff supposed himself to have been a slave; and at his own request, was sold by the defendant to a person whom the plaintiff had induced and procured to purchase him. There is no pretence of an express promise on the part of the defendant, to pay the plaintiff for his services; . . . The plaintiff knew, . . . that the defendant had purchased his time, until he was 28 years of age; . . . [533] The law, under such circumstances, cannot raise an implied *assumpsit*. . . Judgment reversed."

Minklaer v. Rockefeller and Feller, 6 Cowen 276, August 1826. "Minklaer sued R. and F. before a justice, . . . for neglect of duty as overseers of the poor of the town of Clermont, in not providing for John M'Gill and his wife, two paupers belonging to that town. . . To the opinion of the C. P. nonsuiting the plaintiff, he excepted."

Held: [278] "The bill of exceptions presents the question, whether an action on the case will lie against overseers of the poor, for omitting or refusing to take . . . measures to provide for paupers, in favor of an individual, who from motives of humanity, furnishes them with the sustenance and attention, which their situation absolutely requires. . . there is no evidence that their neglect was wilful, . . . except what is to be inferred from their admission, that M'Gill and his wife were paupers, . . . [279] I think it is fairly to be inferred . . . that the defendants did not intend to admit that . . . Clermont was bound to maintain these paupers. . . they said they could do nothing about it, until they saw Mr. Edward P. Livingston; and the return states that the defendants . . . proved two written agreements between . . . Livingston and his wife, and Adam Minklaer, junior; and also a bill of sale . . . between . . . M'Gill and the plaintiff. The plaintiff . . . proved three receipts given by . . . Livingston; . . . two to the plaintiff, and one to . . . M'Gill. The defendants proved an assignment or surrender, under seal, from . . . M'Gill to . . . Livingston. . . it is probable, that M'Gill had been a slave; and that, . . . it was doubtful whether he had been so manumitted as to exonerate his master from the responsibility of maintaining him. . . This evidence was clearly insufficient to entitle the plaintiff to recover. The defendants were not bound, nor had they any authority to make provision for the paupers in the first instance. All they could do, was, to apply to a justice of the peace, and, . . . inquire into the . . . circumstances of the persons asking relief; and if . . . they were in . . . indigent circumstances . . . then the justice was bound to give an order in writing to provide for them. . . [280] When the plaintiff seeks to charge the defendants as public officers, for an omission of duty, he is bound to prove it affirmatively . . . The plaintiff was under no legal obligation to take care

of the paupers. . . it must be considered voluntary . . . and cannot lay the foundation of an action against the overseers of the poor. . . the only course to be pursued, . . . is, to apply to this court in behalf of the paupers for a *mandamus*. . . It appears to me, that if an action would lie at all, it must be in the name of the paupers themselves. . . Judgment affirmed."

In re Martin, 16 Fed. Cas. 881 (2 Paine 348), 1827-1840. [882] "This is a motion to quash the writs *de homine replegiando* . . . by which the marshal is commanded that he cause to be replevied Peter Martin, . . . a citizen of the state of New York, (whom John Enders, and John Grace, citizens of the state of Virginia, have taken and do keep,) . . . Peter was claimed as the slave of John Enders, and . . . had escaped. . . the recorder of New York . . . allowed a *habeas corpus*, . . . But before the recorder had decided upon the case, the writs of *homine replegiando* were issued to the marshal of the district, and the custody of Peter was transferred from the sheriff to the marshal." Subsequently the recorder "granted a certificate, according to the provisions of the act of congress of February, 1793,"¹

Held: [884] "that the act of congress under which the certificate of the recorder was given, is a valid and constitutional law, and that the writs of *homine replegiando* were irregularly issued, and must be set aside."

Warren et al v. Brooks, 7 Cowen 218, May 1827. "the following facts were in evidence: On the 22d of June, . . . Van Wie, . . . sold . . . the negro to Isaac Denniston; who on the same day executed a writing, by which he covenanted, . . . he would manumit him at the expiration of 6½ years. . . Denniston indorsed an assignment of all his right and title, . . . to the defendant. The indorsement . . . stated that the slave promised to live [219] with the defendant 3 years. On the 16th of December, 1820, the defendant, by writing . . . manumitted the slave; . . . in June, 1823, Christian, being in bad health, and unable to support himself, was examined before two justices, who . . . gave orders on the overseers of the poor of Bethlehem to pay . . . for his . . . support; . . . They amounted to about \$160. . . the slave was unable to support himself, at the time he was manumitted. The judge charged that . . . the defendant, not having obtained a certificate from the overseers, of his slave's ability to support himself, etc., pursuant to the statute, was responsible in this action, if Christian was, in fact, not of sufficient ability to support himself when . . . manumitted. . . Verdict for the plaintiffs, 6 cents."

Held: [221] "The liability of the defendant arises, on the 7th section of the act relative to slaves and servants. . . It is contended by the defendant, that there must be a previous adjudication, before the master is liable. . . It seems to me, the right of the plaintiffs is made out, if the person manumitted was a slave, unable to support himself at the time of manumission, had become a charge on the town, and the expenditures were reasonable. . . [222] On the 28th June, 1823, Christian was examined before two justices. He declared he was unable to support [223] himself. . . It seems that all necessary previous steps were taken before

¹ 1 Stat. at L. 302.

relief was afforded. . . On the whole, I am of opinion that Christian was the defendant's slave until the manumission; that he was unable to support himself, and became a charge to . . . Bethlehem; that no adjudication of settlement was necessary, and that the defendant is liable for the money advanced. A new trial must be granted, with costs to abide the event."

The Public Administrator v. Watts and LeRoy:—*Norton v. the Same*, 1 Paige 347, 1829. [349] "I give my black man James his freedom and one hundred dollars; for the last time enjoining upon him a reformation of conduct, without which freedom will prove his greatest punishment."

Currahee v. McQueen, 6 Fed. Cas. 984 (2 Paine 109), 1829-1840. Currahee, [985] "a colored man, born a slave in the Island of Jamaica, came into the state of Georgia with the defendant, she claiming and holding him as a slave, he then being a minor . . . He became of age in January, 1824, and in January, 1826, entered into an agreement with the defendant to purchase his freedom for a certain stipulated price — upon which agreement considerable sums of money were paid at various times, though not to the full amount of the stipulated purchase;"

Held: I. "the plaintiff became free on being brought into Georgia,"¹ II. "All claim to wages, under any implied promise, arising from the mere fact of service, is excluded. . . The claim, therefore, to wages prior to the agreement for manumission in 1828, is not sustained; but we think the plaintiff is entitled to recover back the money paid under that agreement, on the ground that it was paid without any consideration."

Demeyer v. Souzer, 6 Wendell 436, January 1831. "In May, 1829, the plaintiff commenced this suit to recover for services rendered for the defendant by a negro slave. . . Mrs. Demeyer, by her will, gave the slave to the wife of the defendant, and he continued to work for the defendant . . . after the death of Mrs. Demeyer, . . . On the trial . . . the plaintiff produced a bill of sale of the slave, executed by Mrs. Demeyer to him, . . . in 1819, . . . The plaintiff was present when the will of his mother was opened and read, and interposed no claim to the slave. . . the negro testified that never until the expiration of the time of service for which the defendant sold him, did the plaintiff inform him that he belonged to him. . . [437] the judge . . . ordered the plaintiff to be nonsuited, with leave to apply to this court to set aside the nonsuit;"

New trial denied: "If a slave deserts his master and goes into the service of another, the master can recover for services performed by the slave before he gives notice of his claim; but this principle should not, . . . be applied to a case where the master never had possession of the slave, and was chargeable with concealing his claim from the defendant while the slave was performing the services. There could scarcely be imagined a case where an implied waiver of right to the slave, if any valid right ever vested in the plaintiff, was more clearly made out. Though the bill of sale declares delivery was made, yet such was not the fact. Mrs. Demeyer continued, . . . to exercise . . . ownership over the slave for three

¹ Act of Congress, Mar. 2, 1807, 4 Stat. at L. 426.

or four years . . . At her death the defendant took the slave under her will. This was done with the implied assent of the plaintiff. . . he saw him exercise dominion over him . . . and did no act to undeceive the defendant for six or seven years. . . the plaintiff's conduct repels all inference of an implied promise by the defendant to pay for the services."

Rathbone v. Dyckman, 3 Paige 9, October 1831. [10] "The testator . . . also provided for the payment of an annuity of \$150 to Mrs. Conklin: and for the support of a black servant, during her life."

Cross v. Cross, 3 Paige 139, February 1832. [141] "as in Will Whisterlo's Case, where it was attempted to charge a black man as the father of a white child born of a mulatto woman."

Van Epps v. Van Deusen, 4 Paige 64, January 1833. [65] "The complainants filed their bill . . . against the defendant, as the sole acting executor of Harpert Van Deusen, . . . to recover the value of a certain female slave, and the proceeds of a bond which were bequeathed to Mrs. Van Epps, . . . The complainants alleged, . . . that M. Witbeck, . . . bequeathed to Mrs. Van Epps, then an infant, a female slave named Ann, . . . That Van Deusen, . . . father and natural guardian of Mrs. Van Epps, . . . when she was about fourteen years of age, received . . . the money due on the bond; and that he also took into his possession the female slave, and received her services and her wages until she died at the age of twenty-four . . . years. . . . That the complainants frequently called upon H. Van Deusen, . . . in his lifetime, to pay the amount . . . on the bond, and to compensate them for the black girl; . . . That he died in 1827, . . . That the defendant alone made probate of the will; and that he had received assets more than sufficient to pay all the debts of the testator. And that the complainants had called upon the defendant . . . to pay the amount . . . on the bond, and the value of the black girl; but that he had refused to pay the same. . . . [66] the defendant, . . . denied all knowledge . . . as to the existence of the supposed legacies . . . or that his testator ever received the money on the bond, or had possession of the slave, . . . [67] The complainants gave in evidence the will of Maritie Witbeck, bequeathing the bond and female slave to Mrs. Van Epps; and . . . evidence . . . that he had the services of the black girl, . . . until her death,"

[70] Held: "there is very little doubt that Harpert Van Deusen, . . . received . . . money, [71] . . . this money then belonged to his infant daughter. It also appears that he took home the black girl, . . . and had the benefit of her services until her death. . . . he had no right to receive the money due on the bond, or to receive the services of the slave, yet this court will hold him liable . . . as if he had been the legally constituted guardian, so far as he has had the benefit of the infant's property. . . . The father, however, could not be charged with the value of the slave, but only with the net profits of her labor received by him, over and above the expenses of her clothing and support. The death of the slave at the early age of twenty-four . . . was a loss for which the father could not be answerable. . . . In relation to the equity of these claims, . . . the com-

plainants . . . received . . . equivalent . . . in the free use . . . of the Greenbush farm without rent, for more than ten years . . . [76] the discharge of E. Van Epps under the insolvent act, in 1816, . . . were distinctly stated in the answer. . . [77] there is no excuse for their neglect to bring the assignee before the court, . . . I shall therefore direct this bill to be dismissed, . . . but without prejudice to the equitable rights of the wife,"

Livingston v. Bain, 10 Wendell 384, May 1833. "This was an action of *assumpsit*, . . . On the 3d June, 1820, the plaintiff sold to the defendant the services of a negro called Tobe, to end on the 1st June, 1825. The consideration of the sale was \$200, of which \$50 was paid down, and the residue secured by a note, . . . on which this action was brought. . . Tobe worked for the defendant until the 30th September, 1823, when he asserted his freedom, and left the service of the defendant, and . . . commenced a suit against Livingston, to recover for services rendered for him previous to the sale to Bain. . . It was now admitted, that at the time of the sale to the defendant, Tobe was a *freeman*, although in May, 1817, plaintiff had bought his services from a third person, for a period expiring 1829, and paid the consideration of \$200. . . The judge ruled that the consideration of the note not having wholly failed, the plaintiff was entitled to recover a proportional part of the sum agreed to be paid, . . . and it was agreed [385] between the parties that according to this principle, the plaintiff would be entitled to recover \$147. The jury, . . . found a verdict for . . . that sum. The defendant, . . . now moves for a new trial."

New trial granted: "The plaintiff cannot recover, for the want of consideration in the note. . . The ignorance of all parties . . . could not make a free man a slave, much less authorize the sale of him. . . He asserted his freedom in the only way in which he could, by emancipating himself from his servitude, and claiming and exercising the rights and [386] privileges of a free citizen. . . Although the sale in this case may not have been immoral, as the parties were ignorant of the fact, still it is not the less illegal."

Floyd v. Recorder of New York, 11 Wendell 180, April 1834. "*Mandamus*. A fugitive slave was brought before the recorder of New-York on a *habeas corpus*. The fugitive sued out a writ of *homine replegiando*, upon which an issue was joined and tried in the New-York circuit, and a verdict found that the fugitive owed service to the person claiming the same. Upon which judgment was rendered, and the recorder applied to for a certificate allowing the removal of the fugitive, which he declined to give, being of opinion that by the suing out of the writ . . . he had lost jurisdiction of the person of the fugitive. The claimant asked for a *mandamus* directing the recorder to grant the certificate."

Mandamus granted: "The recorder did not lose jurisdiction by the suing out of the writ . . . the only effect of it . . . was to suspend the proceedings upon the *habeas corpus*, until final judgment upon the writ of *homine replegiando*. . . the recorder ought to have granted the certificate."

Jack, a negro man, v. Mary Martin, 12 Wendell 311, July 1834. "Jack sued out a writ . . . in which, after alleging that he, a negro man, [312] was in the custody of Mary Martin, and that she claimed him as a slave, . . . that she detained him . . . the sheriff was commanded to cause Jack to be replevied, . . . The defendant put in three avowries: . . . [313] In the second avowry, she says she took Jack, and detains him, because he was and still is her slave, and this, etc.; wherefore she prays judgment and a return, etc. [314] . . . The superior court . . . gave judgment for the defendant; . . . a writ of error was sued out,"

Held: [315] "This replevin suit is under the provision of the state law. The defendant, in the superior court, set up in defence the fact that the plaintiff was her slave, and acknowledged the taking, by virtue of proceedings alleged to be in conformity to the act of congress. . . . [329] The act of congress provides, that 'upon due proof to the satisfaction of such magistrate, that the person so seized or arrested doth owe service to the person claiming him or her, it shall be the duty of such magistrate to give a certificate, etc. . . . The act of congress provides that the proof upon which the certificate shall be granted, may be either by oral testimony or affidavit, and the averment that the recorder heard the proofs and allegations of the parties, is sufficient within this law.'" Affirmed.¹

Mulheran's Executor v. Gillespie, 12 Wendell 349, July 1834. "Gillespie sued the executors . . . for board and lodging, provided a servant of the testator, at his request. . . . The demand of the plaintiff was [350] . . . for the . . . period . . . between June, 1823, and June, 1829, when . . . the testator died. . . . on the 29th June, 1829, Mulheran made his will, and . . . gave all his personal property to his niece . . . on condition that she should pay for the board of his old colored servant Nancy, should clothe her . . . and at her decease decently inter her. . . . the sum of \$719.44 . . . was paid to the plaintiff and his wife, the wife . . . being one of the daughters of Margaret, the sister of the testator. The judge decided that the bequest and the acceptance thereof did not operate as an extinguishment . . . of the plaintiff's demand, and so instructed the jury, who found a verdict for the plaintiff for \$212. . . . [354] defendants sued out a writ of error." Held: [355] "Judgment affirmed."

Scott v. Shufeldt, 5 Paige 43, January 1835. "The bill . . . was filed for the purpose of annulling a marriage contract, on the ground that the consent of the husband . . . was obtained by fraud, force and coercion. . . . the complainant had occasionally visited the defendant, . . . she afterwards made oath before a magistrate that she had been delivered of a bastard child, and that the complainant was . . . arrested upon a warrant, . . . required to give bail as the putative father of such bastard; and believing it to be a white child, and being unable to procure bail, he consented to marry the defendant, and was . . . married to her . . . that he subsequently ascertained that the child, . . . was a negro child; the complainant and defendant being both white persons; and that he had not cohabited with the defendant subsequently to such marriage. . . . complainant, . . . [44] prayed that the marriage contract . . . be annulled,"

¹ See same *v. same*, p. 391, *infra*.

Held: "if the mother, at the time she charged him as the putative father, and induced him to marry her under the supposition that the child might possibly be his, knew it was not his child, but that it was the child of a negro, she was not only guilty of perjury, but she also intentionally defrauded the complainant in such a manner as to [45] authorize this court to declare the marriage contract a nullity. . . I shall therefore direct a reference to a master . . . that the master . . . report whether the child . . . was a negro or mulatto child; and whether, at the time she made that charge, and at the time of the marriage, she knew . . . it was a negro or mulatto child, and intentionally concealed that fact from the complainant. . . also . . . whether the parties to this suit have voluntarily cohabited as husband and wife since the alleged marriage. . . to the end that . . . a decree of nullity may be pronounced if the allegation of fraud, . . . shall be established by the proof."

Griffin v. Potter, 14 Wendell 209, October 1835. "Potter sued Griffin for work, labor and services rendered by him. Potter is a negro; he was born 8th of May, 1806, of a mother who was at the time of his birth a slave, and by the act for the gradual abolition of slavery in this state, passed 29th March, 1799, he owed service to the proprietor of his mother until he arrived to the age of twenty-eight years. In January, 1823, his services were sold to a person residing in Buffalo, and being unwilling to go with his master, he besought the defendant to buy him, telling him that he was to serve until he was 28 years old, and that if he would buy him he would be a faithful servant until that time. The defendant bought his services of his master, for which he paid \$300, and Potter then went to live with the defendant, . . . until January, 1827, when he declared he would serve him no longer, and went away. The plaintiff contended he was born a freeman; but if not, that he was released from his services at the age of 18, by the omission of the owner . . . to deposit in due time, . . . an affidavit . . . in pursuance . . . of an act passed 31st March, . . . [210] The jury found a verdict for the plaintiff . . . The defendant . . . sued out a writ of error."

Held: "By the act for the gradual abolition of slavery, all children born of slaves, subsequent to 4th July, 1800, were declared to be free but to continue servants to the owners of their mothers—males till the age of 28, . . . [211] The affidavit is clearly not a compliance with the statute. . . [214] The defendant here, at the request of the plaintiff, bought his services, . . . A very large price was paid; and there is reason to infer, that but for the request of the plaintiff, the defendant would not have made the purchase. . . it is clear that but for a clerical error . . . the plaintiff would have been bound to serve until 28. The court below seem to have considered the plaintiff as entitled to his wages after 18. According to the statute he was free; but if at 18 he asserted his freedom, it would have been the duty of the overseers of the poor to have bound him an apprentice until 21; . . . If he remained in the defendant's service after he knew he was not bound to remain there, and the defendant did not agree to pay for his services, there is ground for an implied promise. . . Judgment reversed, and *venire de novo*."

Jack a negro man v. Mary Martin, 14 Wendell 507, December 1835. "Error from the supreme court.¹ . . . [508] Jack sued out a writ *de homine replegiando*, . . . stating that Mary Martin, . . . had taken . . . him upon the . . . allegation that he was her slave, . . . she avows the taking . . . because, . . . Jack . . . is the slave of the defendant, . . . and such proceedings were . . . had that . . . it did appear . . . that the defendant was entitled to . . . Jack, . . . that Jack was then delivered . . . to the sheriff . . . [510] wherefore, the defendant . . . took Jack . . ."

Held: [528] "we may deplore the existence of slavery in any part of the Union, . . . yet, as the right of the master to reclaim his fugitive slave is secured to him by the federal constitution, no good citizen, . . . will interfere to prevent this provision from being carried into full effect, . . . [530] It stands undenied . . . that the defendant was entitled to the services of the plaintiff, under the guaranty of the federal constitution and that the judgment of the supreme court was right upon the whole record."

Gibbs v. Mennard, 6 Paige 258, January 1837. "The complainant's bill stated that the brig *Felix*, . . . the defendant was master, was at Turks Island . . . while there a bond was executed . . . by the defendant as principal and the complainant as surety, in the penalty of £1000, . . . that the brig *Felix* should not . . . carry out . . . any servant or slave without leave of the master or owner; that when the brig sailed she . . . brought . . . to New York a slave or servant without leave . . . and that . . . the bond became forfeited and the complainant, . . . became liable to pay the penalty . . . that the defendant was about to depart [259] from this state to . . . Cape Breton. . . the defendant produced his own affidavit, . . . that the colored man secreted himself on board before the brig sailed, and was not discovered by the defendant until it was too late . . . to turn back; and that upon his arrival at New York, the defendant endeavored to send him back, and had engaged a passage for him in another vessel, when he was taken from on board the brig by order of the civil authority . . ."

Held: "From the facts . . . I think the defendant was properly discharged from custody . . . [260] it would be contrary to the settled principles of this court . . . to compel a party to pay a forfeiture . . . before it had been legally ascertained that either the defendant or his surety would or could be compelled to pay such penalty."

Wood v. Vandenburg, 6 Paige 277, January 1837. [278] "The bill . . . was filed . . . to obtain a construction of . . . will, and the direction of the court as to the distribution . . . [279] Jacob G. Vandenburg, by his will, . . . directed his executors to sell his . . . estate . . . and . . . to put the money at interest, . . . [280] and . . . upon the death of his parents, his estate, . . . should be divided . . . and that Negro Tom should be maintained out of the testator's property during life. . . . The bill alleged that the annual interest . . . was insufficient, for the support of the father and his sister . . . and the negro Tom;"

¹ See same *v.* same, p. 389, *supra*.

Held: [284] “the legacies for the support of negro Tom, . . . must next be provided for out of the proceeds . . . and the master must set apart a sufficient fund for the support of negro Tom, . . . As the legacy . . . and the provision for the support of negro Tom are both general in their natures, and are payable out of the same fund, . . . they must of course, in case of a deficiency of assets, abate rateably. . . [286] As the support of the parents and unmarried sister and of negro Tom, exceeded the income of the estate, . . . there was no interest or income to be paid over to the decedent’s parents, . . . beyond the amount of the provision for their support.”

Sunday v. Gordon, 23 Fed. Cas. 408 (1 Blatchf. and H. 569), February 1837. An action to recover seaman’s wages and damages by Quaselle Sunday, a native of Elmina, on the coast of Africa. [410] “it is customary, on the coast of Africa, for trading vessels to employ natives, at about twenty-five cents per day, as laborers, in loading and unloading foreign vessels in harbor and doing other work on board of them; that these laborers frequently accompany such vessels from port to port along the coast, and often come out to the United States and return with them; that, in the latter cases, they are compensated by a ‘clash,’ as it is called, being some trifling articles for trade, and also personal clothing; that the natives regard it as a great object to come off in that way and learn the English language, as it gives them consequence at home and enables them to get good employment on vessels trading on the coast; that they are no sailors, and are never put to duty as seamen; that, in this particular case, the libellant came off with the expectation of being left at Liberia, but the master, being sick with the fever common to that coast, retained him as a nurse or waiter to attend upon him, and brought him to the United States; that he understood nothing of a ship’s duty, and was never, whilst attached to the brig, put to any other employment than that of sweeping decks and occasionally working at the pump, and then chiefly for his necessary exercise; that his services were never of any value to the vessel; that, when the brig went back from this port, with the libellant on board, she was on a trading voyage, and it was within her instructions to run down the coast of Africa, if a good market should not be earlier found, and there land the libellant where he could most readily reach home; that, after the cargo was disposed of at Mogadore, no vessel was there by which the libellant could be sent down the coast; that the master refused to leave him, because, by the laws of Morocco, he would have become a slave; that he was accordingly brought in the ship to the United States; and that the respondents clothed and maintained him here, and procured a passage for him back to Liberia on two occasions, but that once he refused to go, and on the other occasion he was out of health, and probably so much so as to excuse his accepting the offer. The court can discern, in these facts, nothing that affords the libellant ground for maintaining this action. . . [412] suits of this character ought never to be instituted in the name of the party, without the direct authorization of the court. This ignorant savage, who cannot communicate at all in our language, is made to attest, under oath, to a series of allegations . .

which . . . he is scarcely more capable of making than any other individual of his tribe remaining in Africa. According to the testimony of some of the witnesses who know him best, he can hardly be made to comprehend the simplest facts occurring before his senses. . . . I shall decree that the libel be dismissed, and with costs, as a necessary consequence, although the latter part of the order must, of course, be inefficacious and nugatory." [Betts, J.]

Van Kleeck v. the Reformed Dutch Church, 6 Paige 600, August 1837. [601] "And I, the said John Haberdinck, do further give, devise and bequeath unto my said wife Mayken Haberdinck, all the rest of my temporal estate, real and personal, . . . whether the same shall . . . consist in houses, . . . gold, silver, . . . negroes, bonds, . . . or any other estate whatever, . . . during her natural life."

Dixon v. Allender, 18 Wendell 678, August 1837. "A writ *de homine replegiando* was sued out . . . by the alleged slave, and a motion was now made by the claimant to quash the writ, on the strength of the decision of this court in the case of Jack, a negro man, *v. Martin*, (12 Wendell 311.) . . . [679] The Court, Nelson, Ch. J. presiding, directed the motion to be suspended until the next special term; in the mean time the attorney for the plaintiff to have leave to prepare and serve his declaration, and the attorney for the defendant to have leave to plead the proceedings had before the recorder under the act of congress, to which the plaintiff may demur, with the view to enter the formal judgment of this court, so that the cause may be removed to the court of dernier resort in this state, for a final decision upon the constitutional [680] question involved . . ."

Wright et al v. Trustees etc., 1 Hoff. Ch. 201, 1839. [205] "The bill in this case was filed by the executors of Archibald Campbell, for the purpose of obtaining the direction of the court as to the distribution of the surplus funds of the estate of the testator in their hands. . . . Archibald Campbell made his last will . . . duly executed, and . . . executed a codicil thereto . . . [207] . . . 'I give . . . five hundred dollars in trust, . . . to the New-York Society for the Manumission of Slaves, and for protecting such of them as have been or may be liberated to be applied for the use and benefit of said Society.'"

Held: [214] "It is admitted by counsel, that the variations in the designation are immaterial as to . . . The New-York Society for Promoting the Abolition of Slavery. . . . With respect to the pecuniary legacies given to these . . . institutions, paid by the executors, charged in their final account, and passed upon by the surrogate, I hold that the point cannot be now raised; neither in the present suit from the omission to present it in the pleadings, nor in any original suit whatever, by the present parties."

U. S. v. The Catharine, 25 Fed. Cas. 332 (2 Paine 721), 1840. The *Catharine*, an American vessel, [333] "built and owned in Baltimore," was brought to Havana and sold to Tyng, an American citizen, a ship

broker. [335] "The vessel sailed from Havana on the 28th of June [1839]; she had on board about twenty-eight or thirty persons; the majority were Spanish or Portuguese; . . . some of the crew were employed in making sennet; it is yarns plaited together, and is used in putting around ropes and rigging to prevent chafing; . . . [336] under the directions of the boatswain's yeoman, who told him [witness] it was to be used in tying slaves; they made a very great quantity; many were engaged in making it, and more was made than was necessary for the use of the vessel;" On August 13 a British brigantine, the *Dolphin*, chased the *Catharine*. [334] "She showed no colors, but hoisted American colors after about two hours' chase, and after the *Dolphin* had fired several shots. . . . They finally compelled her to heave to, . . . Lieut. Holland came on board and searched Capt. Peterson, and found the following paper concealed on his person: 'The main thing for you to do on this voyage is to be ready, in case you are boarded by a man-of-war, to show your log-book, . . . and you are, in that event, to take all command with your American sailors, according to your roll; all the others are to be passengers. You are to be very careful that, in any cross questions, you do not commit yourself, but always stick to the same story. When the vessel is discharged, you must at once cut your register in two pieces: one piece you must . . . send to . . . Baltimore; . . . Throw one piece overboard if you are obliged to by being boarded by a man of war.' . . . within half an hour afterwards, they found a Spanish log-book of the voyage, kept co[n]temporaneously with the American log-book," Among the papers was found "a list of twenty-four persons, Spanish or Portuguese, with designations showing them to compose the officers and mariners of a ship's company, at the head of which was Pereyra as master; the plan of a slave deck drawn on paper; . . . [335] six or eight men would be quite sufficient to navigate the vessel in a lawful trade; . . . They found on board a large boiler . . . sufficient to cook for three hundred people; a quantity of lumber which was marked and numbered for laying a slave deck, and could easily have been put up in a few hours as a slave deck after the cargo was discharged; a number of wooden vessels, some made up and some in shooks; about nine were made up and there were materials for about six more; each would have contained from four to six hundred gallons. They also found five hundred and seventy wooden spoons, similar to those used in slave vessels, and thirty-six large tin dishes and a number of small ones. These equipments are generally found in slave vessels, and witness had never seen them anywhere else. . . . [337] in the month of September, 1840, on taking out the cargo of the *Catharine* . . . there were found near the bottom of the hold two bags containing iron manacles or handcuffs. . . . in one of the bags . . . one hundred and seventy-five . . . the other bag . . . appeared to contain about the same number," The *Catharine* was brought to New York and was condemned. [341] "The penalty was incurred, and the forfeiture attached from the very inception of the voyage, . . . The vessel becomes tainted with the offence wherever she may go, or into whatever hands she may fall." [Thompson, J.]

U. S. v. Morris, 14 Peters 464, January 1840. "Morris, was indicted under the second and third sections of the act entitled 'An Act in addition to an Act entitled "An Act to prohibit the carrying on the Slave-trade from the United States to any foreign Place or Country," ' approved on the 10th of May, 1800.¹" Morris, a citizen of the United States, was in command of [465] "the schooner *Butterfly*, carrying the flag of the United States, and documented as a vessel of the United States, (her register being dated the 24th day of May, 1839, and issued by the collector of New Orleans to Nathan Farnsworth, a citizen of the United States, as owner,) was boarded and examined, on the 26th day of August, 1839, on the high seas, in latitude 5° 25' north, longitude 30° east, near Cape St. Paul's, on the coast of Africa, by the British brig of war *Dolphin*, on suspicion of being a Spanish vessel engaged in the slave-trade, in contravention of the treaty between Great Britain and Spain for the suppression of the slave-trade. That on such examination, the vessel was found to be on her voyage from Havana, in the island of Cuba, which port she had left on the 27th day of July, 1839, bound to St. Thomas, in the island of Principe, near the coast of Africa; that the vessel had on board twenty-four large leagers capable of containing each from two hundred and fifty to three hundred gallons of water; eighteen of these were in shocks, that is, the staves were in bundle not fitted; four of them contained water, and two contained bread; there was a quantity of plank stowed away in the hold, similar to the planks used in framing slave-decks, but this plank could not have been fitted as a slave-deck until the vessel had discharged her cargo; and that such leagers and slave-decks were commonly found to be a part of the equipments and fittings of vessels engaged in the slave-trade on the coast of Africa; that she had on board a full cargo, consisting of various commodities, adapted either to the traffic in negroes, or to any lawful trade carried on by trading vessels upon the coast of Africa; that the prisoner was in command of the vessel; that he was described in the ship's papers, and represented himself as a citizen of the United States; that the rest of the ship's company were represented in the crew-list as Spaniards, or Portuguese, who had been shipped at Havana; that there were also on board fourteen Spaniards who had been received at Havana as passengers; that the cargo had been shipped at the same place, and according to the invoice and bill of lading was to have been delivered at St. Thomas, in the island of Principe, aforesaid, and appeared, by the documents, to be owned by persons residing at Havana; that two log-books, one in English and the other in Spanish, were found on board; that various documents in the Spanish language were also found on board; that under these circumstances, the vessel was captured by the *Dolphin*, suspecting the same to be Spanish property, and sent for adjudication to Sierra Leone to be proceeded against in the Mixed Commission Court at that place, which Court declined taking cognisance of the case on account of the vessel being documented as an American vessel; that she was then sent to the port of New York, to be dealt with

¹ 1 Story's Laws 780.

by the authorities of the United States as they might think proper. No slaves were found on board the vessel at the time of her capture; and it was testified by the witnesses for the prosecution, that from the cargo and situation in which the vessel was found, no slaves could have been carried or transported in her at any time during the voyage on which she was then engaged: that it would have been necessary to have discharged the cargo before slaves could have been taken on board: that the vessel was short of water, having only about eleven gallons on board when she was captured: and that Cape St. Paul's is a common watering place on the coast, being about five hundred miles distant from the island of Principe."

Held: [476] "the vessel in question was employed in the transportation of slaves, within the meaning of the act of Congress of May 10th, 1800, if she was sailing on her outward voyage to the African coast, in order to take them on board to be transported to another foreign country. . . 'voluntarily' . . . means, 'with knowledge' of the business in which she is employed. And in order to constitute the offence, the party must have knowledge that the vessel was bound to the coast of Africa, for the purpose of taking slaves on board, to be transported to some other foreign country." [Taney, C. J.]

Maurice v. Graham, 8 Paige 483, October 1840. [484] "This suit was brought to foreclose a mortgage given by the defendant . . . to the complainant, . . . And this was an application . . . of the complainant to compel . . . the purchaser . . . at the master's sale, to complete this purchase. . . the purchaser insisted, that under the will of W. Turpin, . . . the mortgagor had not a perfect title to the rent and reversion. Turpin . . . devised the premises as follows: 'I give . . . to Juda Jackson, my freed colored girl, and equally to her brother Edward Butler, . . . provided they both live to the age of twenty-one years, or to the survivor if only one should live to attain that age, all that lot' etc. (describing the premises.) 'If Juda and Edward both die leaving no child or children, in that case I leave . . . this lot to my freed black woman Lucy Bates,' . . . Juda Jackson attained . . . twenty-one . . . and . . . intermarried with the defendant . . . the mortgagor. . . she joined with her husband in a conveyance of all her interest . . . to a third person, . . . who . . . reconveyed [485] . . . to Graham, the husband. Edward Butler became of age . . . he conveyed all his interest . . . to his sister Juda, . . . She died . . . without issue, leaving her mother, . . . and her brother, Edward Butler, her only heirs at law. And they conveyed all their interest . . . to Graham, who . . . mortgaged . . . to the complainant."

Held: "The question . . . is, what interest . . . passed to the devisees of W. Turpin, under his will; . . . I think his general intention is very obvious, . . . [486] It does not appear, nor is it material to the decision of this case, whether Lucy Bates is still living. For if the limitation over to her . . . was . . . valid, the whole estate of the mortgagor, . . . under Juda and Edward, is liable to be divested by the death of Edward without issue living at the time of his death; his sister Juda having already died childless. . . If these several estates . . . of Juda, and Edward and Lucy,

are to be considered as legal estates, . . . the purchaser at the master's sale will not obtain a good title to the whole premises. For he will have to take the title subject to the contingency of its being divested, in favor of Lucy Bates or his heirs, in [487] case of the death of Edward without leaving issue at the time of his death. . . [488] . . . the purchaser must be discharged from his purchase. And the premises may be re-sold by the master, subject to such claims as may exist thereon in favor of Lucy Bates for her annuity; or in favor of her and her heirs, as devisee of the remainder in fee, in case Edward Butler should die without leaving issue surviving him."

Moore v. Lyons, 25 Wendell 119, December 1840. "Betsey Lyons bro't an action of ejectment against James Moore, for the recovery of the moiety of a house and lot in the city of New York, which she claimed under a devise in the will of Cornelius Clopper, . . . The clause . . . under which the plaintiff claimed is in these words: 'I give . . . unto the said negro-woman Mary, my dwelling house and lot . . . during her natural life; . . . after her death, I give . . . said dwelling house and lot . . . to Susan, Jane and Betsey, three daughters of said Mary, or to the survivors . . . of them, their . . . heirs . . . forever.' By a previous clause in the will, the testator manumitted his negro wench Mary, and her children, and . . . directed his executors to place £600, at interest, . . . to pay the interest thereof annually to Mary during her natural life; and after her decease, he directed the £600 to be called in . . . and divided among the heirs of her body, in equal proportions. At the time of the death of the testator, Mary and her three children were living. In 1811, Jane intermarried with the defendant, . . . and died in 1822, intestate, [120] . . . Susan died before her mother, without issue, . . . In 1824, Mary, the mother, died, leaving . . . Betsey, her son-in-law . . . and his two sons."

Held by the lower court: "The remainders to the children of Mary were clearly not vested, but were contingent, as they went to the survivor; . . . The counsel for the defendant concedes the case to the plaintiff, unless he can maintain that the clause of survivorship referred to the death of the testator. Such a conclusion would conflict with the plain intent of the will. . . Judgment being . . . entered the defendant sued out a writ of error,"

On appeal. Held: [123] "the plaintiff below, . . . claimed the whole estate in fee, as the last survivor of those interested in remainder: insisting that the remainder was contingent, and the survivorship referred to the death of the tenant for life. . . [124] in the construction of wills, . . . the intention of the testator . . . is to govern. . . [126] 'courts will never construe a limitation into an executory devise, when it can take effect as a remainder; nor a remainder to be contingent, when it can be taken to be vested.' . . . [127] The solution of this question involves the decision of the main point . . . 'to what period does a general clause of survivorship refer?' . . . the decisions from the earliest period . . . have established . . . the rule of referring survivorship to the death of the testator. . . [143] I am, therefore, of opinion . . . That the remainders in this case were vested, and not contingent; . . . That the plaintiff in

error, as heir at law of his deceased son, . . . is entitled to the possession of one equal undivided moiety of the whole premises . . . and . . . that the judgment of the supreme court is erroneous and ought to be reversed.”

Nash v. Benedict, 25 Wendell 645, October 1841. “an action for a libel, . . . in these words: ‘A northern freeman enslaved by northern hands. . . Peter John Lee, a free colored man . . . was kidnapped by . . . Daniel D. Nash, . . . and hurried away from his wife and children into slavery.’ . . . [646] The counsel for the defendant, for the purpose of showing that the defendant had probable cause for believing the publication to be true at the time it was made, and thus rebut the inference of actual malice and mitigate damages, offered to read in evidence certain articles in the *Emancipator*, . . . which were objected to by . . . the plaintiff; but the judge ruled that if the articles were in explanation of, . . . the libel, they were admissible . . . counsel . . . then read one . . . when on the objection to their admissibility being renewed, the judge sustained the objection, . . . that the articles did not explain the libel; and . . . charged the jury that . . . in his opinion the libel would admit of no other construction than a charge of felonious kidnapping under the statute. . . . verdict for the plaintiff with \$1,500 damages. The defendant moved for a new trial.”

Held: [647] “Seizing Lee, and hurrying him away . . . into slavery, imports at least a seizure or kidnapping with intent to cause him to be held to service against his will. . . . The learned judge was right, therefore, in this part of his charge. . . . [648] on looking at the articles . . . it is most manifest that they tend directly to aggravate rather than mitigate its character; as they explain the whole transaction . . . by showing that the seizure of Lee, . . . took place in pursuance of lawful authority, . . . on a charge that he was a fugitive felon from Virginia. By the reference to these articles . . . it appears that this explanation was before the defendant, at the very time when he penned, or adopted, and inserted it in the almanac; thereby negating every pretence of misapprehension or mistake. New trial denied.”

Havens v. Van Den Burgh, 1 Denio 27, May 1845. [28] “He also gave to his four daughters his negro woman, a slave, with power to his executors, . . . to sell her and divide the money equally among his [29] said daughters;”

Frazer v. Western, 1 Barb. Ch. 220, November 1845. [221] “John Mathews, . . . made his will, by which he gave, . . . to his executors, in trust for his daughter Mary, . . . the one half part of certain slaves, to her use, during her life, . . . and upon her decease, to her children equally; with a power of disposition, if there were no children. Upon an application to the court of chancery . . . a sale of the slaves was ordered, . . . and it was further ordered that Israel G. Collins . . . should be substituted as trustees of the portions coming to their . . . wives, . . . The proportion of Mary Collins, . . . amounted to \$7596.25; and this sum was paid over to Collins, . . . on his giving a bond, . . . in double the amount, . . . The bond was given . . .”

The Osceola, 18 Fed. Cas. 868 (Olcott 450), July 1846. "William Frances, a colored seaman, . . . shipped as cook and steward, at \$16 per month. . . the vessel sailed with a cargo from Boston to Demarara and thence to New-Orleans, where . . . he was taken out of her and confined in prison at New-Orleans for one month, when he was returned again on board;" The master [869] "testified that when the vessel arrived in New-Orleans, March 9, 1843, and he found he must give bonds in \$500 not to leave the libellant there, and that the libellant must also be put in prison until the departure of the vessel, he gave him the choice of being then discharged and shipping in another vessel, for a Northern port, or to remain in prison until the brig was ready to sail. The libellant elected to be discharged, . . . All the jail fees were . . . paid by the consignee of the vessel. . . two or three days after, the libellant shipped" "as cook, . . . at the wages of \$18 per month, for a new voyage to Bilboa, thence to one or more ports in Europe," At Bordeaux he . . . deserted the vessel, as she was leaving the port for New-Orleans;"

Vandenburgh v. Truax, 4 Denio 464, May 1847. "A negro boy, about sixteen or eighteen years old, was the plaintiff's ostler; the boy was seen in the street . . . near the plaintiff's store, approaching the defendant with a stone in his hand, and appearing, . . . very angry; . . . The negro did not attempt to throw, or strike with the stone. The defendant took hold of the negro, and told him to throw the stone down; . . . The boy got loose . . . and ran away. The defendant took up a pick-axe and followed the boy, who fled into the plaintiff's store, and the defendant pursued him there, with the pick-axe in his hand. The back door of the store was shut, so that the boy could not get out there without being overtaken; and he ran behind the counter, . . . to save himself from being struck . . . In fleeing behind the counter, the boy knocked out the cock, or [465] faucet, from a cask of wine, and about two gallons of the liquor, of the value of \$4, were spilt and lost. For that injury the action was brought. . . judgment for the plaintiff for four dollars . . . defendant brings error."

Held: "when one does an illegal . . . act, which is likely to prove injurious to others, . . . he is answerable, . . . for all the consequences which . . . result from his conduct; . . . it is not necessary that he should intend to do the particular injury which follows; . . . [468] And there is nearly as much reason for holding him liable for driving the boy against the wine cask, . . . as there would be if he had produced the same result by throwing the boy upon the cask, . . . Judgment affirmed."

The Mary Ann, 16 Fed. Cas. 949 (Abb. Adm. 270), April 1848. "the crew shipped on board the *Mary Ann* for a voyage to the coast of Africa. Arriving there [Gallinas] . . . they became suspicious that the master intended to engage the vessel in the slave-trade. Resolving to prevent this," they [951] "united in the determination to put or leave the master on shore," [950] "took possession of the vessel, and after navigating her along the coast, in search of an American cruiser, under whose authority they might place her, but without success, they brought her back to the port of New York. Proceedings were taken . . . by the United States

authorities, to procure the condemnation of the vessel as a slaver. The court decided that . . . the charge was not sustained, but that there was probable cause for her arrest." Held: the crew forfeit both the wages already earned to Gallinas and those for the residue of the voyage.

Howland v. Conway, 12 Fed. Cas. 730 (Abb. Adm. 281), May 1848. Six of the crew "on a voyage from New York to New Orleans, Mobile, Liverpool, and back to New York" were colored men.

The Laurens, 14 Fed. Cas. 1192 (1 Abb. Adm. 302), June 1848. Libel "filed by the United States against the bark *Laurens*, and \$20,000 in specie on board her, . . . for being employed in the slave-trade, in contravention of the acts of congress of March 27, 1794, and May 10, 1800." In 1849 "a decree was rendered declaring the vessel and cargo forfeited."

Tingle v. Tucker, 23 Fed. Cas. 1294 (1 Abb. Adm. 519), April 1849. "Some of the libellants [five colored men] sailed with the vessel from New York to Apalachicola, and all of them performed the voyage from Apalachicola to Marseilles. . . . It did not appear . . . that the libellants were guilty of any extreme misconduct, or that the officers had any reasonable cause for apprehending personal danger or any intentional mutiny. . . . It was, however, clear, that the conduct of libellants was at times perverse and offensive to the officers, and that they were deficient in ready subordination and alacrity in the performance of their duties." "on the arrival of the ship at Marseilles, the conduct of the crew was reported to the United States consul . . . who, after taking the depositions of the officers and steward, and inquiring into the facts, ordered the libellants to be discharged from the ship," [1297] "Then the consul . . . had the men committed to prison, and afterwards sent home, as prisoners for trial. . . . The decree will be, that the libellants . . . recover their several wages up to the time of their discharge at Marseilles, with costs to be taxed; and that the demand for wages to the termination of the home voyage be denied." [Betts, J.]

Shorter v. the People, 2 N. Y. 193, May 1849. [194] "Henry Shorter, a negro, was indicted for the murder of Stephen C. Brush, and tried . . . It was proved . . . that . . . the deceased was passing down Seneca-street . . . that they were conversing and laughing about a negro character that had been acted that evening at the theatre; and that they passed the prisoner and another negro on the side walk. The prisoner . . . came up with them, . . . and as he passed a fight occurred between the deceased and the prisoner. . . . After several blows had passed the deceased hallooed, 'he has got a knife,' and he then retreated to the middle of the road. The prisoner followed him and blows were passing . . . or else the prisoner was striking the deceased and the deceased defending against the blows, until he got to the middle of the road, when he fell down and died in about fifteen minutes. . . . the prisoner . . . ran away. . . . the prisoner carried . . . a large dirk knife, with which he inflicted . . . nine or ten severe wounds, one of which entered the cavity of the heart and was mortal. . . . [195] The jury found the prisoner guilty of murder. . . . The prisoner brought error to this court."

Held: [201] "The life of a human being must not be taken upon slight grounds; there must be a necessity, either actual or apparent, for the killing, or it cannot be justified. . . [203] Where a man is struck with the naked hand, and has no reason to apprehend a design to do him any great bodily harm, he must not return the blow with a dangerous weapon. After a conflict has commenced he must quit it if he can do so in safety, before he kills his adversary: and I hardly need add, that if his adversary try to escape, he must not pursue, and give him fatal blows with a deadly weapon. . . I am of opinion that the judgment of the supreme court should be affirmed; and my brethren concur in this opinion, upon both the points which have been considered."

In re Long, 15 Fed. Cas. 821 (9 N. Y. Leg. Obs. 73), January 1851. "In the matter of Henry Long, claimed as a fugitive from service." Dr. Wade testified: [822] "Henry was born . . . in the town of Christianburgh, Virginia; that his mother was a slave, owned by Mr. Anderson; that they were brought up together as boys and men; . . . Dr. Wm. Parker, another citizen of Virginia, testifies that . . . he . . . had the letting of Henry in Richmond, Va., to the house of Haskins and Libby, as the slave of this claimant, and collected the wages, transmitting the same to his brother-in-law, Smith; that while so in service in Richmond, Henry was sick, more than once; and that he was his physician, attending him while sick, and sat up with him through the night; . . . [823] in Dec., 1848, Henry left Richmond; that he advertised him; . . . that since that time he has been found in New York." A witness for the defence testified that in 1848 Henry "was a constant driver of a carriage from a particular street [in New York] named by him; and that he often met him at a blacksmith's shop in Centre street." Another "testifies that Henry was a waiter in New York; another one that he saw Henry with his waiter's garb and dress on board the *Vanderbilt*, all in the year 1848." Judson, District Judge: "there may have been a mistake as to the precise time when Henry was first seen in New York, and an honest mistake too. . . there is no real contradiction arising out of the evidence . . . The consequence is that a certificate in conformity to the act of congress¹ be now issued by the clerk of this court, for the surrender of Henry Long, as a fugitive from service and labor."

Fugitive Slave Law,² 30 Fed. Cas. 1007 (1 Blatchford 635), April 1851. Charge to the grand jury: [1008] "the first [fugitive slave] act of congress, passed February 12, 1793, . . . was passed on the urgent recommendations of the governors of Pennsylvania and Virginia, between which states a difficulty had arisen in the surrender of fugitives. . . the legislatures of some of the states [New York, as early as 1830] passed laws forbidding their own magistrates from acting under the law in the surrender of fugitives, and enforced the prohibition with heavy penalties. . . These, and other more direct interferences by legislative acts of the states with the execution of the law of 1793, together with the open re-

¹ Act of Feb. 12, 1793 (1 Stat. at L. 302), "and an amendment of September 18, 1850" (9 Stat. at L. 462.)

² Act of Sept. 18, 1850, 9 Stat. at L. 462.

sistance with which its execution was met in some instances, by combinations against law, led, necessarily, to the recent supplementary act; . . . [1009] This act is designed, first, to substitute officers of the federal government in the place of these state magistrates; and second, to arm the officers with sufficient power and authority to enable them to execute the law against any resistance actual or threatened, and in whatever form it may be presented. . . [1012] the legislation of most if not all of the Northern states, tending to embarrass, and, in some instances, to annul the provisions of the act of 1793, has strongly impressed our Southern brethren with the conviction, that these states have resolved to throw off this constitutional obligation. . . has forced them to the question, whether the Union, with this provision of the fundamental law rejected and contemned—a provision vital to the rights and interests of that portion, and without which the Union would never have been formed—is to them a blessing or a curse. . . This question has been raised by fifteen states of the Confederacy, six of whom were original parties to the compact. . . they have come to the resolution, one and all, that if this hostile legislation is carried into effect, . . . the Union is no longer a blessing, and should be dissolved—that the abrogation of one material provision of the fundamental law is destructive of the compact—and that the portion of the Union for whose benefit it was adopted, and whose rights and interests are thereby endangered, is absolved from its allegiance.” [Nelson, J.]

Ex parte Davis, 7 Fed. Cas. 45 (14 Law Rep. 301), August 1851. John Davis, a slave, escaped from his master, George J. Moore of Louisville, Kentucky, [48] “on or about the 25th day of August, 1850,” [46] “into the state of Ohio,” and was, in August 1851, in the custody of a deputy marshall in Buffalo, New York. A writ of *habeas corpus* was allowed by Judge Conkling: “the [fugitive slave] act¹ was not passed until the 18th of September [1850] . . . the 10th section of the act . . . is clearly prospective, and therefore inapplicable to the case of an escape from labor or service, occurring before the passage of the act;”

Brown v. Hartley, 4 Fed. Cas. 383 (Betts’ Scr. Bk. 225), August 1851. In 1849 Brown, a colored man, “signed shipping articles for a voyage as seaman on board the ship *Hungarian*, from the port of Saco, in Maine, to a port in the Gulf of Mexico,” At New Orleans the ship “was moored out of the precincts of the city, to prevent the libellant and other colored men of the crew being put in prison during the stay of the ship there, according to the laws at that port. After so remaining a few days, the libellant requested the defendant, the master of the ship, to procure him a berth on another vessel going north, to relieve him from the danger of imprisonment at New Orleans. Such place was secured for him, and three other colored men of the crew,”

Fugitive Slave Law, 30 Fed. Cas. 1013 (2 Blatchford 559), October 1851. Charge to the grand jury: “The district attorney has called my attention to a crime recently committed in one of the most populous towns in the western part of this state—the case of the seizure and rescue of a

¹ 9 Stat. at L. 463.

fugitive slave out of the hands of a federal officer, by an unlawful assemblage of people, more or less armed, pending an examination before a magistrate in pursuance of an act of congress passed September 18, 1850.¹ The crime, as alleged, was committed in the edge of the evening, in the midst of the local police and municipal authorities of a city of intelligence and character; and this, after threats and other unmistakable evidences of an intended rescue and crime had been given out. The marshal, and all the authorities associated with him, and other persons coming to his aid and assistance, were overborne by the violence of the mob, and law and legal authority were trampled under foot. . . [1014] One or more members of the Confederacy cannot annul a material part of the compact which they have entered into with the other states, . . . those other states, . . . after an unavailing effort by the constituted authorities of the Union to enforce obedience, would have a right to regard the compact at an end, and to withdraw from a confederacy of faithless associates. . . The people of fifteen states of the Union . . . have appealed to their Northern brethren to come up to their constitutional duties and obligations and save the Union." [Nelson, J.]

Bascom v. Lane, 2 Fed Cas. 994 (Brun. Col. Cas. 348), November 1851. "the complainants [commissioners appointed by the general conference of the Methodist Episcopal Church South] allege that differences and disagreements have sprung up between what was called the northern and southern members, in respect to the administration of the church government, concerning the ownership of slaves by the ministry of the church, of such a character . . . as threatened fearfully to impair the usefulness of the church," The history of the separation of the Methodist Church South follows.

U. S. v. Reed, 27 Fed. Cas. 727 (2 Blatchford 435), October 1852. "the alleged offense consisted in rescuing from the custody of the United States marshal, at Syracuse, Jerry, . . . held to service . . . in the state of Missouri, and . . . a fugitive from such service,"²

U. S. v. Smidth, 27 Fed. Cas. 1131 (N. Y. Times, Feb. 26, 1855); 1138 (3 Blatchford 255), February 1855. "Capt. Smidth was convicted . . . of being employed in the African slave trade,³ on board the slave brig *Julia Moulton*" which he purchased in Boston from the American owners. "The evidence was not entirely clear that the purchase of vessel was made for himself, . . . the prisoner, as master of the vessel, sailed from the port of New York to the coast of Africa, took in a cargo of [500] negroes, and from thence sailed to the Island of Cuba, where the cargo was landed, and the ship burned by his orders. Considerable evidence was given on the part of the prisoner tending to show that he was a subject of the kingdom of Hanover, in which he was born," [1132] "the national character of the vessel was submitted to the jury," [1131] "The jury found a general verdict of guilty. . . [1132] There must . . . be a new trial."

¹ 9 Stat. at L. 462.

² Act of Congress, Sept. 18, 1850, sect. 7, 9 Stat. at L. 464.

³ Act of May 15, 1820, 3 Stat. at L. 600.

U. S. v. Wilson, 28 Fed. Cas. 718 (3 Blatchford 435), March 1856. "an indictment . . . charging that the prisoner, who was a colored man, being a mariner, belonging to the schooner . . . did . . . 1855, . . . destroy the said vessel,"

U. S. v. Naylor, 27 Fed. Cas. 78 (19 Law Rep. 449), November 1856. History and construction of the statutes in relation to the slave trade. Held: act of March 22, 1794¹ is still in force.

U. S. v. Cobb, 25 Fed. Cas. 481 (4 Am. Law J., n. s., 145), October 1857. Indictment against eight men for aiding in the escape of a fugitive from labor "after he had been apprehended, and while he was yet in custody [of the deputy marshal], in virtue of a warrant issued in a proceeding for his restoration to the person, a citizen of Missouri, to whom it was alleged his labor was due. . . on the first of October . . . at the city of Syracuse, . . . [482] a building in the midst of a populous city was partially demolished, and deadly weapons were recklessly used, . . . to the grievous injury of several persons." "the defendants . . . must severely be required to give bail for their appearance . . . or, for want of sufficient bail, be committed to prison." [Conkling, J.]

U. S. v. the Henry, 26 Fed. Cas. 277 (4 Blatchford 359), September 1859. "a libel of information, filed . . . against the brig *Henry*, upon a charge of having been fitted out in the port of New York, for the purpose of engaging in the slave trade, . . . The district court dismissed the libel, but . . . granted a certificate of reasonable cause of seizure,"

The Orion, 18 Fed. Cas. 817 (4 Wkly. Law Bul. 327), October 1859. The bark *Orion*, [818] "a vessel of about 450 tons burden, built in 1846," was chartered, in January 1859, to Miranda "for a voyage to the west coast of Africa and back to New York, for the sum of \$850 per calendar month. . . she had from one-third to one-half a cargo, . . . the whole crew [of twelve]," except the mate, "left the *Orion* at the port of New York during the interlapse of clearing and sailing, and that twelve others were shipped in their stead. The bark, though a small vessel, had two decks—the spar deck and a half between deck—a second deck commencing aft and coming forward to the main hatch, and another commencing forward and running back to the fore-castle hatch, while between these half decks there are beams running across the vessel three or four feet apart, on which plank could be laid to complete this deck throughout the vessel. On these half decks no cargo was stowed. In the vessel, invoiced and manifested as part of the cargo, was found about 17,000 feet of lumber, which could have been used to complete the deck; 168 casks, most of them apparently intended for water-casks, and averaging over 130 gallons each, and invoiced at 35,540 gallons; 150 buckets, without handles; 200 barrels navy bread; 46 tierces containing about 29,000 pounds of inferior rice; 12 cases containing 240 muskets; about 300 feet in length of hoop iron, not on manifest or bill of lading, not in the invoice; a large quantity of medicines, consisting of Epsom salts, cantharides plaster, simple cerate, and powdered mustard. Also, a half barrel of flax-seed,

¹ 1 Stat. at L. 347.

a quantity of fire-wood, and about a ton of coal, two copper boilers, or stills, holding some 60 gallons each, a quantity of beef, pork, and beans, and about 100 bottles of disinfecting fluid, or chloride of soda in solution. Besides these, the cargo was made up principally of cheap shirtings and sheetings, cheap stripes and drills, cheap prints, cotton handkerchiefs, very cheap earthenware, including large quantities of bowls and soup plates, 24,000 gallons of rum, over 50 dozen of spear-points, knives, etc. The vessel sailed from New-York direct to the mouth of the Congo river, and soon after the arrival there, was boarded by the officers of a British vessel of war, and detained for a time as suspected of being intended for or engaged in the slave-trade; and the master, as appears by the log-book, there proposed to abandon the vessel as a prize to this British cruiser. This was opposed by the mate and crew, who declared that they were not conscious of having done anything illegal, and that if it were necessary to give up the ship, they would prefer being given up to a ship of their own nation. The mate then sought the *Marion*, and the *Orion* was searched, and sent home for condemnation. . . [819] all the circumstances are suspicious. The almost entire change of crew on the 20th of January; the character of the cargo, apparently selected with a view to the traffic of slaves, or to be used as provisions for them; the extraordinary quantity of water-casks under cover of their being intended for palm-oil, though the vessel was apparently seeking a part of the country where the trade is not in palm oil; the antecedents of the supercargo sent with the vessel, who was a Portuguese, who by his own account, had had previous experience both on the coast of Africa and at Rio Janeiro; the sailing of this small vessel under a charter-party at \$850 per month with but one-third or one-half of the cargo; and other circumstances convince us she was intended and fitted out for slave-trade. . . probably Canhao and the master were the only persons who knew that the vessel was intended to be employed in the slave-trade, if such was the fact. . . decree of condemnation with costs." [Hall, J.]

Lemmon v. the People, 20 N. Y. 562, March 1860. [564] "Appeal from the Supreme Court. On the 6th day of November, . . . Louis Napoleon, a colored citizen . . . made application . . . for a writ of *habeas corpus* . . . to bring before said justice the bodies of eight colored persons, . . . who . . . were . . . detained under the pretences that they were slaves. The writ . . . issued, . . . Lemmon made a return to the writ . . . he averred that the eight persons . . . were the slaves and property of Juliet Lemmon his wife, who had been the owner of such persons as slaves for several years, she being a resident and citizen of the State of Virginia: . . . 'that . . . Juliet, with her said slaves, . . . is now *in transitu* . . . from . . . Virginia . . . to . . . Texas, . . . and that she was so on her way . . . when the . . . slaves were taken . . . under the writ' . . . [565] The return also denied any intention, . . . of selling the negroes. . . Mr. Justice Paine . . . discharged the colored Virginians. . . Lemmon appealed."

Held: [600] "she embarked, . . . for New York, . . . to secure a passage from thence to her . . . destination. . . The question to be decided is whether the bringing the slaves into this state under these circum-

stances entitled them to their freedom. The intention, and the effect, of the statutes of this State . . . are very plain . . . [601] The first and last sections of the title are . . . 'sect. 1. No person held as a slave shall be imported, . . . into this State on any pretence whatsoever, . . . Every such person shall be free. . . . sect. 16. Every person born in this State, whether white or colored, is free. . . . and every person brought into this State as a slave, . . . shall be free.' . . . [602] If, therefore, the Legislature had the constitutional power to enact this statute, the law of the State precisely meets the case of the persons who were brought before the judge on the writ . . . and his order discharging them . . . was . . . correct. Every sovereign State has a right to determine by its laws the condition of all persons who may at any time be within its jurisdiction; to exclude therefrom those whose introduction would contravene its policy, . . . [605] The aspect in which the case of fugitive slaves was presented to the authors of the Constitution . . . was this: A number of the States had very little interest in continuing the institution of slavery, and were likely soon to abolish it within their limits. . . . [610] if the appellant can claim exemption from the operation of the statute . . . on the grounds that she is a citizen of a State where slavery is allowed, . . . she may retain slaves here during her pleasure; . . . But my opinion is that she has no more right to the protection of this property than one of the citizens of this State would have upon bringing them here under the same circumstances, and that the clause of the Constitution referred to has no application to this case. . . . [612] The act under consideration is not in any just sense a regulation of commerce. . . . [615] Upon the whole case, I have come to the conclusion that there is nothing in the National Constitution or the laws of Congress to preclude the State judicial authorities from declaring these slaves thus introduced into the territory of this State, free, and setting them at liberty, according to . . . the statute referred to." [Denio, J.]

Dissenting opinion by Clerke, J. [632]: "A considerable proportion of the discussion in this case was occupied by observations, not at all necessary to a proper disposition of it; . . . What, . . . could be the object of the Legislature in interfering with persons passing through our territory? . . . [636] By the law of nations, the citizens of one government have a right of passage through the territory of another, peaceably, for business or pleasure. . . . It is a principle of the unwritten law of nations. . . . [638] property in slaves existed to a great extent in nearly all the States; . . . [641] If, then, by the law of nations, the citizen of one government has a right of passage with what is recognized as property by that law, . . . is not a citizen of any State of this confederacy entitled, . . . to a right of passage through the territory of any other State, with what that compact recognizes as property, without the latter's acquiring any right of control over that property." [Dissenting opinions were delivered also by Comstock, Ch. J. and by Selden, J.]

Dodge v. Pond, 23 N. Y. 69, March 1861. [70] "Action by . . . Dodge, surviving executor, for a construction of the will of . . . Phelps, . . . [73] The seventeenth recited that it had been in contemplation to establish a

college in Liberia, Africa, and . . . if . . . \$100,000 should be raised . . . 'then, . . . I give . . . fifty thousand dollars,' . . . wishing his executors especially to have in view . . . a theological department in such college."

Held: [77] "The only specific objection . . . is that made to the bequest, . . . of \$50,000 . . . there is another objection to this legacy which is entirely fatal to its validity. It is not only made to depend upon a contingency, but a contingency which may never happen; . . . Such a legacy is in direct contravention [78] of the statute against perpetuities. A provision limiting the period for raising the \$50,000 to the continuance of two lives in being at the death of the testator, would have obviated this objection; but as no such provision was inserted, the legacy is clearly void, irrespective of the other objections which have been suggested."

U. S. v. the Augusta, 24 Fed. Cas. 892 ("not previously reported"), September 1861. "The libel is founded on the second section of the act of March 22, 1794, and on the act of April 20, 1818, and charges that the bark in question was fitted out at Greenport, L. I., with the intent to employ her in the slave trade. . . . The vessel was purchased by Appley [of Southold, near Greenport and Sag Harbor] about the 1st of June last, and was seized on the 23d of the same month. . . . The answer . . . avers that the intent was . . . to employ the vessel on a whaling voyage, . . . It is insisted by the government that it appears from the evidence: (1) That the outfit of this vessel was made from a port at which the whaling business had been abandoned . . . (2) That she is a larger and a much more expensive vessel than is ever used on a short voyage like the one for which the claimant says he fitted her. (3) That . . . the provisions and water, were entirely inadequate for such a whaling voyage. (4) That no adequate preparations had been made for shipping such experienced officers and crew as were indispensably necessary, had such a voyage been contemplated. (5) That the comparatively low price of oil, and the general declension of the whaling business . . . are inconsistent with the claim that she was designed for that business. (6) That her outfit, water and provisions indicate that she was intended for the slave trade."

Held: I. "the first of these claims [is not] . . . entitled to much weight. . . . [893] Greenport . . . is not very far from several other whaling ports, . . . [II.] the *Augusta* was a much larger vessel than it is usual to fit for so short a time as 15 months,—the period for which the claimant says he fitted her. . . . he . . . bought her, paying cash for her. . . . [III.] There is one very extraordinary fact in regard to the beef. Several barrels of it were good and sweet, and suitable for the crew to eat, but the greater portion [47 barrels] was more or less tainted. . . . [894] There are other deficiencies . . . [IV.] About two weeks only remained before the time of sailing, and no inquiries made even for an officer, or for experienced whalers, . . . It is quite consistent with the idea that her officers and men were to consist, not of our honest whalers, but of those desperate adventurers . . . who infest our large seaports, and who are ready to embark in that inhuman traffic which the courts and the navies of most of the civilized world have as yet in vain striven to suppress. [V.] . . . from the present price of oil, the scarcity of whales, and the losses . . . in

the business, it is fast being abandoned. . . [895] another consideration . . . is the danger of capture by so-called privateers. The claimant alleges the voyage was to be in the Atlantic,—the only ocean infested by these depredators. . . it may well be doubted whether these cruisers would capture a slave cargo at the present time. There must be little or no sale in the Southern ports for this kind of ‘property,’ in the present condition of things there, . . . I am therefore of the opinion . . . that the *Augusta* was not fitted for a whaler, . . . this vessel was well adapted . . . to carry a slave cargo. She had two permanent decks, . . . The large fry works were admirably fitted for cooking the slaves’ food, and were ample in size for the necessities of a large number of negroes. She was evidently provisioned, so far as the wants of the crew were concerned, for a short voyage, . . . Yet she had 20 cords of wood, which would not be needed . . . except upon the idea . . . that she was going to have a large number of persons on board to cook for. She had eight barrels of salt, which would be needed in cooking the farinaceous food necessary for such a cargo, . . . 30 pounds would have been sufficient for a whaling voyage of 15 months. . . an excess of rice, corn, meal, and beans, . . . between 13,000 and 14,000 pounds of bread, . . . for a short [whaling voyage] . . . was greatly in excess. . . The vessel also had an immense supply of fresh water in casks. A portion of this was in casks that once had oil in them, but . . . that . . . would only injure the flavor, but not the salubrity, of the water. . . [896] My opinion . . . is that this vessel was fitted out . . . with the intent to employ her in the slave trade. . . She must, therefore, with her tackle and lading, be declared forfeited to the United States,” [Shipman, J.]

U. S. v. Gordon, 25 Fed. Cas. 1364 (5 Blatchford 18), November 1861. Gordon was indicted under the 5th section of the act of May 15, 1820.¹ He was the son of a sea captain, both his parents being residents of Portland, Maine. He was the captain of the *Erie*, a vessel which had been built in the United States and owned by American citizens. After an alleged sale to a foreigner, in March 1860, the *Erie* left Havana in April 1860, [1365] “laden at that port—[with] some 150 or more hogsheads of liquor, a number of barrels of pork and beef, bags of beans, barrels of bread and rice, and some 250 bundles of shooks, with a corresponding number of hoops, for the purpose of being subsequently manufactured into barrels or casks. . . [1366] The vessel was of some 500 tons.” Four seamen “state that, after they had been out some thirty days, and had discovered the provisions and freight on board, a suspicion arose, in the minds of the sailors, that the vessel might be intended for the slave trade, and that they disclosed this suspicion to the captain, . . . The captain, however, disclaimed any such purpose, rebuked the suspicion, and ordered them forward. . . [1368] the [800] negroes were taken on board in the Congo river, some distance from its mouth, but where it is several miles broad, and really an arm of the sea.” [1367] “These negroes were collected at the place where they were put on board, in

¹ 3 Stat. at L. 601.

barracoons, and were there under restraint by the persons who furnished them at the ship's side." The four seamen [1366] "also state that, after the negroes were put on board, they were called aft, and were applied to for the purpose of ascertaining whether they would continue to serve as seamen in the return voyage, and were told that, if they would, they should be paid a dollar a head for every negro landed at Cuba. . . that the prisoner gave a direction for hoisting the anchor, and directed the course of the vessel when she came out of the river." The first and second mates deny this. "They state that, after . . the discharge of the cargo, . . the control of the vessel and her navigation were passed over to the hands of another person, to Mr. Hill, who died, and afterwards to Mr. Manuel, whom they regarded as the captain of the vessel;" Gordon was on board when the *Erie* was captured [1368] "in the Atlantic Ocean, several miles from land." He was found guilty and sentenced to death.

U. S. v. Westervelt, 28 Fed. Cas. 529 (5 Blatchford 30), November 1861. "an indictment founded on the fourth and fifth sections of the act of congress of May 15, 1820,¹ . . The defendant [an American citizen] . . was the third mate of the ship *Nightingale*," a foreign vessel which sailed from Liverpool to the coast of Africa and received 800 negroes on board. Charge to the jury: [531] "The question you have to determine is, whether or not the prisoner did participate in the reception of the negroes, on board of the *Nightingale*, from persons who had seized them on the land, and brought them by force to the vessel, freely, voluntarily, and willingly," "The jury did not agree on a verdict." [Nelson, J.]

The Tropic Wind, 24 Fed. Cas. 212 (Blatchf. Pr. Cas. 64), November 1861. [213] "she proceeded, under the charge of the master and four colored men, shipped at Washington, on her voyage thence for Halifax. . . [214] the evidence of the colored informers, upon whose charge the vessel was seized, gave probable grounds of suspicion that she harbored the intention to go up the Rappahannock to Fredericksburg, and there make sale of the colored men, . . The whole evidence, when disclosed, dissipates that suspicion, and a decree must be entered dismissing the suit,"

Ex parte Gordon, 1 Black 503, December 1861. [504] "Gordon has filed a petition . . stating that he has been indicted and convicted . . of the crime of piracy, under the act of Congress prohibiting the African slave trade, and sentenced to death . . and . . he . . moves for an alternative writ of prohibition . . and also for a *certiorari*, . . This motion cannot be sustained." [Taney, C. J.]

U. S. v. Horn, 26 Fed. Cas. 373 (5 Blatchford 102), November 1862. Indictment against Albert Horn "for fitting out and sending away a vessel, with intent that she should be employed in the slave trade. At the trial, the defendant was found guilty,"

U. S. v. Santos, 27 Fed. Cas. 954 (5 Blatchford 104), November 1862. "indictment for fitting out a vessel with intent to employ her in the slave

¹ 3 Stat. at L. 600.

trade. . . The defendant appeared . . . but, during the trial . . . departed, without the leave of the court. . . the defendant was acquitted by the jury."

The Slavers (Kate), 2 Wallace 350, December 1864. Libel against the bark *Kate*, under the acts of Congress of March 22, 1794,¹ and April 20, 1818.² "The *Kate* . . . arrived at New York from Havana, on the 17th of May, 1860, . . . Six days after," her purported owners [351] . . . purported to sell the vessel" to Lake of Brooklyn, for \$10,500, though appraised soon after at only \$4000. "The vessel was of about 250 tons, with one deck, three masts; . . . sharp built, and had sixteen or eighteen spare spars and sails; there was an iron tank six feet square, for water, in the hold. . . Smith . . . the custom-house broker who cleared the vessel [July 3, 1860, 'bound for Cape Palmas and ports on the west coast of Africa,'] . . . appeared to have cleared vessels on former occasions for the slave trade. . . She had not gone far before she was seized . . . and brought back; libelled . . . A stipulation having been given for value and costs, she was released, and . . . September, cleared by Smith again" Her cargo "on the 3rd of July, 1860, . . . included large quantities of rum . . . 5000 feet of lumber, 82 water-casks, filled with fresh water, . . . The lumber was piled on the water casks, and formed a flooring throughout the length of the vessel, . . . [352] After her second seizure³ . . . found . . . on board some articles which were not reported to the custom-house; . . . a surf-boat, . . . The boxes manifested as containing 'iron pots' contained furnaces, with boilers on top, which could be used for cooking a quarter of a barrel of rice each. . . The crew list . . . was inaccurate . . . the first mate . . . had been four or five times to the coast of Africa; the last time in the bark *Cora*, since seized as a slaver." [365] When the bark was first seized, she was accompanied outside the harbor by a tug, which conveyed the captain, Otto [the first mate], and one Da Costa" who "had, some four years before, been indicted for slave-trading, . . . and had evaded the officers of the law. He pretended to be a stranger to Otto; to be ignorant of our language, and to have no connection with the bark; but trunks marked with his name were found in her cabin; he was detected exchanging signs with Otto, and it was soon discovered that his ignorance of our language was a mere pretence. Hernandez, who represented himself as shipper of part of the cargo, . . . never appeared to protect his interest. There is reason to think that the name was but an *alias* for Da Costa." [354] "The bark and all her cargo was either adapted or capable of being adapted to a slave voyage. On the other hand, it was shown by . . . a Portuguese, long in the African trade, and a person frequently summoned in slave cases, and . . . by other persons . . . that there is a regular trade with Cape Palmas and the west coast of Africa; . . . that the vessel . . . was suitable enough for the legitimate trade; also, . . . every article on the manifest . . . in demand by the native Africans; . . . No manacles were found . . . nor any supply of medicines unusual in

¹ 1 Stat. at L. 347.

² 3 *ibid.* 450.

³ [365] "after refusal of her second application for clearance and before sailing."

a lawful voyage." District Judge Betts condemned the bark: [355] "In the earlier seizures . . . vessels employed in the trade were found fitted out with arrangements so manifestly designed for that business, that the circumstantial proofs . . . were nearly equivalent to positive testimony. The species of . . . circumstantial proofs of that order, and then generally regarded as necessary to a conviction, were made public law by a treaty between England and Spain, . . . and were generally acquiesced in by courts of the United States as laying down a safe rule of evidence. . . . Very soon slave-trades discarded sets of manacles as part of their preparation. A slave deck was no longer found laid in the vessel or prepared . . . She exposed no longer an extraordinary supply of provisions, medicines, or equipments specially adapted to the use of slaves, . . . it has become notorious . . . that slaving vessels are now . . . fitted and cleared at ports abroad and in this country openly, with the appearance of lawful traders . . . and that on arrival . . . where slave cargoes are collected, the ship is, *impromptu*, put in a state to receive their victims on board, and is thus enabled, often in one hour's time to become transmitted from the . . . aspect of an honest trader to a slaver" Decree affirmed.

The Slavers (Sarah), 2 Wallace 366, December 1864. "The *Sarah* was a bark of about 260 tons, . . . similar to the *Kate*,¹ . . . She was clipper-built, intended for fast sailing, . . . She had . . . extra spars, and besides her ordinary boats, two large surf-boats. The manifest showed a large quantity (19,448 gallons) of . . . 'oil-cask shooks,' with a proportionate quantity of iron hoops and rivets. These would hold water as well as oil. . . . 'oil casks'—are found in large quantities on nearly all vessels condemned as slavers. . . . 15 or 16 barrels of beef or pork not on the manifest, also 16 barrels of bread and 6 barrels of flour, and 1 tierce of rice, marked for the homeward passage . . . [368] The manifest showed 150 hogsheads of rum, also cases of muskets." [372] "rum, which, the expert witnesses say, is a well-known article of trade in the purchase of negroes. One of the expert witnesses, who had been . . . in the custom-house at New York for seven years, testified that he had noticed that vessels designed to be used in the slave-trade were usually transferred two or three times just previous to the sailing of the vessel; and in this case" [368] "The deputy marshal . . . seized the bark [1861] fifteen miles down the New York bay. When approaching, . . . he saw through a spy-glass that several persons on board were examining the vessel he was on, and that immediately after, somebody threw a box, about 2 by 3 feet in size, overboard, . . . [369] Delano swore that [one] Miller, in the act of employing [him,] . . . represented himself as master of the vessel; said 'he was going to the coast of Africa; was going black-binding,' . . . He said, 'If you go with me, you will be gone about four months, and have about \$3000 or \$4000 when you get back.' . . . No manacles, nor unusual supply of medicines were found on her, and the cargo was one which would have suited a lawful voyage to the African coast. The District Court condemned the bark." Affirmed.

¹ P. 410, *supra*.

The Slavers (Weathergage), 2 Wallace 375, December 1864. [376] "The vessel was a bark of about 365 tons, . . . The outward foreign manifest, sworn to . . . September, 1860, represented her as bound for Hong Kong, *viâ* Ambriz¹ . . . [377] The bark had a between-deck, made of rough boards, . . . two surf-boats, besides four other small boats, . . . A lot of lumber . . . usual in fitting a slaver, but not unusual in fitting any vessel. . . cargo was perfectly suited to the slave-trade. As respected Morris [to whom the bark was purported to have been sold September 5, 1860], . . . no man of that name was, on the 6th September, . . . known to be in the shipping business of New York. . . [378] vessels never clear from New York for China *viâ* any such place [as Ambriz], . . . the ordinary size of vessels in the trade, on the west coast of Africa, is from 200 to 400 tons; that of those trading to China, averaging from 800 to 1200. On the other hand, . . . No manacles, nor any unusual supply of medicines, were found . . . Her size and equipments . . . were not unfit for a lawful voyage . . . All articles found on the vessel were entered on the manifest. . . [379] temporary decks were sometimes highly convenient, and were used accordingly in lawful voyages to Africa; and surf-boats, also;" [376] The District Court condemned the vessel." Affirmed: [382] "it seems to us . . . that the manifest is a 'more complete one, in every respect, for engaging in the slave trade,' than any one heretofore presented to the court." "Besides the articles mentioned, the manifest also shows that she had one hundred and fourteen casks filled with water, and shooks and headings to make ninety-six more, . . . also ten furnaces and boilers,"

White v. Howard, 46 N. Y. 144, September 1871. [145] "William Bostwick, . . . died . . . April 10, 1863, leaving a will, . . . Letters testamentary thereupon issued, . . . [146] The last clause of the 'seventh' article is . . . whatever remains of said trust fund . . . shall be divided equally between the following . . . the American Colonization Society;" . . .

Held: [163] "The American Colonization Society claims the one-sixth of the property under the will. This society was incorporated in 1836, by an act of . . . Maryland, . . . was authorized, to take lands by devise, and to . . . dispose of such lands as the society should determine, to be most conducive to the objects of the society, namely, the colonizing of the free people of color of this country in Africa. The principal question . . . is, whether it can take land in this State by devise. . . That it can take personal property by bequest, has been determined by this court. . . By the statute of this State . . . all persons (other than bodies . . . corporate) were permitted to take lands by devise, . . . [164] By section 3 of the present statute of wills, all persons capable by law, to hold real estate, are authorized so to take, but . . . no devise to a corporation shall be valid, unless . . . by its charter or statute, be expressly authorized so to take. . . [165] it is equally clear that such charters only were intended, as were granted by a statute of this state, . . . as it is that . . . a statute of the State was intended. . . [166] It follows that the colonization society, can take no interest in the New York real estate under the will of the testator."

¹ [378] "a Portuguese town on the west coast [of Africa]. . . It is about 100 miles from any point where slaves are got."

CONNECTICUT

INTRODUCTION

I.

The Connecticut reports, as a whole, illustrate the economic evolution of a seaboard agricultural state into an industrial community. Starting with suits growing out of the problems of the farmer, the fisherman, the maritime adventurer, and the rural merchant, we encounter in turn the legal phases of the post-revolutionary land speculation, the hegemony of the Congregational church, the migration to the Western Reserve, the rise of the cotton mills, the development of the Yankee nation, the coming of the railroads, the departure of grub-staked prospectors for California gold, the temperance movement, the recruiting for the Civil War, the trend to the cities, and the ultimate supremacy of the factory. These changes are vividly reflected in the law books.

Except for the influence upon public opinion of the friendly relations with the South, following the growth of the cotton mills, all this has little to do with slavery or the negro. Nevertheless, as will appear, there were a few cases in Connecticut which contributed to the political controversies over slavery or cast an oblique light upon them, and we touch here and there upon the status of the negro in the North.

Connecticut has the distinction of having been the first American commonwealth to publish a law report—the single volume of Kirby, issued in 1789.¹ Following Kirby and in part overlapping the period, but not duplicating the cases reported, come Root's reports, followed by Day, and, in turn, the present series of Connecticut reports.

There were slaves in Connecticut, Indian and negro, from almost the earliest days of the colony. Connecticut legislation respecting slavery begins in 1711 with an act,² perpetuated in subsequent compilations, making owners who set slaves at liberty responsible for their relief. The first act looking toward abolition was that of 1774, forbidding the importation of slaves "by sea or land, to be disposed of, left, or sold within this colony."³ Ten years later, in 1784, it was enacted that no negro or mulatto born in the state after March 1 of that year should be held in servitude after arriving at the age of 25 years,⁴ and by act of 1797 the age was

¹ In recent years other states have issued compilations of decisions of earlier dates than those embraced in Kirby, and in Connecticut the Acorn Club has printed (1933) a small volume containing a few more cases noted by Kirby, probably with some intention of additional publication.

² Acts (1796), p. 231.

³ *Id.*, Supplement, p. 403. Importation of Indian slaves had been forbidden earlier, October 1715; *Public Records of the Colony of Connecticut*, V. 534.

⁴ Acts and Laws (1796), p. 399.

reduced to 21 years.⁵ Provision was made for the support of those who were thus manumitted. So that after 1784 the only slaves for life peculiar to Connecticut were those born prior to that year; and the only other slaves held under Connecticut law were of limited servitude, being young persons born after 1784 but free on reaching the age of twenty-five or twenty-one. These, of course, were the offspring of the older slaves, as no others could be born in slavery after 1784. The number of slaves of both classes was very small and rapidly diminished. The editors of the *Compiled Statutes* of 1821 remark⁶ that there were then very few slaves and in a short time there would be none.

In consequence, the early cases affecting negroes are not numerous and are significant as reflections of social or economic condition, rather than of political status. Under the Connecticut system of poor relief, paupers were chargeable to the town in which they were "settled." The earlier reports abound in suits between municipalities to determine where responsibility should fall for caring for particular persons who had become destitute. In a few instances the pauper was a negro. These cases should be read against the background of the far greater number of such cases where no negro was involved.

With the rise of the cotton mills and the development of commercial relations with the South, the reports begin to reflect the conflicting views and tempers prevailing in Connecticut toward the Peculiar Institution.

In 1833 the legislature passed an act to forbid the establishment of schools for negroes from without the state.⁷ In a case that arose under that act in 1834 (*Crandall v. State*, p. 430, *infra*), the trial justice instructed the jury that free blacks were not citizens. On appeal counsel presented argument with respect to the principles on which the act was based, but the appellate court, after alluding to "the excitement which always attends the agitation of questions connected with the interests of one class and the liberties of another, more particularly at the present time," expressed a desire not "to agitate the subject unnecessarily," and decided the case on a technical defect in the information. This case attracted much public notice. Echoes of it were reverberating twenty years later, as will be seen.

In October 1845, an amendment to the state constitution was adopted, which provided, (Article VIII.), that

Every white male citizen of the United States who shall have attained the age of twenty-one years, who shall have resided in this state for a term of one year next preceding and in the town in which he may offer himself to be admitted to the privileges of an elector, at least six months next preceding the time he may so offer himself, and shall sustain a good moral character, shall, on his taking such oath as may be prescribed by law, be an elector.

⁵ Public Statutes (1808), p. 626.

⁶ P. 430.

⁷ 10 Conn. 340.

The word "white" in this amendment was not new, having been included in the qualifications of electors throughout the history of the state. In 1848 (act of June 12) slavery was abolished in Connecticut.

In June 1865, the legislature adopted a resolution asking the Supreme Court of Errors for its opinion upon the question "whether a negro is or is not a citizen of the United States" within the meaning of the above amendment. To this the judges returned the following reply:⁸

The undersigned Judges of the Supreme Court, having considered the resolution of inquiry passed on the 10th day of instant June, in answer thereto say, that in their opinion a free colored person born in this state is a citizen of the state and of the United States, within the meaning of the amendment of the constitution referred to.

This reply was published in a supplement to 32 Conn. and the reporter appends the following footnote:

"In the case of *Crandall v. The State*, 10 Conn., 339, Daggett, Ch. J., charged the jury in the superior court that free blacks were not citizens. The case was carried to the Supreme Court, where the question was elaborately argued, but was ultimately decided on another point, and no opinion expressed upon the principal question. The court was held by Daggett, Ch. J., Williams, Bissell and Church, Js. Peters, J., was absent. It appears by minutes of the consultation taken by Judge Bissell, and found since his death among his papers, and which the writer has had an opportunity to examine, that the question of the citizenship of free blacks was discussed at considerable length by the judges, and that while Judge Daggett adhered to the opinion expressed by him in the superior court, all the other judges either held or inclined to the opinion that they were citizens.

"The writer has also seen a letter written by Judge Williams, in March 1857, (then in his 80th year) to Judge Bissell, in which, after expressing a desire that Judge B. would visit him, he goes on to speak of the Crandall case, as follows:

"I should like to converse with you upon a subject which has become of some interest—the Crandall case. Those who did not understand it, or did not care to have others understand it, have represented the court, of which we were then members, as having adjudged that the blacks were not citizens. Everyone who reads the case knows that it is not so. Then I am inquired of what was the opinion of the judges on that point. You probably have the same inquiry made of you. Now I have no hesitation in saying that my own opinion did not coincide with Judge Daggett's, and I do not know as did that of one of the court, but I do not know as I can or ought to speak affirmatively for others. Now I should be glad to know what you say to such inquiries, or what I may say for you, and how far we ought to give our impression as regards the opinions of our deceased brethren. According to my recollection in the consultation at Brooklyn, Peters, J., absent, all of us differed from the Chief Justice so far as we expressed an opinion, but we gave no definite opinion, and when at Hartford concluded to dispose of the case on other grounds. If you are well enough please advise me what I ought to say to inquirers and whether there ought to be any delicacy in saying what were our impressions on the subject, though no judicial opinions were given. For myself I must say that

⁸ 32 Conn. 565.

I did not then doubt, nor since have doubted, that our respected friend was wrong in his charge to the jury.'

"The reply of Judge Bissell has not been found.

"The question has lost some of its practical importance since the passage of the recent act of Congress, known as the Civil Rights Bill, but the foregoing facts are of much historical interest."

The Civil Rights Bill, mentioned by the reporter in the concluding paragraph of the above note, is the act of Congress passed over President Johnson's veto April 9, 1866,⁹ which provided:

That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory of the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of persons and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

It will be observed that nothing is here said about the right to vote, a subject upon which, of course, Congress could not legislate.

Notwithstanding the dictum of Judge Daggett who instructed the jury in the Crandall case (*supra*) and "the learned Dr. Webster" upon whose dictionary the judge relied, it is well settled that citizenship does not in any case imply the right of suffrage. Children and lunatics are citizens, though they may not vote, and in some states commorants who are declarants for naturalization have been accorded the franchise, although they are not citizens.

In 1851, the Connecticut legislature passed a tax law.¹⁰ Among the exemptions from taxation there was included "the personal and real estate of persons of color." Interpreting this act in 1860, in *Johnson v. Norwich*, p. 444, *infra*, the court held that "persons of color" is not a "term or phrase of art, having any peculiar or technical signification," and ruled that the expression applied to all who "have a distinct visible admixture of African blood . . . disclosing visibly the peculiar and distinctive color of the African race." The court also observed that the exemption "was designed as a compensation to those persons on whom the constitution of the state does not confer the elective franchise."

The right of suffrage in Connecticut continued to be confined to free white males until the adoption of Article XV. of the constitution of the United States, which was ratified by Connecticut May 19, 1869, and proclaimed by the Secretary of State of the United States March 30,

⁹ 14 Stat. at L. 27.

¹⁰ Public Statutes (1850), ch. 47, sect. 6.

1870. Connecticut did not change her own constitution in this respect until 1876, when the following amendment was adopted: "Article Twenty-third. That Article VIII of the amendments to the constitution be amended by erasing the word 'white' from the first line."

Turning now to the status of negroes from other states, as affected by the Connecticut decisions. In 1837 a case arose involving the status of a Southern negro (*Nancy Jackson v. James S. Bulloch*,¹¹ p. 433, *infra*). It resulted in a three-to-two decision by the Supreme Court of Errors. The effect of the majority ruling was to set free the personal maid of a citizen of Georgia who had visited Connecticut several times, accompanied by this servant, and who, at the time the suit arose, had been sojourning in Hartford for about two years for the purpose of sending his children to school. Judge Bissell in his dissent adverts to "the excitement that is abroad on this subject," and the energetic style of his own opinion and that of the majority reflects the excitement which he deprecated.

For the famous case or cases of the *Amistad*, the data given in both state and federal reports are presented.

One of the last of our Connecticut cases, *Tillotson v. Tillotson*, illustrates various phases of American social and economic history extending over fifty years, before, during, and after the Civil War. The report covers 63 pages, but the portions of it having direct bearing upon slavery embrace only a few paragraphs, the essentials of which are given *infra*.¹²

II.

From the earliest days of the Connecticut colony (and the same is true of the New Haven colony while it had an independent existence) the highest court of justice was the General Assembly. From 1663 to 1711 the Court of Assistants was for most purposes the highest court, yet with possibilities of appeal to the General Assembly. An act of 1711¹³ provided for a Superior Court, consisting of a chief justice (by custom the governor or deputy governor) and four other judges, but appeals still went to the General Assembly. From its printed records and those of the Assistants (Council) a few cases concerning slavery and the negro have been reproduced in subsequent pages.

In 1784 it was provided by law that judges of the Superior Court should be chosen by the General Assembly, while the Lieutenant Governor and

¹¹ Maternal grandfather of Theodore Roosevelt. The plaintiff was probably nurse or "mammy" to the future President's mother.

¹² For the preceding portion of the Introduction, the volume is indebted to George W. Dalzell, Esq., of the bar of the District of Columbia. For general information on slavery in Connecticut, reference may be made to Bernard C. Steiner, "History of Slavery in Connecticut," nos. IX.-X. of the eleventh series of *Johns Hopkins Studies in Historical and Political Science* (1893), which treats with some fullness several of the cases here recorded, and to the articles by William C. Fowler on "The Historical Status of the Negro in Connecticut," in *Historical Magazine*, XXIII.

¹³ *Public Records of the Colony of Connecticut*, V. 238.

Council should constitute the Supreme Court of Errors and should be the last resort in all matters of law and equity, brought, by way of error, from the judgment or decree of the Superior Court.¹⁴ In 1793 the Governor was added to the highest court and made the presiding judge.¹⁵

By legislative act of 1806 the judicial system of the state was organized in a Superior Court consisting of nine judges who, in groups of three, held court in circuits, their courts having civil, criminal, and chancery jurisdiction; and a Supreme Court of Errors, consisting of all the judges of the Superior Court, sitting *in banco*, one term each year.¹⁶ This court not only took cognizance of writs of error from the Superior Court, but heard argument on motions for new trials and on cases stated.

The state constitution of 1818 provided for a Supreme Court of Errors,¹⁷ which by statute of the same year was constituted of a chief judge and four assistant judges.¹⁸ Legislation of 1855 provided for a gradual reduction of the number of judges in the Supreme Court from five to three.¹⁹ An act of 1858 added one or more of the judges of the Superior Court, to make a total number of not more than five.²⁰ An act of 1859 provided a court of four, three of whom would be necessary in order to reverse any decision of the Superior Court.²¹

¹⁴ Acts of May 1784, p. 267.

¹⁵ Acts of October 1793, p. 471.

¹⁶ Acts of May 1806, p. 713.

¹⁷ Art. V, sect. I.

¹⁸ Acts of 1818, p. 311.

¹⁹ Public Acts, May 1855, ch. 25.

²⁰ Public Acts, May 1858, ch. 22.

²¹ Public Acts, May 1859, ch. 54.

CONNECTICUT CASES

Case of Abda, 15 *Public Recs.* 548, February 1702/3 (Governor and Assistants). "Information being exhibited in Council, that Capt. Joseph Wadsworth did . . . oppose the constable of Hartford in his execution of a writ of arrest upon the body of a mallatta servant to Capt. Thomas Richards, etc., the Council doth recommend it to the judge of Hartford countie court to take effectual care that the premises be dilligently inquired into and prosecuted to an issue according [to] order of law."

Id., 4 *Public Recs.* 478, May 1704 (General Assembly). "It is ordered by this Court that Mr. Thomas Richards of Hartford shall have a hearing of his petition concerning his servant Abda, at the Gen'rl Court in October next, if he shall there prosecute it according as the lawe directs."¹

Rogers v. Hagar, 15 *Public Recs.* 582, July 1710 (Governor and Assistants). "James Rogers jun'r, as administrator of the estate of his grandfather Mr. James Rogers, deceased, complained that a negro woman of new London, called Hagar, with a child of hers were slaves to his said grandfather, and that of them he died possessed; and that he, the said administrator, had demanded them as parcel of the said estate, with some other children born of said Hagar since the decease of the said James Rogers, but they refused to yield themselves unto him. And the said Hagar appearing . . . and pleading that she has lawfully obtain'd her freedom and her children from her said former master, and therefore could not be reckoned as parcel of said estate:

"It was agreed, That if the said Hagar would give bond . . . with sufficient sureties, to make out at the next county court . . . in New London the freedom she had alledged for herself and children, both she and they should be secured against any further process or action of the said administrator till the said plea of freedom should be heard and determined."

Tyler v. Dixon, 9 *Public Recs.* 485, October 1749. "Upon the petition of Samuel Tyler, of Wallingford, against Charles Dixon, of East Had-dam, shewing that said Dixon obtained a final judgment at the superior court held in Hartford in September last, against him, in an action bro't by said Dixon for enticing and improving² Humphrey Negro in his service about eight months, claimed by Dixon as his servant, and that by some indirect and unfair measures of said Dixon he was defeated of a fair tryal, and also he had discovered and obtained further evidences of said Humphrey's circumstances during that time; praying for a reversal of said final judgment and . . . a new tryal." New trial granted.

Kilborn v. Griswold, 9 *Public Recs.* 577, October 1750. "Upon the petition of Eleazer Kilborn *vs.* Josiah Griswold, representing that a

¹ Nothing on the case appears in the printed records of the October court. A speech on the case by Governor Saltonstall is printed in *Historical Magazine*, XXIII. 14-18.

² Making use of.

controversy had arisen between the said parties in respect to a certain negro, named Zacheus, claimed both by the said Kilborn and the said Griswold, and that said controversy was left to be decided by" two referees, "who awarded that the said Griswold had a legal right to said negro, . . . and that said Griswold had obtained a judgment against the petitioner at the adjourned county court . . . and complaining that . . . damages were extremely exorbitant, and that other disputes respecting the service and property of the said negro are still subsisting, and long and tedious lawsuits are likely to ensue thereon;" Referred to three referees, on whose award the county court is "fully empowered and directed to render judgment."

Case of Aaron Fish, 10 Public Recs. 182, May 1753. "Upon the petition of Aaron Fish, . . . representing that Mr. James Danielson . . . in his life time made and duly executed his last will and testament, . . . in and by which he gave unto the said Aaron Fish all his real estate . . . also his negro man named Crisp, and all other his personal estate not in said will before given away, reserving only the use . . . thereof to his then wife Irenia during the time she should remain his widow,"

Case of Caesar Trick and Peter, 10 Public Recs. 333, January 1755. "Upon the representation of Joseph Fowler, Esq., [a justice of the Superior Court] . . . shewing to this Assembly that one Caesar Trick, a molatto [*sic*] man, servant to Nathaniel Huntington, of Norwich . . . and one Peter, negro man, late servant to Mr. Richardson, late of Lebanon, . . . now deceased, were convicted before the adjourned superior court . . . December, 1754; the aforesaid Caesar for making and signing sundry counterfeit bills in imitation of the bills of credit of the Colony of Rhode Island and Providence Plantations, and of the Province of New Hampshire, and the said Peter for uttering such counterfeit bills, knowing them to be such; . . . and that the said Nathaniel Huntington hath applied that he may have his said servant Caesar released to him from the said gaol, where he now is, upon some reasonable terms: Also shewing that one David Richardson, of Lebanon, hath applied that he may have the said Peter released from said prison, where he now is, and secured to him, to serve with him to the day of his death, he paying all costs and charges . . . resolved and ordered, that upon the said Nathaniel Huntington's paying, or giving good security to pay, the cost of the prosecution of said Caesar, and of his confinement since the conviction, . . . and also giving good security so to dispose of him, said Caesar, as that he may be secured from going at large in any of the towns in this Colony, . . . he shall receive him from the prison aforesaid." Similarly as to Peter.

Case of Bristow, 10 Public Recs. 595, January 1757. "Whereas one Bristow, a negro man servant and slave to Mr. George Beckwith of Lyme, having at the sessions of the superior court at New London in September last been legally convicted of committing a rape on the body of one Hannah Beebe of said Lyme, and thereupon by said court sentenced to suffer the pains of death," but "lawfully reprieved, and execution of said sentence by his Hon'r the Governor of this Colony respited . . . for

the further orders and resolves of the then next General Court of this Colony, . . . and whereas . . . sundry depositions in writing and affidavits" show "that she, the said Hannah, hath soon after said condemnation openly and freely declared said Bristow to have been innocent of said crime, . . . [596] resolved and ordered by this Assembly, that release and delivery . . . be . . . granted to him said Bristow,"

Lane v. Baldwin, 11 *Public Recs.* 142, May 1758. "on the petition of John Lane of Middleton, *versus* Michael Baldwin of Guilford, shewing to this Assembly that said Baldwin having brought his action against him for selling an unsound negro, demanding £100 damages, . . . some unfair proceedings were had in taking a deposition *ex parte* improved¹ on a tryal of said case at the superior court held at New Haven in August last, by which the jury in said case were principally induced to find their verdict against said Lane, on which judgment was rendered against him;" New trial granted.

Delano v. Penoyer, 12 *Public Recs.* 91, October 1762. "Upon the petition of Thomas Delano of Sharon, against John Penoyer of said Sharon, shewing to this Assembly that the said Penoyer recovered final judgment against him at the superior court . . . for £61 18 s. 7 d. lawful money, . . . in an action brought by the said Penoyer wherein he charged the petitioner with fraud in the sale of a certain negro girl; complaining that the jury missed their evidence in said case, and praying for a new trial" Granted.

Roberts v. Smith, 12 *Public Recs.* 575, May 1767. "Upon the petition of William Roberts, of Amenia [567] . . . New York, representing that Samuel Smith . . . of Sharon . . . at an adjourned county court held at Litchfield . . . August, 1766, recovered judgment against him for the sum of one hundred pounds New York money, on a note of hand which was given by the petitioner to said Smith for one certain negro man slave for life to said Smith whom said Smith delivered to the petitioner to sell and dispose of for him, with instructions to the petitioner that if he could not sell said negro he might send him home at the proper risque of him, said Smith, and in that case said note was to have been given up; which negro the petitioner, not being able to sell, did dismiss in order to return home, but said negro hath never returned home and is lost, and the said Smith hath contrary to his engagements refused to deliver up said note, but having recovered judgment thereon hath procured an execution thereon to be levied on the petitioner's land;" Assembly appoints a committee to inquire and report.

County Treasurer v. Bissel, 1 *Root* 85, December 1783. "*Scire facias* on a bond for prosecution, given by said Bissel upon praying out a writ, in which one Robbin a negro man was plaintiff; setting forth in the *scire facias*, the judgment and execution recovered against said Robbin for cost; and also a commitment of said Robbin to gaol on said execution, and that he had taken the poor prisoner's oath, and gone out."

¹ Made use of.

Jack Arabas v. Thomas Ivers, 1 Root 92, 1784. "Jack was a slave to Ivers and enlisted into the continental army with his master's consent—served during the war, and was discharged. Ivers claimed him as his servant; Jack fled from him to the eastward, Ivers pursued him, and took him and brought him to New-Haven on his return to New-York, where he belonged, and for safe-keeping while he stayed at New-Haven, he got the gaoler to commit Jack to prison; and upon Jack's application to the court, complaining of his being unlawfully and unjustly holden in prison, the court issued a *habeas corpus*, to bring Jack before the court; also ordering the gaoler to certify wherefore he held Jack in prison; which being done, Ivers was cited before the court; and upon a summary hearing, Jack was discharged from his imprisonment, upon the ground that he was a freeman, absolutely manumitted from his master by enlisting and serving in the army as aforesaid."

State v. Hunn Beach, 16 Acorn Club Publications 20 (Kirby), March 1786 or August 1787. "Information at common law for assaulting, falsely imprisoning, transporting to South Carolina and there selling one Dinah Woodward, a free negro, as a slave for life. Witnesses for the prosecution, Captain Holbrook a passenger, and Hart a hand on board."

Wilson et al. v. Hinkley et al., Kirby 199, January 1787. "Hinckley and others, selectmen of the town of Tolland, brought their action before a Justice of the Peace, against Willson, and the other inhabitants of the town of Coventry, for certain sums of money advanced for the . . . support of Amy Caesar and her two children, alledged to be the proper paupers of the town of Coventry. . . It was then pleaded . . . That said Amy was born in said Tolland, and that her mother was an Indian woman, a native of this country; and that said Amy lived with Jabez Edgerton, of said Tolland, as a servant, until she arrived at the age of eighteen years, when her service expired, and she was set at liberty . . . in August, 1782, she married to one Timothy Caesar, in said Tolland, whose mother was also an Indian woman, and native of this country: That said Timothy, at the time . . . was a slave and servant to one Joseph Hovey, of Mansfield; . . . In March, 1783, they both came into the town of Coventry, and there lived for the term of eighteen months."

Held: "Timothy Cæsar, being born of a free woman, a native of the land, was not a slave, nor was he within the meaning of the statute, 'a servant bought for time;' nor does it appear that he was an apprentice under age, or that he was under any disability to gain a settlement by commorancy; and having resided more than one year in the town of Coventry, with his wife, the said Amy, he there gained a settlement for himself and her, also for her children."

Pettis et al. v. Jack Warren, Kirby 426, March 1788. "the defendant in error brought his action of trespass before the mayor's court, for an assault and battery. The defendants in the action pleaded in abatement—That the plaintiff was a runaway Negro, a slave for life, travelling without a pass, and being found by the defendants in the city of Norwich, was taken up to be examined before proper authority: . . . and that neither

of the parties lived within the jurisdiction of said city. The plaintiff replied—That he lived within the jurisdiction of said city, and . . . traversed his being a slave. . . . The jury found a verdict for the plaintiff and 9*l.* damages, leaving that part of the issue, whether the plaintiff was a runaway Negro, unanswered; on which it was moved in arrest of judgment, on this ground—that the verdict did not comport with the issue:—But the motion was overruled; which was one of the errors complained of. Another matter complained of in error was—That upon a challenge to one of the jurors; for that he had declared an opinion, ‘that no Negro, by the laws of this state, could be holden a slave;’ an inquiry into the facts was denied, and he admitted to sit.”

Held: “Though by statute ‘whatsoever Negro is *found wandering* out of the town or place to which he belongs, without a *ticket*, or *pass*, in writing, under the hand of his master or owner, or of an Assistant or Justice of the Peace, shall be deemed a runaway; and any person finding or meeting him, may seize and secure him, to be examined before the next authority, etc.’ Yet the jury having found that the plaintiff, *lived and dwelt* in the city of Norwich, it appears that he was not *wandering* out of the town or place to which he belonged, so as by the statute to justify the seizure of him by a private person, not his master. . . . As to the other point—An opinion formed and declared upon a general principle of law, does not disqualify a juror to sit in a cause in which that principle applies.”

Lee Peck v. State, 1 Root 331, September 1791. “Petition for a new trial, stating that the petitioner was prosecuted and convicted by a verdict of the jury before this court for counterfeiting certain pieces of coined money; that thereupon he was taken into custody and committed to gaol; that he was surprized with the testimony . . . of Jacklin, a negro man, upon which the jury convicted him; that he is able by certain new testimony to prove that the character of said Jacklin, a negro man, is bad in point of truth and veracity, and prays for a new trial.”

Lemuel Lamb v. Sharp Smith and Wife, 1 Root 419, March 1792. “Error to reverse a judgment of the county court, in an action brought by Smith and wife against Lamb, declaring that David Lamb on the 6th of July A. D. 1771, made his will and gave to his two sons John and the said Lemuel, all his estate after the decease or second marriage of his wife, to be divided as follows, *viz.* etc. to Betsey, the wife of said Sharp Smith, a legacy as follows, Item, I give and bequeath to my negro woman Betsey, her freedom in six months after my decease. I also give to said negro woman Betsey, twelve pounds lawful money, to be put to interest under the care of the Rev. A. Rosseter and to be by him dealt out to said Betsey’s use, at his discretion, as her circumstances shall require, to be paid equally by my sons Lemuel and John Lamb, within one year after my decease. . . . the county court gave judgment that the declaration was sufficient and for the plaintiffs to recover the sum of £12-19-6 damages and cost.”

“Judgment of the county court affirmed. . . . the defendant and said John . . . ought to pay the interest. Mr. Rosseter was appointed by the

will a kind of superintendant or guardian to said Betsey as to this legacy, but had no kind of interest in it. His accepting or refusing the trust can have no effect upon the negro woman's interest in it."

Hillyard v. Nichols, 1 Root 493, January 1793. "Action upon the statute, to recover the penalty of £200 for exporting two negro children out of the state, who were entitled to their freedom at the age of twenty-five years. . . The jury found a verdict for the defendant."

State v. Daniel Wilson a Negro, 2 Root 62, September 1793. "Information at common law for a high misdemeanor and breach of the peace, for threatening to kill and murder Mrs. Wheat and the family of Capt. Wheat, when he was from home, and actually stabbing one John Gordon and for other outrageous conduct; of which he was convicted and sentenced to Newgate prison for eighteen months, as a common law punishment." Judgment affirmed.

Hylliard v. Austin Nickols, same case¹ on motion for a new trial, 2 Root 176, January 1795. "Petition for a new trial, in an action brought by said Hylliard against said Nickols upon the statute entitled an act to prevent the slave trade—alleging that said Nickols at a certain time had transported out of this state into the state of Virginia, two negro children, contrary to the force and effect of said statute, whereby he had incurred the forfeiture of £100 for each; . . In which action the defendant was acquitted by verdict of the jury, upon the plea of not guilty. . .

"it was admitted by the defendant on said trial, that he carried said children out of this state into the state of Virginia; that he then removed into the state of Virginia for the purpose of settling there, and that he carried these children with him as a part of his family; and to prove this, said Nickols produced a deposition purporting to have been taken before justice Mitchel in Virginia, in which the deponent testified that said Nickols had paid taxes in said state; that the petitioner could now prove by said justice Mitchel and certain other documents, that said deposition and the signature of said justice, was all a piece of forgery. . . Further alledging, that he could now prove by incontestible evidence, which he knew not of at said former trial, *viz.*—naming the witnesses—That said Nickols carried said negro children into the state of Virginia for the purpose of selling them, and that in fact they were sold soon after they were carried there. Further, that he could prove by the testimony of sundry persons—naming them—That said Nickols never was taxed in said state of Virginia; that he did not remove there for the purpose of settling; but for the purpose of trafficking, and trading in land and negroes. . .

"By the court—This is not a criminal prosecution, but a civil action brought on a remedial statute to recover the penalty enacted to prevent the exportation of persons, of a certain description, out of this state into any other state for the purpose of selling them. . . After a hearing on the merits a new trial was granted."

Ebenezer Kingsbury v. Town of Tolland, 2 Root 355, February 1796. "Writ of error to reverse a judgment of a justice, in an action, Tolland

¹ *Hillyard v. Nichols*, *supra*.

against said Kingsbury, declaring, that said Ebenezer was sole executor of Ruth Kingsbury, late of Norwich, deceased—That said Ruth was mistress of Cuff and Phillis, a negro man and woman, whom she owned as servants for life—That in December, A. D. 1773, she liberated and set them free, and soon after died; leaving a clear estate of the value of £500 lawful money—That in A. D. 1776, said Cuff and Phillis, with the consent of said Ebenezer, removed into the town of Tolland, and had there resided and dwelt ever since. And on or about the 10th of February last, they were reduced to want, and the selectmen of said Tolland provided for their relief to the value of £2 lawful money, which was expended for their necessary support; of which the plaintiffs gave notice to the defendant, and requested payment; and thereupon the defendant became liable to pay said sum, and in consideration thereof, assumed upon himself and promised.

“Plea in bar, that on the 18th of November 1776, said Cuff and Phillis, being free citizens of this state, removed into the town of Tolland, where they had ever since resided and dwelled, without being warned to depart said town; whereby they became legal inhabitants of said town, and liable to be maintained by said town. Reply, that said Cuff and Phillis were foreigners, born in Africa—that they were owned as slaves by Joseph Kingsbury, and by him given to his wife the said Ruth, who liberated them as aforesaid; and in no other manner were said negroes free citizens of this state; and that they never gained any legal settlement in said Tolland. . .

“By the Court—The statute is, ‘That all slaves set at liberty by their owners or masters, in case they shall come to want, shall be relieved by such owners, etc. respectively, their heirs, executors, or administrators; and upon their refusal so to do, the slaves, etc. shall be relieved by the select men of the town to which they belong; and said select men shall recover of said owners or masters, their heirs, executors and administrators, all the cost and charge, in the usual manner as in case of other debts.’ ”

Geer v. Huntington, 2 Root 364, March 1796. “Action for the service of a negro boy, who was born a slave, and was over twenty-five years of age. The plaintiff claimed him by a bill of sale from Mrs. Stanton, his mistress. The defendant claimed the boy to be free by force of manumission from his mistress, who was now living. The evidence was, that Mrs. Stanton had said, that the negro boy should be a servant to nobody but to her; and that he should be free at twenty-five years of age. At twenty-five the negro boy left his mistress, and entered into the service of the defendant, and for that, this action was brought.

“Verdict for the defendant, and accepted by the court—upon the ground that the declaration of the mistress made to the servant, that he should be free at twenty-five years of age, amounted to a manumission.”

Town of Bolton v. Town of Haddam, 2 Root 517, February 1797. “Action of debt by book, for expenditures in supporting a negro man, claimed by the plaintiffs to belong to the town of Haddam. . . Verdict for the plaintiffs.

“ In this case it was determined that a slave for life was settled with his master ; and if manumitted by his master with or without a certificate from the selectmen, or by having enlisted and served in the army with his master’s consent ; that he continued to be a settled inhabitant in the town where he was settled before, until by legal means he becomes settled in another town.”

Dickinson v. Kingsbury, 2 Day 1, June 1805. “ This was an action of debt on bond, for two hundred dollars, . . .

“ the condition of which was, that one Benjamin (Negro) should appear before the Superior Court, and answer to a complaint made against him for burglary. . . a complaint was exhibited, by a grand-juror, against Benjamin for burglary ; a warrant was thereupon issued, by which he was arrested, and brought before a justice for examination ; the justice having heard the complaint, and the testimony relative thereto, gave judgment against Benjamin, that he should become bound, with sufficient sureties, in the sum of two hundred dollars, to the Treasurer of the State, to appear before the next Superior Court, and that, on failure of so doing, he should be committed to the gaol in New-Haven County ; he neglected to procure bail ; and the justice thereupon committed him to prison.” The sheriff, “ after the commitment of Benjamin, and while he remained a prisoner, took the bond, payable to the Treasurer of the State without his knowledge or consent, and thereupon immediately let Benjamin escape from gaol and go at large. The Superior Court . . . ordered the Sheriff to set him at the bar, to plead to an information, which the Attorney for the State had filed against him. But the sheriff neglected to comply with that order ; ” The Supreme Court of Errors allowed such practice by a sheriff.

Richards v. Stewart, 2 Day 328, June 1806. [331] “ After having proved, that Dill was put on board of the vessel, at Barbadoes, by Cruden, as supercargo ; that as such he sailed, in June, 1804, and had the charge, and direction of the vessel from Barbadoes to St. Christophers, to take in a cargo of salt, by the order and for the benefit of Cruden, and from St. Christophers to New-York, whither the vessel was ordered by Cruden ; . . and that there were four negroes put on board by Cruden, as seamen, who arrived with the vessel at New-York, in July, 1804, and were soon afterwards taken, by the direction, and under the care of Dill, as supercargo, to New-London ; the defendant offered in evidence an advertisement, subscribed by Dill, for the negroes, who had escaped from him, describing them as mariners on board the schooner *Urania*, and slaves, and alleging that they had departed without license.”

United States v. John Smith, 4 Day 121, September 1809 (U. S. Circuit Court). “ This was an action of debt to recover double the value of the interest which the defendant had in certain slaves, transported in the brig *Heroine*, whereof the defendant was sole owner and master, from Africa to Havanna, and there sold, by the direction of the defendant and for his benefit, contrary to the provisions of the act of congress of May 10, 1800 ”

[no citizen to have property in any vessel engaged in the slave trade from one foreign place to another]. “The action was com[122]menced March 31, 1808. . . the crew of such vessel did forcibly seize, carry on board said vessel, and there confine more than one hundred of the natives of Africa, . . and . . did sail . . to the port of Havanna, . . at which port said vessel did arrive before the first day of June, 1806. And . . before the 30th day of June, in the year last mentioned, and within two years next before the date of this writ,” they “were sold and disposed of as slaves.”

By the court: [127] “It appeared that the vessel arrived at Havanna more than two years before the commencement of the suit; but it did not appear that the slaves were actually sold until some time within the two years” prescribed by the statute of limitations. [128] “My opinion is, and so I shall charge the jury, that the offence consists in transporting persons from one foreign country to another, with a view to their being sold as slaves; and as soon as the vessel arrives at the place of destination, the offence is completed, whether the slaves are sold or not. It is incumbent on the attorney for the United States to show an offence committed within two years; and as this has not been done, there must be a verdict for the defendant.” (Edwards, J.) “The jury found accordingly.”

Town of Windsor v. Town of Hartford, 2 Conn. 355, November 1817. . . “an action of *assumpsit*, for the support of Fanny Libbet, a pauper, and her two children. Fanny was born in Hartford, in the year 1785, and was the illegitimate daughter of Sarah, a slave of Jonathan Butler . . of Hartford. When Fanny was about three years old, Jonathan Butler gave her, and with her the right to all her services, to his son, Frederick Butler, an inhabitant of Wethersfield. She resided in Wethersfield until she was twenty-five years old, when the term of her service by law expired. Sarah, the mother of Fanny, was sold by her master, Jonathan Butler, in the year 1795, to Hezekiah Chaffee, an inhabitant of Windsor, and was emancipated by him in the year 1801.” Counsel for the plaintiff “contended, that the settlement of Fanny, . . was in Hartford, that being the place of her birth, . . that she gained no settlement by her residence in Wethersfield, during her minority; . . and that she had no derivative settlement with her mother, [356] . . in Windsor. . . They also contended . . that Fanny never was a slave, having been born after the 1st day of March 1784.”

Held: “Fanny . . never was a slave. During her residence with Frederick Butler, she is to be considered on the footing of an apprentice, or minor, living in another town, by the consent of parents or guardians; and did not thereby gain any settlement in Wethersfield. She never gained a settlement in Windsor, in right of her mother; for the mother being a slave could communicate no such right. She must, of course, retain her settlement in Hartford, and her two children follow the place of her settlement.” [Swift, C. J.]

Town of Columbia v. Williams et al., 3 Conn. 467, October 1820. Action to recover the value of supplies furnished to a destitute negro. [470] "Adam, a negro slave of William Williams, Esq. late of Groton, deceased, becoming sick, and the defendants, who are the heirs of the said William Williams, refusing to relieve him, the plaintiffs supplied him with necessary food, medicine and attendance, to a considerable amount. The defendants, who had derived a large real and personal estate from the said William Williams, were notified, by the plaintiffs, of the advancements made, but refused to reimburse them; in consideration of which, the plaintiffs contend, that by virtue of the statute, they have a right to recover; . . . It is not pretended, that the slave ever was an inhabitant of Columbia; or that he ever was emancipated; and from the facts conceded, it appears that he belonged to Groton, and was never made free. . . . The section of the law on which the action is founded, is expressed in the following words: And that all slaves, set at liberty by their owners, and all negro, mulatto and Spanish Indians, who are servants to masters for time, in case they come to want, after they shall be set at liberty, or the time of their said service be expired, shall be relieved, by such owners of masters respectively, their heirs, executors or administrators; and upon their or either of their refusal so to do, the said slaves and servants shall be relieved, by the select-men of the town to which they belong; and the said select-men shall recover of the said owners or masters, their heirs, executors or administrators, all the charges or cost they are at for such relief, in the usual manner, as in case of other debts. Tit. 150. c. 1. s. 11. The persons to whom this section extends, are 'slaves set at liberty by their owners.' . . . [471] Undoubtedly, when no authority is exercised over a slave, and he is suffered, without restraint, to reside or migrate where he pleases he is in fact free, and will continue so, until his master shall resume the government, which he has suspended; but the slave has not been 'set at liberty.' This expression denotes the putting of him in a permanent condition of freedom, and implies the extinguishment of the right, which the master had over the slave, and not the mere temporary cessation of actual authority. . . . the slave in question has not been set at liberty, within the intention of the law. . . . It has been contended, by the plaintiffs, that a person *belongs* to the town in which he resides, and hence, that Adam was of Columbia, the place in which he had a residence, at the time of his sickness. But the meaning of the word *belongs*, . . . has been utterly misconceived. By the law of settlements, the support of a slave in necessitous circumstances, is incumbent on the town in which he is a settled inhabitant: Of consequence, the supplies by Columbia, gave her a right to recover of Groton," while Groton, by the statute, is given a claim against the owner or his heirs. "It . . . is . . . clear that the slave Adam did not belong to Columbia, within the intendment of the statute; and that the plaintiffs have no cause of action against the defendants." [Hosmer, C. J.] New trial ordered.

Prindle v. Glover et al., 4 Conn. 266, June 1822. Action for assault and battery: "There was no proof, on the trial, that the defendant Glover

personally committed the trespass complained of. But the plaintiff insisted, and adduced evidence to prove, that Frederick, a negro, the other defendant, made an assault on her, at the time alleged, at the dwelling-house of Bennett Prindle in Newton; and that Glover aided and abetted him, therein. To establish this fact, the plaintiff introduced testimony to prove, that at the time stated in the declaration, *viz.* about 12 o'clock at night, Frederick and Glover were together, at or near the place where the assault was alleged to have been made; and had there been seen at several times during the preceding evening."

Fuller v. Trustees of the Academic School in Plainfield, 6 Conn. 532, July 1827. Defendants alleged: [536] "That at a private party, at the dwelling-house of Levi Robinson, a member of the board, said Fuller pronounced the members of the board to be a set of rascals and scoundrels, (excepting Mr. Robinson when called upon by him) and no more fit to act in that capacity than Port Hall, an infamous black man too well known to all then present."

Pitkin v. Pitkin, 7 Conn. 315, June 1829. A bill in chancery, brought by executors praying for sale of real estate of a decedent to provide funds for administering his will. "In 1818, Elisha Pitkin executed [316] a deed of gift of all his real estate lying in this state to the plaintiffs and to the defendants. He retained that deed until his death, when it was his intention that it should take effect. At the same time, he made his will, and therein gave all his estate, not otherwise disposed of, to the plaintiffs and Joseph Pitkin, and the heirs of Timothy Pitkin then deceased, to be equally divided between them, they to take care of and provide for a negro woman called Flora, his slave; the expense to be borne equally between them; or his executors to reserve in their hands a sufficiency for that purpose. He constituted the plaintiffs his executors, and died in 1819. They accepted the trust, and proved the will; and . . . paid large sums for the support of said Flora to the amount of 1,000 dollars, supposing there was a sufficiency of estate left for that purpose, by the testator. After the final settlement of the estate, it appeared, that there was not sufficient property, exclusive of that conveyed by the deed, to pay the debts of the deceased; and that a part of the estate so given by the deed, had been sold for the payment of debts; and that all the debts had been paid. Flora is still living; is aged and infirm; and large sums will probably be wanted for her future support. . . There is no other estate from which Flora can be supported. The bill prays the court to order a sale of so much of the real estate of the testator as will reimburse the expenses already incurred, and will provide for the future support of Flora for whose support his estate is liable."

Held: [318] "The court cannot know, that these sums were necessary for her support; much less can they foresee and provide for the future. . . this whole business properly pertains to the court of probate."

Town of East Hartford v. Pitkin et al., Executors, 8 Conn. 393, June 1831. "The declaration alleged, That Elisha Pitkin . . . of East-Hartford, died in August, 1819; that he left, at his decease, a negro female

slave, named Flora, who then was, and ever since has been, a settled inhabitant of that town; that he was, during his life, and his estate has been, since his death, liable for her support; that she was and is part of the estate of the deceased; that she never was manumitted, but now is, and ever since his death, has been holden as a slave, and part of the estate of the defendants as executors. The declaration then alleged, That on or about the 1st of March, 1828, Flora became poor and destitute, and has at all times since, been in need of food, [394] clothing, medicine and attention; that she has no relation of sufficient ability to support her; that . . . the town of East-Hartford, by their select-men expended 300 dollars in her necessary support; and that the defendants . . . were specially notified . . . and thereupon became liable.”

By the court: [395] “Elisha Pitkin, if living, would be, and his estate since his death is, liable for the support of this slave. There can be no doubt of this position. It was never doubted, that a master was obliged to support his slave . . . [396] Flora . . . never was emancipated . . . [397] Flora is not a pauper, in the sense of the statute” (title 93, Slavery, sect. 2). Declaration insufficient. [Daggett, J., Hosmer, C. J.] Williams, J., dissenting: [408] “By the principles of natural justice” the defendants “are bound to refund.”

Town of Guilford v. Town of Oxford, 9 Conn. 321, July 1832. [322] “Alanson Bryan, the husband of Rhoda, was, at the time of his intermarriage with her, and still is a settled inhabitant of Oxford. Before the marriage and until that time, she was an inhabitant of Guilford or Wallingford. The marriage took place in October, 1828; and in March following, she was delivered, at New-Haven, of a coloured child, begotten by a black man, before the marriage, and soon afterwards went to Guilford, where she, together with the infant, became chargeable to and was supported by Guilford; of which Oxford had due notice. Alanson Bryan and Rhoda are both white persons; and at the time of the marriage, he was ignorant of her pregnancy. In May, 1829, he preferred his petition to the General Assembly, . . . praying for an act of divorce.” It was granted.

By the court: [328] “1. That the marriage . . . was valid, I think there is no doubt. 2. . . . It is . . . unquestionable, that the divorce did not avoid the marriage *ab initio*, but only rendered it void *in futuro*. 3. . . . Before the above marriage, the said Rhoda was a settled inhabitant of Guilford or Wallingford. By her marriage with Bryan, who was an inhabitant of Oxford, she became settled in that town. The settlement remains, notwithstanding a divorce; it having no retroactive effect.” Rhoda and her illegitimate child are settled in Oxford, and “Oxford is liable to the plaintiffs.”

Crandall v. State, 10 Conn. 339, July 1834. [340] “This was an information, filed by the prosecuting attorney of the county of Windham, for a violation of the statute of 1833, regarding the instruction of coloured persons not inhabitants of this state.¹ The information alleged,

¹ Act providing “That no person shall set up or establish in this state any school, academy, or literary institution, for the instruction or education of coloured persons, who are not inhabitants of this state, nor instruct or teach in any school, academy, or other

That at Canterbury, [341] in said county, on the 24th of September, 1833, for the purpose of attending and being taught and instructed in a certain school, which before that time had been and then was set up, in said town of Canterbury, for the instruction and education of coloured persons, not inhabitants of this State, Prudence Crandall, of said Canterbury, . . . did harbour and board certain coloured persons, who, . . . were not inhabitants of any town in this state; all . . . without the consent in writing first obtained of a majority of the civil authority and also of the select-men of said town of Canterbury. . . ." In the Superior Court, [342] "The defendent claimed . . . that . . . such coloured persons were to be regarded as citizens of the states where they respectively belonged and that they were entitled to the privileges and immunities secured by the second section of the fourth article of the constitution of the United States;¹ and that . . . imposing a penalty for harbouring and boarding coloured persons not belonging to this state, while no such penalty was imposed for harbouring and boarding the coloured inhabitants of this state, was repugnant to the constitution of the United States, and void."

Held, by the Superior Court: [343] "The plain and obvious meaning of this provision" of the Constitution "is to secure to the citizens of all the states, the same privileges as are secured to [344] our own by our own state laws. . . . The persons contemplated in this act are *not citizens* within the obvious meaning of that section of the constitution of the United States which I have just read . . . slaves were not considered citizens by the framers of the constitution. A citizen means a *freeman*. By referring to Dr. Webster, one of the most learned men of this or any other country, we have the following definition of the term—'Citizen: 1. A native of a city or one who enjoys the freedom and privileges of the city in which he resides. 2. A townsman, a man of trade, not a gentleman. 3. An inhabitant; a dweller in any city, town or country. 4. In the United States it means a person, native or naturalized, who has the privilege of exercising the elective franchise, and of purchasing and holding real estate.' . . . Indians . . . are not citizens, according to the acceptation of the term in the United States.

"Are *free blacks* citizens? It has been ingeniously said that vessels may be owned and navigated by free blacks and the American flag will protect them; but you will remember that the statute which makes that provision, is an act of Congress, [346] and not the constitution. Admit, if you please, that Mr. Cuffee, a respectable merchant, has owned vessels and sailed them under the American flag; yet this does not prove him to be such citizen as the constitution contemplates. But that question stands undecided, by any legal tribunal within my knowledge. For the purposes of this case, it is not necessary to determine that question. It has been

literary institution whatever in this state, or harbour or board, for the purpose of attending or being taught or instructed in any such school, academy, or literary institution, any coloured person who is not an inhabitant of any town in this state, without the consent in writing, first obtained of a majority of the civil authority, and also of the select-men of the town in which such school, academy, or literary institution is situated."

¹ "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

also urged, that as coloured persons may commit treason, they must be considered citizens. . . Treason may be committed by persons who are not entitled to the elective franchise. For if they reside under the protection of the government, it would be treason to levy war against that government, as much as if they were citizens. . .

[347] “To my mind, it would be a perversion of terms, and the well known rule of construction, to say, that slaves, free blacks, or Indians, were citizens, within the meaning of that term, as used in the constitution. God forbid that I should add to the degradation of this race of men; but I am bound, by my duty, to say, they are not citizens. . . But there is still another consideration. If they were citizens, I am not sure this law would then be unconstitutional. The legislature may regulate schools. . . I am not sure but the legislature might make a law like this, extending to the white inhabitants of other states, who are unquestionably citizens, placing all schools for them under suitable boards of examination, for the public good; and I can see no objection to the board created by this act.” [Daggett, C. J.]¹

The jury returned a verdict against the defendant. On appeal [365]. By the court: “The other point presented, is, that the information is insufficient; and this has been argued on the ground, that this law is contrary to the constitution of the United States. . . When the nature and importance of these questions are considered, the difficulties actually attending the construction of this clause of the constitution, the magnitude of the interests at stake, the excitement which always attends the agitation of questions connected with the interests of one class, and the liberties of another, more particularly at the present time; the jealousies existing on the one hand, and the expectations excited on the other; no desire is felt to agitate the subject unnecessarily. . . If then it appears, that the same result must follow if we do not examine at all this constitutional question, . . [367] as if it was decided, for one, I feel no disposition to volunteer an opinion on that subject. And on examination of this information, it seems to me, that no crime is charged upon this defendant, even if this law is constitutional. . .

“Prudence Crandall is not charged with setting up a school contrary to law, not with teaching a school contrary to law; but with harbouring and boarding coloured persons, not inhabitants of this state, without license, for the purpose of being instructed in such school. It is, however, no where alleged, that that school was set up without license, or that the scholars were instructed by those who had no license. . . The object in view of the legislature, . . [368] evidently, is, to regulate the schools, not the boarding houses; the latter only is auxiliary to the former. . . [369] It is the *unlicensed schools* which are the objects of this supervision; and these only are the schools forbidden. They only are guilty, who assist in such prohibited institutions, or harbour or board their pupils. To bring the case, then, within the act, the school must be . . a school set up or established without license; . . This information charges, that

¹ See p. 415, *supra*.

this school was set up in Canterbury, for the purpose of educating these persons of colour not inhabitants of this state, . . . but omits to the state that it was not licensed. This omission is a fatal defect; . . . [370] This information, therefore, is insufficient. . . [372] Judgment reversed.” [Williams, J.]

Nancy Jackson v. Bulloch, 12 Conn. 38, June 1837. [39] “ This was a writ of *habeas corpus*, before Ch. J. Williams, on the application of Nancy Jackson, by her next friend James Mars, alleging, that she then was, and for a long time had been, illegally confined, by James S. Bulloch, then residing in Hartford. The return stated, as the cause of detention, that Nancy was born in the state of Georgia, in the year 1813; that by the laws of said state, she is a slave and the property of the defendant, who is a citizen of that state; that in the month of June, 1835, the defendant came to the state of Connecticut, with a view to a temporary residence therein, and with an intention to return to Georgia; that he brought Nancy with him, and she has continued in his service from that time until the issuing of this process; that his residence in this state is, and has been, for a temporary purpose; that he intends, and ever since he came to this state has intended, soon to return to [40] the state of Georgia, with her; that his domicile is, and ever has been, there; that he came to Connecticut ” in 1835, 1836, 1837, for some months of each year; “ that his family have been in Connecticut at board, from the 16th of June, 1835, to the present time, June, 1837; and that during this period, Nancy has continued with them, in their service. The complainant, admitting the truth of these facts, claimed, that they were insufficient to justify her detention. . .

“Williams, Ch. J. The question in this case is, whether Nancy Jackson, the petitioner, can, by the laws of this state, be detained here longer, in a state of slavery; and it is a question of deep interest to this community, how far our laws tolerate slavery within our limits. . . It was expressly conceded ” by the counsel for the respondent, “ that slavery was a system of such a character, that it can claim nothing by the law of comity, which prevails among friendly states upon subjects of a different class: that it was local, and must be governed entirely by the laws of the state, in which it is attempted to be enforced. . .

[41] “ The case, therefore, . . . is to be decided upon the same principles, as if the parties [42] were inhabitants of any foreign country, with which we are at peace and in amity, where slavery is tolerated. . .

“ In England, it is well settled, that slavery does not exist in that country; that a slave coming from another country—even their own colonies—was free, the moment he placed his feet upon English ground. *Somerset's case*, Lofft, 1. . . It is said, however, this is not our law; because slavery exists here to a certain extent. It cannot be denied, that in this state, we have not been entirely free from the evil of slavery; and a small remnant still remains to remind us of the fact. . . [44] This brings us to the question, what was the state of our law upon this subject, at the time of the adoption of the constitution [in 1818] of this state; for it has not

since been varied. . . In October, 1774, a law was . . . passed to prevent the importation of slaves into this state, by sea or land. And almost as soon as the war, . . . had terminated, another law was enacted, declaring that no negro or mulatto, born in this state after the 1st of March, 1784, should be held in servitude longer than until they arrived to the age of 25 years; which was subsequently reduced to 21 years. . .

[45] “ Unless then, there is some defect in those statutes, which will prevent their operating in the manner intended, slavery in the state of Connecticut, (except as it respects the few born before the act of 1784,) is abolished. It may then become necessary to examine these statutes more in detail. The first statute was as follows: ‘ And whereas the increase of slaves in this state is injurious to the poor and inconvenient; *Be it enacted*, that no indian, negro or mulatto slave shall, at any time hereafter, be brought or imported into this state, by sea or land, from any place or places whatsoever, to be disposed of, left or sold within this state.’ . . . [48] It is not claimed, that Nancy Jackson was brought into this state to be sold or disposed of; and the respondent also insists upon it, she was not brought here to be *left*. On the other side, it is contended, that as she was brought here, and has been suffered to remain for nearly two years, she has been *left* here, within the true intent and meaning of this statute. . . [50] If it be asked how long ” slaves “ might continue here, before they could be said to be *left*, it is answered, that a liberal construction should be given to the term, depending upon circumstances, though two years could not be allowed under any circumstances, except of imperious necessity. In those states, where a time is limited, by statute, for the allowed residence of slaves from other states, brought in by their masters, no state has extended the time to two years. Pennsylvania has limited it to six months; and Virginia to a year. . . A slave, then, brought from another state or country into this state, may, in our opinion, be considered as *left* in this state, although the owner does not intend to reside here permanently himself, or to suffer such slave permanently to remain here. [51] So long as he is a traveller, passing through the state, he cannot be said to have *left* her here. But when he and his family are residing here, for years; and when he has suffered his slave to remain here, for almost two years; he cannot claim the privilege of a traveller, even although he intended at some future time, to return with his family to his former residence. If it be said, that the return shows, that the respondent did not mean to leave his slave here, and therefore, it is not a case within the statute; we reply, in the language of the court of Missouri, in the case before cited: ¹ ‘ Is it true, that if a person does not intend to do an act, and yet does it, that the act is not done?’ . . . [52] In the opinion of a majority of the court,² it follows, that this slave has been brought and left in this state, contrary to the act of 1774; and therefore, that she cannot be claimed or treated as a slave, under our laws.

“ The statute of 1784, follows up and completes the system of abolition. [53] The respondent, it has been conceded, can claim nothing by the law

¹ *Julia v. McKinney*, 3 Mo. 270.

² Three judges to two.

of comity, and nothing under the constitution of the United States. From the law, as settled in Somerset's case, that a foreigner who brings his slave into a country where slavery is not permitted, cannot hold him, it would seem to result, that upon this subject at least, an inhabitant of another state or country could claim no other or greater privileges than the inhabitants of that state or country into which he removed: . . . [54] The result, therefore, to which a majority of the court have arrived, is, that these statutes [of 1774 and 1784] were designed to terminate slavery in Connecticut, and that they are sufficient for that purpose. . . We feel therefore bound to say, that we know of no law of this state, under which this woman can be holden in slavery; and therefore advise, that she be discharged."

[55] "Bissell, J. . . I find myself compelled to dissent from the opinion held by a majority of my brethren; and I feel bound, in justice to myself, to state the reasons on which my own opinion is founded. [56] By the laws of Georgia, the individual brought up, on this writ, is the slave and property of the respondent; and it is admitted, that by those laws, her condition is not affected, by her temporary residence among us. If she return with him to Georgia, she will still continue to be his slave and property. Is this relation destroyed, and is this respondent divested of his rights by the operation of our laws? . . . [61] I must confess, that I am utterly at a loss to discover upon what principle, or in virtue of what statute, it is, that the property of the respondent in his slave has become divested.

"First, is it that slavery is opposed to the common law of this state? This claim has been gravely urged at the bar; and we have been told, that the common law of England is our common law; and that slavery has there been held repugnant to the principles of the common law. One would think, that a very slight glance at our statutes and our decisions, in which slavery is not merely tolerated, but sanctioned and regulated, would prove a very satisfactory answer to this claim; and show, most conclusively, that the common law of England, on this subject, never had any application here. . . Secondly, it has been insisted, that slavery has, here, become extinct, by the adoption of our state constitution. That part of the constitution, upon which most reliance has been placed, is in these words: 'All men, when they form a social compact, are equal in rights;' . . . [62] But slaves are not, and are not capable of being, parties to such a compact.

[63] "If, then, the claims of the respondent are repugnant, neither to our unwritten law, nor to our constitution, it only remains, that we enquire whether they conflict with any of the statutes to which I have adverted.

"It has been supposed that the case falls within the spirit and meaning of the acts providing for the gradual abolition of slavery. These statutes, as we have seen, are confined, *in terms*, to persons *born in this state*. And I confess I hardly know [64] upon what principle of interpretation it is, that we are called upon to extend the provision of these acts to persons *born elsewhere*. . . [65] Again, it has been objected, and

much reliance is placed upon the objection, that the facts set forth in the return show, that the slave Nancy was brought here *to be left*, and has been *left*, within the meaning of the 4th section of the statute. . . 'To leave,' says Dr. Webster, (and with him agrees every English lexicographer), signifies 'to withdraw or depart from,' 'to forsake,' 'desert, abandon,' 'to suffer to remain,' 'not to take or remove.' Now, this slave has ever been in the service of the respondent's family, and under his protection and controul. He has not '*withdrawn from her.*' She has neither been *forsaken, deserted, nor abandoned*; and so far from suffering her to remain, he states his intention to be to take her with him to his domicile and hers. Now, is there any evidence that this slave was brought here *to be left*, within either the grammatical or popular meaning of the term? . .

I, however, understand it to be claimed, that to leave a slave in the state, within the meaning of the act, it is not necessary that he should be abandoned, but that it is sufficient if he *stop here with his master*: and that *to be left*, is used in the statute, only in contradistinction to a mere *transit* or passage through the state: that in the one case, the rights of the master are preserved, and in the other lost, although the place of the domicil be the object in both cases. I am unable to feel the force of this distinction; or to see why it is, that in the one case, we are to have regard for the law of the domicil, and suffer it to govern, and not in the other. Can anything depend on mere length of stay, so long as the domicil is unchanged and the *animus revertendi, bona fide* remains? . . ."

Town of Colchester v. Town of Lyme, 13 Conn. 274, July 1839. [275]
 "In 1799 and for many years before that time, Jenny was the slave of Dr. Mather, who was then a resident and settled inhabitant of Lyme, and continued so to be until his death in 1832. In the year first-mentioned, Dr. Mather set free this slave, who was then fifty-six years of age, by giving her a letter of manumission; and he never afterwards exercised or claimed any controul over her. There was no evidence that he obtained from, or made any application for, to the civil authority and select-men of Lyme, a certificate authorising such manumission; nor was there any evidence of any record thereof in the town-clerk's office. Afterwards, during the year 1799, Jenny went to live with Dr. Watrous of Colchester, where she remained, as a hired servant, in his family, supporting herself until about eight years ago, when she became unable to support herself, and has ever since so continued. Since May 22d, 1834, she has been supported by the town of Colchester.

"Upon these facts the plaintiffs claimed, that Jenny had never lost her settlement in Lyme; and that the defendants were liable for her support. But the court charged the jury, that Jenny, by her residence in Colchester, supporting herself, had gained a settlement in that town; and that it was their duty to return a verdict for the defendants."

Held: [278] "The master of this slave, by relinquishing all claims to service and obedience, effectually emancipated her; and thus she became *sui juris*, and entitled to all the rights and privileges of other free citizens

of the state, among which the right of acquiring a new place of settlement, was the most important. . . The town where the emancipated slave belongs, or has a settlement, is the town empowered by statute to recover from the master, or his heirs, executors, or [279] administrators, for expenditures incurred for the support of such slave; and if in the present case, Colchester is such town, then Colchester only can recover of the former master or his representative." New trial not granted.

Gedney v. L'Amistad,¹ 10 Fed. Cas. 141 (Betts' Scr. Bk. 121), January 1840. In August 1839 "Lieutenant Gedney, commanding the brig *Washington* of the United States navy, seized and brought into the port of New London—the schooner *L'Amistad*, with . . . 49 Africans, then claimed as slaves by Don Pedro Montez and Don Jose Ruez, subjects to her Catholic majesty the queen of Spain—the said Montez and Ruez also being on board the schooner." Several libels were filed, and the schooner, goods and Africans were taken into custody by the marshal. [142] "They have all been humanely treated; liberally fed and clothed by the government, into whose hands they have been providentially cast." A part of these Africans, by their counsel, filed an answer, as follows: "That Cinquez, Banna 1st, Damma, Fawni 1st, Phumah, [and twenty-eight others] . . . are all Africans, entitled to their freedom; . . . that part of said Africans . . . were on shore on Long Island . . . [144] at the time the vessel was seized . . . The only reply which need be given to this claim is, that those on shore were there for a . . . temporary object, to furnish the vessel with water and provisions for the continuance of their voyage to Sierra Leone. . . I proceed to the consideration of the merits of the cause. . . A Spanish vessel owned in Cuba, proceeded from thence to the coast of Africa, and having procured a cargo of native Africans, returned and landed near Havana, where they were put into a slave mart for sale. Within fifteen days from the time of landing, Jose Ruez and Pedro Montez, subjects to the queen of Spain, and residents of Guanaja, in the province of Puerto Principe, on the island of Cuba, being at Havana, purchased fifty-four of these Africans. The schooner *L'Amistad*, then lying in the port of Havana, possessing rightfully the national character of a Spanish vessel, owned and commanded by one Raymond Ferrer, master, . . . the said Ruez and Montez put on board thereof the said fifty-four Africans with permits from the governor of the island of Cuba, to be transported as freight to the said port of Guanaja; and the said Ruez and Montez took passage in said schooner. . . Three days from Havana the negroes rose up on the vessel and killed the master and cook, and by force took command, and after being 63 days upon the ocean, she came into the waters of the United States, in a condition perilous to the vessel and the lives of Ruez and Montez and all others on board. . . [145] can salvage be allowed upon the slaves? . . . these alleged slaves cannot be sold. . . Can a decree be predicated upon a supposed valuation to be ascertained by an appraisal? . . . Are they to be estimated by their value in . . . Connecticut? That is not one cent. . .

¹ See *U. S. v. the Amistad*, p. 438, *infra*.

[146] Shall these Africans, by a decree of this court, be delivered over to the government of Spain, upon the demand of her minister, as the property of Don Pedro Montez and Don Jose Ruez? . . . In Cuba there are three classes of negroes, well known and distinguished: Creoles, who were born within Spanish dominion; Ladinos, who have been long domiciled on the island, or sufficiently so that the laws of Spain operate upon them, or, in other words, embracing those who owe Spain their allegiance; and, lastly, Bozals, embracing all such as have but recently been imported from Africa. The negroes now in question were all born in Africa; . . . I find these negroes to be Bozals; . . . in the month of June, 1839, the law of Spain did prohibit, under severe penalty, the importation into Cuba of negroes from Africa. These negroes were imported in violation of that law, and be it remembered that, by the same law of Spain, such imported negroes are declared to be free in Spain. . . . [147] Who sold those Bozals to Don Jose Ruez and took his twenty thousand dollars from him? . . . Why did they not ascertain that these negroes were Bozals. . . . The secret is told in a word. In Cuba it is the custom to buy such negroes, and ship them as Ladinos or Creoles; . . . [148] the Spanish consul says this mode of 'bona fide' selling is carried on without notice from the local authorities. . . . The Spanish law declares they are not slaves; it would be utterly useless, then, to send them back to Cuba. . . . to show that I abide by the treaty, . . . I take another branch of this case. Antonio is demanded, and the proof from him is that he is a Creole, born, as he believes, in Spain. He was, at the time his master was murdered by Cinquez, a slave, so recognized and known by the laws of Spain. The property in him was in Raymond Ferrer, a Spanish subject, at the time of his death on board the schooner, and now is in his legal heirs. Here is both right and property in Spanish subjects. I shall decree a restoration of this slave, under the treaty of 1795. . . . [151] Cinquez and Grabeau shall not sigh for Africa in vain. Bloody as may be their hands, they shall yet embrace their kindred. I shall put in form a decree of this court, that these Africans, excepting Antonio, be delivered to the president of the United States to be transported to Africa, there to be delivered to the agent, appointed to receive and conduct them home. . . . Antonio, falling clearly within the other principle, and in the presence of the court, expressing a strong wish to be returned, will be decreed to the government of Spain," [Judson, J.]

U. S. v. the Amistad,¹ 15 Peters 518, January 1841. [587] "On the 27th of June, 1839, the schooner *L'Amistad*, [of about 120 tons burden] being the property of Spanish subjects, cleared out from the port of Havana . . . for Puerto Principe, in the same island. . . . the captain . . . had with him a negro boy, named Antonio, claimed to be his slave. Jose Ruiz [*sic*] had with him forty-nine negroes, . . . stated to be his property, in a certain pass . . . signed by the Governor General of Cuba. Pedro Montez had with him four other negroes, also claimed by him as his slaves," (There were [522] "fifty-one male slaves, and three young female slaves,

¹ See *Gedney v. L'Amistad*, p. 437, *supra*.

who were worth twenty-five thousand dollars;”) “while on the voyage, the slaves rose . . . and killed . . . the captain and one of the crew, and two more of the crew escaped . . . Montez . . . and . . . Ruiz . . . were spared to assist in the sailing of the vessel; and it was directed by the negroes, that the schooner should be navigated for the coast of Africa; and . . . Montez, and . . . Ruiz did, accordingly, steer as thus directed and compelled . . . at the peril of their lives, in the day time, and in the night altered their course and steered for the American shore; but after two months on the ocean, they succeeded in coming round Montauk Point . . . [523] Green and . . . Fordham . . . secured a portion of the negroes who had come on shore [for water],” The *Amistad* was taken possession of [523] “by the officers and crew of the [United States brig] *Washington*” and [522] “recaptured from the . . . possession of the negroes . . . and brought into the port of New London,” and the negroes were [527] “taken into the custody of the marshal . . . and confined . . . in the jails in the cities of New Haven and Hartford,”¹ Libels were filed in the district court on behalf of the various claimants. The court [528] “ordered that Antonio should be delivered to the government of Spain, . . . [529] find that the respondents . . . are each of them natives of Africa, and were born free, . . . and still of right are free, . . . that they were severally kidnapped in their native country, and were, in violation of their own rights, and of the laws of Spain . . . imported into the island of Cuba . . . [530] The decree . . . recites the decree of the government of Spain of December, 1817, prohibiting the slave trade, and declaring all negroes brought into the dominions of Spain by slave traders to be free; . . . the said Africans were shipped on board the said schooner . . . under the passports signed by the Governor General of . . . Cuba” in which they are described as “ladinoes.”² [531] “said passports do not truly describe the said persons . . . It is decreed that the said Africans . . . excepting Antonio Ferrar, be delivered to the President of the United States . . . to be by him transported to Africa, in pursuance of the law of Congress, passed March 3d, 1819, entitled ‘An act in addition to the acts prohibiting the slave trade.’” The decree was appealed from. The circuit court “inspected certain depositions:” among them the deposition of Madden, a British subject, resident at Havana, [533] “under the British government, . . . superintendent of liberated Africans . . . and . . . British commissioner, in the Mixed Court of Justice. . . . To one of them, I . . . repeated a Mohammedan form of prayer in the Arabic language; the man immediately . . . repeated a few words of it after me, . . . I also addressed [another negro] in Arabic, . . . he immediately . . . replied—‘aleckoum salaam,’ . . . From my knowledge of oriental habits, and of the appearance of the newly imported slaves in Cuba, I have no doubt of those negroes of the *Amistad* being bona fide Bozal

¹ “Ruiz and Montez . . . caused them to be indicted for piracy and murder. This was almost immediately disposed of, on the ground that the charges . . . were not cognizable in the American courts, the alleged offences having been perpetrated on board a Spanish vessel.” Sturge, *Visit to the United States in 1841*, App. E. xxxiv.

² In the passports they are all given Spanish names.

negroes, quite newly imported from Africa. . . no law . . . has existed since . . . 1820, that sanctions the introduction of negroes into the island of Cuba, from Africa for the purpose of . . . being held in slavery; and, that all such Bozal negroes, as those recently imported are called, are legally free; . . . [534] Africans, long settled in Cuba, and acclimated, are called ladinoes, and must have been introduced before 1820, . . . To have obtained these documents . . . for bona fide Bozal negroes, . . . was evidently a fraud, . . . there is never any inquiry or inspection of the negroes on the part of the governor or his officers, nor is there any oath required from the applicant. . . and by these means, the negroes recently and illegally introduced, are thus removed to the different ports of the island, and the danger obviated of their falling in with English cruisers, and then they are illegally carried into slavery. . . [535] Bozal Africans, . . . when brought to the Havana, are immediately taken to the barracoons,¹ or slave marts; five . . . in the immediate vicinity of the governor's count[r]y house, . . . These barracoons, outside the city walls, are fitted up exclusively for the reception and sale of Bozal negroes; one of these . . . I visited . . . September last . . . and the factor . . . said to me, that the negroes of the *Amistad* had been purchased there; . . . he said, 'che, castima,' or what a pity it is, which rather surprised me; the man . . . said, his regret was for the loss of so many valuable Bozals, in the event of their being executed in the United States. . . from the necessity which my office imposes on me at the Havana of assisting at the registry of the newly imported Bozals, emancipated by the Mixed Court, I can speak with tolerable certainty of the ages of these people, . . . [536] Sa, about 17; Ba, 21; Luckawa, 19; Tussi, 30; Beli, 18; Shuma, 26; Nama, 20; Tenquis, 21; . . . With respect to the Mixed Commission, its jurisdiction extends only to cases of captured negroes brought in by British or Spanish cruisers; and notwithstanding the illegalities of the traffic . . . from twenty to twenty-five thousand slaves have been introduced into the island during the last three years; and such is the state of society, and of the administration of the laws there, that hopeless slavery is the inevitable result of their removal into the interior." "It has been to me a matter of astonishment at the shortness of time in which the language of the negroes is disused, and the Spanish language adopted . . . [537] As to the Mixed Commission, once the negroes clandestinely introduced are landed they no longer have cognisance of the violation of the treaty;" Vega, a Spanish consul, disagreed with many of these statements. [538] "Haley stated . . . that he heard Ruiz say, that 'none of the negroes could speak Spanish; they are just from Africa.' James Covey, a coloured man, deposed that he was born at Berong-Mendi country; left there seven and a half years ago; . . . I was stolen by a black man who stole ten of us. One man carried us two months' walk to Lumboko . . . I was sailing for Havana when the British man-of-war captured us." "I learned to speak English at Sierre Leone. Was put on board a man-of-war one year and a half. . . I have been in this country six months; came in

¹ "oblong enclosures, without a roof," Sturge, *Visit to the United States in 1841*, App. E, xlvi.

a British man-of-war; have been in this town (New Haven) four months with Mr. Bishop; he calls on me for no money, and do not know who pays my board. . . Have conversed with Sinqua; Barton [Quarto?] has been in my town, Gorang. . . All these Africans were from Africa. . . I could understand all but two or three. They say . . . they sailed from Lumboko;" "three moons. They all have Mendi names, . . . two or three speak different language from the others; the Timone language.' The testimony of Cinque and the negroes of the *Amistad*, supported the statements." [532] "The Circuit Court affirmed the decree of the District Court, *pro forma*, except [claims for salvage of part of the cargo] . . . the United States, claiming in pursuance of a demand made . . . by the . . . minister of . . . the Queen of Spain . . . moved an appeal . . . to the Supreme Court of the United States, . . . and it was allowed." [566] "the able and interesting argument of Mr. Adams,¹ for the African appellees" had to be omitted, through "the publication of the 'Reports' has been postponed in the hope of obtaining it, prepared by himself. It has not been received."

Held: [597] "the decree of the Circuit Court, affirming that of the District Court, ought to be affirmed, except so far as it directs the negroes to be delivered to the President, to be transported to Africa, in pursuance of the act of the 3d of March, 1819; and, as to this, it ought to be reversed: and that the said negroes be declared to be free, and be dismissed from the custody of the Court, and go without d[el]ay."² [592] "It has been argued . . . that the Court are bound to deliver them [the Africans] up [to Ruiz and Montez], according to the treaty of 1795, with Spain, . . . The ninth article provides, 'that all ships and merchandise . . . which shall be rescued out of the hands of any pirates . . . on the high seas, shall be . . . restored' . . . it is essential to establish, First, That these negroes . . . fall within the description of merchandise, in the sense of the treaty. Secondly, That there has been a rescue of them . . . out of the hands of the pirates . . . which, in the present case, can only be, by showing that they themselves are pirates . . . [593] It is plain beyond controversy . . . that these negroes never were the lawful slaves of . . . Spanish subjects. They are natives of Africa, and were kidnapped there, and were unlawfully transported to Cuba, in violation of the laws and treaties of Spain, . . . By those laws, and treaties, . . . the African slave trade is utterly abolished; . . . and the negroes thereby introduced into the dominions of Spain, are declared to be free. . . If, then, these negroes . . . were . . . illegally detained . . . on board of the *Amistad*; there is no pretense to say, that they are pirates . . . [596] there is no ground to assert that the case comes within the purview of the act of 1819, or of any of our prohibitory slave trade acts. . .

¹ "the venerable John Quincy Adams, after an absence from the Courts of nearly forty years, . . . did not think it beneath him to defend the Mendians before the Supreme Court," Sturge, *Visit to the United States in 1841*, App. E, xl, xli.

² "The Menden negroes . . . Embarked from New York for Sierra Leone [November 27, 1841], . . . accompanied by five missionaries and teachers." Sturge, *Visit to the United States in 1841*, App. E, liv. See also pamphlet in the New York Public Library, entitled *Intelligent Negroes* (caption-title, no title-page; "Chambers's Miscellany of Useful and Entertaining Tracts," no. 63).

When the *Amistad* arrived she was in the possession of the negroes, asserting their freedom; and in no sense could they possibly intend to import themselves here, as slaves, or for sale as slaves." [Story, J.]

State v. Potter, 18 Conn. 166, July 1846. Indictment for murder. ". . . Ball thereupon testified that the prisoner, on the 11th of February 1845, had confessed to Jesse Knevals, that he, the prisoner, had hired one Austin McGuire, a negro, for five dollars, to commit the murder; that he was present when McGuire did the act; and that afterwards, on the 12th of February, he made another confession to the witness, in which he stated, that the negro was not guilty, but that two young men by the names of Beecher and Sage were associated with him in the murder."

Tate et al. v. Protection Insurance Co., 20 Conn. 481, July 1850. Action on a policy of marine insurance on the bark *Fame*, lost while on a whaling and elephantary voyage to Kergerland and elsewhere. [482] "When the vessel sailed on her voyage, Joseph B. Mitchell was the master, Joseph Penny, the first mate, and Anthony Marks, the second mate, of the vessel; Mitchell having been appointed as such master, and Penny and Marks respectively shipped, as such mates, by the plaintiffs. In the prosecution of the voyage, Penny died, in consequence of a blow from a whale; whereupon the duties of the first mate devolved upon and were exercised by Marks. After which Mitchell died; whereupon the duties of master of the vessel devolved upon and were assumed and exercised by Marks, under whose command and direction the vessel was afterwards navigated, and on her homeward voyage, brought to Rio Janeiro, where a new crew being shipped, the vessel was thence taken, under the direction of Marks, acting as such master, on a slave trading voyage or expedition to the coast of Africa. There a great number of slaves were, by him, procured and transported in the vessel to Rio Janeiro, and there disposed of. He then caused the vessel to be taken elsewhere, and converted her to his own use, whereby she became wholly lost to the plaintiffs, by the barratry of Marks."

Gold v. Judson, 21 Conn. 616, June 1852. [617] "The following is a transcript of the testator's will: . . .

'I give to Obed, a coloured man, living in Watertown, Litchfield County, Connecticut, son to Asahel, deceased, who was formerly servant to Agur Judson, of Huntington, deceased, the sum of one hundred dollars. I give to Silvia, a coloured woman, living in Watertown, Litchfield County, Ct., who was formerly a servant to Agur Judson, of Huntington, deceased, the sum of fifty dollars.' "

Town of New Haven v. Town of Huntington, 22 Conn. 25, June 1852. "Upon the trial [in the Superior Court] it was admitted, that Hannah Johnson, the mother of Richard W. Johnson, and a colored woman, had her original settlement in the town of Huntington. In the year 1804 or 1805, when about seven years of age, she went to live with a man in Cazenovia, in the state of New York, to whom she was bound. In 1806 or 1807, she was married to Titus Johnson, [26] a slave of one Child, then residing in Cazenovia. In 1816 or 1817, she returned to Connecti-

cut, where she has ever since resided. About a year after her return, Titus came to Connecticut, and lived with her about a year, in the towns of Derby and Bethany, and they had a legitimate son, Richard W. Johnson, the husband of Sybil, and the father of Henry and Charles Johnson, born in Bethany, in the year 1819 or 1820. He then returned to Cazenovia, where he died in 1826. About the year 1822, Hannah was married to Charles Treadwell, and had an illegitimate daughter, Charlotte Treadwell, born in the town of Orange, about the year 1823; and this daughter and her three illegitimate minor children, are the remaining paupers, named in the declaration. . . Much evidence was introduced to prove a settlement of Child in Cazenovia; but the court found it insufficient for that purpose; and further decided, that if Child were there settled, and Titus was legally emancipated, such emancipation had no effect upon the settlement of Hannah, and her descendants born in this state, while she was here domiciled; and therefore found the issue in favor of the plaintiffs.

Held: [28] "At the time of her marriage, her husband, Titus Johnson, was a slave belonging to a man living in Cazenovia, in the state of New York. Unless her settlement was changed, in consequence of that marriage, it remained as it originally was, in the town of Huntington. What effect the marriage of a free woman with a slave will have upon her previous settlement, under the laws of the state of New York, does not appear; and in this case, those laws must govern. If they are the same as ours, the settlement will remain unchanged, because a slave is incapable of imparting a settlement, either to his wife or his children." [Waite, J.] New trial refused.

Copp v. Town of Norwich, 24 Conn. 28, July 1855. Suit for taxes on land which had been conveyed by a father to a trustee for the benefit of the minor children of the grantor. [29] "The three children, named in the deed, are still living, and are all minors. Their father is a white man; their mother a mulatto woman, whose mother was of unmixed black, and whose father was of unmixed white blood; and the children correspond in complexion to their descent, being lighter than mulattos and darker than whites."

Held: [31] "The conveyance was to [the trustee] and not to [the children] . . . [32] We do not think it was the design of the legislature to exempt property, thus situated, from taxation. The general rule is, that all real estate shall be subject to taxation, and an exemption of any particular estate is an exception to that rule; and to entitle a party to the benefit of such exemption, he must bring his case clearly within the provision of the law; which we think the plaintiff [the trustee], in the present case, has not done. He is not a person of color. Whether the children of the grantor, having a preponderance of white blood, can be considered as persons of color, within the meaning of the statute, and whether the provision [33] in the deed, relative to the payment of taxes, can have any effect upon the question, whether the property is, by law, liable to taxation, are questions we deem it unnecessary to consider." [Waite, C. J.]

Johnson, Executor, v. Town of Norwich, 29 Conn. 407, October 1860. "The testator owned certain real estate in the town of Norwich which had been assessed as taxable, and which was so unless his property was exempt from taxation under the provisions of the statute (Rev. Stat., tit. 55, sect. 6) which exempts from taxation 'the personal and real estate of persons of color.' The testator was a quadroon, or person of one-fourth African negro blood, and the question was whether he was a 'person of color' within the meaning of the statute."

Held: [408] "The defendant's testator having had one-fourth of African negro blood, we are of the opinion that his property was not liable to taxation under the " section above mentioned. "According to the common, general, and indeed universal acceptance of the phrase 'persons of color' in this community, it embraces not only all persons descended wholly from African ancestors," "but those who have descended in part only from such ancestors, and have a distinct, visible admixture of African blood. We therefore adopt that construction of the act in question, and hold that the exemption provided in it applies only to persons proved to be of such descent and also having and disclosing visibly the peculiar and distinctive color of the African race. We are strongly confirmed in this construction by the legislative history of the act, which shows clearly that the exemption of property furnished by it was designed as a compensation to those persons on whom the constitution of the state does not confer the privilege of the elective franchise, which is confined by that instrument to 'white' male citizens." [Storrs, C. J.]

Charles Treat's Appeal from Probate, 30 Conn. 3, April 1861. [114] "Homer Treat died in 1855, leaving a will, the important part of which was as follows: 'I give, devise and bequeath to [sundry persons named] and to their successors forever, (who shall as a Board of Trustees add to and perpetuate their number, so long as in their opinion the objects of this bequest shall require the existence of the same), all my estate as aforesaid, to be held by them in trust for the promotion of education and science among the Indian and African children and youth of the United States of America, or elsewhere, as in their judgment they shall deem best. I leave it entirely with them to decide in what manner to expend this bequest to secure the object for which it is designed, either by using the principal for the education of a number of children or youth, and thus prepare them for immediate usefulness to their fellow men, or only use the annual interest, and educate a smaller number, and thus continue; or if they shall judge it to be for the best, let them use the whole amount and establish an academy, which shall be destined to be a lasting benefit to that class of my fellow creatures for whose benefit I have most freely given all my property; wishing it to be used in that way, and at such time, and in that place, which they shall judge best, after due consideration upon the condition that the people of color shall be in . . . the United States, at the time that this bequest shall be at their disposal. I wish it to be constantly and distinctly impressed upon the mind, that the bequest is given expressly for that, and for no other purpose, but for the promotion of the intellectual and scien-

tific knowledge of those unfortunate and hitherto abused fellow men above named.' ” Held, that the bequest was not void for uncertainty; either as to the beneficiaries of the charity, or as to the mode of carrying the charity into effect.

State v. Jerome, 33 Conn. 265, February 1866. “Indictment for rape.” “Evidence having been admitted on the part of the accused, who was a colored man, to prove that his wife had visited and taken tea with the complainant who was a white woman, the state afterwards introduced evidence to prove that his wife was a white woman; to the admission of which the counsel for the accused objected, but the court overruled the objection.”

“The accused is a colored man, and if it was allowable at all to prove an act of intimacy between his wife and the complainant, it was proper to explain it consistently with public opinion by showing that his wife was a white woman.” [McCurdy, J.]

Tillotson v. Tillotson, 34 Conn. 335, September 1867. [336] “Bill in equity for an account, discovery, and settlement of a partnership account; brought to the superior court in Hartford county, and referred to a committee, who made the following report: Prior to the year 1825 there was a partnership in the business of peddling clocks, subsisting between [four Tillotson brothers] of Avon in this state. . . [337] The partnership . . . grew up without any formal articles of agreement, . . . The business was widely extended, being carried on in the states of North and South Carolina, Mississippi, Louisiana, Ohio, and perhaps other states.” A plantation in Louisiana was purchased, which finally, came to be joint property of Shubael and Romanta Tillotson, brothers. [339] “It was understood and agreed between Shubael and Romanta that neither of them should have any individual property, (except clothing and personal ornaments), but that all the estate, real and personal, standing in the name of either of them, should be regarded and treated as the property of both, . . . it was the understanding and practice of the firm that each partner should have and take a reasonable and full support for himself and his family out of the partnership funds without any charge, or any account to be rendered therefor. . . [340] Shubael died. 1854 . . . [342] the business of the concern . . . as pointed out and requested in the will, . . . went on under the principal and substantially exclusive direction and control of Romanta.” Shubael’s widow (executrix) and son petitioned for an accounting and settlement.

[357] “The committee allowed the sum of \$3,023.58 for payments made by Romanta Tillotson for the support of a minister at New River, Louisiana. There were over one hundred slaves on the plantation, and the committee allowed these payments as a charge on the common [358] fund, as well on the ground of its being for the pecuniary interest of the concern in promoting in this way the good morals and behavior of their servants, as from the fact that the duty of caring for their slaves in this way in the relation in which they stood to them, had been recognized and acted on in the same ample manner by the firm in the lifetime of Shubael

Tillotson and at his special instance and entreaty. A building intended as a meeting house, and also for use as a school, had been built by the firm under the direction of said Shubael before his death, on land belonging to the firm, . . . In this expenditure Romanta was but acting in the course of business pursued in the lifetime of his brother, and ardently sustained by him. It is true that others besides these families and their servants had the benefit of this ministry, while much the larger part of the expense was defrayed out of the funds of this concern. But the committee do not find that Romanta acted unreasonably in this, as the executrix of Shubael was aware of these expenses in a general way, although she supposed a larger portion of the expenses was contributed by others than was actually done. . . .

[350] “ In the spring of 1862 a destructive crevasse in the Mississippi river destroyed a valuable part of the sugar and molasses crop on the plantation, and after as well as before that time the condition of things in Louisiana growing out of the rebellion was extremely injurious to the prosperity of the concern. The loss of their property in slaves and the great difficulty in procuring the necessary help to carry on the plantation, have rendered the attempts of Romanta to conduct the same almost ineffectual, and the business has resulted in a loss. But the committee find that Romanta has exercised his best skill and discretion in the management of the business, and is not justly chargeable with any fault. . . .

[353] “ There has been a very large diminution of the value of the estate belonging to the concern since the death of Shubael, . . . and especially has the estate suffered largely by the emancipation of all the slaves that belonged to it, and the final results and effects otherwise of the war of the rebellion.”

By the court: [359] “ The case finds that Romanta acted in accordance with this provision of the will, that he conducted the affairs of the partnership in the same manner in which they had been carried on in the lifetime of Shubael, and that in the expenditures in question he acted in good faith for the best interest of all concerned. It was clearly the expectation and desire of Shubael that such expenditures should be made, and we think that, taking into consideration the will, the good faith of Romanta in making the expenditures, the relation that he and the pe[360]titioners bore to their slaves upon the plantation, the benefit resulting to the petitioners in consequence of the expenditures, the previous practice of the firm, and all the facts of the case, there is no cause for complaint on this ground.” [Park, J.]

Hill v. Hayes, 38 Conn. 532, October 1871. “ Trover to recover the value of certain bank bills; . . . On the trial it was admitted that the money described in the declaration belonged to the plaintiff, and was on the night of the 4th of November, 1865, stolen from him in Redding by one Billy Lake, a colored lad, who had, before he left Bridgeport the June previously, occasionally boarded for short periods of time in the family of the defendant, Hayes, an aged and infirm colored woman, who then resided in Bridgeport with her daughter, the wife of Jenkins, the other

defendant, and that on the morning of the 6th of November Billy delivered the money to the defendant, Hayes, to keep for him. Soon after, and on the same morning, Billy with Jenkins left her house, with the avowed intention of going to Birmingham [533] on business. On the afternoon of the same day, and before their return, the defendant, Hayes, was informed by some lads 'that the officers were looking after Billy,' but was not informed for what purpose. Jenkins soon returned, and she thereupon immediately gave the money to him, with directions to return it to Billy, and he forthwith left for that purpose. Soon after, Billy came and requested his money, but upon being informed of what had been done immediately left. Mrs. Hayes had never used the money, or received any benefit from it, and during all the time it was in her hands had no knowledge that it was stolen. There was no evidence that the money was ever returned by Jenkins to Billy."

State v. Ransell, 41 Conn. 433, October 1874. "Information, charging the defendant with mispending his earnings and not supporting his family; . . . [434] On the trial the public prosecutor offered evidence to prove that on the 28th of April, 1874, the accused was lawfully married to Marina Campbell; that about the middle of July, 1872, she was delivered of a child which was now living; that at the time of the marriage she had one child about three years of age, she not having been previously married; that since her marriage with the accused he had not lived with her, nor . . . contributed in any way whatever to her support or that of her children, though receiving a salary of \$225 as a church sexton, and \$8 per week as a hired servant; . . . It further appeared in evidence that the said Marina was a native of King and Queen's County, Virginia, where she was born a slave, and where she lived till since the close of the rebellion, when with her mother she came to Bridgeport, where she had since resided; that previous to her marriage her reputation for chastity was not good; but that since that time nothing had been said against it."

RHODE ISLAND

INTRODUCTION

I.

The first landmark in the history of Rhode Island legislation regarding slavery is the act of 1652 passed by the representatives of Providence and Warwick, before Rhode Island and Providence Plantations were brought into one jurisdiction by the charter of 1663. It provided "that no blacke mankind or white being forced by covenant bond, or otherwise, serve any man or his assignes longer than ten yeares, or untill they came to bee twentie four yeares of age, if they bee taken in under fourteen, from the time of their cominge within the liberties of this Collonie, and at the end or terme of ten yeares to sett them free."¹ Later, however, negro slaves were brought in more largely. There were 425 in 1708, 1645 in 1730, and between three and four thousand are shown in the censuses of 1749, 1756, and 1774. Various eighteenth-century statutes were passed regulating the conduct of negroes. Acts of 1728/29² and of 1765³ provided that in case of manumission security should be given to indemnify the town from charge. The most important act of the colonial period was that of 1774⁴ providing that all negroes thereafter brought into the colony should be free, except slaves of persons travelling through the colony, or of persons coming into the colony from the other colonies to reside; yet, as is well known, Rhode Islanders continued to be engaged in the slave trade elsewhere.⁵ Ten years later, 1784, it was enacted that all children born of slave mothers after the first of March of that year should be free.⁶

The number of cases in Rhode Island courts concerning slavery or the negro would in any case be small; the amount of material to be got for this volume from the printed judicial reports from its highest court is made still less by the relatively late date at which they begin. The first reporter was not appointed till 1845; his first reports were published in 1847. Only a few cases of dates prior to the nineteenth century are reported, briefly, from the journals of the General Assembly, in the *Colonial Records of Rhode Island*.

¹ *R. I. Col. Recs.*, I. 243.

² *R. I. Laws*, 1730, p. 162.

³ *Ibid.*, 1767, p. 234.

⁴ *R. I. Col. Recs.*, VII. 251. For the preceding period of the history of slavery in the colony, see W. D. Johnston, "Slavery in Rhode Island, 1755-1776," in *R. I. Hist. Soc., Publications*, n.s., vol. II., pp. 113-164.

⁵ Ample means for tracing the history of the Rhode Island slave trade are provided in Elizabeth Donnan, *Documents Illustrative of the History of the Slave Trade to America* (Carnegie Institution, 1932), III. 108-404.

⁶ *R. I. Stat.*, session of February, 1784, p. 6.

II.

From early colonial days to the adoption of the first state constitution in 1843, supreme judicial authority was exercised by the General Assembly or legislative body, mostly on appeal or petition from decisions of the court successively entitled Court of Trials, Superior Court, and Supreme Judicial Court. Under the constitution of 1843, the Supreme Court was constituted of a chief justice and three associate justices,⁷ and the exercise of appellate jurisdiction by the legislature ceased.⁸

⁷ Constitution, art. III.; Acts, May, 1843, p. 11, June, 1843, p. 70.

⁸ For the history of the Rhode Island courts, see chap. II., by Edward C. Stiness, in Edward Field, ed., *State of Rhode Island*, vol. III.

RHODE ISLAND CASES

Taylor v. Cuff, 5 R. I. Col. Recs. 72, October 1743. "Whereas, Comfort Taylor, . . . widow, did, by petition, set forth to this Assembly, that at a court of equity, held at Providence, [Oct. 9], the petitioner obtained a judgment against a negro man, named Cuff, belonging to Thomas Borden, . . . for £200, and costs of suit, for a grievous trespass, committed by said Cuff, against her; and that, as the execution will go against his person to be imprisoned, according to the common form of executions, it is not clear that the sheriff can dispose of him, which she apprehends he ought to have power to do, because said negro is not free, but a private property; and therefore prayed that the said sheriff might be empowered to sell him, as other personal estate, taken by execution, to satisfy debts; and considering the great abuse she has suffered, and the charge that will come out of said negro, for prison fees, she desired that the fine of £20 against said negro Cuff might be remitted, otherwise she should get nothing for all the hardships she has endured;—Upon consideration whereof it is voted and resolved, that the sheriff . . . be, and he is hereby fully empowered to sell said negro Cuff as other personal estate; and after the fine of £20 be paid into the general treas[73]ury, and all other charges deducted out of the price of said negro, the remainder to be appropriated in satisfying said execution."

Norton et al. v. Bennet, R. I. Acts and Resolves, 22 Geo. II., p. 35, June 1749. "Job Bennet, jun. of Newport . . . was requested by the Sheriff, who was by an Act of this Assembly commanded to take up as Prisoners of war, several negroes that were brought into the Colony by Capt. Robert Morris and Capt. John Dennis, and sold as Slaves: Notwithstanding he the said Job comply'd exactly with the Act of Assembly, he hath since been sued by Benjamin Norton, George Goulding, and John Clerk, and they have obtained Judgment against him for the Negroes, . . ."

Fales v. Mayberry, 8 Fed. Cas. 970 (2 Gallison 560), November 1815. [971] "In the year 1799, the brig was fitted out . . . on a slave voyage, from Boston to Georgia, thence to the coast of Africa, and thence to the West Indies. The brig accordingly sailed on the voyage, went to Africa, and there took on board 150 slaves, who were carried to the West Indies and sold; and afterwards the brig was, under the original instructions for the voyage and as a part of the project, sold . . . at St. Bartholomews. The present action was brought to recover the two third parts of the proceeds of said voyage," Story, J.: "You need not labor the argument. Certainly this action cannot be maintained. The traffic in slaves is a most odious and horrible traffic, contrary is the plainest principles of natural justice and humanity. . . The laws of the United States,¹ long before the inception of this voyage, prohibited, under severe penalties, (including the forfeiture of the vessel) any trade by American citizens in carrying

¹ Act of Mar. 22, 1794, ch. 11. 1 Stat. at L. 347.

slaves to, from, or between any foreign countries. The voyage was, in its very elements, infected with the deepest pollution of illegality; and the present action is brought between the very parties, who formed and executed this reprehensible enterprise. . . . As to the sale of the ship, it was a part of the original scheme, evidently adopted to evade the forfeiture inflicted by the laws of the United States; ”

Town of Exeter v. Town of Warwick, 1 R. I. 63, October 1834. “ This was an appeal from an order of removal of the town of Warwick of a pauper, to the town of Exeter . . . Pruda Tillinghast . . . was born in Exeter, in the year 1797 . . . daughter of Braddock [Tillinghast], who purchased a freehold estate in said Exeter, December 8, 1797, for two hundred dollars; . . . was assessed and paid taxes on his estate in said town, . . . was treated by the town as a freeman . . . From the evidence, there is no doubt that Braddock was either born or purchased a slave, but was permitted to leave his master and act for himself about the close of the revolutionary war, and that no claim on him, or for his services, was ever made by his supposed master; though no evidence of a manumission . . . was offered.

“ It is plain by this act [of 1748], that the place of birth is considered as the place of legal settlement, where none has been acquired. . . . In the case in question the pauper was born in Exeter, . . . If birth alone therefore gave a settlement, she belongs to that town. . . . The pauper was not a slave. She was free born. All persons born after the 1st of March, 1784, were free born. The law, therefore, referred to for the support of manumitted slaves, has nothing to do with this case.” Order confirmed.

Sands v. Champlin, 21 Fed. Cas. 339 (1 Story 376), November 1840. Will of Ray T. Sands, dated 1818: “ I give unto my black woman Phillis, her entire liberty; but should she choose to remain with my nephew, Samuel P. Robinson, and work as she did for me, I desire the said Samuel P. Robinson to give her the same fare and usage, and the same privileges she enjoyed, particularly the room she now occupies, and finally such as she received from me; I also give her all such articles as she may claim, the determination of which I submit to my wife, however. I give unto my black boy John, should he continue in the service of my family, that is, my wife or Samuel P. Robinson, until he arrives at the age of twenty-one, the improvement from that time of the cellar house on the Kentucky farm,¹ the garden south of the house, . . . [340] and the lot west of the cellar, . . . to him and his family during his natural life; . . . it is to be understood, that he lives on the premises himself; if he lives in my family until he arrives to the age of twenty-one, I order the annual profits to him from my death. When he goes on the premises to live himself, he is to suffer no other family to live with him, that would be injurious to my other property; then should he occupy the house and land in the manner just mentioned, I then give him four loads of tug annually, during five years, after he shall arrive at the age of twenty-one, to be dug out of the Rodman swamp, . . . I also give him the privilege of carting sea-weed, or

¹ “ my farm on the west side of the island,”

any other article he may need, on or off said premises, for his own use during the term, where no essential injury will arise."

Crane v. Cowell, 6 Fed. Cas. 749 (2 Curtis 178), November 1854. Will of Waite Smith, dated February 5, 1808: [750] "My will further is, that my executor . . . fulfil my indenture to James Pink, my indentured mulatto servant, and that they provide for him a flock bed, under straw bed, bolster, and pillows, bedstead, cord, two pairs of sheets, pillows, and bolster cases, one pair of blankets, and one yarn coverlet, and set off to him a small piece of land most convenient for my devisors and large enough for a small house and garden, for his own use but not to sell, so that he may have the use and improvement thereof during his natural life, provided he lives in some respectable family after my decease, and faithfully fulfils his indenture to them as he was bound to do to me."

The Slavers (Reindeer), 2 Wallace 383, December 1864. "The bark *Reindeer* . . . was forced by stress of weather into Newport, R. I., July 11, 1862,¹ . . . the United States filed a libel . . . [385] The District Court condemned the Vessel, cargo, . . . The Circuit Court affirmed" Special counsel of the United States: [386] "The *Reindeer* was a vessel of 348 tons, . . . owned by Pearce, of New York, . . . [387] built with a rider,—an arrangement for laying an extra deck. . . she cleared and sailed for Havana . . . January, 1861, . . . shipped on her to Havana . . . 14,700 lbs. of *tasajo*, or dried beef, and a box of hardware. Her outward manifest exhibited, besides, twenty-two packages of hardware. . . [391] The cargo was all of it suited to the slave-trade. . . Machats, or war-knives, innocently described as 'hardware;' 'sponges,' an article used to wash slaves after being packed under the hatches; 'vinegar,' given to them to rinse their mouths; 'medicines,' for these poor beings; disinfecting fluids, . . . casks of long iron chains, with padlocks, . . . [392] *Tasajo* is imported from Buenos Ayres, and is a food especially for slaves." [387] "The shipping articles, signed at New York . . . described the bark *Reindeer* as 'now bound from the port of New York to one or more ports in Cuba; from thence to one or more ports in Europe, if required, and back to a port of discharge in the United States, or from Cuba back to the United States.' . . . four deserted in Cuba, . . . The captain and the rest of the crew remained all the time with the vessel, and were on her when she arrived at Newport. . . Pearce, the owner . . . arrived in Havana about the middle of March, and remained until the 6th of May . . . She laid [*sic*] at Havana from . . . February to . . . June, 1861. . . One of the consignees . . . stated . . . that on the 10th of May² Tejedor chartered the vessel, . . . [388] On the 22d of June, 1861, the *Reindeer* cleared at Havana 'for Falmouth, England, and for orders.' . . . 'on . . . the 2d day of July, 1861, at sea, in about latitude 31°, longitude 69°, . . . a squall, . . . the ship unfit to perform the voyage, squared away for Newport, . . . ' The location of the vessel, when the captain was thus compelled to put into Newport, showed her . . . to have been on the route to the west coast of

¹ Misprint; should be 1861.

² The charter-party was dated Mar. 23, 1861.

Africa. . . [389] The marshal of the United States . . . found on board . . . a 'sea letter' . . . This . . . declared the destination of the *Reindeer* to be St. Antonio. . . an unimportant island in the Cape de Verd Group, in a line from Havana to the western coast of Africa. . . [392] a place for which such a cargo would have been wholly too large, and as much unsuited." Decree affirmed: [394] "No claim was ever filed by the owner of the vessel, . . . [397] Expenses . . . were to be borne by the charterer, but there was no change in the shipping articles, or in the crew-list, or in any of the ship's papers. On the contrary, the voyage went on as it was begun at New York, and the same officers and crew remained on board till the vessel was seized . . . the list of the cargo taken from the vessel, shows that a large quantity of articles, specially suited to the slave-trade, were not on the manifest, . . . Her manifested cargo, also, is of the same criminating character. . . [398] it is difficult to resist the conclusion, that they were all exported from the port of New York. . . Support to the theory that the charter-party is not a *bonâ fide* instrument . . . [399] evidence . . . that fourteen packages of stores for the vessel were shipped at New York, on the 10th of May, 1861, by order of the owner, . . . None . . . were manifested, and the directions were that they should not be, and they were not landed at Havana, but were transhipped directly on board the *Reindeer*. . . Claimants not only failed to call either of the supposed passengers who were on board, but they have neglected to call the master or any one of the crew, and the evidence shows that the master has absconded." [Clifford, J.]

Brown v. Meeting Street Baptist Society, 9 R. I. 177, March 1869. "This was an amicable bill in equity, . . . for the purpose of effecting, . . . the aid of this court, the exchange of the lot . . . held by the complainants in trust. The bill . . . alleged, that Moses Brown, by his deed . . . conveyed to Obadiah Brown and others, the lot on meeting street, . . . 'in trust . . . for a Meeting House, for Divine Worship for the people of color, that now are, or hereafter may be in this town, and for no other use, but for the said people of color forever.' . . . [178] That the original trustees, and, after them, the present ones, have permitted all people of color in Providence, . . . to worship in the Meeting House . . . and in 1855 the colored people who worshipped there, obtained an Act of Incorporation . . . That, said meeting house being so greatly out of repair as to be nearly worthless, and the lot being very ineligible from its inaccessibility and surroundings, being entirely shut in by other buildings, the trustees pray for leave to exchange said lot for one much more eligible in every respect, said exchange being highly beneficial for the trust. The defendant Corporation filed its answer, admitting the facts as alleged and joining in the prayer of said bill. . . The matter was referred to S. W. Peckham, Esq., as master . . . His report set forth that said exchange was necessary and expedient, and would be highly beneficial to the trust."

Held: [184] "In this case the plaintiffs have submitted to us an argument upon two points relating, first, to the jurisdiction of the court, and second, to the question whether there is anything in the terms and provisions of the deed under which the plaintiffs hold, to present the proposed

change. . . [185] We are satisfied, . . . that it is within the jurisdiction of this court, under the full chancery powers . . . to sanction, in a proper case, the sale or exchange of real estate held upon trust for charitable uses. . . [187] the primary purpose of the donor being the promotion of the charity, his incidental purpose that the particular property given shall be used for its promotion, may be disregarded, and the property sold or exchanged, if thereby the charity will be greatly benefitted. . . [188] The correct doctrine is, we suppose, that the trustees have the power, when the interest of the charity manifestly requires, to alienate the charity estate, and that the court is called upon to sanction the alienation, . . . [189] We think, therefore, it is no infringement . . . for the trustees to alienate the estate . . . We are satisfied from the report of the master, that the charity as it now exists, will be very much benefitted by the exchange proposed, and we therefore give it our sanction and approval, and authorize it to be made."

MASSACHUSETTS

INTRODUCTION

I.

The first slaves of the Massachusetts Bay and Plymouth colonists, who appear in the court records, were Indians and Englishmen, condemned to slavery, permanent or temporary,¹ for their crimes. Chousop, "the Indian of Block Island, was adjudged" by the General Court of Massachusetts Bay, in 1636, "to be sent to the island, and there bee kept as a slave for life to worke, unless we see further cause."² "William Androws, having made assault upon his master, Henry Coggan, . . . and not onely so, but did conspire also against the peace . . . of this whole common welth, was censured [in December, 1638] to bee severely whiped, and delivered up a slave to whom the Court shall appoint."³ But in September 1639, he "is released (upon his good carriage) from his slavery, and put to Mr. Endecott, hee promising to pay Henry Coggan 8 l; and so Androws is to serve Mr. Endecott the rest of his time."⁴ Likewise Thomas Dickerson who was condemned to slavery in December 1639,⁵ was "discharged from his slavery," in September 1640, "and committed to Ensigne Richard Walker. . . Jonathan Hatch,⁶ . . . for the present is committed for a slave to Leif't Davenport."⁷ In June 1640, "Thom: Savory, for breaking a house in the time of exercise, was censured to bee severely whiped, and for his theft to be sould for a slave until he have made double restitution."⁸ In December 1640 "Henry Stevens for fiering the barne of his master, Mr. John Humphrey, . . . was ordered to bee servant to Mr. Humphrey for 21 years from this day, toward recompensing the loss."⁹ Evidently Mr. Humphrey would be better recompensed for the loss of his barn by twenty-one years of service from Stevens than by his enslavement for a briefer period.

¹ In the seventeenth century and even later, slaves were of two kinds: slaves for life and slaves for a term; and they were not the less slaves though their servitude terminated before death.

² 1 Mass. Recs. 181. See also *Re Indian Hoken*, p. 472; *Re Indian Tom*, 472, *infra*.

³ *Re Andro[w]s*, p. 469, *infra*.

⁴ *Re Androws*, p. 469, *infra*.

⁵ *Re Dickerson*, p. 469, *infra*.

⁶ Hatch's slavery was not for a long period, for in March 1642, he "was taken for a vagrant," and again sent "to Leiftennant Davenport at Salem" (2 Plym. Col. Recs. 36). The following month he "is appoynted to dwell with Mr. Stephen Hopkins, and the said Mr. Hopkins to have a special care of him." *Ibid.* 38.

⁷ In March, 1639, the "Generall Courte, houlden at Boston," ordered "that 3 l 8 sh's should be paid Leiften't Davenport for the present, for charge disbursed for the slaves, which when they have earned it, hee is to repay it back againe." *Re Slaves*, p. 469, *infra*.

⁸ *Re Savory*, p. 469, *infra*.

⁹ 1 Mass. Recs. 311. For further instances, see *Re Barton*, p. 470, *infra*; and *Re Southwicke*, p. 471, *infra*.

In 1641, the Code of Fundamentals, or Body of Liberties, of the Massachusetts Colony in New England (the first code of laws of that colony) provided that, "There shall never be any bond slaverie, villinage or Captivitie amongst us, unles it be lawfull Captives taken in just warres and such strangers as willingly selle themselves or are sold to us. . . this exempts none from servitude who shall be Judged thereto by Authoritie."¹⁰

Accordingly, indignation ran high when, in 1645, the ship *Rainbowe* arrived at Boston from Barbadoes (via Piscataqua?), having on board some negroes "fraudulently taken and brought from Ginny, by Capt. Smiths confession, and the rest of the Company."¹¹ A letter was at once dispatched "to Mr. Williams, of Pascataq., . . that he forthwith send the neger which he had of Capt. Smyth hither, that he may be sent home, which the Court doth resolve to send back without delay; and if you have anything to aleadge why you should not returne him . . make it appear, . . but not to make any excuses or delay in sending of him."

And in November 1646 "the Generall Courte, conceiving themselves bound by the first oportunity to bear witnes against the haynos and crying sinn of man stealing, as also to prescribe such timely redresse for the past, and such a law for the future as may sufficiently deterr all others belonging to us to have to do in such vile and most idious courses, justly abhored of all good and just men, do order, that the negro interpreter, with others unlawfully taken, be, by the first oportunity, (at the charge of the country for present,) sent to his native country of Ginny, and a letter with him of the indignation of the Courte thereabouts, and justice hereof, desiring our honored Governor would please to put this order in execution."¹²

But manstealing in America¹³ was a different matter. As early as 1641, the very year in which the Code of Fundamentals was adopted it was "de-

¹⁰ Printed in 1843 from the original manuscript, in 8 Mass. Hist. Coll. (3d ser.) 231. The heading of the chapter is "Liberties of Forreiners and Strangers." The same provision appears, under the rubric "Bond-Slavery," in the *Book of the General Lawes and Liberties* printed in 1648. In the second printed edition, of 1660, the word "strangers" is omitted. Thus, not only might captives and strangers be enslaved, but their children "if sold to us." There is therefore no foundation in law, as there was none in fact, as Chief Justice Parsons points out in *Winchendon v. Hatfield* (p. 484, *infra*) for the unanimous decision of the judges in *Littleton v. Tuttle* (p. 482, *infra*) "that Cato [the child of a slave], being born in this country, was born free:" See also Moore, *Notes on the History of Slavery in Massachusetts*, pp. 11-18: [18] "Based on the Mosaic code, it is an absolute recognition of slavery as a legitimate status."

¹¹ *Smith v. Kaezar*, pp. 470, 471, *infra*.

¹² *Re Negro*, pp. 470, 471, *infra*.

¹³ And in Ireland. The Irish servant, William Hiferney, who had "bin stolen away out of his owne countrey," was not sent back, when he complained to the Court, in 1661; but his master was "perswaded . . that hee . . will remitt two yeares of the time of his service." He had been bound for "the tearme of twelve yeares . . engageing to soe long a time when hee was unaquainted with the English tongue," (3 *Plym. Col. Recs.* 220). However, by 1677, the public conscience was sufficiently aroused in respect to the stealing of Indians to cause the Council to order fifty-six pounds paid to Bernard Trott "for his services and expenses in the redeeming and returning from Fayal two Indians" (8 *Acts of the Prov.* 123) "a Sacamore and his Squa Stollen away [in the winter or spring of 1675-6] from the Eastward, . . and 13 Indians more, and carried to Fyall and Sold for Slaves Which made the first Indian Warr, there in those parts," (*ibid.* 485). Trott was not paid, however, till 1705, when he was allowed "eleven pounds per annum for five years, in part compliance." *Ibid.* 123.

clared to bee the mind of the Court, that if the Indians send not back our run awayes, then, by commission from the Governor and any 3 of the magistrates, to send and take so many as to satisfy for the want of them, and for the charge of sending for them." ¹⁴

And only one month before the General Court of Massachusetts Bay bore witness "against the haynos and crying sinn of manstealing," the Commissioners for the United Colonies, meeting at New Haven,

seriously consideringe [the proud affronts to the English] . . . thought, that if such . . . hostile practices against the English, together with the entertayninge, protectinge or rescuinge of offenders were suffered, the peece of the Colonies could not be secured, . . . therefore concluded, that . . . the magistrates of any of the jurisdictions, might at the plantifs charrdge send some convenient strength of English, and . . . seise and bring away any of that plantation of Indians that shall entertain, protect or rescue the offender, . . . [71] after . . . due Warninge given them as abettors or at least accessory unto the Injury . . . done to the English, onely woemen and children to be sparingly seised, unles knowne to be some way guilty. And because it wilbe chargeable keepinge Indians in prisone, and if they should escape, they are likely to prove more insolent and dangerous after, it was thought fitt, that upon such seasure, the delinquent or satisfaction be againe demanded, of the Sagamore or plantation of Indians guilty or accessory . . . and if it be denyed, that then the magistrates . . . deliver up the Indians seased to the party . . . indamaged, either to serve or to be shipped out and exchanged for Negroes as the cause will justly beare.¹⁵

Indians so seized could hardly be regarded as "lawful captives taken in just wars" as excepted in the statute of 1641.¹⁶

The statute, in that respect, merely enacted what had become customary in Indian warfare. Some of the captives taken in the Pequod War, "fifteen of the boys and two women [were sent] to Bermuda [in 1637], by Mr. Peirce; but he, missing it, carried them to Providence Isle."¹⁷ Some of the Pequod captives were given to the Narragansett allies,¹⁸ some to the colonists.¹⁹ The Indian prisoners taken in King Philip's War suffered a similar fate. In September 1672, Articles of Confoederation between Massachusetts Bay, New Plymouth and Connecticut, were signed, providing that "the whole advantage of the warr, . . . whether it be in lands, goods, or persons, shall be proportionately divided among the said confoederaters."²⁰ One hundred and twelve men, women and children, several of whom "have bine actors in the late rising and warr of the Indians against us, and the rest complyers with them therein, . . . contrary to . . . covenant made . . . with this collonie, . . . as apeereth further also in that they did not discover that pernicious plott which Philip, with

¹⁴ 1 Mass. Recs. 329.

¹⁵ 9 Plym. Col. Recs. 61.

¹⁶ Ancient Charters 52.

¹⁷ Winthrop's Journal, I. 234. About a century later the French on the Mississippi sent three hundred of their Natchez captives to Santo Domingo to be sold. 5 Martin (La.), o. s., 480.

¹⁸ See references in Moore, p. 7.

¹⁹ 1 Mass. Recs. 201; Winthrop, I. 227.

²⁰ 4 Mass. Recs. (pt. 2) 473.

others, completed against us," were, "excepting some few of them," adjudged by the council of war (held at Plymouth, August 4, 1675) to be sold.²¹ The Rev. John Eliot wrote on August 13:

To the Honorable Governor and Council, sitting at Boston . . . the humble petition of John Eliot Sheweth That the terror of selling away such Indians, unto the Ilands for perpetual slaves, who shall yeild up themselves to your mercy, is like to be an effectual prolongation of the warre . . . This usage of them is worse than death . . . My humble request is, that you would follow Christ his designe, in this matter, to promote the free passage of Religion among them, and not to destroy them. . . it seemeth to me, that to sell them away for slaves, is to hinder the inlargment of his kingdom, . . . to sell soules for money seemeth to me a dangerous merchandize. If they deserve to dy, it is far better to be put to death, under godly governors, who will take religious care, that meanes may be used, that thei may dy penitently. to sell them away from all meanes of grace, when Christ hath provided meanes of grace for them, is the way for us to be active in the destroying their soules, when we are highly obliged to seek their conversion,²²

Nevertheless, the

councell of warr . . . being mett together att Plymouth [September 2] . . . to consider of a certaine parsell of Indians lately come in to Sandwich in a submissive way to this collonie, doe find, that they are in the same condition of rebellion as those formerly condemned to servitude, and doe unanimously agree that the said Indians, being in number fifty-seven, are condemned into perpetuall servitude, and therefore doe heerby order . . . the Treasurer to make sale of them, for and to the use of the collonie, as oppertunity may present.²³

At this time begins the long series of bounties "for the Incurragement of Voulenteers [as well as of soldiers] to Goe forth in pursuit of the enimie" continuing through the French and Indian war: "the plunder . . . whether Goods or persons being Legally soe adjudged . . . shalbe to their owne proper use and behoofe."²⁴ Even "our honored Governor" has his share. "In reference unto such emergent charges that have fallen on [him] . . . the summer past, the Court have settled and confered on him the prise of ten Indians, of those salvages [*sic*] lately transported out of the government."²⁵

On the other hand, certain "Indians whoe came in, applying themselves to the government for acceptance to mercye," were ordered to "take up their abode from the westermost syde of Sepecan River,"²⁶ and it was "ordered by the councell of warr, that it shalbe lawful for any of the

²¹ 5 Plym. Col. Recs. 173.

²² 10 Plym. Col. Recs. 451.

²³ 5 Plym. Col. Recs. 174.

²⁴ 10 Plym. Col. Recs. 360 (1675). See also 5 Mass. Recs. 95, 96 (1676); 5 Plym. Col. Recs. 207, 209 (1676); 6 Plym. Col. Recs. 213 (1689); 1 Acts of the Prov. 292 (1697); *ibid.* 530 (1703); *ibid.* 594 (1706); 13 Acts of the Prov. 399 (1744); *ibid.* 488 (1745); *ibid.* 521 (1746); 14 Acts of the Prov. 107 (1748); 15 Acts of the Prov. 308, 343, 349, 356, 396 (1755); *ibid.* 474, 552, 617 (1756); *ibid.* 709; 16 Acts of the Prov. 13 (1757).

²⁵ 5 Plym. Col. Recs. 175 (1675).

²⁶ *Ibid.* 210, 215 (1676).

magistrates . . . to dispose of the children of those Indians . . . unto such of the English as may use them well, especially their parents consenting therunto, during the time until such children shall attain the age of twenty four, or twenty five yeers,"²⁷ But it is

ordered by the councell, that all such Indians as have or shall come into the collonie in a clandestine way, not applying themselves to the authoritie of this jurisdiction for libertie, shall not expect the benefitt of the indemnitie formerly shewed to other Indians that did come in in an orderly way, but shalbe forthwith taken up and desposed off, as other captive Indians, to the collonies use.²⁸ . . . [210] Whereas it is apprehended that the permission of Indian men that are captives to settle and abide within this collonie may prove prejudiciall to our common peace and safety, considering there hath never bin any lycence for such soe to doe, it is ordered by the councell and the authoritie thereof, that noe Indian male captive shall reside in this government that is above fourteen yeers of age att the beginning of his or their captivity, and if any such captives above that age are now in the government, which are not desposed of out of this jurisdiction by the 15th of October next, shall forthwith be desposed of for the use of this government.²⁹

In September 1676 "There being many of our Indian ennemyes seized, and now in our possession, the Court judgeth it meete to referr the disposall of them to the honoured council, declaring it to be their sence, that such of them as shall appeare to have imbrued their hands in English blood should suffer death here, and not be transported into forreigne parts."³⁰

An act of the Province of Massachusetts Bay, passed in 1725, provided that

no Indian native of this province, upon any pretence whatsoever, shall be . . . carried out of this province, beyond the seas, unless by order . . . of the general sessions of the peace, or superiour court of judicature, court of assize and general goal [*sic*] delivery, or security given . . . conditioned for the returning of such Indian.³¹

Though Indian captives proved too dangerous to hold as slaves longer than to secure their transportation out of the country, for sale or exchange, Indian slaves were obtained outside the bounds of the Massachusetts Bay and Plymouth Colonies. Any temptation to import free Indians as slaves was curbed by the Provincial Act of 1709,³² which required "a certificate from the governor . . . of the plantation from which they are brought that they are indeed bond-slaves."

There was, aside from Indian slaves, a more or less abundant supply of Indian servants. In the early years of the colony of Massachusetts Bay, it was found necessary to restrain their employment. A Court of

²⁷ *Ibid.* 207 (July 1676).

²⁸ *Ibid.* 209.

²⁹ *Ibid.* 209 (1676).

³⁰ 5 Mass. Recs. 115.

³¹ 2 Acts of the Prov. 364.

³² 1 Acts of the Prov. 634.

Assistants ordered, in 1631, "that whatever person hath received any Indian into their Famylie as a servant shall discharge themselves of them by the 1th [*sic*] of May nexte; and that noe person shall hereafter intertaine any Indian for a servant without licence from the Court."³³ "It is ordered [in 1634], that it shalbe lawfull for any Englishe man to imploy any Indean to shoote with a peece that the General Court shall give leave unto. There is leave graunted to the Deputy Governor, John Winthrop, Esq, and John Winthrop, Junior, each of them to intertaine an Indean a peece, as a howseholde servant."³⁴ In the following year the "Deputy Governor [Richard Bellingham] hath leave from the Court to intertaine an Indean into his Family."³⁵ In 1639, the "Governor had leave to keepe . . . a Naviganset Indian and his wife."³⁶ They were not always contented with their lot. In 1642 "Sergent John Leveret and Sergent Edward Hutchinson were sent to Meantonomo . . . to demand satisfaction of him: . . . That hee doth keepe divers Pecoits which are run away from us, or at least doth countenance and alow the Niantick sachim so to doe. . . . So for Willi:, lately the Governor his servant, run away, to bee sent us."³⁷ The mission was unsuccessful as far as Willi: was concerned, for the following spring, "Mr. Humfrey Atherton and Mr. Edward Tomlins are appointed to go . . . there [Connecticut, New Haven, and Plymouth] . . . and to get and bring Will, the Indian, if they can."³⁸

In 1646, the "law which forbids the intertaining of any Indian into service without allowance of the Courte is repealed, there being more use of incuragement thereto then otherwise."³⁹

In 1660, at a meeting of the Commissioners for the United Colonies, held in New Haven, it is ordered:

For the Incurragement of such Indians as shalbee willing to putt their Children apprentices for convenient time proportionable to their age to any Godly English within the united Collonies with the consent of the Comissioners for the time being . . . that every such Indian shall Receive yearly during their Childrens apprenticeship one coate out of the Corporation stocke or from their masters besides meate drinke and clothing convenient for their Children whilest they continew with their Masters; provided the said Indians doe yearly bring to some of the Comissioners of the Collonies where they live; a Certifycate under the hand of the said masters; that such Indian Children hath or doth live with them;⁴⁰

³³ 1 Mass. Recs. 83.

³⁴ 1 Mass. Recs. 127.

³⁵ *Ibid.* 158.

³⁶ *Ibid.* 285. See also 2 Mass. Recs. 61.

³⁷ 2 Mass. Recs. 23.

³⁸ *Ibid.* 35. See also 1 Mass. Recs. 298.

³⁹ *Ibid.* 152; 3 Mass. Recs. 64.

⁴⁰ 10 Plym. Col. Recs. 251. Revised, in 1678: "provided that they be put apprentices not for less term than until they come to twenty-one years of age," (*ibid.* 397). Such Indian children may not have been worse off than the children shipped in from England for servants in 1643. 2 Mass. Recs. 45, 76, 89, 98; 3 Mass. Recs. 30.

The consent of the parents was not essential though desirable, in the case of the Indian children, disposed of in the Plymouth Colony in 1676;⁴¹ but the next year the Court ordered that indentures should be signed "for such as are soe disposed, to prevent future differences."⁴²

Similarly, it was "enacted [in Massachusetts Bay, in May 1677], that such Indjan children or youths that are settled or disposed, by order of authority, or with their parents or relations consents to any of the English inhabitants in this jurisdiction, shall so remaine with them as servants . . . untill each of them attein to the age of twenty fowr yeares . . . except by speciall contract it be otherwise provided;" but "for such other Indian children, youths or girls, whose parents have been in hostility with us, or have lived among our enemies in the time of the warr, and were taken by force, and given or sould to any of the inhabitants of this jurisdiction, such shall be at the disposall of their masters or their assignees, provided they be instructed in civility and Christian religion;"⁴³

Thus in the colony of Massachusetts Bay there was no limit put to the servitude of the children of hostile Indians—they might be slaves for life. In the Plymouth Colony, however, the "Court [in 1678] sees cause to prohibite all . . . within our jurisdiction or elsewhere, to buy any of the Indian children of any of those our captive salvages that were taken . . . our lawfull prisoners in our late warrs with the Indians, without speciall leave . . . of the government of this jurisdiction."⁴⁴

By a law of the Plymouth Colony, passed in 1674, such Indians as . . . will not take care to pay their Just debts after conviction, shalbe made to serve either those to whom they are Indebted or some other man untill the debt be satisfyed for twelve pence a day in summer time and six pence a day in winter time and their diett, and if they will not serve but run away; then it may be lawfull to sell them by order of two Majestrates of this Jurisdiction or the Selectmen of the Towne for soe longe a time as they shall see fitt, untill the debt be satisfyed for, and all such charges as shall arise upon defect as aforsaid; . . . such Indians which shall . . . steale any thinge from the English hee or they shall make restitution by payment of four fold either by serving it out; or some other way or be sold for his theft;⁴⁵

By virtue of this law, "Isacke Tetatan, an Indian, resedent in . . . Barnstable, . . . [238] For the payment of . . . three pound . . . [was] delivered [in 1681] . . . in execution to John Allin, of Barnstable, by the consent of [Isacke's creditor and of Isacke himself,] . . . to live and faithfully serve . . . from the eleventh of . . . July untill the last . . . of November."⁴⁶

⁴¹ See p. 459, *supra*, and 5 Plym. Col. Recs. 207.

⁴² 5 Plym. Col. Recs. 223.

⁴³ 5 Mass. Recs. 136.

⁴⁴ 5 Plym. Col. Recs. 253.

⁴⁵ 11 Plym. Col. Recs. 237.

⁴⁶ *Re* Indian Isacke Tetatan, p. 475, *infra*. See also *Re* Indian Will, p. 478, *infra*; 6 Plym. Col. Recs. 81 (1682); *ibid.* 104 (1683); *ibid.* 177 (1685); 10 Acts of the Prov. 668 (1725); 12 Acts of the Prov. 175 (1742).

In 1712, an act was passed "prohibiting the importation or bringing into this province any Indian servants or slaves."

Whereas divers . . . notorious crimes . . . expecially of late, have been perpetrated . . . by Indians and other slaves within several of the majestie's plantations in America, being of a malicious, surley and revengeful spirit, rude and insolent in their behaviour, and very ungovernable, the over-great number and increase whereof within this province is likely to prove of pernicious and fatal consequence to her majestie's subjects and interest here, . . . and is a discouragement to the importation of white Christian servants, this province being differently circumstanced from the plantations in the islands, and having great numbers of the Indian natives . . . about them, and at this time under the sorrowful effects of their . . . hostilities,—Be it therefore enacted . . . That . . . all Indians, male or female, of what age soever, imported . . . into this province by sea or land, . . . to be disposed of, sold, or left within the province, shall be forfeited to her majesty for . . . the support of the government, unless the person . . . importing . . . shall give security, at the secretarie's office, of fifty pounds per head, to . . . carry out the same again within . . . one month next after their coming in, not to be returned back to this province.⁴⁷

Indian slavery may have persisted, however, for many years, from the increase of Indian slaves already residing in the Province, as indicated by the numerous laws passed, from 1746 to 1762, prohibiting the "selling any strong drink without license to any Indian, negro or molatto slave."⁴⁸ It may be argued, however, that in these acts, "Indian" may be a noun and not an adjective.

As English and Indian servants for a term of years were the rule in the Plymouth and the Massachusetts Bay colonies, in the seventeenth century, and the enslavement of members of those races exceptional or temporary, so in the case of the negro. He first appears in the judicial⁴⁹ records of these colonies as a servant⁵⁰ rather than a slave. In 1644, the year before the outburst of righteous indignation over the *Rainbowe's* cargo of "negars,"⁵¹ the records of Massachusetts Bay contain another item indicating the same point of view: "Mr. Blackleach his petition about the Mores

⁴⁷ 1 Acts of the Prov. 698.

⁴⁸ 3 Acts of the Prov. 257 (1746). Similar acts were passed yearly in 1748, 1751-1755, 1757-1760, and 1762.

⁴⁹ Elsewhere we learn that in December, 1637, "Mr. Peirce, in the Salem ship, the *Desire*, returned from the West Indies after seven months. He had been at Providence [in the Caribbean], and brought some cotton, and tobacco, and negroes, . . . from thence, . . . He met there two men-of-war, . . . who had taken divers prizes from the Spaniard, and many negroes." Winthrop's Journal, I. 254. James Savage, the editor of the Journal, notes: "Perhaps the unavoidable conclusion from this passage is, that slaves were brought here for sale. It was an unhappy exchange for the Indians—fifteen boys and two women—he had carried out, (see page 234;) though perhaps the blacks were happier than their red brethren."

⁵⁰ In 1653 his status appears to be equal to that of servants of the other races: "it is . . . ordered by this Court . . . that all Scotsmen, Negeres, and Indians inhabiting with or servants to the English, from the age of sixteene to sixty yeares, shalbe listed, and are hereby enjoyned to attend traynings as well as the English," (3 Mass. Recs. 268; 4 Mass. Recs. pt. 1, 86). But in 1657, the Court orders "that henceforth no negroes or Indians, although servants to the English, shalbe armed or permitted to trayne," (3 Mass. Recs. 397; 4 Mass. Recs. pt. 1, 257.) See also 1 Acts of the Prov. 130 (1693); 21 Acts of the Prov. 34 (1779); *ibid.* 397 (1780).

⁵¹ 2 Mass. Recs. 129, 176, 196, 216; 3 Mass. Recs. 46, 49, 58.

was consented to, to be committed to the elders, to enforme us of the mind of God herein, and then further to consider it." ⁵²

The Plymouth Colony Records for the same year contain the case of the servant Hercules, who differed with his master as to the term he should serve, the Court ordering that Hercules is to serve his master "six yeares, which wilbe untill the third day of July next, and then to be free from him;" ⁵³ but whether Hercules is black, white or red, is not indicated. Nor is the nationality given of "Ebedmelecke, the servant of Jobe Lane, [who] for runing from his said master, and stealing victualls on the Lords day, is adjudged [in 1653] to be whipt so it exceed not five stripes, the rigor of the law for his offence being remitted." ⁵⁴ Was this remission of rigor due to his master's desire not to reduce the value of his property?

In 1653 there was also "a controversy . . . betwixt John Smyth, Senior, of Plymouth, and a neager maide servant of John Barnes . . . and with proper admonission, both parties were cleared." ⁵⁵

There are two cases of negro servants reported in 1676. ⁵⁶ The will of Walter Briggs, executed in 1677, indicates the possession of negro slaves rather than servants. ⁵⁷ No mention is made of any master of "Robert Trayes, negro," who was indicted in 1684 for wounding Daniel Standlake; ⁵⁸ nor is the status given of the negro convict Nimrod ⁵⁹ in 1685.

But, in spite of the scantiness of the judicial records, the prevalance of negro slavery is shown by "A Memorial [sent, in 1694] . . . unto . . . The Governour and the Generall Assembly . . . By Many Ministers of the Gospel . . . II. It is Desired That the wel-knowne Discouragement upon the endeavours of many masters [to] Christianize their slaves, may be removed by a Law which may take away all pre[text] to Release from just servitude, by receiving of Baptisme." ⁶⁰

In 1703 an act was passed prohibiting the manumission of mulatto or negro slaves "until sufficient security be given to the treasurer of the town . . . in a valuable sum, not less than fifty pounds, to . . . in dempnify the town . . . from all charge for . . . such molato or negro, . . . in case he or she by sickness, lameness, or otherwise, be rendered incapable to support him- or herself." ⁶¹ Free negroes and mulattoes appear to have been few in number in 1707, for the preamble to the act ⁶² of that year requiring them to work "in repairing of the highways, cleansing of the

⁵² 2 Mass. Recs. 67.

⁵³ *Re Hercules*, p. 470, *infra*.

⁵⁴ *Re Ebedmelecke*, p. 471, *infra*.

⁵⁵ *Re Negro*, pp. 470, 471, *infra*.

⁵⁶ *Re Negro Sebastian*, p. 473, *infra*; *Re Negro Jethro*, p. 473, *infra*.

⁵⁷ Will of Walter Briggs, p. 473, *infra*.

⁵⁸ *Re Robert Trayes, negro*, p. 477, *infra*.

⁵⁹ *Re Hannah Bonny*, p. 478, *infra*.

⁶⁰ 7 Acts of the Prov. 537.

⁶¹ 1 Acts of the Prov. 520. The first act restricting the manumission of servants in the colony of Massachusetts Bay was passed in 1636: "no servant shalbee set free, or have any lot, untill he have served out the time covenanted," 1 Mass. Recs. 186.

⁶² 1 Acts of the Prov. 606.

streets, or other service, for the common benefit,"⁶³ states that "in the several towns and precincts within the province, there are several free negro's and molatto's."

White servants were found to be more desirable for New England than negroes,⁶⁴ and the importation of the latter was discouraged by imposing, in December 1705,⁶⁵ a duty of four pounds on each negro imported. This called forth protests by those who had imported small negro children, and petitions for an abatement of the duty as "some of said Children were not worth the Money."⁶⁶ One of these petitions naively disclaims any scruple in separating negro infants from their mother:

A Petition [in 1720] of Ann Taylour of Boston Widow, Shewing that She being left at Jamaica a Widow with five small Children, was unable to support her self and Family there, And therefore returned to Boston the Place of her Nativity and brought with her two Negro Men and two Negro Women and their five young Children, the eldest of them not being more than eight years old and two of them being at the Breast, That She keeps the Women to look after her Children, and that the Negroe Children will sell but for very little, That She is informed the Law obliges her to pay a Duty of Four Pounds per head for the Children, as well as for the other Negroes, which if she had known, she would not have brought the Children with her, And therefore Praying in Consideration of the Premises, That this Court would please to remit or forgive, to the Petitioner the Duty arising upon the Importation of the said Negroes.⁶⁷

It was resolved "that the Prayer of this Petition be granted."

The duty was remitted on "Jocky about fifteen years of Age," imported from Antigua, because "in . . . September [!], on the back of Nantucket both the said Negro Boys Leggs were frozen, . . . And the Surgeon was obliged . . . to cut off both his Feet . . . And the Petitioner was forc'd to sell him for Ten pounds, to a Taylour and paid Thirty five pounds for his Cure, . . ." ⁶⁸

In 1776 the clause of the Code of Fundamentals of 1641 allowing the enslavement of "lawful captives taken in just wars," was repealed as far as negro captives, taken on the high seas, were concerned:

Whereas . . . two Negro men, lately taken, on the High Seas, on board the Sloop *Hannibal* and brought into this State as prisoners, are advertised to be

⁶³ As they "are not charged with training, watchings and other services required of her majesty's subjects," *id.*

⁶⁴ "That the Importation of White Servants be encouraged, and that the Importation of Black Servants be discouraged," (10 Council Records 260, 1718). Letter of the Lords of Trade to Governor Dudley, Jan. 12, 1709: "One of the reasons you give why Negroes are not desired in New England is, because it being on the Continent the Negroes have thereby an opportunity of running away: The same reason will hold in Carolina, Virginia and Maryland, . . . where negroes are so valuable." Dudley replied, Jan. 31, 1710: "though the reason that I formerly assigned of Negroes running from us seems to be equal with Carolina and other Colony's, the force of it continues, because they will always run to the Southward for warmer weather, and as the cold is disagreeable to them, so it demands of the master much more cloathing, and gives him much less service, for six months in the year." 1 Acts of the Prov. 580n.

⁶⁵ 1 *ibid.* 578.

⁶⁶ 8 Acts of the Prov. 770 (1707). See also *ibid.* 248.

⁶⁷ 10 Acts of the Prov. 9.

⁶⁸ *Ibid.* 39 (1720).

sold at Salem . . . by public Auction, Resolved, That all persons concerned . . . are forbidden to sell them or in any manner to treat them otherways than . . . prisoners taken in like manner; and if any sale . . . shall be made, it is . . . void. And that whenever it shall happen, that any Negroes are taken on the High Seas, . . . they shall not be allowed to be sold, nor treated any otherways than as prisoners are ordered to be treated, who are taken in like manner.⁶⁹

The constitution of Massachusetts took effect the last Wednesday of October 1780. It begins with a "Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts" which opens with these words: "All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying . . . their . . . liberties;"

In the following spring Quork Walker (sometimes called Quarko, Quack and Quaco), "a slave brought from Africa,"⁷⁰ ran away from Dr. Jennison to the home of John and Seth Caldwell, whose deceased brother, James Caldwell, had been the first husband of his deceased mistress, Mrs. Jennison. A few weeks later⁷¹ Dr. Jennison "and several others"⁷² came to the Caldwells' field where Quork was harrowing, "got the negro down," and "struck him with the handle of a whip,"⁷³ One of the Caldwells "heard a screaming . . . young fellow upon the negro, I took him off . . . and told Jennison his master had freed him—and Winslow⁷⁴ let him go—wounds in his hands and arms."⁷⁵

This assault gave rise to two civil actions and one criminal prosecution. The first was an action of trespass, brought by Quork Walker against Nathaniel Jennison⁷⁶ on May 1, 1781. Jennison pleaded that "One Caldwell, being seised of the said Quork as of her own proper negro slave, was married to . . . said Nathaniel, by means whereof the said Nathaniel . . . became possessed of . . . Quork as of his own proper negro slave." The plaintiff replied "that he the said Quork is a free man," The jury "returned a verdict for the plaintiff for £50 damages, upon which judgment was rendered . . . The defendant appealed to September term 1781 of the Supreme Judicial Court, but, failing to appear . . . was defaulted, and the judgment below affirmed."

To the same September term the defendants Caldwell appealed, against whom Jennison had brought an action of trespass on the case,⁷⁷ on May 28, alleging that they had "seduced the said negro man" from his service

⁶⁹ 19 Acts of the Prov. 568.

⁷⁰ Judge Sullivan to Dr. Belknap, Apr. 9, 1795. 3 Mass. Hist. Coll. (5th ser.) 403.

⁷¹ On Apr. 2, 1781 [Jennison v. Caldwell, 1 Proc. of Mass. Hist. Soc. 1873-1875, 296], or on Apr. 30 [Walker v. Jennison, *id.*] or on May 1 [Commonwealth v. Jennison, *ibid.* 293].

⁷² Commonwealth v. Jennison, p. 480, *infra*.

⁷³ Walker v. Jennison, p. 479, *infra*.

⁷⁴ Testimony of Joshua Winslow: "I was desired by the defendant to help him reclaim Quaco." Commonwealth v. Jennison, p. 480, *infra*.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

“and . . . retained . . . the said negro . . . for six weeks, . . . and did . . . rescue out of the plaintiff’s hands . . . his said servant;” and obtained a verdict and judgment for £25. On appeal the defendants Caldwell [297] “were found not guilty, and had judgment for costs against the plaintiff.” The report of the third trial, *Commonwealth v. Jennison*,⁷⁸ is fuller than the reports of the other two, as it is “printed . . . *verbatim* from the notebook” of Chief Justice Cushing. Quork testified: “I lived with Dr. Jennison 7 years and $\frac{1}{2}$ after I was 21. My old master said I should be free at 24 or 25. Mistress told me I should be free at 21—said so to Jennison, before and after marriage.” The defence introduced in testimony a bill of sale from Zachariah Stone to Caldwell, deceased, “of Mingo and Dinah, 1754, and Quaco, 9 months old.”⁷⁹ As a claim to freedom based on a promise made to a slave, was worthless in law, a more substantial foundation for Quaco’s claim had to be found, and Chief Justice Cushing discovered it in the newly adopted Constitution. In his charge to the jury, he declared: [294] “our Constitution . . . is totally repugnant to the idea of being born slaves. This being the case, I think the idea of slavery is inconsistent with our . . . Constitution; and there can be no such thing as perpetual servitude of a rational creature, unless his liberty is forfeited by some criminal conduct or given up by personal consent or contract.”

Jennison was found guilty and fined forty shillings. According to Judge James Sullivan,⁸⁰ “This decision put an end to the idea of slavery in this State.”⁸¹ But Judge James Winthrop⁸² declares, in a letter⁸³ to Dr. Jeremy Belknap, in 1795, that it was “By a misconstruction of our State Constitution,” Thereby “a number of citizens have been deprived of property formerly acquired under the protection of law.”

Correct or incorrect, this judicial construction of the Constitution of 1780 abolished⁸⁴ slavery in Massachusetts. A statute was not needed, and Mr. George H. Moore, in his *Notes on the History of Slavery in Massachusetts*, is mistaken in saying, after his quotation of Lord Mansfield’s statement in regard to villeins in gross,⁸⁵ that “it could be said with

⁷⁸ *Id.* The indictment was found in September, 1781.

⁷⁹ *Ibid.* 297. See p. 480n., *infra*.

⁸⁰ “a member of the Convention which framed the Constitution of Massachusetts. Soon after, he was one of the Justices of the Supreme Judicial Court, and took part in the decision of the civil action of *Jennison v. Caldwell* in 1781.” 3 Mass. Hist. Coll. (5th ser.) 403n.

⁸¹ *Ibid.* 403.

⁸² Chief Justice of the Court of Common Pleas. Alden Bradford says of him: “We have no hesitation in ranking him among the most learned, useful, and patriotic citizens of Massachusetts.” *Ibid.* 39In.

⁸³ *Ibid.* 389.

⁸⁴ But *Venus* “formerly the slave of . . . Whittemore . . . [was] disposed of . . . at auction” for the term of her life, by Whittemore’s administrator, in Cambridge in 1793 (*Watson v. Cambridge*, p. 495, *infra*). Such an auction sale differed from that of the ordinary pauper who was “put up . . . to the lowest bidder for one year” only. *Willington v. West Boylston*, 4 Pickering 101 (1826); *Mahen v. Scott*, 10 Pickering 54 (1830).

⁸⁵ “villeins in gross may, in point of law, subsist at this day. But the change of customs and manners has effectually abolished them in point of fact.” *King v. Inhabitants of Thames Ditton*, 4 Douglas 300 (302).

equal justice that slavery, having never been formally prohibited by legislation in Massachusetts, continued to 'subsist in point of law' until the year 1866, when the grand Constitutional Amendment terminated it forever throughout the limits of the United States."⁸⁶ And the comment which he adds in closing his book is nugatory.⁸⁷

As to the causes of the abolition of slavery in Massachusetts, we have the opinions of several "prominent citizens of Massachusetts" in response to a series of questions respecting slavery in that Commonwealth, sent in 1795 by Judge St. George Tucker of Virginia⁸⁸ to Dr. Jeremy Belknap, founder of the Massachusetts Historical Society. Dr. Belknap had the questions printed "as a circular letter and distributed about forty copies 'among such gentlemen as it was supposed would assist in answering them.'"⁸⁹ Dr. John Eliot replied: "The cause of *abolition of slaves in the State* may be traced entirely to the *sentiment* of the people;"⁹⁰ but Samuel Dexter, in his answer to the questionnaire, says: "it was a very rare thing [fifty years ago] to hear the [slave] trade reprobated. Some disliked the custom of keeping negroes from prudential considerations; but the number was small indeed who had religious scruples. Such scruples were confined to the most liberal thinkers."⁹¹

And John Adams replies from Quincy, on March 21, 1795:⁹² "I was concerned in several causes in which negroes sued for their freedom, before the Revolution. The arguments in favour of their liberty were much the same as have been urged since . . . arising from the rights of mankind, . . . [402] Argument might have some weight in the abolition of slavery in Massachusetts, but the real cause was the multiplication of labouring white people, who would no longer suffer the rich to employ these sable rivals so much to their injury. This principle has kept negro slavery out of France, England, and other parts of Europe. The common people would not suffer the labour, by which alone they could obtain a subsistence, to be done by slaves. If the gentlemen had been permitted by law to hold slaves, the common people would have put the negroes to death, and their masters too, perhaps. . . The common white people, or

⁸⁶ Moore, *Notes on the History of Slavery in Massachusetts*, p. 242.

⁸⁷ "It would be not the least remarkable of the circumstances connected with this strange and eventful history, that, although *virtually* abolished before, the actual prohibition of slavery in Massachusetts as well as Kentucky, should be accomplished by the votes of South Carolina and Georgia." *Id.*

⁸⁸ "Williamsburg, Virginia, Jan. 24, 1795. . . The introduction of slavery into this country is at this day considered among its greatest misfortunes by a very great majority of those who are reproached for an evil which the present generation could no more have avoided than an hereditary gout or leprosy. . . [380] having observed, with much pleasure, that slavery has been wholly exterminated from the Massachusetts, . . . I have cherished a hope that we may, from the example of our sister State, learn what methods are most likely to succeed in removing the same evil from among ourselves." 3 Mass. Hist. Coll. (5th ser.) 379.

⁸⁹ *Ibid.* 381.

⁹⁰ *Ibid.* 382.

⁹¹ *Ibid.* 384.

⁹² *Ibid.* 401.

rather the labouring people, were the cause of rendering negroes unprofitable servants. Their scoffs and insults, their continual insinuations, filled the negroes with discontent, made them lazy, idle, proud, vicious, and at length wholly useless to their masters, to such a degree that the abolition of slavery became a measure of economy."⁹³

Slaves owned in Massachusetts and residing there, were free by virtue of the Constitution of 1780; but the status of slaves who were owned elsewhere and were merely sojourning in Massachusetts, or had taken refuge there as fugitives, was not clearly settled till later.

II.

In what is commonly called the colonial period, the period when the government of Massachusetts was conducted under the first charter, the charter of 1628, judicial power, above that of local courts, was exercised by the Court of Assistants, which indeed in the earliest years was also the chief executive and legislative body; but, from an early date to the end of the period, appeals from its decisions were heard by the General Court or colonial legislature. The system in the Plymouth colony was similar. Under the exceptional regime of Governor Andros, an act was put forth in 1687⁹⁴ reorganizing the judicial system, and providing, as the highest tribunal in the New England province, a Superior Court of Judicature, with appeals to the King in Council.⁹⁵

This arrangement long survived the short-lived rule of Andros, for the first legislature under the second charter provided, in 1692,⁹⁶ a judicial system at the summit of which stood a Superior Court of Judicature, consisting of a chief justice and four assistants, and this continued to be the highest court in the province till the Revolution, indeed until the adoption of the constitution of 1780: for while the act of 1692 was disallowed by the crown, partly because of its provisions respecting a court of chancery, it was in all other essential respects repeated by an act of 1699.⁹⁷

Neither was the composition of the highest court altered by the Revolution, nor by the constitution of 1780, still in force. Its style was altered to Supreme Judicial Court, but it continued to be composed of chief justice and four assistants till 1852, when the number of associate judges was increased to five.⁹⁸ At that figure it remained till after 1875, the date chosen for the end of the excerpts presented in these volumes.

⁹³ Governor Dudley had, in 1710, assigned reasons of economy for dispensing with negro slaves in Massachusetts. See p. 464n., *supra*.

⁹⁴ Mar. 3, 1687. Text in *Conn. Col. Recs.*, III. 412.

⁹⁵ See H. D. Hazeltine, "Appeals from Colonial Courts to the King in Council," in *Annual Report of the American Historical Association for 1894*, pp. 299-350.

⁹⁶ Act of Nov. 25, 1692, ch. 33. 1 Acts of the Prov. 72.

⁹⁷ Act of June 26, 1699, ch. 3. *Ibid.* 370.

⁹⁸ Act of Apr. 20, 1852, ch. 127. Acts of the Prov., 1852, p. 84.

MASSACHUSETTS CASES

Re Andro[w]s, 1 Mass. Recs. 246, December 1638. "William Andrews, having made assault upon his master, Henry Coggan, . . . and not onely so, but did conspire also against the peace . . . of this whole common welth, was censured to bee severely whiped, and delivered up a slave to whom the Court shall appoint."

Re Haslewood, 1 Mass. Recs. 246, December 1638. "John Haslewood, being found guilty of severall thefts, and breaking into severall houses, was censured¹ to bee severely whiped, and delivered up a slave to whom the Court shall appoint Giles Player, [for similar offences] . . . was censured to be severely whiped, and delivered up for a slave to whom the Court shall appoint."

Re slaves, 1 Mass. Recs. 253, March 1639. "It is order,² that 3 l. 8 sh's should bee paid Leiften't Davenport for the present, for charge disbursed for the slaves, which when they have earned it, hee is to repay it back againe."

Re Kempe, 1 Mass. Recs. 269, September 1639. "John Kempe, for filthy, uncleane attempts wth 3 yong girles, was censured to bee whiped both heare, at Roxberry, and at Salem, very severely, and was committed for a slave to Leif't Davenport."

Re Andrews, 1 Mass. Recs. 269, September 1639. "Willi: Andro[w]s, who was formerly committed to slavery for his ill and insolent carriage, is released (upon his good carriage) from his slavery, and put to Mr. Endecott, hee promising to pay Henry Coggan 8 l.; and so Andrews is to serve Mr. Endecot[t] the rest of his time."

Re Dickerson, 1 Mass. Recs. 284, December 1639. "Thomas Dickerson was censured to bee severely whiped, and condemned to slavery."³

Re Savory, 1 Mass. Recs. 297, June 1640. "Thom: Savory, for breaking a house in the time of exercise, was censured to bee severely whiped, and for his theft to be sould for a slave until hee have made double restitution."

Re Hope, the Indian, 1 Mass. Recs. 298, July 1640. "Hope, the Indian, was censured for her running away, and other misdemeanor, to be whiped hear and at Marbleheade."

Re Dickinson,⁴ 1 Mass. Recs. 300, September 1640. "Thomas Dickinson is discharged from his slavery, and committed to Ensigne Richard

¹ By "A Quarter Courte, houlden at Boston," i.e., by the Court of Assistants. Decisions prior to 1684, whether of Massachusetts or of Plymouth, hereafter recorded, may be assumed to be decisious of the Court of Assistants unless otherwise marked.

² By the "General Courte, houlden at Boston."

³ See *Re Dickinson*, *infra*.

⁴ See *Re Dickerson*, *supra*.

Walker. . . Jonathan Hatch was censured to bee severely whiped, and for the present is committed for a slave to Leif't Davenport."

Re Barton, 2 Mass. Recs. 21, June 1642. "Marmaduke Barton is condemned to slavery, and to bee branded, and to remain in slavery till the Court take further order about him."

Re Hercules, 2 Plym. Col. Recs. 69, March 1644. "Upon hearinge of the differrence betwixt William Hatch, of Scittuate, and his servant Hercules,¹ for the terme he should serve him, whether six or seaven yeares, the Court,² haveing heard the evedences on both sides, do order that the said Hercules is to serve the said William six yeares, which wilbe untill the third day of July next, and then to be free from him."

Smith v. Kaezar, 2 Mass. Recs. 129, October 1645. "That Capt. Smith was cheife commander of the ship *Rainbowe*, . . . That Kaezer, etc., had no . . . just cause to bring away the shipp from Barbadoes, . . . That Kaesar should pay to Smyth these ensuing damages, . . . For the negars (they being none of his, but stolen) we thinke meete to alowe nothing. . . [136] The Court thought fit to write³ to Mr. Williams, of Pascataq', (understanding that the neg'rs which Capt. Smyth brought were fraudulently and injuriously taken and brought from Ginny, by Capt. Smiths confession, and the rest of the Company, that he forthwith send the neger which he had of Capt. Smyth hither, that he may be sent home, which the [General] Court doth resolve to send back without delay; and if you have any thing to aleadge why you should not returne him, to be disposed of by the Court, it wilbe expected you should forthwith make it appear, either by yourselfe or your agent, but not to make any excuse or delay in sending of him."

Re Smith and Keysar, 3 Mass. Recs. 46, October 1645. "Upon a petition of Rich: Saltonstall, Esquier, for justice to be donne on Capt Smith and Mr Keysar for their injurious dealing with the negroes at Gynnye, the petition was graunted; and ordered, that Capt Smith and Mr Keisar be laid hold on and committed to give answer in convenient time thereabouts." (General Court.)

Re Rainebowe, 3 Mass. Recs. 58, October 18, 1645. "Upon the petitions of Capt Smith, Mr Keisar, Mr Selleck, and Grosse, that this [General] Courte would heare the case anew about the shipp *Rainebowe*, their request was granted,"

Re Negro, 2 Mass. Recs. 168, November 1646. "The Generall Courte, conceiving themselves bound by the first oportunity to bear witnes against the haynos and crying sinn of man stealing, as also to prescribe such timely redresse for the past, and such a law for the future as may sufficiently deterr all others belonging to us to have to do in such vile and most odious

¹ Hercules Hill was one of the eight men sent from Scituate against the Narragansett Indians, Aug. 23, 1645 (2 Plym. Col. Recs. 90). If the same Hercules, he has acquired a surname since March, 1644.

² "the Generall Court . . . holden at Plymouth."

³ The letter was written on October 14. 3 Mass. Recs. 49.

courses, justly abhorred of all good and just men, do order, that the negro interpreter, with others unlawfully taken, be, by the first opportunity, (at the charge of the country for present,) sent to his native country of Ginny and a letter with him of the indignation of the Courte thereabouts, and justice hereof, desireing our honored Governor would please to put this order in execution."¹

Re Smith and Kezar,² 2 Mass. Recs. 176, November 1646. "The Secretary, Mr Auditor Gen'r, Capt. Atherton, and Mr Sparhawk are appointed a committee to examine witnesses and draw up the case about Capt. Smith and Mr Kezar kiling, stealing, and wronging of the negers, etc." (General Court.)

Re Mores, 2 Mass. Recs. 196, May 1647. "The commission about the Mores is continued in the hands of the same men which were chosen by the last Courte." (*Id.*)

Ibid. 216, November 1647. "Upon the petition of Walter Merry, it is left to his liberty to appear at the next Court of Assistants, there to answer for Capt. Smith, and undergo the judgment of the Courte in the case, or to pay what they have forfeited." (*Id.*)

Re Ebedmelecke, 3 Mass. Recs. 306, May 1653. "Ebedmelecke, the servant of Jobe Lane, for runing from his said master, and stealing victualls on the Lords day, is adjudged to be whipt so it exceed not five stripes, the rigor of the law for his offence being remitted." (*Id.*)

Re Negro, 3 Plym. Col. Recs. 39, August 1653. "Whereas a controvercy depending betwixt John Smyth, Senior, of Plymouth, and a neager maide servant of John Barnes, was refered, for want of clearer evidence, unto this Court³ . . . and accordingly whatsoever could bee said on either side was heard; and with admonission, both parties were cleared."

Re Southwicke, 4 Mass. Recs. (pt. 1) 366, May 1659. "Whereas Daniell and Provided Southwicke, sonne and daughter to Lawrence Southwicke,⁴ have binn fyned by the County Courts at Salem and Ipswich, pretending they have no estates, resolving not to worke, and others likewise have binn fyned, and more like to be fyned, for siding with the Quakers and absenting themselves from the publicke ordinances,—in answer to a quaestion, what course shallbe taken for the sattisfaction of the fines, the Court, on perusall of the lawe, title Arrests, resolve, that the Tresurers of the severall countjes are and shall hereby be impowred to sell the sajd persons to any of the English nation at Virginia or Barbadoes."⁵

Re Parthman, 4 Mass. Recs. (pt. 1) 428, May 1660. "In answer to the petition of Elias Parthman, as also the petition of Sarah, the wife of

¹ Also 3 Mass. Recs. 84.

² See *Smith v. Kaezar*, p. 470, *supra*.

³ Court of Assistants held at Plymouth.

⁴ A Quaker, banished May 11, 1659, in accordance with the order of the General Court, October 1658.

⁵ General Court. "Edmund Butler, one of the treasurers, . . . sought out for passage, to send them to Barbardoes for sale; but none were willing to take or carry them:" W. Sewel, *History of the Quakers*, I. 278.

Robert Fuller, in relation to Hopestill Coney, a kinsman of said Fullers, whom he [Parthman] sould at Virginea, the [General] Court . . . orders that he give sufficient security . . . to value of fiffy pounds on this condition, that he shall bring the sajd Hopestill Coney, whom he sold at Virginea, to Boston sometimes before the sayd County Court in Aprill next, if he be alive, or full. . . certifficat of his death, time when and place where he died, on returne whereof the County Court is hereby impowred to proceede to chancery his bonds as they shall see cause."

Re Indian servant, 4 Plym. Col. Recs. 70, July 1664. "the jury . . . [71] found, that . . . Wyatt road to a meddow of his to cutt grasse, a servant of his, an Indian boy, following him, and when hee came to the meddow hee found his master dead,"

Re Laborne, 4 Mass. Recs. (pt. 2) 153, June 1665. "the [General] Court judgeth that the petitioner [Alexander Laborne] . . . be delivered to the creditors, to be sold or serve, he having taken his oath that he is not worth five pounds."

Re Franck Negro, 3 Records of Court of Assistants 194, March 1669. "Franck Negro is Indicted . . . for conspiracy: aiding or assisting John Pottell in his escape out of the prison in Boston the 8th of December last, the said Pottell being committed in order to his tryall for murdering of the Cooke of the Ship *Golden Fox*. . . wee the Grand Jurie doe not find Franck negro guilty of the fact according unto this bill of Inditement."

Re Indian Hoken, 5 Plym. Col. Recs. 151, July 1674. "Wheras there is an Indian, called Hoken, that hath bin a notorious theife, and . . . of late hath broken up the house of James Bursell, of Yarmouth, for which hee was committed to prison; and hee made an escape by breaking of prison, and since stole a horse, being insolent in his carryage and an incorrigable theife, that will not be reclaimed, but lyeth sherking and lurking about, wherby many persons are greatly in feare and danger of him; wherfore the Court doe order Mr Hinckley and Leiftenant Freeman, or any other majestrate that can light off the said Hoken, that they cause him to be apprehended and sold or sent to Barbadoes, for to satisfy his debts and to free the collonie from so ill a member."

Re Indian Tom, 5 Mass. Recs. 25, October 1674. "In answer to the petition of Tom, the Indian condemned by the last Court of Assistants to dy for his rape, etc, humbly acknowledging his offenc, pretending ignorance of the law, etc, the [General] Court judgeth it meet to grant his request as to saving of his life, but order, that he be sold for a slave for ten yeares, to be sent to the English living in some parts of the West Indjes, remaying in prison till he be sent away."

Re Mannapaugh,¹ 5 Mass. Recs. 58, October 1675. "Two Indians, one an old man named Mannapaugh, and Mannanesit, . . . his son, pretending themselves to belong to Uncas, being found at Chelmsford, where the haystacke was fired, giving no reason of their comming and staying here, was

¹ See *Re Monnipaugh*, p. 473, *infra*.

judged to be spyes, and order to be sent away¹ by the Treasurer." (General Court.) Sentence reversed the next month.

Re Monnipaugh,² 5 Mass. Recs. 68, November 1675. "Whereas two Indians, that came in . . . upon a safe conduct from the council, have, through some mistakes, been sentenced by this Court to be sold, . . . it is ordered, that the sajd sentence be reversed, and that they be otherwise disposed of for their owne and the countrys security. The names of the Indians are Monnipaugh and Mannassett. And although the sajd persons should be sold, yet the keeper shall not deliver them without order of this [General] Court or council."

Re Indian captives, 5 Mass. Recs. 115, September 1676. "There being many of our Indian ennemyes seized, and now in our possession, the [General] Court judgeth it meete to referr the disposall of them to the honoured council, declaring it to be their sence, that such of them as shall appeare to have imbrued their hands in English blood should suffer death here, and not be transported into forreigne parts."

Re Negro Sebastian, 5 Mass. Recs. 117, October 1676. "In answer to the petition of Robert Cox, in behalfe of Sebastian, negro, his servant, the [General] Court judgeth it meet to grant the petitioners request, the life of the said Bastian Negro, and orders, that the said Bastian be severely whipt with thirty nine stripes, and allwayes to weare a roape about his neck, to hang doune two Foot, that it may be seene, whilst he is in this jurisdiction, and when ever he is found without his roape, on complaint thereof, to be severely whipt with twenty stripes, and discharging the prison charges, to be releast and dischargd the prison."

Re Indian girl, 5 Mass. Recs. 122, October 1676. "In answer to the petition of Lef't Richard Way, humbly desiring this Courts favour to grant him liberty to Keepe his Indian girle in towne, the [General] Court judgeth it meet to grant this petition."

Re Negro Jethro, 5 Plym. Col. Recs. 216, November 1676. "In reference unto a negro named Jethro, taken prisoner by the Indians, and re-taken againe by our army, which said negro appertained to the estate of the successors of Captaine Willett, deceased, our Generall Court have agreed with Mr John Saffin, adminnestrator of the said estate, mutually, that the said negro doe forthwith betake himselfe to his former service, and to remaine a servant unto the successors of the said Captaine Willett, untill two yeers be expired from the date heerof, and then to be freed and sett att libertie from his said service, provided, alsoe, that during the said tearme of two yeers, they doe find him meat, drinke, and apparrell fitting for one in his degree and calling, and att the end of his said service, that hee goe forth competently provided for in reference to apparrell."

Will of Walter Briggs, 6 Plym. Col. Recs. 135, January 1677. "I will that my executor allow my said wife a gentle horse . . . to ride . . . and that Jemy, the neger, catch it for her. Also, I will my said wife, Mariah,

¹ Synonymous with "to be transported and sold." *Ibid.*

² See *Re Mannapaugh*, p. 472, *supra*.

the little neger gerle, to be with her so long as my wife lives, provided she continue at Conihassett." Proved June, 1684, before the General Court.

Re Indian Popanooie, 5 Plym. Col. Recs. 243, July 1677. "Wheras Phillip . . . and other sachems . . . [244] have lately broken covenant with the English, and they and their people have likewise broken out in open rebellion . . . among which said rebels an Indian named Popanooie is found to be one, who . . . is found to be very active in the great crewelty . . . acted upon severall of the inhabitants . . . of Dartmouth, . . . after due examination had of the premises, this Court doth heerby condemne and centance him, . . . and his wife and children, to perpetuall servitude, they likewise being found coepartenor with him in the said rebellion, and particularly that hee, the said Popanooie, is to be sold and sent out of the country."

Re Indian slaves, 5 Plym. Col. Recs. 270, November 1678. "These may certify. . . that certaine Indians,¹ liveing in or neare Sandwich, . . . being apprehended, and on their confession convict of felloniously breakeing open a house, and the chest of Zacheriah Allin, . . . and . . . stealeing . . . twenty five pounds in mony, they haveing lost or imbezelled the said mony, and noe other way appeering how hee should be satisfied for his loss . . . the authoritie of this collonie have centanced the above named Indians to be his perpetuall slaves, and . . . heerby doe authorise . . . him . . . to make sale of them . . . to any Christian person or persons in New England or elsewhere, as his lawfull slaves for tearme of their naturall life."²

Re Indians, 6 Plym. Col. Recs. 14, June 1679. "In reference unto severall Indians bought by Jonathan Hatch of Captain Church, the brothers of the woman, desireing shee might be released, appeered in Court with the said Jonathan Hatch, and came to composition with her [*sic*, him] for the freedom of both her and her husband, which are two of the three Indians above named; and her brothers payed on that accoumpt the summe of three pounds silver mony of New England, and have engaged to pay three pounds more in the same specue, and then the said man and woman are to be released; and for the third of the said Indians, it being younge, the [General] Court have ordered, that it shall abide with the said Jonathan Hatch untill it attaines the age of 24 years, and then to be released for ever."

Re Indian Joseph Peter, 6 Plym. Col. Recs. 32, March 1680. "In reference unto an Indian called Joseph Peter, whoe was committed to prison att Plymouth for stealing a hyde from John Gorum, hee expressing himselfe pensive for his said fact, and promiseing reformation, was released from bodily punishment; but for satisfaction for two debts, the one which

¹ Three in number.

² "It is ordered by the Court, that in case Zacheriah Allin can not sell them, that this record shalbe extant against them, . . . that if ever they be taken faulty in like respect, that then they shalbe forthwith sold out of the country." *Id.*

hee oweth to Mr. Barnabas Laythorpe, which is 5 *ll* 13 *s* 2 *d*, and for the answaring of the other debt, which is 03 16 06, hee is ordered by the Court to be and abide with the said Barnabas Laythorp and John Gorum, or such as they shall order him to be with, as their servant, for the full terme of two yeers from the date heerof, and not to absent himselfe at any time from their said service, by night or by day, without a tikett from one of them; and incase hee shall absent himselfe, hee shall pay four dayes worke for one."

Re Indian Samuel, 6 Plym. Col. Recs. 65, July 1681. "Att this Court it was ordered that Isacke, Indian majestrate att Saconett and places adjacent, doe send or cause to be sent an Indian youth named Samuell, the son of Wanwaneame, a prenteece to the widdow of John Tucker, of late of Martins Viniyard, unto Steven Skiffe, of Sandwich, to be sent by him to said widdow; or that the said Isacke doe pay or give sufficient securitie to pay the said widdow, or said Skiffe in her behalfe, the full summe of eight pounds in mony, four pounds the last of October next, and other four pound the first of March next, which is according to his owne proposall."

Re Indian Isacke Tetatan, 7 Plym. Col. Recs. 237, July 1681. "William Randall . . . complaineth against Isacke Tetatan, an Indian, resedent in . . . Barnstable, . . . [238] for the payment of . . . three pound this Court have delivered the said Isacke Tetatan in execution to John Allin, of Barnstable, by the consent of the said William Randall, and Isacke Tetatan, to live and faithfully serve . . . from the eleventh of this instant July untill the last day of November next"

Re Indians, 6 Plym. Col. Recs. 81, March 1682. "It is ordered by the Court, that Sam Bab and John Mohauke, two Indians . . . that are now convicted of feloniously takeing the estate from John Williams, of Scittuate, and charges ariseing therupon, . . . serve the said John Williams or his assignes the full time of four monthes, each of them, . . . and then to depart from Scittuate,"

Re Indian Sam, 6 Plym. Col. Recs. 98, October 1682. "Sam, the Indian, . . . for his rape committed upon an English gerle, being found guilty by the jury, who found him guilty by his owne confession, . . . although in an ordinary consideration hee deserved death, yett considering hee was but an Indian, and therefore in an incapacity to know the horiblenes of the wickednes of this abominable act, with other cercumstances considered, hee was centanced by the Court to be severly whipt att the post and sent out of country. John, an other Indian, for his incorrigible theft the second time, in robing of a barke and other theft, was centanced . . . to be sent out of the country."

Re Indian Gorge Partrich, 6 Plym. Col. Recs. 104, March 1683. "Wheras Captain John Williams did . . . obtaine an execution . . . for fifty six shillings against Gorge Partrich, Indian, sundry goods stollen away from said Williams, and damage don him, and assisting an Indian

squa, servant to said Williams, from under which execution said Partrich made an escape, and since committed sundry misdemeanors, as swearing, assaulting, threatening to kill the said Captaine Williams, for which being imprisoned, and brought to answer for said misdemeanors, and being found convict thereof, was by this Court centanced to be whipt, and warned not to come any more att Scittuate as hee would answer the contrary att his perill, and alsoe ordered him to pay to the said Captain Williams the said fifty shillin[g]s mentioned in the said execution, and twenty shillings more to said Captain Williams for his charge, trouble, and damage respecting the said misdemeanors, and twenty shillings to the Scittuate constables for their charges, and eleven shillings to the under marshall for his fees, amounting all to five pounds and seven shillings in silver mony; and whereas for the payment wherof Mr William Clarke oblided himselfe, and on request of said Gorge Partrich hath payed the said monyes, hee, the said Partrich, Indian, did promise well and faithfully to serve the said William Clarke from the date heerof untill the latter end of October next come twelve month, this Court doth therefore impower the said William Clarke to retaine the said Indian, Gorge Partrich, as his servant during the said tearme aforsaid, whoe is to find his said servant with meat, drink, and apparrell, sutable for him, and doe heerby order and require the said Indian, Gorge, to doe his master, Mr William Clarke, and his assignes, true and faithfull service, and his lawfull commands every where to doe, and from his said masters service not to absent himselfe by night nor day without lycence from his said master the whole tearm aforsaid."

Re Indian James, 6 Plym. Col. Recs. 101, June 1683. "In reference to an Indian named James, now liveing att Swansey with Mr Anthony Loe, whoe was out in the rebellion, and hath often soliseted the Court for his freedom, this [General] Court have ordered, that the Tusday after March Court hee shalbe free, except Mr. Loe doe appeer, or some one for him, att the said Court, to give satisfying reason to the contrary; and the Court orders, that when hee goes away from his said master, that hee shall give him a good suite of clothes."

Re Indian Joseph Peter, 6 Plym. Col. Recs. 108, June 1683. "an Indian named Joseph Peter, haveing bin sometime in durance, was presented before the [General] Court for stealing thirteen or fourteen pound in mony and a parte of a rundlett of liquor from Robert Parker, of Barnstable, on the Lords day, being alsoe convicted of acts of like nature rendering him a common theife and incorrigable, is centanced by the Court to be sold out of the country; and the charges of his imprisonment, etc, being defrayed, the resedew of prise to be delivered to the said Robert Parker."

Re Indian Imdah, 6 Plym. Col. Recs. 116, November 1683. "Imdah, an Indian, for thevery att divers places att severall times, and goeing on therein in an incorrigable way, is centanced by the Court to be sent out of the country, and incase hee doe att any time come any more into this colonie, that hee shalbe taken and ymediately brand marked, soe as hee may therby be knowne."

Re Robert Trayes, negro, 6 Plym. Col. Recs. 141, July 1684. "Bill of indictment: You, Robert Trayes, negro, are indicted . . . for that you . . . did, on the last day of March last, . . . fire of a gun att the dore of Richard Standlake, therby wounding and shattering the legg of Daniell Standlake, of Scittuate, of which wound, and cutting of his legg occasioned therby, died;" "The verdict of the grand jury is, *Bella vera*. . . [142] The Petty Juryes . . . Verdict. . . Wee find him an instrument of the death of Daniell Standlake by misadventure. The Court approved the verdict; and the negro . . . was cleared, with admonition to lay it much to hart that one should lose his life by him, although throw misadventure, onely amerced these fines . . . to pay towards the charge of the lamnes of Daniel Standlake, unto his father, . . . 3 *ll*: 00: 0 And for the negroes wrong that hee hath don in taking away, or being an instrument in taking away, Daniell Standlake out of the world, although by misadventure, is fined . . . 02 *ll*: 00: 0 or to suffer corporall punishment by being whipt."

Re Indian Timothy, 6 Plym. Col. Recs. 152, March 1685. "Timothy, Indian servant to the reverent Mr John Cotton, being complained of for running away from his master some time about November last, which was occasion of considerable charge to his master, losse of time, and many waies to his damage, the Court, on consideration of damage that hee sustained, orders the said Timothy, Indian, to serve his said master or his assignes one yeer more, or besides the tearme hee is bound for by indenture, which yeers service hee willingly offered and promised in open Court for satisfaction to his master."

Re Indian Thomas Wappatucke, 6 Plym. Col. Recs. 153, March 1685. "Thomas Wappatucke, Indian, being found guilty of burglary att October Court last,—It is ordered by the Court, that hee be sold for a perpetuall servant; and it is left to the honored Governor and the worshipful Mr Barnabas Laythorpe to dispose or make sale of the said Indian, and give a bill of sale for them that buy him, and to proportion the mony made of him to them that have received damage by him."¹

Re Freeman, 5 Mass. Recs. 477, May 1685. "Peter Freeman, Indean of Narraganset, having binn a guide to the English army for the colonies under the command of the late Generall Winslow, having donn good service to the country, and whiles his doing that service his daughter was taken and made a slave, the Court judgeth it meete to order the Treasurer of the country to give him two English coates, two paire of stockings, and two paire of shooes, (one for himselfe and one for his wife,) a white shirt, and five shillings in money to carry him home, having spent much time, both now and formerly, to obteyne his recompence; and its left to the major generall to informe himselfe where his said daughter is in

¹ "the South Sea Indians, liveing about Satuite Pond, . . . desire to have confeirmed by this Court to Mr Sheirjashub Bourne . . . [160] a certain neck of barren land . . . with all the meadow on both sides . . . being sold to said . . . Bourn for the redemption of their countryman, Tom Wampetucke, from his being sold out of the country for his misdemeanor," (*ibid.*, 159, 160). The Court confirmed "said parcells of land . . . unto . . . Bourn,"

captivity, and with whome, and to endeavor hir reprisall and freedome, that she may returne to hir Father; and orderd, the secretary to write to Captain Prentice to take order accordingly, and make returne what he doth and cann doe in that respect." (General Court.)

Re Hannah Bonny, 6 Plym. Col. Recs. 177, October 1685. "Hannah Bonny, convict for fornication with John Michell, and also with Nimrod, negro, and haveing a bastard child by said Nimrod, is sentanced to be well whipt. Nimrod, negro, convict for fornication with Hannah Bonny, is sentanced to be severely whipt, and that said Nimrod pay 18 pence per weeke to said Bonny towards the maintenance of said child for a year, if it live soe long; and if he, or his master in his behalfe, neglect to pay the same, the said negro to be putt out to service by the Deputy Governor soe long time, or from time to time, soe as to procure the same."

Re Boomer, 6 Plym. Col. Recs. 178, March 1686. "The jury find the prisoner . . . guilty of the breach of the Kings peace . . . by breaking the Sabboth by sufering his Indian servants to hunt on the Sabboth day."

Re Indian Will, 7 Plym. Col. Recs. 308, November 1690. "Will, Indian servant to Captain John Williams, being accused¹ per Thomas Coleman, of Scituate, for breaking into his cellar . . . and thence stealing out wine, rum, and spice, and at this Court thereof convict, and of sundry other thefts . . . [309] as said Indian confesseth, is sentenced to sit on the gallows, to be branded on the hand with the letter B, and to pay to the persons damnified by his theft five pound money, Court fees, and charge of prosecution, or to be sold for the payment thereof, and to be imprisoned till sentence be performed."

Re Negro James, 11 Acts of the Prov. 413, October 1737. "Order granting the freedom of James, a negro man. A Petition of James a Negroe Man formerly belonging to Samuel Burnel deceased Shewing that whereas upon his former Petition . . . December 1735, Praying to be set free according to the Will of his deceased Master, this Court was pleased to Order that he might have a Writ of Protection for his security till three months after the death of his Mistress, that so he might further apply for his Freedom; that his said Mistress is now dead; and therefore Praying that this Court would now declare him to be absolutely free . . . Read and Accepted; and for as much as it appears. . . that the Petitioners late master . . . by four several Wills . . . had ordered that the Petitioner should be set free from his service after the decease of his mistress. . .

Ordered . . . that the Petitioner James be absolutely manumitted . . . from his servitude and . . . discharged from all Claims . . . from the Administrator or Heirs of . . . Burnell as a servant or as part of said Burnell's estate. Provided security be given . . . to indemnify the town of Boston from any charge that may arise from the Petitioners freedom."

Larkin v. Dwight, 13 Acts of the Prov. 491, July 1745. "A Petition of . . . Dwight . . . shewing that . . . Larkin brought his action against him . . . for fraudulently selling to . . . Larkin a castrated Negroe, and

¹ "At a Court of Assistants held . . . at Plimouth."

Judgement went against the Petitioner, from which he appealed . . . but being delayed on his journey, he did not get to Boston till . . . Judgment was entered up against him . . . praying that he may be allowed a new Trial ”

Oliver v. Sale, Quincy 29, August 1762. “ Oliver sues the Defendant for selling him two free Mulattos for Slaves. . . [31] *Mr. Otis, for Defendant.* I hold in the Case of a Negro, there should be an express Warranty of their Freedom, and that the Rule of Merchandise which obliges the Vendor to answer for what he sells without Warranty is confined to Manufactures . . . which a Man must be supposed to Know the Quality of ; but in this Case it is impossible [as] in most Cases to know whether they are free or not. *Ch. Just.* Is there not as palpable a Fraud, when a Man sells a Negro as a Slave whom he knows to be free, as when he sells a Bag of Feathers and assures them to be Hops? That he Knew them to be free they must prove . . . [32] *Mr. Otis* offered a Deposition ” [n.] “ Lydia Whitaker . . . testifies . . . that she was at the house of Capt. John Sale when Mr Nath’l Brown and Mr John Oliver came to buy two of his negro boys and Capt. Sale told them that he would not sell them for Slaves because he understood they were to be free after some time, and he would only sell his right and title in them, and Mr Oliver said he would run the risk of their ever getting free. . . Sworn before the Court in Oct’r 1761 ” [33] “ the Court directed the Jury to find Defendant Costs.”

Allison v. Cockran, Quincy 94, 1764. “ Trover for a Negro. The Administratrix of one Cockran, (Father-in-Law to the Defendant,) . . . [95] was offered as an Evidence to prove the Sale from Allison to the Father.”

Re Neptune, 21 Acts of the Prov. 115, June 1779. “ John Greenwood . . . about three Years ago his Negro-Man Neptune, aged about Twenty-two Years, entered on board a Privateer . . . which Vessel . . . was taken by one of the British Ships of War, that about one Month since the Ship called the *Blaze-Castle* was taken . . . on board of which was . . . Neptune, who is now in charge of the Commissary of Prisoners of this State, and prays that the said Commissary may be ordered to deliver him said Negro: Resolved . . . Commissary . . . discharge . . . Neptune from his Confinement, that if he chooses he may return to the Service of the said John Greenwood.”

Quork Walker v. Jennison, Proc. Mass. Hist. Soc. 1873-75, 296, September 1781. “ On May 1, 1781, Quork Walker brought an action of trespass against Nathaniel Jennison . . . alleging that the defendant on April 30, 1781, . . . ‘ seized the said Quork and threw him down and struck him . . . with the handle of a whip, and did . . . imprison . . . him’ . . . Jennison pleaded that . . . ‘ one Caldwell, being seised of the said Quork as of her own proper negro slave, was married to . . . said Nathaniel, by means whereof the said Nathaniel . . . became possessed of . . . Quork as of his own proper negro slave,’ . . . The plaintiff replied ‘ that he the said Quork is a free man,’ . . . The jury returned a verdict for the plaintiff for £50

damages, upon which judgment was rendered . . . The defendant appealed to September term 1781 of the Supreme Judicial Court, but, failing to appear . . . was defaulted, and the judgment below affirmed."

Jennison v. Caldwell, Proc. Mass. Hist. Soc. 1873-75, 296, September 1781. "On May 28, 1781, Jennison brought an action of trespass on the case against John Caldwell and Seth Caldwell, alleging that, on April 2, 1781, . . . 'a certain negro man Quarko' was the plaintiff's servant, . . . yet the defendants . . . seduced the said negro man from the . . . service of the plaintiff, and caused . . . him to absent himself . . . and . . . retained . . . the said negro . . . for six weeks, . . . and did . . . rescue out of the plaintiff's hands . . . his said servant, and did hinder . . . him in . . . reducing his said servant to his . . . service . . . upon a trial . . . [Jennison] obtained a verdict and judgment for £25. The defendants appealed to September term 1781 of the Supreme Judicial Court, and . . . [297] were found not guilty, and had, judgment for costs against the plaintiff."

Commonwealth v. Jennison,¹ Proc. Mass. Hist. Soc. 1873-75, 293, April 1783. "Indictment, found September, 1781, vs. Nathaniel Jennison of Barre, for an assault on Quack Walker, and beat with a stick 1st May, 1781, and imprisoned two hours. . . [Testimony for the Commonwealth] *Mr. Caldwell*. The Negro . . . was at work in my field with a team . . . heard a screaming . . . Jennison and several others . . . had got the negro down, young fellow upon the negro, I took him off . . . and told Jennison his master had freed him—and Winslow let him go—wounds in his hands and arms. My brother said always he should be free at 25— . . . *Quack*. I was harrowing. 10 years old when master Caldwell died. Mrs. lived a number of years before she married again. I lived with Dr. Jennison 7 years and ½ after I was 21. My old master said I should be free at 24 or 25. Mistress told me I should be free at 21—said so to Jennison, before and after marriage. Defence. From Zachariah Stone to Caldwell, deceased—Bill of Sale Mingo and Dinah, 1754, and Quaco, 9 months old.² . . . *Mr. Jones*. Quaco lived with Caldwell till he died—appraised at £40—set off to his Mrs. as part of her personal estate. She married Jennison about 1770, and died about 3 years after. *Joshua Winslow*. I was desired by defendant to help him reclaim Quaco." Charge of Cushing, C. J. [294] "Fact proved. Justification that Quack is a slave . . . that Mr. Jennison . . . was entitled to Quack as his property; and therefore he had a right to bring him home when he ran away; . . . And the defendant's counsel also rely on some former laws of the Province, which give countenance to slavery. . . As to the doctrine of slavery and the right of Christians to hold Africans in perpetual servitude, . . . that (it is true) has been heretofore countenanced by the Province Laws

¹ "printed . . . *verbatim* from the note-book" of Chief Justice Cushing.

² "Rutland District, May 4, 1754. Sold this day to Mr. James Caldwell, . . . a certain negro man named Mingo, about twenty years of age, and also one negro wench named Dinah, about nineteen years of age, with her child Quaco, about nine months old: all sound and well: for the sum of one hundred and eight pounds . . . which negroes I . . . warrant and defend against all claims whatsoever. . . Zedekiah Stone" (*ibid.* 297). Judge Sullivan states that "Quock was a slave brought from Africa," Letter to Belknap, 3 Mass. Hist. Coll. (5th ser.) 403.

. . . but nowhere is it expressly enacted. . . It has been a usage . . . But whatever sentiments have formerly prevailed in this particular or slid in upon us by the example of others, a different idea has taken place with the people of America, more favorable to the natural rights of mankind, and to that natural, innate desire of Liberty, with which Heaven (without regard to color, complexion, or shape of noses, features) has inspired all the human race. And upon this ground our Constitution . . . by which the people of this Commonwealth have solemnly bound themselves, sets out with declaring that all men are born free and equal—and that every subject is entitled to liberty, . . . as well as life and property—and in short is totally repugnant to the idea of being born slaves. This being the case, I think the idea of slavery is inconsistent with our own conduct and Constitution; and there can be no such thing as perpetual servitude of a rational creature, unless his liberty is forfeited by some criminal conduct or given up by personal consent or contract.” “Verdict guilty.”¹

Shelburne v. Greenfield, 5 Mass. Hist. Coll. (1st ser.) 46, 1795. “The action was brought by the town of Shelburne against the town of Greenfield, for the support, and to compel the removal, of two paupers [Romulus and Rosana].² These people . . . were Africans, imported and sold as slaves. They were purchased, about . . . 1757, by an inhabitant of Greenfield; claimed their liberty, like other blacks, in 1776, were married together [in 1778], and removed to Shelburne, and there became chargeable as paupers. The merits of the question, was, whether the paupers were chargeable on the commonwealth as state paupers, having gained no . . . settlement in Greenfield? For the town of Greenfield it was argued, that the laws of the late province did not rank the Africans with the white people; they could not, whilst they were the property of others, be capable of holding property as their own: that their polls were not taxable as those of white people; they were not liable to train, labour in mending the highways, or to perform any other civil duty: that they could not be removed, or warned out of town, by the selectmen, because they were but the chattel of another; and therefore . . . that they must come within the description of persons, who were found within the state, without any place of settlement, and were the proper charge of the commonwealth. It was further urged, that, as the Africans were bought and sold, as chattels, under the laws of the late province, and were emancipated by the force of the public opinion, it was enough for the masters to sustain the loss of their service, without being burdened with the support of them. The court gave no opinion on the point, whether the emancipated negroes were to be the charge of the town, or of their late masters; but were of opinion, that they come within the description of servants; and that they therefore gained a settlement, upon the principles of common law, where their masters were settled. Judgment was given, that Shelburne should

¹ He was “fined 40 s. This decision put an end to the idea of slavery in this State.” James Sullivan to Dr. Belknap (3 Mass. Hist. Coll., 5th ser., 403). “James Sullivan was a member of the Convention which framed the Constitution of Massachusetts. Soon after, he was one of the Justices of the Supreme Judicial Court, and took part in the decision of the civil action of *Jennison v. Caldwell* in 1781.” *Ibid.*, p. 403n.

² 2 Dane 412.

recover against Greenfield the charges of the past support of the negroes; and that they should be removed to Greenfield, the place of their last master's inhabitancy. Whether a town, in such case, can call upon the African's last master, is not yet determined by the court."

Inhabitants of Shelburne v. Inhabitants of Greenfield, cited in 13 Mass. 552, 1796. "the children of two negro slaves were considered to have their settlement in the latter town, because their parents had a settlement there under their master; although the parents were married, and their children were born, in Shelburne. But we find no reasons given for that decision; and it cannot therefore weigh against the strong reasons, which offer in favor of a contrary opinion." [Parker, C. J., in 1816.]

Inhabitants of Littleton v. Tuttle, cited in 4 Mass. 128n., October 1796. "an action of *assumpsit* for 7*l.* money expended . . . for the support . . . of Jacob, alias Cato, a negro and a pauper. . . Cato's father, named Scipio, was reputed a negro slave when Cato was born, and, according to the then usage . . . was the property of . . . Chase, an inhabitant of Littleton. Cato's mother, named Violet, was a negro in the same reputed condition, and supposed to be the property of . . . Harwood. Scipio and Violet were lawfully married, and had issue Cato, born in Littleton, January 18th 1773, and was then, in the general opinion a slave, the property of the said Harwood, as the owner of his mother. Harwood, . . . 1779, sold him to the defendant, who retained him . . . until he was 21 years old. He being then a cripple, and unable to labour, the defendant delivered him to the overseers of the poor of Littleton, . . . refusing to make any provision for him: whereupon the overseers expended the money in his maintenance, for which this action was brought. The court stopped the defendant's counsel from replying, and the Chief Justice charged the jury, as the unanimous opinion of the court, that Cato, being born in this country, was born free;¹ and that the defendant was not chargeable for his support after he was 21 years of age. And the jury found a verdict accordingly without going off the stand."

Perkins v. Emerson, 4 Dane 412, November 1799. "In the year 1765, Emerson, an inhabitant of Topsfield, received into his family a negro girl, born in Wenham in 1759, and kept her as a slave till she claimed her freedom in the American revolution, and gave no notice of this to the town. In 1798 she became poor, and Topsfield paid \$34.50 for her support, and sued Emerson on the act of 1736 for the money so paid. Judg-

¹ Chief Justice Parsons expressed himself to the contrary in *Winchendon v. Hatfield*, p. 484, *infra*. See also G. H. Moore, *Notes on the History of Slavery in Massachusetts*, p. 7: "There is an earlier report of this case furnished by James Sullivan, Attorney-General, who was of counsel in the case, for publication in 1798. It is a noticeable fact that he does not state that the judges declared the negro to have been born free." See 5 Mass. Hist. Coll. (1st ser.) 47: "The action was brought by the town of Littleton for the maintenance of a black man, who was born in the town, claimed as a slave, under the laws prior to the revolution, and sold to the defendant by his supposed master, of whose slave he was born. The black man, at the age of twenty-one years, became lame, and unable to labour; and the defendant carried him, and left him with the overseers of the poor, for support. The judges were of opinion, that, as he was born in the town, he was a proper inhabitant; and that the town was obliged to maintain him, as it would have been if he was a white man. Whereupon the plaintiffs became non-suit."

ment for the defendant for costs, and the court held, that from 1765 to 1776 she was Emerson's slave, and not an inmate or boarder, etc., within the act. That she could not be separated from Emerson, her master; so that she could not be warned and carried out of the town of Topsfield; hence it was no purpose for him to have given notice . . . [413] In this case were cited the above act of 1736, and the acts of 1692, 1700; the act of 1703, respecting slaves, and the act of 1707, subjecting free negroes to do certain duties;”

Little v. Barreme, 2 Cranch 170, February 1804. [172] “The rest of the seamen [of the Danish brigantine *Flying Fish*] are Englishmen, Portuguese and Negroes.”

Adams v. Woods, 2 Cranch 336, February 1804. “An action of debt for the penalty of 2000 dollars, under the 2d section of the act of congress of 22d of March, 1794, ‘to prohibit the carrying on the slave trade from the United States to any foreign place or country.’¹ . . . The defendant pleaded, ‘that the cause of action . . . did not accrue within two years next before the date . . . of the writ in this case’ . . . Lincoln, attorney-general, for the plaintiff. . . [338] The legislature could not suppose that the term of two years would be a proper limitation of all penal actions. In the present case it goes to a total annihilation of the penalties of the act. No vessel engaged in the slave trade can ever be subjected to condemnation; for the voyage is always circuitous, and generally takes up more than the two years to perform it. It is generally from the United States to the West-Indies—from thence to Africa—thence back to the West-Indies or South America, and thence home. . . I have lately seen a set of papers sent from our consul in England to the secretary of state, in which orders were given to the captain to go to the West-Indies, and from thence to Africa, and to continue the trade until the vessel should be no longer fit for a voyage.” [342] “The court is of opinion . . . that the issue in law . . . ought to be decided in favour of the defendant.” [Marshall, C. J.]

Commonwealth v. Battis, 1 Mass. 93, October 1804. “The defendant, John Battis, a negro of about twenty years of age, was indicted for the murder of . . . a white girl . . . There was another indictment . . . for committing a rape on the body of the said . . . on the same day, . . . the prisoner . . . pleaded guilty to each. The court informed him . . . that he was under no legal or moral obligation to plead guilty . . . He would not retract his pleas—whereupon the court told him that they would allow him a reasonable time to consider . . . and remanded him to prison. They directed the clerk not to record his pleas, at present. In the afternoon . . . he again pleaded guilty—upon which the court examined, under oath, the sheriff, the gaoler, and the justice (before whom the examination of the prisoner was had previous to his commitment) as to the sanity of the prisoner; and whether there had not been tempering with him, either by promises, persuasions, or hopes of pardon, if he would plead guilty, . . .

¹ Vol. III., p. 22, of this series.

nothing of that kind appearing, the prisoner was again remanded, and the clerk directed to record the plea on both indictments. On the last day of the term . . . [96] the Attorney General . . . moved for sentence—which the Ch. J. delivered in a solemn, affecting and impressive address to the prisoner. The sentence was entered on the indictment for the rape. He has since been executed.”

Martin v. Insurance Co., 2 Mass. 420, March 1807. [421] “ On the 4th of February [1802], the town of Cape Francois [in the West Indies] was plundered and burnt by the negroes,”

Greenwood v. Curtis, 4 Mass. 93, March 1808. “ This was *assumpsit* upon a contract in the following words, viz. ‘ Rio Pongos on the coast of Africa, July 27. 1802. I promise to pay or cause to be paid to the owners . . . of Brig *Hope*, nine four foot slaves, thirty seven prime slaves, and seventy six bars on demand for value received of Capt. Hichborn. Benja. Curtis.’ The first count alledges, that prior to the date of the foregoing . . . the plaintiff had become the owner of the brig *Hope* and her cargo, . . . that . . . Hichborn was master of said brig: . . . a new count . . . alledges a settlement of accounts . . . and a balance found in bars, equal to 4481 dollars 1 cent, due from Curtis to the plaintiff. The action was tried at the last November term, before Parker, J. from whose report . . . the following facts appear. . . The defence, principally relied on, was that the contract declared or was in violation of the principles of the constitution and laws of the state, and of the United States, and therefore no action could be maintained on it in the courts of the Commonwealth. The judge directed the jury to that effect; and further that the plaintiff could not recover upon the *insimul computassent*, because . . . the note . . . was given in extinguishment of that balance, which note was not void, although payment of it could not be enforced by the laws of this Commonwealth. A verdict was returned for the defendant.” Verdict set aside and new trial granted: “ no objection lay to the *insimul computassent*, and that the note given in consideration of it, not being negotiable, could not in law be regarded as a payment of it,”¹

Inhabitants of Winchendon v. Inhabitants of Hatfield, 4 Mass. 123, March 1808. “ a writ of error to the court of Common Pleas for the county of Worcester, brought . . . to reverse a judgment . . . respecting the settlement of a pauper, upon an appeal from the adjudication of a justice of the peace . . . The records of the court below . . . was . . . ‘ Worcester, . . . December, 1806. The town of Winchendon, . . . complainants against the town of Hatfield, setting forth . . . that Edom London, a negro man, now resident in . . . Winchendon, is poor and become chargeable to said town, and that the said town of Hatfield is the place of his lawful settlement, . . . The facts . . . are, that . . . Edom, in . . . 1757, was the proper estate of . . . Bond, and then by him sold to . . . Williams of Weston; . . . 1760, and after the decease of . . . Williams, said Edom was set off as the estate of said Williams to the wife of . . . Partridge of Hat-

¹ See same *v. same*, p. 489, *infra*.

field, who was the daughter of said deceased, . . . and then went to live with . . . Partridge, in . . . Hatfield, and continued his servant until . . . 1767, at which time he was sold . . . to . . . Ingersoll, Esq. of Westfield, . . . and continued with him about three years; was then sold . . . to . . . M'Cluster of Longmeadow, lived with him a few weeks; was then sold . . . to . . . [124] Holcomb, of Simsbury in Connecticut, and lived with him about four years; then was sold . . . to . . . Bond, of Lincoln, and lived with him a short time; was then sold . . . to . . . Cowdin, of Fitchburg, and lived with him three or four years; was then sold . . . to . . . Stimson, of Winchendon; and the day following he absconded [*sic*] and enlisted in the eight months' service in Cambridge, and before the expiration of said eight months' service, and in the year 1775, was sold by . . . Stimson to . . . Sawyer, of Winchendon, with whom he lived some time; then he was sold . . . to . . . Goodridge, of the same Winchendon, in . . . July, 1776, with whom he lived about five weeks; then he enlisted into the three years' service, and the said Goodridge received the whole of his county, and part of his wages.

“ The Court of Common Pleas affirmed the judgment of the justice, and adjudged that the lawful settlement of the said Edom London was not in the town of Hatfield. Upon the general issue pleaded of *in nullo est erratum* the cause was shortly spoken to at the last September term . . . Upham for the plaintiffs in error . . . relied on the pauper's residence in Hatfield more than a year prior to . . . 1767,¹ without being warned to depart pursuant to the laws then existing, whereby he gained a settlement in that town, . . . the facts show no settlement gained since the pauper left Hatfield. He is then yet settled there, unless his being a slave makes a difference in the case, of which Upham was not aware.”

Judgment affirmed with costs. Parsons, C. J. delivered the opinion of the court: [125] “ Slavery was introduced into this country soon after its first settlement, and was tolerated until the ratification of the present constitution. The slave was the property of his master, subject to his orders and to reasonable correction for misbehaviour, was transferrable like a chattel by gift or sale, and was assets in the hands of his executor or administrator. If the master was guilty of a cruel or unreasonable castigation of his slave, he was liable to be punished for the breach of the peace, . . . [128] And the issue of the female slave, according to the maxim of the civil law, was the property of her master. . . . in an action ² . . . [129]

¹ Prior to Apr. 10, 1767, the act of March 1701 was in force: “ Nor shall any town be obliged to be at charge for the relief . . . of any person residing in such town . . . that are not approved [by the selectmen or by the town] . . . unless such person or persons have continued their residence there by the space of twelve months next before, and have not been warned . . . to depart.” 1 Acts of the Prov. 453. This law was repealed by the act of March 1767: “ That . . . after the tenth day of April next, no person whatsoever, coming to reside . . . within any town in this province, shall gain an inhabitancy . . . by any length of time he . . . may continue there without warning, unless such person shall first have made known his . . . desire to the selectmen thereof, and obtained the approbation of the town, at a general meeting . . . for his dwelling there; nor shall any town be obliged to be at charge for the relief . . . of any person residing in such town . . . that have not been approved as aforesaid.” 4 Acts of the Prov. 912.

² *Contra*, Littleton v. Tuttle, p. 482, *supra*.

tried in Middlesex, . . . 1796, the Chief Justice, in directing the jury, stated as the unanimous opinion of the court, that a negro born in the state before the present constitution was born free, although born of a female slave. It is however very certain that the general practice and common usage has been opposed to this opinion.”¹ [128] “the treatment of slaves was in general mild and humane, and they suffered hardships not greater than hired servants. Slaves were sometimes permitted to enjoy some privileges as a *peculium*, with the profits of which they were enabled to purchase their manumission, and liberty was frequently granted to a faithful slave by the bounty of the master, sometimes in his life,² but more commonly by his last will. Several negroes born in this country of imported slaves demanded their freedom of their masters by suit at law, and obtained it by a judgment of court. The defence of the master was faintly made, for such was the temper of the times, that a restless discontented slave was worth little; and when his freedom was obtained in a course of legal proceedings, the master was not holden for his future support, if he became poor. But in the first action involving the right of the master, which came before the Supreme Judicial Court after the establishment of the constitution, the judges declared that, by virtue of the first article of the declaration of rights, slavery in this state was no more. [129] From this brief view of the state and condition of a slave, it is manifest that the master was obliged to support him, and was entitled to all his services. The slave therefore could not acquire a settlement in his own right. But he might, through age or disease, become useless, when the property of a master who was a pauper. In this case his maintenance would devolve on some town, and some settlement must be assigned to him, to designate the town subject to the burthen. He had consequently a derivative settlement from his master, and whenever the master acquired a new settlement, it was accompanied by the settlement of the slave, who could not be separated from his master.

¹ The following instance supports Chief Justice Parsons' assertion: “Upon reading a Petition of William Brown Son of a Free Man by a Servant Woman, and has been sold as a Slave, and is at present own'd by Mr Andrew Boardman, Setting forth that his said Master will sett him at Liberty and make him free, if this Court will indemnifie him from the Law relating to the Manumission of Negroes, as to maintaining of him in case of Age Disability etc, Praying the Court to indemnifie him: In as much as the Petitioner is a young able bodied Man, and it cannot be suppos'd that he is manumitted by his Master to avoid Charge in supporting him; Ordered that the Prayer of the Petition be granted, And that the Petitioner be deem'd free when sett at Liberty by his Master, Altho no Security be given to Indemnify the Town where he dwells from Charge by him, And in case the Petitioner shall hereafter want a Support, his said Master shall not be oblig'd to be at the charge thereof, Any Law Usage or Custom to the contrary notwithstanding [*sic*].” Passed November 1716. 9 Acts of the Prov. 492.

² Not always to a faithful slave, unless John Saffin's difficulties with his “negro man Adam” colored his recollections; for in his petition to the Legislature in 1703, asking [271] “liberty to Review the Action and Judgment the said Negro hath lately Obtained for his freedom” he declares that “when he lett his farme . . . to . . . Shepard [in 1694] with the said Negro, knowing him to be a Desperate Dangerous Villaine, . . . I Endeavored to Oblige him to his Duty, and thereupon promised his freedom under my hand att the End of the Terme [of seven years] . . . Provided that the said Adam . . . Doe Dureing the Terme . . . goe on Chearfully quietly and Industriously” He claimed that the condition had been broken (*Adam v. Saffin*, 8 Acts of the Prov. 266-271). According to Saffin, Adam had “been at no less than five Superior Courts, and two Inferior Courts seeking to Obteine his freedom.” *Ibid.* 271.

“A reasonable conclusion from these facts is that slaves were not within the ninth and tenth sections of the statute of 12 and 13 Wm. III. c. 10,¹ making the warning out of persons within the year necessary to prevent a settlement; . . . and that slaves are not within the fourth section of the statute of 7 Geo. III. c. 3,² which provides that no settlement shall be gained by residence, as that section extends only to persons, who were competent to gain a settlement by residence, if not warned out. To this construction it is objected that the statute of 2 Anne c. 2³ considers slaves as gaining a settlement by residence, because the master of a manumitted slave must indemnify the town where he lives. The language of this statute⁴ is adapted to the cases, which most frequently, if not always, happened. A practice was prevailing to manumit aged or infirm slaves, to relieve the master from the charge of supporting them. To prevent this practice, the act was passed. The design of it was, to hold the master answerable for the maintenance of the slave, if the manumission was without indemnity. As slaves were rarely, if ever manumitted, until after a long course of service, probably it never happened that they acquired their liberty, until after a year’s residence in the town, in which they were manumitted. And when they became free, they might gain a settlement in their own right by a year’s residence, unless warned. The town wherein they were manumitted, was the proper town to be indemnified, for there only could they acquire a settlement against the will of the inhabitant, as, having lived there a year, they could not be the subject of warning. The law must now be applied to the facts stated. . . the pauper was once the slave of . . . Partridge, living several years with him in Hatfield, where his master was settled. The pauper then acquired a derivative settlement in Hatfield. Afterwards his master Partridge sold him to . . . Ingersoll, . . . settled in Westfield. There he lived several years with his new master; and there he lost his settlement in Hatfield, by gaining a new derivative settlement in Westfield. . . Having lost his settlement in Hatfield and not having regained a new settlement there, the defendants in error are not liable for his maintenance:”

Inhabitants of Dighton v. Inhabitants of Freetown, 4 Mass. 539, October 1808. “writ of error . . . brought to reverse a judgment . . . by which the settlement of Dinah Walker, a pauper was determined to be in Dighton. . . [540] Dinah was more than twenty years since lawfully married to one Pomp Walker, a black man, who had formerly been a servant to Col. Elnathan Walker, deceased, and was appraised at fifty dollars as part of the personal estate . . . lived with the administrator . . . in Taunton, until 1779, when he was discharged from any further claims of the administrator for his services, and returned into . . . Dighton, and was married . . . and continued to reside there until his death: that the overseers of the poor of Dighton, . . . 1805, gave notice . . . to the overseers of the poor of Freetown, that . . . Dinah had become chargeable to

¹ Act of March 1701, 1 Acts of the Prov. 453.

² Act of March 1767, 4 *ibid.* 912.

³ Act of July 1703, 1 *ibid.* 519.

⁴ Act of July 1703, 1 *ibid.* 520.

the town of Dighton, and requested them to remove her to Freetown, and pay the expence that had accrued to Dighton for her support, to which notice the overseers of Freetown gave no answer” Judgment reversed with costs: “It does not appear in what town Pomp’s former master had his settlement; nor whether Dinah was in fact free or a reputed slave. She must therefore be considered by us as free when married; . . . Pomp being . . . a reputed slave until 1779, he was settled in the same town with his master, deriving his settlement from him, . . . at his decease inter-state [he] . . . [541] as the personal estate of the deceased became the property of Peter Walker the administrator, and acquired the settlement of his new master, which was in Taunton; and there he lived with, and served him until 1779, when he became free by the manumission granted by his master. He then returned to Dighton and married . . . Dinah. As a settlement in Dighton could not then be gained by residence, Pomp’s settlement remained in Taunton, and in the same town Dinah acquired a derivative settlement with her husband. Had Dinah been a slave . . . it would have deserved further consideration, before it had been decided that she gained a new derivative settlement by her marriage. . . . So if Pomp . . . had been a slave when he married Dinah, it might well have been questioned if she had gained a new settlement with an husband, who being the property of another had no claim to the service of the wife; nor would she have had any claim on her husband for maintenance.” [Parsons, C. J.]

Inhabitants of Salem v. Inhabitants of Hamilton, 4 Mass. 676, November 1808. “an action . . . to recover . . . the expences incurred by the plaintiffs in the support of Scipio Freeman and Rose his wife, . . . [677] Scipio, an African negro, now more than seventy years of age, was brought into Salem, when of the age of seven years, and was there sold as a slave to Samuel Lummas, and continued with him until his death in 1744; that he then became the property of his only son . . . John . . . that both the father and son resided . . . in that part of Ipswich, which now constitutes the town of Hamilton . . . until . . . 1770, when John Lummas purchased a farm in the other part of Ipswich, on which he resided until . . . 1787. In 1775 . . . Scipio deserted from his master, and became a soldier in the American army for a short time, when he was reclaimed by his master, who transferred him to T. P. of Wenham, with whom he continued for several years, until for a consideration in money paid to T. P. who promised him his freedom, he again enlisted in the American army as a soldier for . . . Wenham. In . . . 1780, an informal marriage took place between him and Rose, and they have ever since lived together as man and wife.” [676] “a verdict taken for the defendants, subject to the opinion of the court,” Judgment entered upon the verdict: [677] “Scipio was in 1770 the reputed slave of John Lummas, living with him in Ipswich, and in that part of it not included within the limits of Hamilton, Scipio was therefore . . . settled in Ipswich, . . . Before the incorporation of Hamilton he had left Ipswich, and was considered as a freeman.” [Parsons, C. J.]

Greenwood v. Curtis, 6 Mass. 358, March 1810.¹ [359] “the action was tried, November term, 1808, before the chief justice, and a verdict found for the plaintiff by consent of the parties, subject to the opinion of the court upon the following case agreed. On the 29th of January, 1802, the said brigantine was at sea, bound on a voyage from Charleston, . . . South Carolina to the coast of Africa, . . . laden with a cargo, the plaintiff’s property, . . . the plaintiff being . . . an inhabitant of Charleston;— and the cargo was to be sold on that coast on his account for slaves, to be thence transported to Charleston; . . . and the cargo was . . . sold on barter and on credit, for one hundred and fifteen slaves, by . . . Hichborn to the defendant, who then did, and for several years before had resided there as a factor, . . . Hichborn died on the coast, and . . . Delaney was appointed master . . . who received on board a number of slaves in part payment . . . and on the 27th of July, 1802, . . . the defendant stated an account, . . . in which Hichborn was debited for the advances made to him, and for fifty-nine slaves delivered to Delaney, and in which the defendant charged himself with the balance of 6056 bars [equal in value to 4481 dollars 41 cents], which account he signed, and on the same day he also signed a promissory note of the following tenor: . . . [360] ‘I promise to pay . . . to the owners . . . of the . . . *Hope*, nine four foot slaves, thirty-seven prime slaves and seventy-six bars on demand, for value received . . . Benjamin Curtis.’ . . . the said account and note were parts of the same transaction;” Judgment according to verdict: [371] “the plaintiff cannot recover, both on the note and on the account. If there be no illegality attached to this transaction, the plaintiff may recover on either, . . . [375] The . . . objection, that no action upon either . . . can be maintained in this state, is principally relied on by the defendant. . . [376] The slave trade, . . . [his counsel] has argued, is . . . prohibited by a statute of the commonwealth, in the preamble of which it has been declared to be an unrighteous commerce; . . . This objection deserves much consideration. By the common law, upon principles of national comity, a contract made in a foreign place, and to be there executed, if valid by the laws of that place, may be a legitimate ground of action in the courts of this state; although such contract . . . [377] may be prohibited to our citizens. . . [378] subject to two exceptions. . . when the commonwealth or its citizens may be injured . . . when the giving of legal effect to the contract would exhibit to the citizens . . . an example pernicious and detestable. . . [379] founded on moral turpitude, in respect either of the consideration or the stipulation. . . In South Carolina it was lawful to purchase slaves on the coast of Africa, and to import them . . . into that state. And it does not appear that this purchase . . . was unlawful at Rio Pongos. . . To maintain the action, if it be not within the exceptions, is enjoined on us by the comity we owe another state. . . [380] We do not perceive any injury, that could arise to the . . . interests of this state . . . if either of the contracts had been faithfully executed . . . The defendant therefore . . . must . . . shew that the action, as considered by the laws of

¹ See same *v. same*, p. 484, *supra*.

this commonwealth, is a *turpis causa*, . . . This objection may apply to the counts on the note, but not to the count on the *insimul computassent*. . . [381] The consideration of the implied promise . . . is the sale of the cargo, which involves no moral turpitude; neither is the performance of the promise by paying the balance in cash immoral." [Parsons, C. J.] Sedgwick, J. dissented [362n.-378n.]

Inhabitants of Medway v. Inhabitants of Natick, 7 Mass. 88, October 1810. "*Assumpsit* for monies expended . . . in the support . . . of . . . Roba Vickons, a pauper, alleged by the plaintiffs, to have had her legal settlement in Natick, and a child of the said Roba. . . The pauper is the daughter of Ishmael Coffee, of Medway.—The said Ishmael is half black and half white.—His wife, who is the mother of Roba, . . . is a white woman: . . . Roba was married to . . . Vicksons of Natick, a white person, . . . 1789, by the Rev. Stephen Badger . . . Roba, and her child . . . are residing in Medway, . . . If . . . it should be the opinion of the court that the said Roba is a *mulatto*, within the meaning of the 'Act for the more orderly consummation of marriages,'¹ and that the said act, so far as it relates to a prohibition of marriage between a white person and a *mulatto*, and declaring the same to be . . . void, is constitutional, then the plaintiffs agree to become nonsuit.—But if the court should be of opinion that . . . Roba is not a *mulatto*, or that the said act . . . is unconstitutional, then the defendants agree to be defaulted," Defendants defaulted: [89] "It is our unanimous opinion, that a *mulatto* is a person begotten between a white and a black. . . The pauper's father . . . was a *mulatto*, and her mother was a white woman. The pauper is then not a *mulatto*."

Lord v. Dall, 12 Mass. 115, March 1815. "*Assumpsit* on a policy of assurance, made for 5000 dollars in favour of the plaintiff upon the life of Jabez Lord her brother, aged thirty-three years, bound on a voyage to South-America, or any other place he might proceed to from Boston, commencing the risk . . . December 1809 and to continue until . . . July 1810 . . . Jabez had died on the coast of Africa, . . . Jabez sailed from Boston, . . . to Fayal, as supercargo of . . . the *Mount Aetna*, at which place she was converted into a Portuguese vessel called the *Vincidero*, still belonging to her former owners, but sailing with Portuguese papers and under Portuguese colours. From Fayal the vessel sailed to Madeira, and from thence to the coast of Africa, for the purpose of procuring slaves, with intention to carry them to South-America: . . . [116] Jabez acting as supercargo, and having purchased some of the slaves himself. . . It was not made certain, whether . . . Jabez originally designed to go to the coast of Africa. . . The question . . . reserved . . . was whether the actual going upon a voyage for the purposes aforesaid . . . avoids the policy. . . there was no evidence that the plaintiff knew where . . . Jabez was bound." Judgment entered on the verdict for the plaintiff: [120] "Perceiving nothing in this contract unfriendly to the morals or interests of the community; and no knowledge of an illegal intention being imputed to the plaintiff;" [Parker, C. J.]

¹ Stat. at L. 1786, ch. 3, sect. 7.

Sawyer v. Insurance Co., 12 Mass. 291, May 1815. "on arriving in sight of Port au Prince [April 1812] he [the master of the brig *Lydia*] was hailed by an armed brig belonging to the king of Hayti, . . . [292] The king of Hayti and all his officers were blacks, except his majesty's interpreter, who was a mulatto. . . The defendants produced a copy of the condemnation,"¹

Dunbar v. Mitchell, 12 Mass. 373, July 1815. "one James, a native Indian or aboriginal, was formerly seized of the land demanded, . . he died . . leaving . . a daughter named Hannah, . . the mother of the demandant; . . Hannah having been lawfully married to one Dunbar, . . Dunbar was a negro or mulatto, and . . Hannah was an Indian of the whole blood."

Inhabitants of Stockbridge v. Inhabitants of West-Stockbridge, 12 Mass. 400, September 1815. "assumpsit for expenses incurred . . in support of one Frank Duncan, a pauper, . . Williams . . previous to . . August 1770, being the owner of a forge and being in want of a bloomer to assist in working the same, he heard of a black man, who was a slave and said to be a good workman, then living with his master in New-Jersey. Having conscientious objections against holding a slave, the witness purchased the time of the slave for ten years, for which he paid the master 100 *l.* New-Jersey currency. He brought the man . . the pauper above named, to West-Stockbridge and he continued in the service of the witness, until he was fully paid and satisfied for the money he had advanced for his services" Plaintiffs nonsuit: [402] "it has been inferred by the counsel for the plaintiffs . . that the pauper became the slave of Williams, and through him gained a derivative settlement in West-Stockbridge.—But . . we think it repugnant to the terms of the contract, and the obvious intention of the parties, . . Williams . . expressly denies that he purchased the pauper, or held him as a slave. He considered him as a servant, but not as in a state of slavery. He treated him a[s] such; nor could he by any reasonable construction of the contract, legally treat him otherwise. The property in the slave remained unaltered by the contract: unless it may be considered as amounting to a manumission. Certainly the property was not transferred to Williams against his will, and his conscientious scruples, as expressed to the master, when he made the contract." [Wilde, J.]²

Locke v. Swan, 13 Mass. 76, March 1816. [77] "a return cargo was made up, consisting of gold dust and various other productions of the country [Africa] . . 1812 . . [the brig] was captured . . by the British frigate . . and was carried to Halifax. The defendant [who had hired the brig] was permitted to be on shore on his parole, a mulatto servant of his being the only one of the original crew remaining on board. While the brig lay at Halifax, the defendant, with the aid of the . . mu-

¹ "Henry . . first crowned monarch of the new world, . . etc. . . [293n.] Thus judged . . in Court, in presence of M. the king's procurer, by us, counsellor, seneschal, civil, criminal and police judge, performing the functions of judge of the admiralty, in the absence of the Titulaire."

² See same *v.* same, pp. 492, 494, *infra*.

latto, succeeded in secreting and getting into his possession gold dust to the value of 4000 dollars ;”

Caesar v. Bradford, 13 Mass. 169, March 1816. “Caesar entered his action against Ingraham, and . . . 1812 . . . recovered judgment for 309 dollars 50 cents damage and costs.”

Emerson v. Howland, 8 Fed. Cas. 634 (1 Mason 45), May 1816. Emerson, “being owner of a slave, called Ned, at Norfolk, in Virginia, on the 2d of March, 1811, shipped him as a mariner, at the monthly wages of \$22.00 on board of the *Ann Alexander*, Kempton master, on a voyage from Norfolk to Liverpool, . . . the ship . . . sailed from thence for Archangel, and while on the voyage . . . was captured by a Danish cutter, and carried into Drontheim, in Norway, for adjudication. . . . About ten days before the restoration, Captain Kempton discharged all his crew, . . . Ned received his discharge at the same time . . . and Captain Kempton gave him a due bill for the amount of his wages up to that time [September 1812], and also a letter to his master,” in which he says: [635] “Ned has behaved himself extraordinary well, while on board, and has discharged every duty with propriety. I have had the misfortune to be taken by the Danes, . . . and am under the necessity of discharging your servant Ned.” [634] “Ned went immediately on board of the barque *Fredrick*, Coffin master, then bound to London, under an engagement to work for his passage without wages. Captain Kempton stated to Captain Coffin, that Ned was a slave; and requested him, on his arrival in London, to procure him a passage to the United States, and to assist him in this object he gave him £5 sterling. The barque proceeded to London, and on his arrival there, about the 1st of November, 1812, Captain Coffin procured a passage for Ned in a cartel, then bound to New York; and gave him the £5 to enable him to proceed from New York to Norfolk. . . . The cartel arrived at New York on the 29th of March, 1813; but there was no positive evidence that Ned came home in her, or had ever returned to the United States.”

Inhabitants of Stockbridge v. Inhabitants of West-Stockbridge, 13 Mass. 302, September 1816.¹ “a petition for a review . . . The petitioners set forth . . . that Mr. Williams, whose deposition was used . . . was, at the time of his testifying, a very aged and infirm man, and since that time has died: that since his death, . . . there has been found among his papers, by his executors, a bill of sale of Frank Duncan, . . . by which William Bott of New Jersey, on the second of April 1770, in consideration of 100 *l.* paid him by the said Williams, sold him the said Duncan, then about 25 years of age, to hold to him, his executors, etc. during the natural life of the said Duncan,” “by which it appears that the said Williams testified under a mistake, and that the said Duncan was his slave, and was therefore lawfully settled in . . . W. Stockbridge.” [304] “let the petitioners take their review.”

¹ See same *v.* same, p. 491, *supra*, and p. 494, *infra*.

Inhabitants of Andover v. Inhabitants of Canton, 13 Mass. 547, November 1816. “*assumpsit* for 499 dollars 65 cents, expended in the relief . . . of . . . Lewis Elisha, his wife and four children. . . Lewis Elisha was born in that part of . . . Stoughton which is now Canton, in . . . 1773. His parents were Caesar Elisha and Abigail Moho, who were . . . married in 1769. . . Caesar was, at the time of Lewis’s birth and long before, a negro slave of Charles Wentworth, and so continued till his death in March 1780. . . Wentworth had a legal settlement in that part of Stoughton now Canton, . . . Abigail Moho . . . was the daughter of an Indian father of the Punkapog tribe, whose . . . lands are within the limits of Canton; and her mother was a white woman, but admitted by the guardian of said tribe as one of their number. . . Lewis Elisha left Canton about 1788 or 1789, and never returned. In 1803 he married Hannah Richardson, the daughter of a mulatto father and a white mother, having her settlement before marriage in Andover or Boxford. Before the year 1765 and ever since, the Punkapog tribe . . . have had guardians appointed over them, by the government of the province and commonwealth, . . . On the 7th of November 1763 [1765¹] the general court passed a resolve that Joseph Billings, guardian of the said tribe, be directed to take the same care of the mulatto children of the said tribe, as of the other Indians; and to bind out the said mulatto children as other Indians:” Plaintiffs nonsuit: [549] “There is no doubt that she [Abigail] was a mulatto, within the meaning of the legislative acts, providing for the care of this tribe of Indians and of those who mixed with them. . . [550] As between the years 1767 and 1789 there was no mode of acquiring a new settlement, but by approbation of the inhabitants . . . and as Lewis left Canton in . . . 1789 without ever having obtained such approbation; . . . he has no legal settlement there, unless his *birth* gave it to him, or unless he derived it from his *father*, or his *mother*. . . after the passing of the provincial act of 7 Geo. 3,² . . . 1767, it has been held [that birth gave no settlement] . . . here. . . Did Lewis then derive a settlement in Canton from his father Caesar?—At the time of his birth, Caesar was a slave, and . . . [551] was the property of his master, as much as his ox or his horse: he had no civil rights, but that of protection from cruelty; he could acquire no property, nor dispose of any without the consent of his master. . . he had not the capacity to communicate a civil relation to his children, which he did not enjoy himself, except as the property of his master. . . [553] the foundation of derivative settlements is the right to controul the person; which right could never be enjoyed by one held in absolute slavery.” Lewis’s [551] “mother was free, being the daughter of an Indian and a white woman both of whom were free. . . [552] we think there is no doubt that, at any period of our history, the issue of a slave husband and a free wife would have been declared free. So that Lewis never did become the property of his father’s master; and so did not obtain a settlement through him as a slave. . . [553] Lewis derived no settlement in Canton from his father: and it is equally clear that he could derive none from his mother. For the mother

¹ 18 Acts of the Prov. 69.

² Act of March 1767, 4 Acts of the Prov. 912.

communicates a settlement only to *illegitimate* children. Besides, nothing in the case shows that Abigail Moho . . . was herself lawfully settled in Canton. . . although she might perhaps . . . have left the tribe as her son Lewis did; yet while she continued subject to the regulations established for that tribe, she could not be considered as having any municipal relation to the inhabitants of Canton: . . . [554] The mother of Lewis, therefore, was not settled in Canton, in consequence of living within its limits: nor did Lewis . . . gain a settlement by belonging to the tribe, for the same reasons:” [Parker, C. J.]

Inhabitants of Stockbridge v. Inhabitants of West-Stockbridge, 14 Mass. 257, September 1817. “This action . . . came on again for trial upon a review granted by the court,¹ . . . Williams . . . had given his deposition . . . that he supposed there was a deed or writing between him and the former owner, but had no particular recollection about it. It did not appear that he considered himself bound to restore the slave to his former master, at the end of the ten years. . . [258] Williams died in June 1815, and in . . . October his son . . . accidentally found . . . a bill of sale² from . . . Bott . . . to . . . Williams, of a negro slave called Frank, . . . 1770: . . . in the handwriting of . . . Williams; . . . the owner of the . . . slave was . . . Firman of New York, of whom . . . Bott had hired him; that Firmin [*sic*], at the request of the slave, had written a letter to Bott, requesting him to sell the slave, or find another master for him; that Williams came there to procure a man to work at his furnace . . . and upon Bott’s recommendation Frank consented to go with him, he agreeing with Frank that if he would serve him faithfully for ten years, he would then give him his time, and would also give him a yoke of steers and ten acres of land; saying that he did not keep slaves any longer than till they had earned what he paid for them. . . Frank . . . continued in his service seven years, and paid him *l.* 30 for the other three years . . . which sum he paid out of the wages and bounty given him as a soldier in the army of the United States. . . [259] the judge instructed the jury, that . . . Frank became the slave of . . . Williams; and that his intention or his agreement . . . to give him his time at the end of ten years, upon the condition of his good behaviour . . . would make no difference in the case. A verdict . . . for the plaintiffs,” Judgment on the verdict: [261] “the bill of sale . . . appears to have been a full . . . transfer of the slave for his life. Williams’s scruples . . . made no difference in the character of his property. Nor did his intentions to emancipate him, or his promise to that effect, . . . [262] in any wise affect the nature of his purchase. No contract made with the slave was binding on the master: for the slave could have maintained no action against him, had he failed to fulfil his promise, which was an undertaking, merely voluntary on his part. While Frank continued in Williams’s service, he was to every intent his slave. He had a legal right to keep him in service for life, and in case of his sickness or inability to labour, his master must have supported him at his own expense.” [*Per Curiam.*]

¹ See same *v.* same, pp. 491, 492, *supra*.

² *Id.*

Frith v. Sprague, 14 Mass. 455, November 1817. "Oakman Sprague . . . at Turk's Island, . . . 1808, in consideration that . . . Frith would become bound to the king, as surety for . . . Oakman, in a bond in the penal sum of l. 100 sterling, with condition that the brig *Mars*, of which . . . Oakman was then master, should not carry out of the government of that island any servant or slave, without leave of the master or owner, or person having the charge of the same, . . . in writing, promised to indemnify said Frith, and save him harmless etc. . . the *Mars* did carry a slave from the island without leave . . . Frith was obliged to pay . . . on the 18th of December 1809, 525 dollars to Messrs. Wood and Joel, the owners of the slave." Verdict for the plaintiff. Judgment on the verdict.

Watson v. Inhabitants of Cambridge, 15 Mass. 286, October 1818. "*Assumpsit* for the support of one Venus Whittemore, . . . the plaintiff proved that . . . Venus was ninety years old, and that she was formerly the slave of . . . [287] Whittemore deceased, . . . an inhabitant of Cambridge; . . . The defendants proved that the administrator of . . . Whittemore, in . . . 1793, disposed of . . . Venus at auction to . . . Watson of Cambridge . . . who gave to the said administrator a bond in the penal sum of £200, conditioned to provide for the support . . . of . . . Venus, in raiment and diet, . . . in sickness and health, in a comfortable manner, and at her death to cause her to be decently buried, free of expense to the heirs of . . . Whittemore; . . . Venus was present at the said auction, and refused to go into the family of one of the bidders; that in consequence . . . the auction was suspended for some time; that said Watson, after the auction, said he had undertaken to support . . . Venus during her life; and that he did support her during his life. And the defendants contended that . . . she had a right to recover the money, necessary [for her support] . . . of the administrator of . . . Watson; and so . . . was not a pauper. . . the judge instructed the jury . . . [288] that the evidence adduced by the defendants was not admissible, to prove that . . . Venus had any estate: . . . verdict for the plaintiff, . . . But if, in the opinion of the whole court, the direction of the judge was wrong, the verdict was to be set aside," Judgment on the verdict: [290] "In this bond¹ . . . she had no legal interest, . . . Perhaps the town may be entitled to relief from the estate of Watson, if that is liable on the bond." [Parker, C. J.]

Inhabitants of Lanesborough v. Inhabitants of Westfield, 16 Mass. 74, September 1819. "*Assumpsit* for the support of Lucy Goman and William Hector Goman jun. paupers . . . Plato and Flora his wife, parents of . . . Lucy, were the slaves of . . . [75] Bancroft, an inhabitant legally settled in Westfield, before the revolution: . . . Lucy was born in April 1778, and continued with her . . . parents in the family of . . . Bancroft, until the . . . adoption of the constitution of the commonwealth: that she resided in Westfield until . . . 1803, when she removed to Lanesborough, and has dwelt there ever since: . . . 1804 she was married to . . . Goman, who has never gained a settlement in any town; . . . William H. Goman jun., . . .

¹ [290] "given by . . . Watson . . . in . . . 1793,"

was the legitimate child of the . . . marriage," Plaintiffs nonsuit: "The plaintiffs cannot prevail, unless Lucy Goman derived a settlement in Westfield from her parents, who had their settlement in that town derivatively from Bancroft, . . . it has been before settled that slaves did not communicate civil relations of any sort to their children.¹ . . . By the colonial law of 1646² no bond slavery could exist, except in the case of lawful captives taken in just war, or such as willingly sold themselves, or were sold to the inhabitants.³ Of course, the children of those who were . . . slaves, not coming within the description, could not be held as slaves.⁴ And in the year 1796 it was solemnly and unanimously decided by the court, that the issue of slaves, although born before the adoption of the constitution, were free.⁵ Lucy . . . [76] then did not derive a settlement in Westfield from her parents, nor from their master: nor did she acquire one from birth, that not giving a settlement at the time she was born. She must therefore be *filia reipublicae*, never having gained a settlement in any other town . . . and the issue of her marriage . . . is in like condition," [Parker, C. J.]

Inhabitants of Milford v. Inhabitants of Bellingham, 16 Mass. 108, September 1819. "Assumpsit to recover the expense of supporting Bess Corbett, a negro woman, . . . she was born in the family of the late Dr. Corbett of Bellingham, long before the revolution, and was his slave. The defendants contended that Corbett had given her to his grand-daughter Esther . . . who in . . . 1778 married a Col. Frost of Milford, and that she was taken into his family, and remained there until some years after she became manumitted by the adoption of the constitution of the commonwealth. It was testified by a Mr. Craggin and his wife, that when Bess was six or seven years old, Dr. Corbett requested them to take her and bring her up, so that she might be useful to his said grand-daughter when she should be married, to whom he said he intended to give her. . . . [109] Dr. Corbett also said that he had given each of his daughters one slave, that the one which he had given to Esther's mother he had taken back upon her death, and that he intended this negro girl for Esther in lieu of that [one] . . . Col. Frost . . . came for Bess soon after the marriage, and took her home with him, saying she had been given to his wife by her grandfather. . . . There was some evidence contradictory . . . particularly the deposition of Col. Frost, who denied that Bess ever belonged to him or his wife as a slave. . . . the jury . . . returned a verdict for the defendants:" Judgment on the verdict: [110] "A bill of sale, or other formal instrument, was not necessary to transfer the property in a slave, which was a mere personal chattel, and might pass, as other chattels, by delivery."

¹ *Andover v. Canton*, p. 493, *supra*.

² 1641. The Code of Fundamentals, or Body of Liberties of the Massachusetts Colony in New-England.

³ Ancient Charters 52.

⁴ G. H. Moore maintains the contrary in his *Notes on the History of Slavery in Massachusetts*, p. 11 *et seq.* See also *Mass. Hist. Coll.* (3d ser.), VIII, 231.

⁵ *Littleton v. Tuttle*, p. 482, *supra*. Judge Parker omits to state that Chief Justice Parsons cited *Littleton v. Tuttle*, only to disapprove of the opinion of the court (*ibid.* 129). His disapproval was, however, only an *obiter dictum*.

Inhabitants of Medway v. Inhabitants of Needham, 16 Mass. 157, October 1819. "assumpsit for expenses incurred in the support . . . of Ishmael Coffee and his wife, . . . [158] he was a mulatto, and his supposed wife a white woman: and they were inhabitants . . . of Massachusetts Bay at the time of the supposed marriage, which was previous to . . . 1770. As the laws of the province at that time prohibited all such marriages,¹ they went into . . . Rhode Island, and were there married . . . such a marriage not being then prohibited by the laws thereof. It was objected by the defendants, that this marriage was void in law; . . . But the judge overruled the objection, . . . verdict for the plaintiff" Judgment on the verdict.

U. S. v. La Coste, 26 Fed. Cas. 826 (2 Mason 129), October 1820. Indictment² against Adolphe La Coste "for causing a certain vessel, called the *Science*,³ to sail from the port of New York, for the purpose of procuring negroes . . . from Africa, to be . . . disposed of as slaves." "the defendant was first apprehended and brought into Massachusetts district," Verdict of guilty. [831] "motions for a new trial and in arrest of judgment are overruled,"

U. S. v. Smith, 27 Fed. Cas. 1167 (2 Mason 143), October 1820. See *U. S. v. La Coste*, *supra*.

Commonwealth v. Green, 17 Mass. 515, March 1822, "convicts in the state prison, were indicted . . . for the murder of Billy Williams, a negro and a fellow convict" [551] "An insurrection had taken place among the prisoners. The man . . . was found, beaten and mangled in a cruel manner. The prisoner was seen, with many other convicts, rushing from the place where the murdered man lay, in pursuit of another victim, . . . The prisoner uttered . . . his intentions to wreak his vengeance upon others."

U. S. v. La Jeune Eugenie, 26 Fed. Cas. 832 (2 Mason 409), May 1822. [833] "This was a libel against the schooner *La Jeune Eugenie* [Raibaud and Labatut, claimants] for being engaged in the slave trade." In order to enforce more effectually the acts of Congress against the slave trade⁴ "the public armed schooner *Alligator*, commanded by Robert F. Stockton, Esq. was sent among other vessels to cruise on the coast of Africa early in the year 1821. On the 17th of May last, Captain Stockton fell in with the schooner *La Jeune Eugenie* at Galenas near Cape Mount, on the western coast of Africa, and captured her on the suspicion of her being engaged in the slave trade; she at that time bearing the French flag, and having papers. She was brought, under the charge of a prize master, into the port of Boston, and libelled . . . as an American vessel engaged in the slave trade. . . it appeared from her register that she was owned by Messrs. Raibaud and Labatut, residents at Basseterre in Guadaloupe, but was built in the United States. It also appeared in evidence that she was

¹ Ancient Charters 748.

² "on the second and third sections of the act of 20th of April, 1818, c. 86 [3 Story's Laws 1698; 3 Stat. at L. 450, c. 91], against the slave trade."

³ See facts in *U. S. v. Malebran*, p. 377, *supra*.

⁴ See acts of Congress, Mar. 2, 1807; Apr. 20, 1818, 3 Stat. at L. 450; Mar. 3, 1819, 3 Stat. at L. 532; May 15, 1820, 3 Stat. at L. 600.

fitted out at Basseterre in the month of February, next preceding her capture; sailed from thence, sometime in the same month to St. Thomas, and from thence to the coast of Africa, with the ostensible purpose of procuring palm oil and other products of Africa. Wm. W. M'Kean, a midshipman on board of the *Alligator*, and the prize master, who brought the *Eugenie* into the port of Boston, deposed that the *Eugenie* had a moveable deck, that her main hatchway was very large, and grated with three iron bars, that the water on board was sufficient to supply two hundred men for a month; and her provisions, including rice, enough for her crew for a twelve month. Joseph Dickson, a seaman belonging to the *Alligator*, deposed, that the *Eugenie* had a crew of nineteen persons including boys; some of them Spaniards and some Italians, that she had a large supply of provisions, sufficient for her crew for five months, and a number of handcuffs and fetters. It was also in evidence that there was a surgeon attached to the vessel, and a supply of medicines on board. Henry Henderson, a seaman belonging to another vessel on the coast, which was also captured by the *Alligator* deposed, that he was on shore at a place called the 'Factory' four and a half days, in company with the captain of the *Eugenie*. And that he understood that the *Eugenie* was then after a cargo of slaves. That the captain had then procured twenty or more, and said that he should have all the slaves ready in twenty days; and Henderson further deposed, that he was told by the owner of the Factory, that the captain of the *Eugenie* was to have 250 or 300 slaves; and that he also heard the king's son say the same thing. All the seamen belonging to the crew of the *Eugenie*, who were examined, deposed, that they had no reasons whatever to suppose that the vessel was engaged in the slave trade. A claim was entered by the Chevalier de Valnais, the French consul, on behalf of the owners of the *Eugenie*, and also a protest against the seizure and judicial proceedings, on behalf of the French government. A claim for restoration of the vessel and damages for her seizure and detention was also made by M. Alleye de Billon, the attorney and agent of the owners, Messrs. Raibaud and Labatut." William Sullivan, counsel for the claimants, gives the history of African slavery,¹ and declares: [839] "It is the inefficient attempt at abolition, which is chargeable with these enormities:" "human beings are concealed in casks—and sometimes thrown into the sea" . . . "the narrow space of a small swift-sailing vessel is filled with living men, women and children; shut up, where it is agony to breath;—where the living, the dying, and the dead, are found in the same fetters; . . . No half-way measure can be justified. . . the means should be found of detecting, and punishing those, who stay at home, but who furnish the capital for the traffic, and who are far more guilty, than the brutal agents, whom they employ."

Held: I. [841] "the claimants in this case" must "show the bill of sale, by which they acquired their title, . . . give the names of the American owners; and . . . establish to a reasonable extent, that the transfer was for a valuable consideration." "It cannot be concealed, however hu-

¹ Pp. 836, 837.

miliating the fact may be, that American citizens are, and have been, long engaged in the African slave trade, and that much of its present malignity is owing to the new stimulus administered at their hands. I speak what the records of this court show; what the records of the government show; what is loudly and vehemently complained of by that foreign government, which is so zealously enlisted in the cause of its abolition." II. [847] "I am bound to consider the trade an offence against the universal law of society¹ and in all cases, where it is not protected by a foreign government, to deal with it as an offence carrying with it the penalty of confiscation. . . [849] the *onus probandi* rests on the claimants to establish the legitimate existence of the trade in France; and more especially since her recent declarations in the face of all Europe, that she had caused it to be everywhere abolished."

Decreed: [851] "that the property be delivered over to the consular agent of the king of France, to be dealt with according to his own sense of duty and right." [Story, J.]

The Alexander, 1 Fed. Cas. 362 (3 Mason 175), May 1823. The brig *Alexander* had no slaves on board, and none had been taken on board during the voyage, for transportation.

Held: "every vessel fitted out for the purpose of the slave trade may be truly and accurately said to be employed in that business, and carrying it on, as soon as she has sailed on the voyage. It matters not at what point of the voyage she is captured, her enterprise is the slave trade, and every act done on such a voyage is an act of carrying it on."² [Story, J.]

¹ [845] "What is the fact as to the ordinary, nay, necessary course, of this trade? It begins in corruption, and plunder, and kidnapping. It creates and stimulates unholy wars for the purpose of making captives. It desolates whole villages and provinces for the purpose of seizing the young, the feeble, the defenceless, and the innocent. It breaks down all the ties of parent, and children, and family, and country. It shuts up all sympathy for human suffering and sorrows. It manacles the inoffensive females and the starving infants. It forces the brave to untimely death in defence of their humble homes and firesides, or drives them to despair and self-immolation. It stirs up the worst passions of the human soul, darkening the spirit of revenge, sharpening the greediness of avarice, brutalizing the selfish, envenoming the cruel, famishing the weak, and crushing to death the broken-hearted. This is but the beginning of the evils. Before the unhappy captive arrive at the destined market, where the traffic ends, one quarter part at least in the ordinary course of events perish in cold blood under the inhuman, or thoughtless treatment of their oppressors. Strong as these expressions may seem, and dark as is the colouring of this statement, it is short of the real calamities inflicted by this traffic. All the wars, that have desolated Africa for the last three centuries, have had their origin in the slave trade. The blood of thousands of her miserable children has stained her shores, or quenched the dying embers of her desolated towns, to glut the appetite of slave dealers. The ocean has received in its deep and silent bosom thousands more, who have perished from disease and want during their passage from their native homes to the foreign colonies. I speak not from vague rumours, or idle tales, but from authentic documents, and the known historical details of the traffic,—a traffic, that carries away at least 50,000 persons annually from their homes and their families, and breaks the hearts, and buries the hopes, and extinguishes the happiness of more than double that number. See state papers of congress for 1821; report on the slave trade, February 9, 1821, page 59. 'There is,' as one of the greatest of modern statesmen has declared, 'something of horror in it, that surpasses all the bounds of imagination.' Mr. Pitt's speech on the slave trade, in 1792. It is of this traffic, thus carried on, and necessarily carried on, beginning in lawless wars, and rapine, and kidnapping, and ending in disease, and death, and slavery,—it is of this traffic in the aggregate of its accumulated wrongs, that I would ask, if it be consistent with the law of nations?" [Story, J.]

² Act of 1800, ch. 51. 2 Stat. at L. 70, sect. 1.

Commonwealth v. Griffith, 2 Pickering 11, October 1823. "indictment for an assault and battery and false imprisonment committed on the body of a negro, named Randolph, in . . . [12] New Bedford. . . The defence . . . was, that Randolph was a slave, formerly the property of . . . M'Carty, of . . . Virginia, . . . deceased; Randolph having fled from his service in his life time. . . came to New Bedford four or five years ago, and . . . had a dwelling-house there, . . . The defendant had authority in writing . . . from one Mason, the administrator . . . and as Mason's agent and attorney, to seize . . . Randolph, pursuant to U. S. Laws, 2 Cong. 2 Sess. c. 7, Sect. 3, . . . and to take him before a judge or magistrate, and then remove him to . . . Virginia . . . it . . . was admitted, that by the laws of Massachusetts Randolph did not owe service to any one; and further, that no letters of administration had been granted upon the estate of M'Carty within this commonwealth. The defendant, accompanied by a deputy sheriff, but without any warrant or other legal process, (though it appeared that application had been made by him to the District Judge . . . who had decided that a warrant or other process was not authorized by the act of Congress, and was not necessary, seized Randolph and kept him in confinement for an hour or more, intending to have an examination before a magistrate, pursuant to the act above mentioned. A verdict was taken against the defendant;" Defendant discharged: [18] "a letter of attorney was not required to communicate power to this agent. . . if it was necessary to pursue the slave in the character of administrator, the authorities are clear against the defendant. But by the statute of the United States the person to whom the service is due may reclaim, and by the laws of Virginia an administrator is such person. . . This brings the case to a single point, whether the statute of the United States giving power to seize a slave without a warrant is constitutional. It is difficult in a case like this, for persons who are not inhabitants of slaveholding states, to prevent prejudice from having too strong an effect on their minds. We must reflect, however, that the constitution was made with some states in which it would not occur to the mind whether slaves were property. . . [19] They might have kept aloof from the constitution. That instrument was a compromise. . . The words of it were used out of delicacy, so as not to offend some in the convention whose feelings were abhorrent to slavery; but we there entered into an agreement that slaves should be considered as property. Slavery would still have continued if no constitution had been made. The constitution . . . leaves [the mode of reclaiming a slave] . . . to be determined by Congress. . . It is said that the act . . . is contrary to the amendment of the constitution, securing the people in their persons . . . against seizures . . . without a complaint upon oath. . . It is very obvious that slaves are not parties to the constitution, and the amendment has relation to the parties. But it is said that when a seizure is made, it should be made conformably to our laws. This does not follow . . . Whether the statute is a harsh one, is not for us to determine. . . We do not perceive that the statute is unconstitutional, and we think that the defence is well made out." [Parker, C. J.] Thacher, J. dissented: [20] "I

think it is the intention of the statute that the seizure of a slave here shall be by process of law here." "The Chief Justice then remarked that the construction now given . . . had been adopted ever since the federal constitution went into operation, by Lowell and Davis, justices of the District Court of the United States."

The Marianna Flora, 11 Wheaton 1, February 1826. [11] "the *Alligator* was a public armed ship, belonging to the navy of the United States, and sent out to cruize against pirates and slave traders, under the different acts of Congress passed for the suppression of these offenders."

Commonwealth v. John Robinson and Sophia Robinson, Thach. Cr. Cas. 488, December 1827. The indictment¹ "charged that the defendants, on the 17th day of September, A. D. 1837, at Cambridge, seized . . . a certain female child . . . of five years of age, . . . and kidnapped said child, . . . The following testimony was introduced for the prosecution. Henry Bright. . . About two years since I lived in Mobile. While there, I had a female slave, a very excellent woman, who died, leaving a female infant,² whom my wife has since taken care of as her own. This child was removed to Cambridge with my family, . . . On missing the child [on September 17], I made inquires, and learnt she had been taken to Boston, in a carriage, by Mrs. Robinson. Soon after, I went to some leading abolitionists in Boston, as I supposed the persons who had taken the child must have done so under a mistaken notion. I called on Samuel E. Sewell [*sic*], Esq. with my wife. We stated to him . . . [489] that we had brought the child here to educate; that we had left Mobile with a view to reside here permanently; that the child was very much attached to Mrs. Bright, and she to the child; that we supposed she had been taken from us by the abolitionists, under the impression that she was a slave, and that we were ready to give them entire satisfaction that such was not the fact; that we were willing to give security to any amount that she should never be made a slave, and that we were only actuated by a desire for the good of the child. Mr. Sewall advised us to draw up a paper,³ setting forth the last-mentioned facts. At my request he drew up one; I signed it, and left it with him. The next morning I called on him again. He told me he had seen Mr. Snowden, the colored clergyman; that the latter could probably find the child, but, as the colored people were jealous of those who came from the South, he should like to have a bond from me that the child should never be carried into a slave-holding state. At my suggestion,

¹ Under Rev. Stat. ch. 125, sects. 20, 21.

² [495] "Stephen Burt, formerly Mr. Bright's slave, but emancipated by him, testified that on the day of the death of the child's mother, she gave her to a colored fellow servant by the name of Eleanor."

³ [493] "Boston, Sept. 18, 1837. *To whom it may concern.* A colored child, named Elizabeth, aged about 5 years, having been taken from me, on suspicion of being a slave, I think it proper to declare that I do not claim her as a slave—that when she was brought here, it was with the intention of having her free and so brought up—and though I intend to go to the South and spend this winter, I have no design of taking her back. Mrs. Bright is attached to the child and wishes to bring her up to be a useful woman. I hereby promise never to claim the said Elizabeth as a slave, or to carry or send her to the slaveholding states as one. It may be proper to add, that Mrs. Bright is an immediate abolitionist. HENRY BRIGHT."

he drew a bond, the penalty of which was five hundred dollars.¹ I called the next morning. . . the young man in the office said the colored people would not give up the child. I then went to Mr. Ellis Gray Loring's office, knowing that he was an influential abolitionist. He said . . . that he was satisfied that the child ought to be given up. He said some colored people had called on him; that he would send for them, and let me know the result. I called the next morning on Mr. Loring. After some private conversation between Mr. Loring, Mr. Sewall, and a Mr. Hanson, the latter expressed a desire that the child should be given up, and directed us to call on Mrs. Robinson. I requested a letter from Messrs. Sewall and Loring to her. They gave me one, the substance of which was, that they thought the child ought to be given up, as they did not suppose she would ever be made a slave. I then called on Mrs. Robinson with my wife. Her husband was present a part of the time. I . . . [490] stated . . . that we held it as a free child. She said . . . that she took the child from Cambridge; that she had requested a Mr. Lewis, an aged colored man, at Cambridge, to bring the child to Boston, but he refused to do so; but that he was at my house for a trunk, the morning the child left, and sent the child into the street; that she then took the child and brought it to Boston; that she did not take it on her own account, but at the request of two white ladies; . . . The next morning . . . She . . . directed us to call on the two Misses Parker, in Hayward Place. . . They said they knew nothing of the little girl till the evening before, when Mrs. Robinson told them of her; . . . We stated to them the facts . . . They said immediately, that the child should be restored, and one of them went with me to Mrs. Robinson. We found Mr. Snowden at Mrs. Robinson's house. Mr. Robinson came in soon. Miss Parker advised them to give up the child. Mr. Robinson said he was perfectly willing to do what those benevolent ladies advised. Mr. Snowden remarked . . . [491] that some of the colored people thought the bond was not sufficient; that he had nothing to do with it, but he thought that if the bond was made larger, it would be satisfactory. I answered that I would make the penalty of the bond as large as was deemed reasonable and proper, and that my only desire was the good of the child. Mrs. Robinson still hesitated about giving up the child. . . She said that if we would call at Mr. Ellis Gray Loring's office in the afternoon, we should have a final answer, and that the child would probably be there. We called there and found Mr. and Mrs. Robinson, with several other colored persons there, with Mr. Loring. The child was not there. Mrs. Robinson said, that, notwithstanding the white people wished them to give up the child, the colored people thought differently, and were determined not to give her up, unless there was some law to compel them. Something was said in regard to treatment of the child while in our possession. We answered them she was treated with uncommon kindness, and if they would inquire of our neighbors or domestics, they would be satisfied of

¹ [494] "Boston, Sept. 19, 1837. I further agree and promise Samuel E. Sewall, to pay him the sum of \$500, on demand, in case the said Elizabeth is carried into any one of the slaveholding states by me or through my agency or permission, in consideration of his exerting himself to find and restore the said Elizabeth to my protection. The above sum, if forfeited, I agree that said Sewall may apply for the anti-slavery cause. HENRY BRIGHT."

this fact. I also said, that I was a native of Massachusetts, and my wife of Connecticut, and that our sympathies with northern people were as strong as theirs. Till this time I had pursued the business with patience, supposing their motives were good. I now became excited. I next applied to Charles G. Loring, Esq. for counsel. By his advice I took out letters of guardianship in Middlesex county. . . . I called on the defendants with an officer, and after reading to them the letters of guardianship, I demanded of them the child. At first, Mr. Robinson said, he presumed we could have the satisfaction we wished. When his wife came in, she said she would not give up the child, but would stand a suit, or words to that effect. We had some conversation with a colored woman present, who said she believed the child was out of town. I then applied to Chief Justice Shaw for a writ of *habeas corpus*, but got no relief there. I then brought a civil action, as guardian for the child, against the defendants. Damages were laid at one thousand dollars, and property was attached. This did not have the effect to produce the child, as I supposed it would. I then complained to the grand jury." Ellis Gray Loring testified: [492] "The colored people expressed an entire distrust of Mr. and Mrs. Bright's sincerity, as they were slaveholders. . . . Some of the colored people said the child was ill-used at Mr. Bright's; that there were marks of a bruise on its head, and that her hair had not, from appearance, been combed for a long time. . . . they were not sure that they could restore the child—and another suggestion was, that the slaveholders, with their smooth tongues, could deceive Mr. Sewall and myself, but could not deceive the colored people. The colored people were very much excited, and so were Mr. and Mrs. Bright. . . . [493] Previously, another colored person had told me that there was a child at Cambridge, who was held by a slaveholder, and who would soon be carried into slavery. I was told that the child was permitted to go out of doors. I told the person that if the child was not restrained of her liberty, I doubted if any one could conscientiously take the oath on which to found a writ of *habeas corpus*. They asked what remedy there was. I told them that it was for the child to take its own liberty; that by a late decision in this state, this was the proper course. I was asked by these defendants, if they assisted the child to escape, whether they would be liable. I told them, they might lawfully receive the child, but had best return its clothing. . . . I was told that the child was seven or eight years old. If I had known its real age, (5 years) I should have hesitated at giving the advice I did give. I never supposed Mr. and Mrs. Robinson intended any injury to the child." William Snowden: "I told Mr. Bright . . . that the colored people thought the bond for \$500, too low; that the child might be sold for that sum, and Mr. Bright would not be the loser if he forfeited the bond. Have known defendants several years. Their characters stand high." Mary S. Parker: [494] "Mrs. Robinson applied to me to procure a place for a child whom she supposed to be a slave. I told her I would procure a place. I did procure one, and informed her of the fact. It was understood that she was to send the child to our house, at No. 5, Hayward Place. The child was not sent to us. I next saw Mrs. Robinson at her house. I went there in consequence of an

interview with Mr. Bright. I assured Mrs. Robinson, that I felt a degree of confidence that the child would not be carried into slavery if returned to Mr. Bright. . . Have known Mrs. Robinson several years. Her character is good. . . [495] Mary Ann Whiting, sister of Mrs. Robinson, testified that the child remained at Robinson's till Monday morning, when . . some five or six colored people came to Robinson's house, and rang the bell. She ran up from the kitchen, and the child followed her. Upon opening the door, one of the men asked her if there was a slave child in the house. She said there was. They then asked if the child by her side was the one, and she said it was. The colored people then put on its bonnet, and took her off. The witness tried to hold the child back, but all the others laid hold of the child, and pulled her away. The witness has not seen the child since, but has heard that she was in Salem, and attended a school there. The witness said that all the colored people were entire strangers to her. . . the county attorney stated that Messrs. Sewall and Loring, Dr. Wainwright, Mr. Curtis and himself, had urged the defendants to restore the child, but that they had uniformly declared that the child was removed from their control, and that they did not know where she was. Parker, for the commonwealth. B. R. Curtis, for the defendants." Thacher, J. charged the jury: [496] "Having been brought into this state by her master, she ceased to be a slave, . . it being established law, that the moment that the master carries his slave into a country where domestic slavery is not permitted, he becomes free. . . [497] the supreme judicial court of this commonwealth. . . have gone to the utmost verge of law . . to withhold such a person from slavery. . . Elizabeth Bright . . was free . . and under the highest legal protection, and that she could not be . . carried out of [the state] . . against her will, either by Mr. Bright, who once claimed her as his slave, or by the defendants at the bar. . . [498] the child was happy and contented with its natural protectors, on the day of its abduction. The measures taken by Mr. Bright to recover the child, prove that he acted with humanity, and that he felt a deep interest in its welfare. . . persons came to the house [of the defendants] in their absence and took it away. Now it does not appear, that the defendants expressed surprise at this fact, or were dissatisfied with it, or that they took any pains to recover the child. . . Hence, if this abduction was the effect of a conspiracy, and the defendants were conspirators or accomplices in the act, they are accountable for the offence. . . [499] their former good character is not to avail for their acquittal, although it may speak much in mitigation of their punishment, especially if, by hastening to restore the child, they should acknowledge their fault. . . [500] From the fact, that, from the time the child was taken, to the present moment, it has been kept in secret confinement, away from its natural friends and protectors, and without their knowledge, and that the defendants now refuse to put it under the protection of the law, you must judge of the act done, and of the intent of the actors at the time. . . The jury returned a verdict, that both defendants were guilty of the first¹ and

¹ [488] "that the defendants . . seized and confined and imprisoned a certain female child . . with intent to cause her to be secretly confined . . in this state, against her will;"

second¹ counts, and not guilty on the other.² The defendants were sentenced to imprisonment for four months in the common jail, and to pay a fine of two hundred dollars and costs. The prisoners claimed an appeal, and gave bonds, in one thousand dollars each, to appear before the supreme judicial court."³

Whiting v. Smith, 13 Pickering 364, October 1832. "Action of slander. . . [365] 'she was no more fit to keep school than a whore from Negro hill.'"⁴

Brown v. Thorndike, 15 Pickering 388, March 1834. Thorndike's will, executed 1825: [389] "he directs the trustee . . . 'that he shall not, without the free consent of my . . . wife Mary M. dispose of the estate situate in . . . Maryland, and consisting of land and negro slaves, of which I became possessed upon my marriage with said Mary M., but shall take care . . . to have the said estate so improved as to be productive,' . . . [390] after the execution of the will, . . . Thorndike . . . conveyed away . . . all his right . . . in the estate in Maryland,"

U. S. v. Gibert, 25 Fed. Cas. 1287 (2 Sumner 19), October 1834. In September 1832 pirates captured the brig *Mexican*, owned by Joseph Peabody of Salem. The pirate ship was a Spanish schooner (*Panda*), which sailed from Havana in August 1832, [1293] "bound to Cape Monte, on the coast of Africa, . . . [1315] on a voyage in the slave trade, a voyage prohibited by the Spanish laws and treaties," The pirates left the *Mexican*, after carrying away the treasure and setting the ship on fire. [1289] "the captain contrived to get upon deck, and extinguished the fire . . . Information of what had taken place . . . was . . . disseminated . . . and reached the coast of Africa, where Captain Trotter⁵ . . . was then cruising." He captured the pirate ship, and the English government sent the crew to this country for trial. Story, J. (in summing up the case): [1292] "In regard to Ferrer, the cook, . . . he was a black man, and possibly might be a slave, and no act was proved against him. If he was a slave, he was entitled to a very indulgent consideration, for he could hardly . . . be deemed master of his own will. . . The jury returned a verdict of not guilty in favor of Ferrer, [and four others] . . . and as to the rest of guilty."

U. S. v. Battiste, 24 Fed. Cas. 1042 (2 Sumner 240), October 1835. "Indictment for a capital offence, in being engaged in the transportation of slaves, contrary to the fourth section of the act of May 15, 1820 (chapter 113). . . Battiste sailed from New York, in July, 1834, in the brig *America*, . . . bound to St. Helena or a market, . . . at Nova Redondo . . .

¹ "that the defendants seized the child with intent to hold her to service against her will."

² "that the defendants seized the child with the intent that she should be carried out of the state against her will."

³ [500n.] "This appeal was entered at the March term of the supreme court, 1838; but on the 22d day of October of that year, upon request of Henry Bright, the prosecutor, and upon payment of costs,—the child having been returned to Bright, and the expenses of the civil suit having been large,—the commonwealth's attorney entered a *nolle prosequi*."

⁴ [364] "right from the hill in Boston."

⁵ "He was an officer of the British navy, stationed on the coast of Africa, with directions to use his exertions in suppressing the slave trade."

she received on board twelve negro slaves as passengers. These negroes were brought to the shore hand-cuffed, and chained together, attended by two negroes, a Portuguese and a soldier. Their fetters were then taken off, and they were carried aboard the *America*, without making any resistance. The negroes were young, the youngest being about fourteen years of age." The next day they reached St. Philippe. "The slaves, with some goods, were landed the next morning in one of the boats of the brig's the captain and mate going with them. . . she sailed to Old Benguela, where she took in fourteen negroes, who were also brought in irons to the shore, attended by a crowd of the natives, among whom was a king of the tribe. Battiste again assisted in removing the fetters, and receiving them on board the brig." The negroes were landed at Loando. [1043] "they next sailed to Old Benguela, where they took in wood and fowls; and thence to Nova Redondo for ivory. At St. Philippe . . they took in nineteen negroes, whom they received at the shore in irons; at Old Benguela, in the same manner they received twenty-one more negroes, . . On reaching Loando, they discharged this cargo in two or three boats; . . All were delivered, with the exception of a little girl, taken in at Nova Redondo, who was afterwards brought by Captain Miller to New York," Story, J. to the jury: "Neither the owners nor master of the brig, nor Battiste, nor any of the crew, had any interest or property in these negroes, or in the sale of them. They did not co-operate in making them slaves, or in perpetuating their state of slavery, unless the mere transportation of them . . [1044] is to be deemed such an act." The jury [1046] "found a verdict of not guilty for the prisoner. He was afterwards indicted on the second section of the act of 1800 (chapter 51), . . he received sentence for the offence."

Commonwealth v. Aves, 18 Pickering 193, August 1836. "*Habeas corpus*. On the 17th of August, 1833 [*sic*], upon the petition of Levin H. Harris, of Boston, representing that a colored female child, named Med, of New Orleans, was unlawfully restrained of her liberty by Thomas Aves of Boston; a writ of *habeas corpus* was granted by Wilde J., in vacation, . . Aves states . . that in 1833, Samuel Slater, a citizen . . of Louisiana, purchased the child and its mother . . for his slaves, . . [194] that . . about the first day of May, 1836, . . Mary Slater, the wife of S. Slater and the daughter of Aves, left New Orleans for the purpose of coming to Boston and visiting her father, intending to return to New Orleans and to her husband, . . after an absence of four or five months . . that the mother of the child remained in New Orleans, . . that the child was confided to the custody . . of Aves by Mary Slater . . during the absence of Mary Slater from Boston for a few days . . that this child . . is by force of the laws of Louisiana a natural child; that by the same laws the mother of a natural child is its legal guardian, and that such right of guardianship over the infant children of a slave, where such children are not themselves slaves, devolves upon the owner of their mother; that if this child is, by force of the laws of Massachusetts, now emancipated . . Slater, as the owner of the mother . . is entitled to the custody of the person of the child as its legal guardian, and that Aves is

the agent . . of . . Slater . . that the child is about six years of age and wholly incapable of taking care of itself; . . that no private person or magistrate has, by the laws of Massachusetts, any right to take the child out of the possession of Aves while he continues to use that possession . . [195] only for the purpose of benefiting the child, and only restraining it of its liberty so far as is necessary for its safety and health; . . The case was adjourned into court, and argued before all the judges. B. R. Curtis, for the respondent. . . [200] the grounds on which we distinguish this case from that of *Sommersett* are, that the owner of *Sommersett* was a British subject, resident in Virginia, then a British colony; that the question of national comity did not arise in that case;" Shaw, C. J. delivered the opinion of the court: [208] "by the constitution and laws of this Commonwealth, before the adoption of the constitution of the United States, in 1789, slavery was abolished, as being contrary to the principles of justice, and of nature, and repugnant to the provisions of the declaration of rights, which is a component part of the constitution of the State. . . [209] How, or by what act particularly, slavery was abolished in Massachusetts, whether by the adoption of the opinion in *Sommersett's* case [1771], as a declaration and modification of the common law, or by the Declaration of Independence, or by the constitution of 1780, it is not now very easy to determine, and it is rather a matter of curiosity than of utility; it being agreed on all hands, that if not abolished before, it was so by the declaration of rights. . . [211] But although slavery and the slave trade are deemed contrary to natural right, yet it is settled by the judicial decisions of this country and of England, that it is not contrary to the law of nations. . . [217] though by the laws of a foreign state, meaning . . a state governed by its own laws, . . a person may acquire a property in a slave, such acquisition, being contrary to natural right, and effected by the local law, is dependent upon such local law for its existence and efficacy, and being contrary to the fundamental laws of this State, such general right of property cannot be exercised or recognized here. That, as a general rule, all persons coming within the limits of a state, become subject to all its municipal laws, . . and entitled to the privileges which those laws confer; . . applies as well to blacks as whites, except . . fugitives, . . that if such persons have been slaves, they become free, not so much because any alteration is made in their *status*, . . as because there is no law which will warrant, but there are laws, if they choose to avail themselves of them, which prohibit, their forcible detention or forcible removal. That the law arising from the comity of nations cannot apply; because if it did, it would follow . . [218] that all those persons, who, by force of local laws, . . have acquired slaves as property, might bring their slaves here, and exercise over them the rights . . which an owner of property might exercise, and for any length of time short of acquiring a domicile; that such an application of the law would be wholly repugnant to our laws, entirely inconsistent with our policy and our fundamental principles, and is therefore inadmissible. . . [224] This opinion is not to be considered as extending to the case where the owner of a fugitive slave, having produced a certificate

according to the law of the United States, is *bonâ fide* removing each slave to his own domicil, and . . . passes through a free State; . . . Nor where an owner of a slave in one State is *bonâ fide* removing to another State where slavery is allowed, and in so doing necessarily passes through a free State, or where by accident or necessity he is compelled to touch or land therein, remaining no longer than necessary. Our geographical position exempts us from the probable necessity of considering such a case, . . . [225] The child . . . being of too tender years to have any will or give any consent to be removed, and her mother being a slave and having no will of her own and no power to act for the child, she is necessarily left in the custody of the law. The respondent having claimed the custody of the child, in behalf of Mr. and Mrs. Slater, who claim the right to carry her back to Louisiana, to be held in a state of slavery, we are of opinion that his custody is not . . . a proper and lawful custody. Under a suggestion . . . that a probate guardian would probably be appointed, we shall for the present order the child into temporary custody, to give time for an application to be made to the judge of probate."

Inhabitants of Franklin v. Inhabitants of Dedham, 18 Pickering 544, November 1836. "1763, a warrant was issued for the warning of . . . a negro woman, named Lettis, . . . to depart from the town," of Dedham.

Lazarus v. Insurance Co., 19 Pickering 81, March 1837. "1824, the plaintiff [a resident of Charleston, South Carolina] executed an indenture, whereby he assigns to Timothy Street, of Charleston, all his interest in . . . certain slaves,"

Burbank v. Whitney, 24 Pickering 146, April 1839. Will of the Rev. Jonathan L. Pomroy, of Worthington, "signed in the presence of four witnesses" on Aug. 30, 1832: "To the American Bible Society, to the American Education Society, to the American Colonization Society and to the American Home Missionary Society, I bequeath four thousand dollars, or one thousand dollars to each society," The American Colonization Society [147] "was incorporated . . . by the State of Maryland, on the 24th of February, 1831, for the purpose of colonizing, with their own consent, on the coast of Africa, the people of color residing in the United States."

The Tigris, 23 Fed. Cas. 1220 (3 Law Rep.), February 1841. Libel filed "by H. J. Matson, . . . commander of her Britannic Majesty's brig *Water Witch* . . . against the brig *Tigris*, of Salem, . . . for certain alleged violations, on the coast of Africa, . . . of several statutes of the United States for the suppression of the slave trade;" [1221] "the African boy, found on board the *Tigris* on the coast of Africa, and sent in that vessel to Salem, was committed to the care of the marshall of this district. . . repeated but unsuccessful essays have been made between this country and Great Britain to arrange a mutual modified right of search for the suppression of the slave trade; . . . From the regretted failure of conventional agreement with Great Britain . . . there is reason to apprehend, that vessels of the United States have not infrequently become par-

ticipators in that inhuman traffic. . . The evidences of guilt . . have been so apparent in some instances, that vessels of the United States, bearing the American flag, have been visited, examined and detained by British cruisers on the African coast, and sent to the United States for trial and adjudication. . . [1222] In the present instance, the United States proceeded by complaint against the alleged offenders, brought to Salem in this vessel, . . but the officers of the government . . have instituted no proceedings against the vessel and cargo, and it remains to be determined whether the commander of the *Water Witch* can sustain this libel against the *Tigris* and cargo, or whether he is incapacitated by a wrongful exercise of the right of search." [Davis, J.] Libel dismissed.

Commonwealth v. Elias M. Turner, 3 Metcalf 19, October 1841. Turner and Shearer were jointly indicted for kidnapping an eight-year-old colored boy with intent to send him out of the state and sell him as a slave in Virginia. Both were found guilty by a jury. [20] "There was evidence . . that the two defendants went together, . . from Palmer (where Turner, who is a minor, resided in his father's family) to Shirley, in the county of Middlesex, to the house of one William Little, . . and that on their return to Palmer, they stopped at Worcester and obtained possession of Sidney. There was also evidence . . that the father of Sidney was induced to commit him to Shearer, to live with him as a servant, through the false representations of both the defendants. Those representations, among other things, were, that said Shearer was a resident of the town of Palmer, and had resided there for several years, and had been and still was engaged in the business of trade, keeping a store there, and that the boy, Sidney, was wanted by Shearer to assist him in that store. The boy was taken by Shearer, and after being carried in a wagon to Palmer, with Shearer and Turner, was immediately afterwards transported by Shearer to the State of Virginia, where he (Shearer) resided. . . Turner was a nephew of Shearer; . . Shearer had not resided at Palmer for the last ten or twelve years; . . Turner knew that Shearer resided in Virginia; that he was an owner of slaves, and that he was engaged there in the business of buying and selling slaves; and that shortly before the boy was obtained . . Turner expressed his belief, that Shearer would not hesitate, if he could get free colored persons from Massachusetts into Virginia, to sell them there as slaves. . . Turner . . inquired of one John Metcalf, . . where they could procure a colored boy; said Turner representing that such a boy was wanted for his father." Exceptions to testimony admitted by the trial court were overruled upon appeal.

Commonwealth v. Mary B. Taylor, 3 Metcalf 72, October 1841. "A writ of *habeas corpus* was issued . . by Mr. Justice Wilde, to bring up the body of a negro boy, seven or eight years of age, named Anson, alleged to be in the custody of Mrs. Mary B. Taylor, . . in this county, and held as a slave . . Mrs. Taylor is . . of the State of Arkansas, in whose family the said boy was born and reared as a slave; . . that it was her intention to carry the boy back to Arkansas, and there hold him in his former condition as a slave. . . she disclaims all intention, on her return,

to remove him out of this State, unless by his own consent. But in point of law, a child . . . of such tender years has no will, no power of judging or electing; . . . different rule would apply, . . . where . . . a negro, . . . has . . . sufficient . . . capacity to judge of his own interests, and elect whether he would return . . . to a slave State, or be set at liberty here. . . . We do order, that . . . Anson be discharged from the custody of Mrs. Taylor, . . . and . . . be delivered into the custody of the guardians" [Shaw, C. J.]

Commonwealth v. Henry G. Tracy et al., 5 Metcalf 536, March 1843. Defendants were tried and three of them convicted on an indictment alleging that they and divers others unknown to the grand jury assaulted Jonas Stratton, a Boston constable, in attempting to take from him a negro known as George Latimer, *alias* Albert Mason, while Stratton had the negro in custody under a warrant charging larceny. [544] "on the trial evidence was offered, to show that at the time of the alleged riot and attempt to rescue, on the night of the 20th of October, the said . . . constable . . . had in his custody . . . George Latimer, . . . that on the 19th of October, a complaint had been made in the police court, charging . . . Latimer with . . . larceny in Boston, . . . on which he was arrested; . . . that on the afternoon of the 20th, . . . complaint . . . dismissed, . . . in the forenoon of the same day, another complaint . . . in the police court, charging . . . Latimer with a larceny in Norfolk, Virginia, and being a fugitive from justice; . . . warrant issued, . . . upon which . . . Stratton . . . arrested . . . Latimer, . . . had him in custody, at the time of . . . riot and attempt to rescue. . . . that another fact was given in evidence, though not stated in the indictment, . . . that shortly before the said riot, in the evening of said 20th of October, a writ of *habeas corpus* was issued by the chief justice of the supreme judicial court, . . . [545] the case was heard by all the judges; whereupon it was certified by the chief justice, . . . 'Latimer is in custody of . . . Stratton, as the agent of James B. Gray of Norfolk, . . . claiming . . . Latimer as a fugitive from labor and service, and . . . at the time of the service of this writ, . . . Gray was . . . proceeding to convey . . . Latimer before the proper tribunal, to obtain a certificate, according to the law of the United States; ordered . . . said Latimer be remanded to the custody of . . . Stratton.' . . . The first exception taken . . . is, that there was a material variance between the complaint and warrant from the police court, as set out in the indictment, and the complaint and warrant . . . in evidence . . . And the court are of opinion that there was no such variance. . . . [546] The second exception . . . is, that the police court had no jurisdiction of a felony committed in another State; and as no requisition . . . had been made by the executive of Virginia, conformably to the constitution of the United States¹ and the act of congress of 1793, ch. 1, there was no authority, under which a warrant could issue, for the arrest of Latimer. This depends upon the constitutionality . . . of the Rev. Sts. c. 142, . . . in regard to fugitives from justice. The case . . . was precisely within . . . those statutes, . . .

¹ Art. IV., sect. 2, cl. 3.

[550] the court are of opinion, that the provision of the Rev. Sts. c. 142, sect. 8, authorizing any court or magistrate, on complaint against any person found within this State, charged with an offence committed in any other State, and liable by the constitution and laws of the United States to be delivered over, etc., to issue a warrant and cause such person to be held for examination, and imprisoned or bailed for a limited time, is a wise law, and . . . constitutional and valid, and . . . that the averment in the indictment, that the police court had jurisdiction . . . is well sustained by . . . proof. . . [551] The next exception is, that as . . . Stratton was acting as the agent of the person claiming the custody of the prisoner as a slave, he could not avail himself of the protection derived from the warrant from the police court. . . We think, . . . the averment in the indictment, that the officer was in the exercise of a lawful authority, under a warrant from the police court, is sustained by the evidence, and is not controlled . . . by the proof that he claimed to act and hold the prisoner under another authority *in pais*. . . [552] The last exception is, that the holding of this warrant, by Stratton, at the same time that he held a power of attorney from Gray, claiming the custody of the prisoner as a slave, was an abuse of the process of the court. . . This is substantially the same point already considered. . . A person may be arrested by the same officer as a criminal, a debtor, a deserting seaman, . . . all at the same time. . . [553] The court are of opinion, that the decisions of the municipal court, and the instructions to the jury, were correct, and that the exceptions must be overruled, and the conviction held good." [Shaw, C. J.]

The Cynosure, 6 Fed. Cas. 1102 (1 Sprague 88), July 1844. [1103] "The libellant, a man of color, was a mariner on board the American ship *Cynosure*, on a voyage to New Orleans. On arriving at that port he was, pursuant to a statute of the state of Louisiana,¹ taken from the ship and committed to jail. [He was detained there during the stay of the vessel, and delivered up to the master when the vessel sailed.] The master was compelled to pay the expenses of that imprisonment, and now claims to have the amount deducted from the wages of the mariner."

Held: "A state cannot thus interfere with the navigation of the United States, nor dictate to the owners of an American vessel the composition of her crew. . . this statute is invalid. . . No deduction is to be made from the wages." [Sprague, J.]

The Harvest, 11 Fed. Cas. 726 (1 Sprague 537), March 1848. Among the company of the whale ship *Harvest*, which sailed from Nantucket for the Pacific Ocean in 1844 was "one colored boat-steerer,"

Linda v. Hudson, 1 Cushing 385, March 1848. "an action on the case, . . . plaintiff alleged that the defendant, without authority from her, made a complaint . . . for the purpose of obtaining a writ of *habeas corpus*, in her behalf, on the ground, that she was . . . restrained of her liberty; and that a writ of *habeas corpus* was issued . . . and delivered to an officer,

¹ 1842, no. 123.

by whom the plaintiff was taken into custody, and carried before the judge by whom the writ was issued, . . . against her consent. It appeared, . . . [386] that the plaintiff was a woman of color, . . . brought into this state from one of the southern states, in which she was held as a slave by the person by whom . . . brought here, and in whose service she then was. It further appeared from . . . testimony of . . . Ruggles . . . a servant . . . that the witness met the plaintiff at the servants' table; that the plaintiff . . . said . . . she should like to be free . . . that, . . . he applied to the defendant . . . that the defendant and witness . . . employed an attorney to draw a petition for a writ of *habeas corpus*; that, before any further proceedings . . . plaintiff's master . . . went to Northampton . . . taking plaintiff . . . that the witness went . . . to Northampton, . . . and, . . . waited on judge Dewey with the defendant for the purpose of signing and presenting the petition . . . and that, . . . he [witness] perceived that his master was about to depart from Northampton, and . . . left the judge's without signing the petition. It further appeared, that the defendant . . . applied to the plaintiff's master, . . . and requested leave to speak with her, in order to inform her, that, in this state, she could take her freedom, . . . that the master replied that . . . defendant should not see her; . . . defendant then returned to the judge and signed the [387] petition, . . .

“When the plaintiff was brought before the judge, she was informed that she was free, if she chose to be so, . . . plaintiff said she knew she was a slave, but chose to remain with her master, and then went away with her master and mistress. . . . The judge, . . . being of opinion, that . . . the defence could not be maintained, directed the jury accordingly, . . . verdict . . . for the plaintiff. . . .

“Shaw, C. J. . . the court are of opinion, that there was evidence for the jury to consider, on the question of fact, . . . the case should have been left to them, to decide, . . . whether the complaint and petition made by the defendant, . . . [388] were so made at her request and for her benefit; with instructions, that if they were so made by the defendant, by her authority . . . defendant was not liable . . . otherwise . . . a verdict for the plaintiff. The verdict, . . . set aside, . . . new trial granted.”

Roberts v. the City of Boston, 5 Cushing 198, November 1849. “This was an action on the case, brought by Sarah C. Roberts, an infant, who sued by Benjamin F. Roberts, her father . . . against the city of Boston, under the statute of 1845, c. 214, which provides that any child, unlawfully excluded from public school instruction in this commonwealth, shall recover damages therefor against the city or town by which such public instruction is supported. The case was submitted . . . upon the following . . . facts:—‘. . . primary schools are supported by the city, . . . the city is divided . . . into twenty-one districts, in which there are several primary schools . . . These schools are under the . . . management . . . of the primary school committee . . . [199] The regulations of the primary school committee contain the following provisions:—Admissions. No pupil shall be admitted into a primary school, without a ticket of admission from a member of the district committee. Admissions of applicants. Every mem-

ber of the committee shall admit to his school, all applicants, of suitable age and qualifications, residing nearest to the school under his charge, (excepting those for whom special provision has been made,) provided the number in his school will warrant the admission. Scholars to go to schools nearest their residences. Applicants for admission to the schools, (with the exception and provision referred to in the preceding rule,) are especially entitled to enter the schools nearest to their places of residence. At the time of plaintiff's application, . . . Boston had established, for the exclusive use of colored children, two primary schools, . . . the colored population . . . constitute less than one sixty-second part of the entire population of the city. For half a century, separate schools have been kept . . . for colored children, . . . The teachers . . . have the same compensation and qualifications as in other like schools in the city. Schools for colored children were originally established [200] at the request of colored citizens, whose children could not attend the public schools, on account of the prejudice then existing against them. The plaintiff is a colored child, of five years of age, . . . applied to a member of the district primary school committee, . . . nearest to her place of residence, for a ticket of admission . . . the number "warranting her admission, and no special provision having been made for her, unless the . . . two schools for colored children . . . be so considered. . . The member . . . refused her application, on the ground of her being a colored person, and of the special provision made . . . Plaintiff . . . applied to the primary school committee . . . and was in like manner refused admission, . . . petitioned the general . . . committee, . . . That committee referred the subject to the committee of the district, with full powers, and the committee . . . refused the application . . . Afterwards, . . . plaintiff went into the primary school nearest her residence, but without any ticket of admission . . . and was . . . ejected . . . by the teacher.' [201] the parties agreed that if the plaintiff was entitled to recover, the case should be sent to a jury to assess damages;"

Held: [204] "The question . . . is, whether, . . . plaintiff has been unlawfully excluded from such instruction. . . [205] The plaintiff had access to a school, set apart for colored children, . . . the objection is, that the schools thus open to the plaintiff are exclusively appropriated to colored children, and are at a greater distance from her home. . . has the plaintiff been unlawfully excluded from public school instruction? Upon the best consideration we have been able to give the subject, the court are all of opinion that she has not. [206] if [the committee] . . . have the legal authority, the expediency of exercising it in any particular way is exclusively with them. Conceding, . . . that colored persons, . . . are entitled by law, . . . to equal rights, . . . the question then arises, whether the regulation . . . which provides separate schools for colored children, is a violation of any of these rights. . . [207] . . . The statute, . . . provides . . . that . . . a school committee . . . shall have the general charge . . . of . . . public schools. . . [208] The power of general superintendence vests a plenary authority in the committee . . . [209] The committee . . . have come to the conclusion, that the good of both classes of

schools will be best promoted, by . . . separate primary schools for colored and for white children, . . . It is urged, that this . . . tends to . . . perpetuate . . . distinction of caste, founded in a deep-rooted prejudice in public opinion. This prejudice, . . . is not created by law, and probably cannot be changed by law. . . . it is a fair . . . question for the committee to . . . decide upon, . . . and we cannot say, that their decision . . . is not founded upon just grounds of reason and [210] experience, . . . the court are of the opinion, that upon the facts stated, the action cannot be maintained. Plaintiff nonsuit." [Shaw, C. J.]

Fugitive Slave Law, 30 Fed. Cas. 1015 (1 Sprague 593), March 1851. "The fugitive slave law, passed in September, 1850,¹ was received, in Massachusetts, with almost universal regret and disapprobation. With not a few, it produced great excitement and exasperation. Some openly avowed a determination to resist it by violence, declaring that it was a matter of conscience not to permit it to be executed. In the following February, a negro, by the name of Shadrach, was arrested in Boston, as a fugitive slave, and carried into the United States' court rooms for examination before a commissioner. A mob broke into the room, took him by force from the officers of the law, and effected a rescue. At the opening of the next regular term of the district court, in March, Sprague, District Judge, delivered the following charge to the grand jury: . . . [1016] The constitution commands that fugitives from labor shall be delivered up. The supreme court has decided that it belongs to congress to provide the means, Congress has enacted this law. It is imperative, and will be enforced."

Thomas Sims's Case, 7 Cushing 285, March 1851. [291] "This is a petition for a writ of *habeas corpus* to bring the petitioner before this court, with a view to his discharge from imprisonment, . . . [293] We are then to examine the petition, accompanied as it is, by a copy of the warrant under which the marshal of the district claims to hold the petitioner, and the return thereon. It appears that the petitioner has been arrested and is claimed as a fugitive from labor, [from the state of Georgia] upon a warrant, issued by . . . a commissioner of the circuit court of the United States, in pursuance of a law of the United States, and that the deputy marshal has returned the warrant to the commissioner who issued it, and has the body of the petitioner before the commissioner for the purposes expressed in the warrant. [294] It is now argued, that the whole proceeding, . . . is unconstitutional and void; because, although the act of congress of 1850, c. 60, (9 U. S. Stat. at Large, 462), has provided for, and directed this course of proceeding, yet that the statute itself is void, because congress had no power, by the constitution of the United States, to pass such a law, and confer such an authority. . . . The subject matter of this act is the return and restoration of fugitive slaves, designated in the constitution as persons held to service or labor in one state under the laws thereof, [295] escaping into another. The whole provi-

¹ 9 Stat. at L. 462.

sion, art. 4 sect. 2, is as follows: 'No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.' . . . it is necessary to refer briefly to the circumstances under which the constitution was made, and the great social and political objects and purposes, which the people . . . had . . . in adopting it. . . . These North American provinces, when they became independent of . . . Great Britain, regarded themselves, and were regarded, as sovereign states; . . . with the usual powers . . . of . . . exercising an exclusive control and jurisdiction over all persons and subjects within their respective territories. . . . In some of the states, large numbers of slaves were held; in others a few only; but some, it is believed, in all except [296] Massachusetts, in which slavery was considered as abolished, by . . . the constitution of 1780. . . . [297] So long as the states remained sovereign, they could assert their rights in regard to fugitive slaves by war or treaty, and, therefore, before renouncing and surrendering such sovereignty, some substitute, in the nature of a treaty or compact, must necessarily be devised and agreed to. The clause above cited from the constitution seems to have been, in character, precisely such a treaty. . . . [298] But the right, thus secured by the constitution to the slave owner, is limited by it, and cannot be extended, by implication or construction, a line beyond the precise *casus foederis*. The fugitive must not only owe service or labor in another state, but he must have escaped from it. This is the extent of the right of the master. It is founded in the compact, and limited by the compact. . . . [299] But the constitution itself did not profess or propose to direct, in detail, how the rights, privileges, benefits and immunities, intended to be declared and secured by it, should be practically carried into effect; this was left to be done by laws to be passed by the legislature, and applied by the judiciary, for the establishment of which full provision was at the same time made. . . . [300] It was, as we believe, under this view of the right of regaining specifically the custody of one from whom service or labor is due by the laws of one state, and who has escaped into another, and under this view of the powers of the general government, and the duty of congress, that the law of February 12, 1793, was passed. . . . (1 U. S. Stat. at Large, 302) . . . [304] The constitutionality of the act of 1793, came directly before this court, and was argued and decided in 1823. . . . After alluding to the relative condition of the states, and the circumstances under which the constitution was made, he [Chief Justice Parker] says: . . . 'That instrument was a compromise. It was a compact by which all are bound.' . . . 'the constitution does not prescribe the mode of reclaiming a slave, but leaves it to be determined [305] by congress.' . . . 'We do not perceive that the statute is unconstitutional, and we think the defence is well made out.' . . . [306] The same principles have been decided by the supreme court of the state of New York. . . . But the judicial authority most to be relied on, and which, . . . is binding and conclusive upon all subjects within their special jurisdic-

tion, is that of the supreme court of the United States. . . A case came before the supreme court of the United States, in 1842, . . in which the point in question was fully discussed and deliberately settled. *Prigg v. Pennsylvania*, 16 Pet. 539. There was some difference of opinion among the judges upon minor points, but not, it is believed, upon . . the constitution[307]ality . . of the act of congress of 1793, and especially of that part of it which confers an authority on circuit and district judges, . . to take a summary jurisdiction, in the manner provided by the act of 1793. . . [308] We have thought it important thus to inquire into the validity and constitutionality of the act of 1793, because it appears to be decisive of that in question. In the only particular in which the constitutionality of the act of congress of 1850 is now called in question, that of 1793 was obnoxious to the same objection, viz., that of authorizing a summary proceeding before officers and magistrates not qualified under the constitution to exercise the judicial powers of the general government. . . [309] On the whole, we consider that the question raised by the petitioner, and discussed in the argument before us, is settled by a course of legal decisions which we are bound to respect, and which we regard as binding and conclusive upon this court. . . [310] I have, therefore, to state, in behalf of the court, under the weighty responsibility which rests upon us, and as the unanimous opinion of the court, that the writ of *habeas corpus* prayed for cannot be granted."

U. S. v. Scott, 27 Fed. Cas. 990 (Betts' Scr. Bk. 221), June 1851. Indictment against James Scott for the rescue of Shadrach, a fugitive slave.

Held: the fugitive slave acts of 1793 and 1850 are constitutional, although they provide for rendition by state officers; the rendition of a fugitive slave under these acts is an executive, and not a judicial proceeding, and trial by jury is not necessary therein, under the federal constitution. Sprague, J. gives "The contemporaneous construction of the constitution" [pp. 993-995]; and the judicial decisions.

U. S. v. Morris, 26 Fed. Cas. 1323 (1 Curtis 23), October 1851. John Debee [1329] "testified that he resided at Norfolk, Virginia, and Shadrach was his slave; that he purchased him in November, 1849, of John A. Higgins, and he remained in the service of the witness until May, 1850, when he left secretly, . . John Caphart . . testified that he was a resident of Norfolk, and had known Shadrach about sixteen years. When he first knew him he belonged to the Glen estate, and lived in Norfolk; he knew the persons who were called his mother and father, some ten or twelve years; his mother and father were said to belong to the same Glen estate. He had often heard Shadrach call them mother and father. He afterwards knew Shadrach as the property of Mrs. Hutchins, and he was sold by the sheriff at public vendue, at the door of the court-house, and bought by John A. Higgins. That the witness, as a police officer, had arrested Shadrach for Higgins, and put him in jail; that Higgins employed him in working on the stand as a licensed porter; that he did not know of his doing any act of service for the Glens, but only heard the young Glens

speak of him as their slave. Each of these witnesses described Shadrach as being between black and mulatto."

Held: [1331] "this evidence is admissible, and, if not controlled, sufficient to establish that Shadrach was held to service under the laws of Virginia when he escaped from that state. Certainly, it is merely *prima facie*, and liable to be controlled by other evidence, tending to show that he was not a slave." [Curtis, J.] "While one of the counsel for the defendant was addressing the jury, he stated the proposition that, this being a criminal case, the jury were rightfully the judges of the law, as well as the fact; and if any of them conscientiously believed the act of 1850,¹ commonly called the 'Fugitive Slave Act,' to be unconstitutional, they were bound by their oaths to disregard any direction to the contrary which the court might give them; . . . he was stopped by the court, and informed that he could not be permitted to argue this proposition to the jury;" Opinion of the court: [1336] "under the constitution of the United States, juries, in criminal trials, have not the right to decide any question of law;"

The Inhabitants of Edgartown v. the Inhabitants of Tisbury, 10 Cushing 408, October 1852. "*Assumpsit* to recover the expenses incurred by the plaintiffs in the support of Nancy Michaels, a colored pauper, whose settlement was alleged to be in Tisbury. . . [409] plaintiffs offered to prove that Rebecca, a colored woman, was brought from Africa, before the year 1780, . . . and owned as a slave by Cornelius Bassett, . . . long before the adoption of the state constitution; . . . that, in 1772, she gave birth to Nancy, the pauper; that said Bassett died in 1778, . . . that said Nancy was inventoried and appraised as a part of his property, and was sold at auction to Joseph Allen of Tisbury; that she was taken by him, . . . to Tisbury, . . . that she had a child, named Lucy Ann, . . . But the judge ruled that if the above stated facts were proved, they would not give a settlement to said Nancy in Tisbury. . . that the plaintiffs were obliged to furnish to her, [Lucy Ann] (and, as they contended, thereby constructively to her mother,) support and maintenance, . . . that they commenced an action against the defendants, . . . to recover . . . for Lucy Ann's support; . . . that judgment was rendered and execution issued, . . . and . . . satisfied; . . . that all the records of the court . . . were, in 1817, destroyed by fire. . . The [410] plaintiffs contended . . . that such judgment was evidence of the settlement of Nancy, the pauper, in Tisbury. But the judge ruled . . . that if it were admitted, it would not authorize the jury to find a verdict for the plaintiffs. A verdict was . . . found for the defendants, and the plaintiffs alleged exceptions . . .

Metcalf, J. "While slavery existed in Massachusetts, the settlement of the slave followed that of the master. . . if the pauper, . . . was the slave of Joseph Allen, whose settlement was in Tisbury, her settlement is there, and the action can be maintained. But as she was born in Massachusetts, she was freeborn, although her mother was a slave. And she

¹ 9 Stat. at L. 462.

could not be held as a slave by Allen under the sale made to him. . . . As the relation of master and slave never existed between Allen and the pauper, she derived no settlement from him. Nor did she derive any settlement from her mother, who was a slave; for a slave could not communicate a settlement. . . . Nor does it appear where the pauper was born. This, however, is immaterial, inasmuch as she was born in 1772, when no child, . . . could gain a settlement by birth. . . . She therefore is not shown to have a settlement in any town, and she must be regarded as *filia reipublicae*. But the plaintiffs attempt to charge the defendants by an estoppel. That attempt cannot succeed. Whether a judgment recovered in 1813 . . . would estop the [411] defendants to levy that the pauper's settlement is in Tisbury, is a question which we have omitted to examine; . . . But this, if clearly proved, would not estop the defendants from contesting the settlement of the child, . . . *A fortiori*, it would not estop them from contesting, in this action, the settlement of the child's mother. Exceptions overruled."

U. S. Mingo, 26 Fed. Cas. 1270 (1 Curtis 1), June 1854. Indictment for murder, "the defendant and the deceased were both seamen, on . . . an American ship, . . . defendant was a Haytien negro; and the deceased a colored man from Baltimore; . . . after some conversation, the two negroes came together on deck, . . . Johnson holding a large hatchet, and Mingo a sheath knife, that each used his weapon against the other, and that Johnson received three stabs . . . from Mingo's knife, and died of one of them next morning." [1271] "The jury found the defendant not guilty."

U. S. v. Stowell, 27 Fed. Cas. 1350 (2 Curtis 153), October 1854. "a motion to quash an indictment against Martin Stowell, for obstructing the marshal in the service of legal process. The obstruction complained of occurred during the proceedings for the rendition of Anthony Burns [escaped slave of Suttle of Virginia], in the year 1854." Motion allowed.

The *Glamorgan*, 10 Fed. Cas. 463 (1 Sprague 273), December 1854. "a libel of information against the brig *Glamorgan* and cargo, alleging a violation of the statute of the 20th of April, 1818,¹ for the prevention of the slave trade, . . . A forfeiture was decreed."²

Stratton v. Babbage, 23 Fed. Cas. 225 (18 Law Rep. 94), 1855. "a libel for seaman's wages on board brig *Iddo Kimball*," "The libellants, who are free colored seamen, joined this vessel at Halifax, Nova Scotia, and signed for a voyage thence to Europe, and then 'to a port of discharge in the United States,' at the rate of \$24 per month. The laws of Louisiana oblige a master of a vessel bringing free colored seamen to New Orleans, to give bonds in \$1,000 to take every such seaman out of the state in his vessel, or to see that they go in some other vessel before he sails. While in port, the men must live on board the vessel, or in jail.

¹ 3 Stat. at L. 450.

² A question respecting appeal from the final decree was argued in the Circuit Court, May 1855, *U. S. v. Glamorgan*, 25 Fed. Cas. 1333.

The master stated the law to the men, and told them they might stay on board and work, and he would allow them the current wages, which were \$15 per month, from the day of arrival in New Orleans. The vessel lay some three weeks in New Orleans, and then sailed for Boston. On the day of sailing, the master required the crew to sign articles for the voyage from New Orleans to Boston for \$15 per month, including the time they lay in New Orleans. They signed the articles, but under protest."

Held: "New Orleans . . . is not a port of discharge for colored seamen. . . . They must be either in jail or on board this vessel, and must go to sea in this vessel, or in such other as the master may find for them. They cannot even leave the vessel without the hazard of being made slaves. . . . they were entitled to proceed to Boston in the vessel at the original rate of wages. They did not waive this right freely, or for a valuable consideration, but made the new contract under duress and under protest, and for no consideration. Decree for the libellants for full wages, to the arrival in Boston, with certain additional wages as compensation for short provisions, and certain deductions for refusal of duty, and for the sickness of a seaman by his own fault." [Sprague, J.]

The Porpoise, 19 Fed. Cas. 1064 (2 Curtis 307), May 1855. "a libel . . . against the brig *Porpoise*, Richardson, claimant . . . founded on the first section of the act of May 10, 1800"¹

The brig *Porpoise*, owned by Richardson, "a resident citizen of the state of Maine, arrived at Rio de Janeiro, in June, 1843, under the command of Cyrus Libby, also a citizen of the state of Maine, the owner being on board. On the fourteenth day of June, 1843, the brig was chartered by the master, to Manuel Pinto de Fonseca, a resident of Rio, by a written charter-party, for one year, or until the termination of any voyage in which she might be engaged at the end of the year. The master was to victual and man the vessel. The charterer had the right to put on board any lawful merchandise, and any free persons as passengers, and to send the vessel to any port, the voyage being lawful. Under this charter-party the brig made three voyages from Rio to the coast of Africa. The first was to St. Thomas, in the Gulf of Guinea; the second was to Cabindka Bay and the Congo river on the west coast; the third was to different points on the east coast. On her return from the last-mentioned voyage, in January, 1845, the brig was seized by the commander of the *Raritan*, a public armed vessel of the United States, . . . one Paulo, a Brazilian, in the employment of Fonseca, and who sailed in the brig, from Rio, on her last voyage, as supercargo, purchased, at two of the Portuguese settlements on the east coast of Africa, among many other slaves, two boys, named by him, or some former master Pedro, and Guillaume. These boys had been reduced to slavery by being made captives in war, and they were sold by their owners to Paulo. They were brought in the brig to Rio, and on the passage waited on Paulo and performed some other services about the table at which the passengers took their meals." Richardson insists [1065] "that though purchased by Paulo as slaves, they were

¹ 2 Stat. at L. 70.

emancipated before they came on board, . . . The substance of Captain Libby's statement in regard to Pedro is, that when the supercargo brought him on board he told him he was free, and that he, Libby, could go to the governor of the place and get his free papers and passports; that he did go, and received from the governor the papers which he produces. These purport to be a notarial certificate declaring that one Avelino Xavier de Minares, had emancipated his slave Peter, of the Landine nation, in consideration of the good services he had rendered him; and also a petition by Peter de Souya [Souza] a free black, a native of Lourenya Margues, [Lourenzo Marques], of the nation of Landine, declaring that he wishes to make a voyage to Rio, for his interest, in the *Porpoise*, and an answer of the governor that he is permitted to do so. . . there is nothing tending to prove that the person, named . . . as emancipated, was the same Pedro brought to Rio; . . . Pedro himself . . . testifies he was Paulo's slave, never emancipated, and brought away from Africa in the *Porpoise* against his will. In substance, the same facts are proved concerning the other boy, Guillaume. . . on at least two occasions, when cruisers were in sight, the boys were concealed; and that on one of these occasion, the captain interposed to cause one of them to go below in the run. I am not convinced that Captain Libby believed these boys were free on the coast, and would remain so when landed in Brazil, in the custody of a man known to him as a slavetrader . . . [1066] about the period in question, the slave-trade was carried on by residents of Brazil, by making contracts to purchase American vessels, deliverable on the coast of Africa at some designated point, where it was expected a cargo of slaves would be ready to be placed on board. The American vessel, commanded by a citizen of the United States, and manned in part at least by our citizens, and registered as a vessel of the United States, sailed under our flag to the coast of Africa; and when the time arrived for the cargo of slaves to be put on board, the American master and crew left the vessel, took away the American papers, she was delivered to a Brazilian commander and crew, and with or without papers, took her departure from the coast. It is quite apparent, that to the successful conduct of such voyages, some other vessel or vessels besides those sent over to bring back the slaves, were, if not absolutely necessary, undoubtedly useful and desirable. They were needed to carry to the coast, the merchandise to be used to purchase the slaves,—to transport the agent of the slave merchant who was to sell on the coast this merchandise, and with it, or its proceeds, buy the slaves; and also to receive on board, as passengers, the American masters and crews who navigated the slave-ships to Africa, and there left them, when the cargoes of slaves were brought on board. Now it clearly appears that this brig served this purpose throughout her last voyage. There was carried in her to the east coast of Africa a cargo of merchandise, intended to be used to buy slaves, to be transported to Brazil. . . two cargoes of slaves were brought by . . . [Paulo, the supercargo], with the cargo of this vessel or its proceeds, and shipped in full view of the master of the *Porpoise*. The American master and crew of one of these vessels were received on board the *Porpoise*, when the cargo of slaves was carried on

board the slaver; and the American master of the slaver went from the slaver to the *Porpoise*, and from the *Porpoise* to the slaver, carrying his ship's papers, and the flag of the United States, as the fear of the cruiser of one nation or another might seem to render expedient. The *Porpoise* also aided one of these slavers, going in company with her into a barred harbor on the coast, to get over the bar, by relieving her of part of her cargo; and there is evidence tending to show that Paulo, the supercargo of the *Porpoise*, who controlled her movements, actually gave orders for the manoeuvring of one of these slave vessels, while on the deck of the *Porpoise*; and that the two went to sea in company, after the slaves were shipped, the *Porpoise* manoeuvring so as to attract the attention of any cruiser which might be in the neighborhood. . . if I were satisfied this vessel had never had a slave on her deck, I should still be of opinion that she had been engaged in the business of transporting slaves, as much as if she had been captured with a slave deck, extra water casks, provisions and irons, before a slave had been brought on board. . . Let a decree be entered . . pronouncing for the forfeiture." [Curtis, J.]

Ela v. Smith et al., 5 Gray 121, October 1855. [122] "Action of tort against . . Smith, mayor of Boston, . . Edmands, major general . . of the Massachusetts volunteer militia, . . Evans, commander of a company . . and . . Freeman, marshal of the United States for . . Massachusetts, for an assault, battery and false imprisonment of the plaintiff at Boston . . the 2d of June 1854. The defendants answered severally, each denying any part in any assault on the plaintiff; Smith also alleging that, apprehending a riot, he issued a precept and gave orders to Edmands to aid the police in keeping the peace . . Edmands that he acted under such precept and orders; Evans that he acted under orders of Edmands; and Freeman that he acted as marshal, in removing a fugitive from service to the State whence he fled, under the act of congress of 1850 . . 9 U. S. Sts. at Large, 465. At the trial . . the evidence introduced by the plaintiff tended to prove . . [that] on the 24th of May 1854, Anthony Burns was arrested in Boston by the United States marshal, at the claim of Thomas Suttle, as a person held to service or labor under the laws of Virginia, and brought before . . a commissioner of the circuit court of the United States, and was afterwards confined by the marshal, with the assistance of . . United States troops, . . until the 2d of June, when [123] the commissioner decided that he should be delivered to the claimant, and made a certificate under the act . . of 1850, reciting that Suttle had exhibited to him a record of a court of . . Virginia, of the slavery and escape of Burns . . proved the identity of Burns, and declaring that the claimant was authorized to remove him to Virginia. . . [126] On the 2d of June, the mayor . . gave such directions, verbal and written, as he thought would best tend to preserve the peace of the city; . . General Edmands, after receiving the mayor's note and proclamation, read the latter to his troops, and then, . . marched them . . to Court Square, and [127] . . so disposed them, in conjunction with the city police, as to exclude the public from Court and State Streets, and allow a free passage

for the marshal and his posse from the court house through those streets to Long Wharf . . . The troops remained at their posts until about three o'clock, when the marshal and his posse, carrying Burns with them, passed through Court and State and Commercial Streets, . . . and placed Burns on a steamboat lying at T Wharf, which took him out to the United States revenue cutter, to be taken back to Virginia; . . . The plaintiff, after Burns had been taken down Long Wharf, attempted to pass along Commercial Street, but was pushed back and knocked down by the soldiers, and cut over the head by a commissioned officer, and then taken away by the police, [128] . . . He was detained by the police some hours, and then released. . . . [134] Bigelow, J. This case presents for the first time to the consideration of the court questions of great interest and importance, arising on the . . . construction and . . . operation of . . . the statutes, by which authority is given to certain civil officers to call out the organized militia . . . to aid in preserving the public peace and enforcing the laws. . . . [135] The provisions of law, on which the defendants Smith, Edmands and Evans rely for a justification of the acts of trespass alleged . . . are found in St. 1840, c. 92, . . . The defendants justify on the ground, . . . that an unlawful assembly or mob was threatened, and that it was in view of the imminent danger to the public peace, and an anticipated violence and resistance to the laws, that the acts charged . . . were committed. . . . [137] It follows . . . that the question, whether a riot was actually threatened, cannot be inquired into in this action. The judgment of the mayor upon it was conclusive, and . . . no liability was incurred by him in issuing the precept by which the armed force was called out. . . . On familiar principles, it affords a complete justification to all those bound to obey its command, for acts lawfully done by them in pursuance thereof. . . . [139] it was clearly within the authority conferred on the mayor by the statute, to order the troops assembled, . . . to perform a specific duty . . . such as . . . preventing the ingress and egress of persons, if, . . . it was . . . necessary for the purpose of suppressing a tumult or . . . resistance to the laws . . . [141] It was urged by the plaintiff that all the defendants were liable . . . because the occasion of the . . . riot . . . was the surrender of a fugitive slave, and that . . . the act of congress of 1850, c. 60, . . . was . . . void, . . . But it is entirely clear that this argument can have no legitimate bearing on the legal issues presented in this case. . . . [142] Upon the evidence offered by the plaintiff . . . there are no sufficient grounds . . . to find a verdict against Freeman. . . . [143] He is not shown to have advised or aided in the commission of any . . . unlawful act by which the plaintiff was injured. . . . the only questions as to the remaining defendants, Smith, Edmands and Evans, are, whether specific orders were given by the mayor for clearing and guarding the streets on the 2d of June 1854, and if so, whether any of the defendants acted unreasonably, or exceeded the just limits of the authority visited in them by law. . . . The defendants Smith and Edmands will not be liable to the plaintiff for any force and violence used upon him, beyond that which was necessary to carry into effect the order for clearing . . . the streets, . . . The same rule would apply to

Evans, if he did not authorize or participate in the alleged violence offered to the plaintiff. Case to stand for trial. A trial . . . resulted in a verdict for the defendants.”

Curtis v. Mussey et al., 6 Gray 261, March 1856. [262] “Action of tort for a libel. The plaintiff . . . alleged that he was a commissioner of the circuit court of the United States for the district of Massachusetts; and . . . in the performance of his duty . . . heard and determined a matter . . . before him, wherein Thomas Sims was claimed under . . . the laws of the United States as a fugitive from labor and service from . . . Georgia, and delivered an opinion in said matter, and granted a certificate authorizing the removal of Sims to . . . Georgia; ‘and the defendants, afterwards, with intent to vilify the plaintiff, and to bring him into hatred, contempt and ridicule, both as a magistrate and as a man, to impute official misconduct to him, and to cause it to be believed that the plaintiff did knowing and wilfully decide and determine said matter falsely and contrary to law, and did wilfully grant said certificate, knowing the same ought to have been refused by him, did publish . . . a certain false, malicious libel concerning the plaintiff, purporting to be a discourse delivered to an audience, in a part of which said libel there was and is contained the following passage.’ The declaration then set forth successively several passages from the alleged libel, . . . [263] The answer admitted that the plaintiff was a commissioner, . . . and that he, . . . [264] did hear and determine the matter of Sims . . . [265] But the answer alleged that said proceedings [266] were had under the act of congress of . . . 1850, known as ‘the fugitive slave law,’ and that the acts of the plaintiff therein were done by . . . the authority conferred upon him as such commissioner . . . but that said law, and the authority thereby conferred upon the plaintiff, were contrary to the Constitution of the United States, . . . The answer further admitted that the defendants did, . . . publish a book, . . . and that in that book was contained a discourse, . . . in which discourse were the several passages set forth in the declaration. . . [267] but they published said discourse . . . without any intention to injure the plaintiff, as alleged in said declaration. . . [268] The plaintiff demurred to the answer, . . . Fletcher, J., overruled the demurrer, and reserved and reported the case to the full [269] court. . .

[272] “The Court held, that the want of actual intent to vilify [273] or libel the plaintiff rendered the publication no less a libel, if such was the natural effect of the words published; . . . that there were passage in the publication, which appeared on their face to be libellous, . . . that the answer therefore, supposing all the matters contained in it to be true, . . . did not constitute a complete defence . . . to the plaintiff’s action; but that, as there were still questions . . . in issue between the parties, the case must stand for further proceedings. . . The case . . . after the death of the defendant Mussey, and before any further action of the court, was settled by agreement of parties, by entering judgment for the plaintiff for five dollars, with costs to the time of the decision upon the demurrer.”

McCrea v. Marsh, 78 Mass. 211, November 1858. "Action of tort for forcibly excluding the plaintiff from a theatre in Boston, . . . At the trial . . . the plaintiff, . . . a colored person, introduced evidence . . . to show that he bought of the defendant, . . . a ticket . . . on which were printed the words, 'Marsh's Juvenile Comedians. Family Circle. R. G. Marsh;' and . . . ticket in his hand, went up the staircase leading to the 'family circle,' and at the head of the staircase offered his ticket to the doorkeeper . . . who, under the directions of the defendant, refused to admit him, on the ground of his color and forcibly prevented his entrance. [212] plaintiff contended, . . . that, 'even if the defendant possessed the right to exclude the plaintiff, still . . . the defendant had, by contract imparted a right to the plaintiff for the time . . . claimed by the plaintiff, and . . . the assault, . . . constituted an injury . . . for which the defendant must respond in damages.' But Abbot, J. ruled, 'that the ticket . . . was only an executory contract, by which the plaintiff contracted with the defendant to permit him to enter . . . and occupy a certain place . . . and if the defendant, before any part of said contract was executed, . . . notified the plaintiff that he should not permit him to enter, . . . that the exclusion of the plaintiff . . . would not render the defendant liable to an action of tort; but, the remedy, . . . must be by an action on the contract. . . the plaintiff . . . alleged exceptions."

Held: "It was correctly ruled, . . . that the plaintiff could not maintain this action, and that his remedy, . . . was by an action of contract. . . [213] It was a license legally revocable, and was revoked before it was in any part executed. After it was revoked, the plaintiff's attempts to enter were unwarranted, and the defendant rightfully used the force necessary to prevent his entry. . . even if the plaintiff had been permitted to enter the family circle, the defendant might have ordered him to leave it, . . . and, upon his refusal, might have removed him, using no unnecessary force. . . The plaintiff is doubtless entitled to recover, . . . the money paid by him for the ticket, and all legal damages . . . sustained by the breach of the contract . . . Exceptions overruled."

The William Jarvis, 29 Fed. Cas. 1309 (1 Sprague 485), June 1859. [1310] "The ship went from Havre to New Orleans, and thence to Boston. She arrived in New Orleans on the 9th of February, 1859. The crew consisted wholly of colored men, who, by the laws of Louisiana,¹ are not permitted to be at large on shore, and might even be taken from their vessel and imprisoned; and the master was compelled to give bond to carry them out of the state."

Held: "that this law of Louisiana was invalid, . . . It is of no avail . . . to say that congress have not, in express terms, said that negroes may be seamen on board of American vessels. It is sufficient that there is no prohibition, and that all persons, of every shade of color, stand upon the same ground of right to constitute a part of the crew." [Sprague, J.]

U. S. v. The Isla de Cuba, 26 Fed. Cas. 553 (2 Sprague 26), March 1860; 548 (2 Clifford 295), May 1864; 551 (2 Clifford 458), May 1865.

¹ "The Black Code," sect. 101.

[548] “ the *Isla de Cuba* was built in New York in the year 1849, . . . Dobson, . . . 1858, chartered the vessel to J. S. Correa for a voyage from the port of New York to the west coast of Africa [to Loango] and back, and that on the following day he took out a register in his own name, in which he made oath that he was the only owner of the vessel. He was also the master, . . . Correa freighted the vessel, . . . A suspicion arises from the manner in which the cargo was stowed. The evidence shows that the ground tier of casks was carefully arranged according to sizes, so as to present on the top a uniform surface like a deck; and there were four tiers of boards, constituting a platform, placed on the barrels, two fore and aft, and two athwart ship, which had the effect to convert the whole length and breadth of the hold of the ship into a substantial deck, where negroes might conveniently be carried on the voyage. . . . the casks under that platform contained about twenty-two thousand gallons of fresh water, and the mate testified that the master informed him that ninety of the casks containing the water, were cleared as oil casks. The platform of boards was cut through in one place, as if to form a hatchway to get at the casks containing the water. The cargo on the return of the vessel was found to contain more than seventy barrels of rice, although it appears that twelve barrels had been sold at Fayal, in the course of the voyage. When the vessel sailed she had on board only a small quantity of beans shipped by the passengers, but an additional quantity of ten or eleven sacks was purchased at Saint Michael’s, and taken on board at that port, where the vessel stopped for a short time. The vessel also had on board fifty boxes of herring, and fifty boxes of codfish, and most of all kinds of provisions usually found in a vessel engaged in a slave voyage. Four large boilers were also found on board in boxes, with all the necessary apparatus for cooking, and the cargo also included some ten dozen pails or buckets, and seventeen crates of crockery, embracing every variety which would be necessary and convenient, in supplying and serving the negroes with food and water. Muskets, swords, and cutlasses were also found on board, packed in boxes and stowed as cargo, and another box containing a considerable quantity of iron rods fitted for grating, and such as might conveniently be used to surround the main hatch, was also found on board. None of these boxes are on the manifest, . . . [550] Four boxes of medicines, in addition to the usual medicine-chest for the ship’s company, were also found on board, containing all or nearly all the ingredients usually found in vessels fitted out for the slave-trade and engaged in that traffic.” There were four passengers “ if J. S. Correa, sometimes mentioned as supercargo, be regarded as such, . . . Three were Portuguese, and one was a Spaniard. The mate [Turner] testifies that the vessel arrived at Fayal on September 2, 1858; . . . While there . . . another passenger came on board, Jacob M. Smalley, who is an important witness for the United States. . . . The attention of the mate was called by the master to the fact that the documents of the supposed supercargo showed, that there were twenty-two thousand gallons of fresh water in the hold of the vessel, and he (the mate) was requested to examine and ascertain if such was the fact. . . . and found the fact to be as represented, . . . the

suspicious of the master were greatly aroused . . . They arrived at Saint Michael's on the 12th of the same month," During the passage from Fayal to Saint Michael's, Smalley, the new passenger, "had various conversations with the master, which in substance and effect show that the master felt himself in danger from the four foreigners on board as passengers, and . . . [551] cautioned the witness not to drink any of the wine at dinner, unless he, the witness, first saw him, the master, drink from the same vessel, assigning as a reason for his fears that they had attempted to poison him at Fayal while the vessel lay there, and expressing the opinion that they intended to use poison to accomplish their purpose. . . the master, requested the mate to have his axe in readiness for use, and also requested the cabin-boy to sleep with a hatchet under his pillow; and so strongly were his fears aroused as to the danger, that he requested the witness to remain awake while he, the master, slept."

[552] "They arrived at Saint Michael on the 12th of September, and remained there till the 22d of the same month. . . the master communicated his suspicions to the mate. He was to receive pay at that port, and he told the mate that when he got his money, he should leave the ship, give him a letter, and order him home with the vessel, . . the mate was appointed master with the approval of the consul, and that the master, who was sick, left the vessel. His directions were that the mate should return to New York, and he advised him to keep all his papers out of the way, so that they might not be stolen by the passengers. The vessel sailed from Saint Michael on the 22d of September, Levi W. Turner, master, and when three days out, he called all hands, and stated to them that he suspected that the voyage was illegal, and that he was going to return to the United States, as advised by the former master. Some of the passengers shed tears, and wanted him to run into Flores, and put them ashore. They offered him \$1,000 if he would do so, but he declined, saying that he would not go any nearer the land that he was. Willing to be rid of them, however, he offered them a boat of four or five tons; and they left in her, taking with them their trunks, one or two bales of goods, and some provisions." [551] "Before they left, however, J. S. Correa, the present claimant, made a bill of sale to the mate of all the cargo left on board." [553] "The libel was brought under the act of 1818, c. 91.¹ . . There was no appearance for the owner of the bark." The vessel was declared forfeited.

The Wanderer, 29 Fed. Cas. 150 (1 Sprague 515), June 1860. [152] "When the *Wanderer* sailed, and for several months before, she was owned by Charles A. L. Lamar, of Savannah, who had purchased her under a decree of condemnation for having been a slaver. Eight or ten days before she went to sea, Martin, by consent of Lamar, took actual possession and control of her, and acting as master, shipped a crew, purchased stores upon the credit of the vessel, and otherwise prepared her for sea, with intent, on his part, to engage in the slave-trade." [151] "Most of the stores were hurriedly taken on board, in the evening of the 18th

¹ 3 Stat. at L. 450.

of October [1859], and during the darkness of the same night, he hoisted sail, and went down the [Savannah] river, taking with him two seamen, who had just before come alongside in a boat, which had been employed by one Black, to convey him to the vessel; and these two men were compelled, against their will, to go the voyage. The vessel escaped from the port [Savannah], without any clearance from the custom-house, without charts or books of navigation, and so suddenly that none of the crew were allowed time to take their clothing from the shore, and many of them were coerced by threats, and a display of deadly weapons. . . . To Hussey, the shipping-master, who was employed by him to engage the crew, ostensibly for a voyage to Matanzas, he declared that 'he had been in the slave-trade, and was going into it again.' And before the vessel left the river, while near its mouth, Martin prepared shipping articles,—describing the voyage to be to Saint Helen's Sound, a place on the coast of Africa,—which all the crew signed. This they were induced to do by a free use of intoxicating liquors, and a display of pistols. And, before leaving the river, Martin repeatedly declared that he was going for a cargo of 'black-birds,' that is, negroes. Upon getting to sea, instead of going to Matanzas, he shaped his course for the Western Islands, and arrived at Flores in thirteen days, with no deviations, except for the purpose of speaking other vessels, in order to obtain charts and supplies. At Flores he took on board a quantity of provisions, and then escaped furtively, without paying for them, and soon after arrived off Funchal, in the Island of Medeira; but seeing a man-of-war in port, he put to sea, directing his course for the coast of Africa. A few days after this, falling in with a French bark, he went on board of her with a boat's crew, and in his absence, the mate, with the concurrence of the crew, took the command, changed her course, brought her to Boston, and delivered her up to the officers of the revenue. . . . [152] This vessel, her tackle, apparel, furniture, and lading, must be decreed forfeit." [Sprague, J.]

Burton v. Schepf, 83 Mass. 133, January 1861. "Tort for assault and battery. At the trial . . . it appeared that . . . one Thalberg gave a concert in a public hall in Lowell; that in the advertisement . . . there was no restriction as to the persons to be admitted, . . . the fee for admission was put at fifty cents; that the plaintiff, who was a colored man, . . . purchased a ticket . . . delivered his ticket to the doorkeeper, received from him a programme of the concert, entered the hall, and was proceeding to the seats, . . . when the defendant called him back and said to him, 'You cannot go in here: we don't allow black men in here;' that, . . . the defendant ordered the plaintiff out and he refused to go, the defendant took hold of the plaintiff and put him outside . . . in the presence of the audience . . . and there tendered him the amount of money . . . the plaintiff had paid for his entrance. There was no claim that any more force was used by the defendant to put the plaintiff out than was necessary, though the plaintiff's coat was somewhat torn. . . . [134] A verdict . . . for the plaintiff, and the defendant alleged exceptions."

Held: "The sale of the ticket to the plaintiff, . . . was a license to him to enter the hall . . . as its temporary lessee, and to remain in it during the concert . . . But the license was revoked immediately upon the entrance of the plaintiff into the hall and before he had taken his seat. By remaining there afterwards, and refusing to depart upon request, he became a trespasser; and the defendant had a right to remove him by the use of such degree of force as his resistance should render necessary for that purpose. It is not alleged that in the exercise of this right the force used was at all excessive, or more than was requisite to effect his removal in a reasonable manner from the premises. . . [136] For such removal an action of trespass cannot, . . . be maintained. . . the exception . . . must be sustained."

U. S. v. Kelly, 26 Fed. Cas. 697 (2 Sprague 77), July 1863. Leno Kelly, a merchant of New Bedford, was found guilty of aiding and abetting "in fitting out . . . the ship *Tahamaroo*, [in 1860] . . . with intent to employ said ship . . . in the trade and business of procuring negroes,"¹ Judgment arrested: the indictment must allege that the vessel was fitted out for that trade by some person other than the defendant, and that that person had the intent to employ her in that trade, and that the defendant did aid and abet such person in so fitting out; and that the fitting out was done at a port within the United States.

The Deer, 7 Fed. Cas. 353 (1 Lowell 95), 1866. "In the case of the steamer *Planter*, which was run out of Charleston, with great skill and at great hazard, by the negro Robert Small and his associates, and delivered to our fleet, congress granted them one-half the value."²

Commonwealth v. Sylvester, 95 Mass. 247, October 1866. "Complaint for refusing to allow Robert J. Stockton, a negro, to play at billiards in a billiard room and public place of amusement kept by the defendant, such refusal being on account of the color of said Stockton. There was no averment in the complaint that the place was licensed and the defendant moved to quash it for that reason; but the motion was overruled. At the trial . . . there was no evidence to show that the place was licensed, and the defendant asked the court to rule that the evidence did not show a public place of amusement, under the statute; but the judge declined so to rule, and the defendant was found guilty, and alleged exceptions. . . .

"By the Court. The evidence did not show that any offence, under St. 1865, c. 277, had been committed by the defendant. [248] It was not proved that the place kept by him was licensed, . . . for the purpose of being used for hire, . . . for the playing of the game of billiards for amusement. The statute was intended to apply only to places so licensed, . . . it cannot be supposed, . . . that it was the intent of the legislature to prescribe the manner in which persons should use their own premises,

¹ The count was "founded on the third section of the act of congress of 1818, c. 19 (3 Stat. 451)."

² 12 Stat. at L. 904.

or permit others to use them, if they did not carry on therein an occupation . . . or suffer other persons to appropriate them to a purpose, which required a license in order to render such an appropriation lawful. Exceptions sustained.”

Jackson v. Phillips et al., 14 Allen 539, January 1867. [540] “ Bill in equity by the executor of the will of Francis Jackson, . . . for instructions as to the validity and effect of the following bequests and devises: ‘Article 4th. I give and bequeath to William Lloyd [541] Garrison, . . . their successors and assigns ten thousand dollars; . . . in trust, . . . for them to use . . . as they deem best, for the preparation and circulation of books, newspapers, the delivery of speeches, lectures, and such other means, as, in their judgment, will create a public sentiment that will put an end to negro slavery in this country; . . . Other bequests, hereinafter made, will sooner or later revert to this board of trustees. . . . Article 5th. I give and bequeath to the board of trustees . . . two thousand dollars, . . . in trust, . . . to be expended by them at their discretion, . . . for the benefit of fugitive slaves who may escape from the slaveholding states of this infamous Union from time to time. . . . [544] By Article 10th, the testator made a similar bequest and devise of the remaining undivided third part of said residue to his brother George Jackson, . . . in trust to pay the whole net income . . . to . . . Harriette M. Palmer, during her natural life, and at her decease, one half of such income ‘to the board of trustees constituted in the fourth article of this will, to be expended . . . for the . . . purpose therein directed;’ . . . ‘but, in case . . . Harriette M. Palmer should outlive all her children, then, at her decease, I direct said trustee, . . . to pay . . . the whole of said trust fund to the . . . trustees constituted in said fourth article in this will,’ . . . Answers were filed . . . One argument was had in March 1863, . . . and a second argument . . . in November 1865. While the case was under advisement, the thirteenth [545] article of amendment of the Constitution of the United States was adopted, and the effect of this amendment upon the case was argued in March 1866. . . . [549] Gray, J. . . . The . . . arguments of counsel have necessarily involved the consideration of the fundamental principles of the law of charities, . . . [550] and have disclosed such diversity of opinion . . . as to require the principles in question to be fully stated, . . . I By the law of this commonwealth, . . . gifts to charitable uses are highly favored, . . . and trusts which cannot be upheld in ordinary cases, . . . will be established and carried into effect when created to support a gift to a charitable use. . . . The question of the validity of these trusts is not to be determined by the opinions of individual judges or of the whole court as to their wisdom or policy, but by the established principles of law; . . . It has been . . . contended . . . that neither of the purposes declared by the testator is charitable [551] within the . . . purview of the St. of 43 Eliz. c. 4, which all admit to be the principal test . . . of what are in law charitable uses. . . . It is well settled that any purpose is charitable in the legal sense of the word, which is within the principle and reason of this statute, although not expressly named in it; . . . [556] A charity, in the legal sense, may be

more fully defined as a gift, to be applied consistently with existing laws, for the benefit of . . . persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings . . . or lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in its nature. . . [557] In the light of these general principles, we come to the consideration of the language of the different bequests in this will. . . [560] The law of Massachusetts has always been peculiarly favorable to freedom, . . . [564] The Constitution of the United States uniformly speaks of those held in slavery, not as property, but as persons; and never contained anything inconsistent with their peaceable and voluntary emancipation. . . [566] The bequest itself manifests its immediate purpose to be to educate the whole people upon the sin of a man's holding his fellow-man in bondage; and its ultimate object, to put an end to negro slavery in the United States; in either aspect, a lawful charity. . . [567] This bequest directly tends to carry out the principles thus declared in the fundamental law of the Commonwealth. . . [568] It falls indeed within the spirit, and almost within the letter, of many clauses in the Statute of Elizabeth. . . III. The next question arises upon the bequest in trust for the benefit of fugitive slaves who might from time to time escape from the slave-holding states of the Union. . . It is no part of the duty of this court to maintain the constitutionality, the justice, or the policy of the fugitive slave acts, now happily repealed. . . [569] A bequest for the benefit of fugitive slaves is not necessarily unlawful. . . [570] To supply sick or destitute fugitive slaves with food and clothing, medicine and shelter, or to extinguish by purchase the claims of those asserting a right to their services and labor, would in no wise have tended to impair the claim of the latter or the operation of the Constitution of the United States; and would clearly have been within the terms of this bequest. . . This bequest therefore, as well as the previous one, being capable of being applied according to its terms in a lawful manner at the time of the testator's death, must, upon the settled principles of construction, be held a valid charity. . . [588] There is no adjudication of this question by the supreme court of the United States. . . [591] The intention of the testator is the guide, or, in the phrase of Lord Coke, the lodestone, of the court; and therefore, whenever a charitable gift can be administered according to his [592] express directions, this court, like the court of chancery in England, is not at liberty to modify it upon considerations of policy or convenience. . . [593] The authority of administering a charitable trust according to the expressed intention of the donor, and, when that cannot be exactly followed, then as nearly as possible, is a part of this jurisdiction, which the court is not at liberty to decline. The only question is, whether the facts of the case show a proper occasion for its exercise according to the settled practice of chancery. . . [594] The charitable bequests of Francis Jackson cannot, in the opinion of the court, be regarded as so restricted in their objects, or so limited in point of

time, as to have terminated and been destroyed by the abolition of slavery in the United States. . . [595] Neither the immediate purpose of the testator— . . nor his ultimate object— . . has been fully accomplished by the abolition of slavery. . . [596] The mode in which the funds . . may be best applied . . must be settled by a scheme to be framed by a master and confirmed by the Court before the funds are paid over to the trustees. . . The case is therefore referred to a master, with liberty to the attorney general and the trustees to submit schemes for his approval; . . [597] As to the bequest in the fifth article, the master reported that . . it . . be applied by the trustees in accordance with their unanimous recommendation, to the use of necessitous persons of African descent in the city of Boston and its vicinity. This scheme was approved and confirmed by the court, with this addition: 'Preference being given to such as have escaped from slavery.' . . [599] The master . . reported that what remained of the fund bequeathed by the fourth article of the will should be 'ordered to be paid over to the . . Freedman's Union Commission, to be . . expended . . in promoting the education, support and interests generally of the freedmen (late slaves) in the States of this Union recently in rebellion.' And this scheme was by . . the whole court accepted and confirmed, modified . . by substituting for the words 'recently in rebellion' the words 'in which slavery has been abolished, either by the proclamation of the late President Lincoln or the amendment of the Constitution.' Final decree accordingly."

Attorney-General v. Garrison et al., 101 Mass. 223, March 1869. [224] "Information filed . . by the attorney general at the relation of the treasurer of the New England branch of the American Freedman's Union Commission, setting forth that in 1861 Francis Jackson's will was duly proved and allowed . . containing in its fourth article a bequest of \$10,000 to William Lloyd Garrison, . . in trust . . 'to use . . for the preparation and circulation of books . . and such other means as . . [225] will create a public sentiment that will put an end to negro slavery in this country,' . . that . . the executor of the will, brought his bill in equity in this court, . . in regard to the true construction of the bequest . . whereupon proceedings were had resulting in a decree, establishing the bequest as a valid charity, and in 1867 ordering its execution cy pres, negro slavery having then been put an end to in this country. . . The material part of this decree the information recited as follows: 'And as to the sum . . given to the said trus[226]tees by the fourth article of said will, . . it is ordered, . . that the remainder . . being \$9,259.80, be paid . . to the said trustees, to be by them paid over, at such times and in such sums as they in their discretion may think fit, to the treasurer of the New England branch of the American Freedman's Union Commission, to be by them expended in promoting the education, support and interests generally of the freedmen (late slaves) in the states of the Union in which slavery has been abolished,' . . The information then set forth that the executor duly paid . . to the trustees, . . but that they never made any payment whatever . . to . . any officer of the Commission;

. . . 'and that they do not now intend ever to make any such payment,' . . . [227] The prayer was, for the court 'to pass a new order . . . that [the charity] may not fail; . . . and to remove such of the said trustees, . . . as may refuse . . . to obey the order . . . of the court, and appoint a new trustee or trustees in the place thereof;' and for general relief. . . Garrison, Quincy and May filed a joint answer, . . . denying that they, . . . had ever declared that they . . . would never consent to pay over . . . to the . . . Commission, . . . and alleging that 'they have long desired . . . to obey . . . the said decree of this court, . . . but their efforts . . . have been defeated by . . . the said Phillips, Jackson, Bowditch and Whipple.' . . . [229] Phillips, Whipple and Jackson also filed a joint answer, . . . [230] that no payment of this fund . . . had been made to . . . any officer of the Commission, . . . [232] denied that, . . . a wise and proper discretion and proper administration of the charity would require that the whole or a considerable part of the sum should be paid to him forthwith, or should have been paid to him previously. Bowditch filed a separate answer, admitting . . . that, notwithstanding the request . . . [233] by the Commission . . . they had made no payment to its treasurer; . . . 'that the said decree . . . does not purport to divest said . . . trustees of the duty . . . of exercising a sound discretion, as to the times and manner of expending the . . . bequest.' . . . [235] 'But he does not feel that he ought to consent, notwithstanding the decree . . . to the application of the whole fund to a purpose which . . . his testator would have disapproved of. Whenever, . . . the amount . . . paid over to the Freedman's Union shall exceed one half of the trust fund, . . . it is probable that this defendant will refuse to note any further payments to said Freedman's Union.' Issue was joined on these answers; and a hearing had before the chief justice, who reserved the case for . . . the full court . . .

[238] "Chapman, C. J. The object of the information is, to enforce, the execution of a charitable trust in conformity with a decree of the court . . . and the court are . . . of opinion that the decree requires that the money, when received by the treasurer . . . should be applied to the enterprise which it is now prosecuting. . . . [239] Four of the [trustees] . . . think that not more than five thousand dollars should be appropriated to the schools; . . . These trustees are so unwilling to execute the trust in conformity with the decree . . . that they prefer to be removed . . . it becomes necessary to remove them. . . . The other three trustees . . . are willing . . . to execute the trust by paying over the whole fund to the treasurer . . . Decree for the removal of the four trustees, and for the nomination of persons to fill vacancies."

Commonwealth v. Cuffee, 108 Mass. 285, October 1871. "Indictment for the murder of Benjamin Howard . . . at the trial, . . . there was evidence . . . tending to show that Howard was killed . . . with a club, near his house . . . and his body dragged into a . . . wood, where it was discovered . . . that the defendant, who was a negro thirteen or fourteen years old, as suspected . . . that . . . two police officers . . . [286] went to the school which the defendant attended . . . and asked him to accompany

them to the scene of the homicide; that he did so, and pointed out . . . the localities at which, . . . it was supposed that the homicide had been committed and the body dragged away and hidden; that they then, against his will, and without a warrant, took him . . . searched him, stripped him . . . and placed him in a cell . . . and that, about ten o'clock at night, 'they took him out of his cell for the purpose of questioning . . . and examined him from that time till midnight, without warning him of his right not to answer unless he chose to do so, or offering him any opportunity to consult with counsel or friends.' The defendants objected to the admission in evidence . . . of statements made by him to the police officers, . . . But it was ruled that, 'in the absence . . . of threats or promises . . . such statements were admissible . . .' and the jury were afterwards instructed that 'if, . . . it appeared to them that these statements were not induced by any threats or promises, they might be considered . . . and allowed such weight as they should consider them to be entitled to; . . . [287] The jury returned a verdict of guilty of murder in the first degree; and the question of the correctness of the . . . rulings was reported for revision."

Held: "The ruling, that the statements were admissible in the absence of threats or promises, was in conformity with recent decisions of this court. . . [288] after all the evidence was in, the court still further guarded the rights of the prisoner by instructing the jury that if, upon the whole evidence in the case, it appeared to them that these statements had been induced by threats or promises, they should not be allowed any weight or effect against the prisoner. These rulings were sufficiently favorable to the prisoner. . . Sentence according to the verdict."

Coleman v. Parker, 114 Mass. 30, November 1873. "Contract, with a count in tort for the same cause of action, to recover a portion of the contents of a trunk, once the property of Sarah Craig, deceased. The plaintiff claimed the property as a gift *mortis causa* from the deceased; the defendant claimed it as administrator of the deceased. At the trial . . . there was evidence that the plaintiff and the deceased had been intimately acquainted . . . for . . . twenty years; that . . . deceased had, . . . promised the plaintiff to leave all her property to her; . . . that the deceased left no relative or heir, and came originally from Virginia, where she was a slave. . . Louisa Dortra, a witness for the plaintiff, testified: 'Mrs. Craig died in July, 1871. . . [31] she told me she wanted Mrs. Coleman to have the trunk if she died and wanted me to see that she got it. . . The key remained in the washstand until after her death; . . .' [32] Upon the foregoing evidence the presiding judge ruled, that there was no evidence of any delivery of the trunk and its contents to the plaintiff, or to Louisa Dortra for the plaintiff by the deceased, to go to the jury, and directed the jury to return a verdict for the defendant, which was rendered accordingly; and the plaintiff alleged exceptions. . . "

Held: "The only question raised upon this bill of exceptions is as to the correctness of the ruling at the trial, that the case furnishes no evidence of any delivery of the trunk and its contents to the plaintiff, or to any one on her behalf. The evidence . . . was sufficient to make out all

the other elements necessary to . . . her title. . . it is not enough merely to show that the dying person intended to make the gift, and that she designated . . . what was to be given and to whom. It is necessary also to the plaintiff's case to show that the intention was carried into effect, and that the gift was consummated by an actual or effective delivery. . . [33] We have no doubt that a trunk with its contents might be . . . delivered, . . . by a delivery of the key, not as a symbolical delivery . . . but because it is the means of obtaining possession. . . the evidence reported wholly fails to show that the witness had or was intended to have any such exclusive control or possession of the key. On the contrary, the evidence is that . . . she was directed by the sick woman to lock the trunk and put the key back where she found it, and that it remained there until after the death of the sick woman. There was no such change in the possession of the key as would constitute an effectual delivery of the trunk. Exceptions overruled."

VERMONT

INTRODUCTION

As the first Constitution of Vermont prohibited slavery,¹ few cases are to be found in which it is involved. In the first, decided in 1802, Stephen Jacob, a justice of the Supreme Court of Vermont, had bought a slave Dinah in 1783 and had brought her into the state, but had little service from her as his neighbors enticed her away on learning how good a servant she was. When she became blind and paralytic, the selectmen tried to force Jacob to support her. It was held that the bill of sale to Jacob could not be read in evidence, that it did not operate in Vermont. In 1803 there is a case of lynching a free negro to extort a confession of theft. He was hanged by a halter till nearly suffocated and was otherwise abused. He was found guilty of larceny and one of his torturers was fined, there being "no statute against the crime, as the Legislature never could have contemplated its commission in an enlightened age, and amongst a free people." Among the very numerous "pauper" cases in Vermont, no mention is made of negroes, and but one case seems, from the name of the pauper's husband, Cato Williams, to involve that race. The case of *Burlington v. Rhoda Fosby*² is interesting in holding that Rhoda is the heir at law of Thomas Jackson, both being the illegitimate children of a slave belonging to a citizen of New Hampshire. Only one instance is found of caste distinction, *Paige v. Smith*,³ in which the plaintiff threatened that he would hire some negro to whip the defendant.

If one may generalize from so few cases, it seems that in Vermont as so often elsewhere, the bench was much broader in its attitude toward the negro than the common run of persons, particularly the ignorant sort, who did not hesitate even in Vermont to resort to torture which would have disgraced states farther south.

¹ See paper read by Chief Justice Watson at the meeting of the Vermont Bar Association, 1920.

² P. 537, *infra*.

³ P. 537, *infra*.

VERMONT CASES

Selectmen v. Jacob, 2 Tyler 192, August 1802. "on the 26th of July, 1783, the defendant¹ purchased of one White Dinah, a negro slave, whom he then brought into the town of Windsor; that she continued to live with and serve him as a slave until some time in the year 1800, when she became infirm, sick, and blind, and in this condition was discarded by the defendant, and became a public charge, and that for the moneys expended by the corporation for medicine and attendance during her sickness, and for her support since, this action is bought." Counsel for defendant: [196] "Several of the inhabitants of Windsor, represented in their corporate capacity by the present plaintiff, discovering that she was an excellent servant, and wishing to profit themselves of her labours, inveigled her from her master's family and service by the syren songs of *liberty and equality*, which have too often turned wiser heads. She spent the vigour of her life with these people, . . . and now she is blind, paralytic, and incapable of labour, they aim by this suit to compel the defendant *solely* to maintain her; . . . When she was enticed from the defendant's service; he did not attempt by legal aid to reclaim her. As an inhabitant of the State, in obedience to the constitution, he considered that he could not hold her as a slave." [201] "The bill of sale cannot be read in evidence to the Jury."

Held:² [199] "Our State constitution is express, no inhabitant of the State can hold a slave; and though the bill of sale may be binding by the *lex loci* of another State or dominion, yet when the master becomes an inhabitant of this State, his bill of sale ceases to operate here."

State v. Cato Jenkins, 2 Tyler 377, February 1803. A negro, Cato Jenkins, was charged with stealing a portmanteau containing various bank bills "at Rutland, etc. on the evening of the 1st day of January, 1803, . . . Whitney, the owner of the goods, had fastened his horse with the portmanteau upon the saddle, which contained a small jug of West-India rum, and . . . the bills . . . ; went into a tavern; passed a convivial evening; at a late hour he found his horse had slipped his bridle, was wandering in the public highway, and the portmanteau with its contents were missing. The next morning the defendant treated one Washburn with rum from the jug, which he had concealed in a barn. This led to a suspicion that the defendant stole the property. On being charged, he readily acknowledged that he had the portmanteau in his possession, which he had concealed in a hay-mow. He said he found it early the same morning in the road, but denied all knowledge of the bank bills. Some ill-advised persons³ then seized the negro, and undertook to extort a confession as

¹ Assistant Judge of the Supreme Court of Vermont.

² "Jacob, Assistant Judge, being a party, did not sit in this cause."

³ See *State v. Hobbs*, p. 537, *infra*.

to the bank-bills by torture, which was effected by suspending him by a halter round his neck from the limb of a tree, until he was nearly suffocated, and by other base and inhuman practices, too indecent to be mentioned. The negro, however, persisted in his first confession, and denied all knowledge of the bills. . . the Court, after reprehending, in strong and pointed terms, the practice of torture as a means of discovering the truth, charged the Jury . . . That, however we might feel as men at the relation of the wanton, cruel, and outrageous abuse done to the prisoner, we must not suffer the impulse of the moment . . . to divert us, as Judges or Jurors, from the obligation of our official oaths. The Jury returned their verdict guilty."

State v. Hobbs and Strong, 2 Tyler 380, February 1803. "Indictment for a misdemeanor in torturing a person suspected of theft. . . charged the defendants, that . . . they . . . made a violent assault upon the body of Cato Jenkins, . . . and him the said Cato Jenkins with force and arms did then and there beat, bruise, torment, torture, and burn with fire, and him the said Cato Jenkins with like force did suspend and hang by the neck, . . . The Jury acquitted Return Strong, and found Abraham Hobbs guilty. The Court, in delivering sentence, observed, That there was no statute against the crime, as the Legislature never could have contemplated its commission in an enlightened age, and amongst a free people. That if such a statute had existed, it would probably have been in the power of the Court to award a punishment more adequate to the enormity of the offence. . . The Court sentenced the culprit to pay a fine to the State treasury."

Castleton v. Clarendon, Brayton 181, 1820. "an appeal from an order of removal of Hester Williams, wife of Cato Williams,¹ . . . on the 6th day of January, 1812, said Cato was warned to depart said Castleton, . . ."

Burlington v. Rhoda Fosby, 6 Vt. 83, January 1834. "both the said Thomas [Jackson], the intestate, and Rhoda, the claimant, were the illegitimate children of one Candice, who was the slave of one Moore, a citizen of New-Hampshire." Held: [91] "Rhoda Fosby is the heir at law of Thomas Jackson, the intestate,"

Paige v. Smith, 13 Vt. 251, February 1841. "the plaintiff had made . . . violent threats . . . that he would way-lay the defendant, beat, flog, and whip him, and that he would hire some negro to whip him;"

¹ The name "Cato" indicates that negroes are involved.

NEW HAMPSHIRE

INTRODUCTION

I.

Slavery was of slight proportions in New Hampshire, only 158 slaves are indicated in the census of 1790; and before long slavery was abolished. The paucity of cases dealing with slave problems indicates that public sentiment never reached the boiling point on the question of abolition.

That the common law was sufficient to cover a case of attempted sale of an indentured mulatto boy of six years into slavery in Alabama is evidenced by the case of *State v. Rollins*;¹ the fact that the Supreme Court of the state granted a new trial after conviction in the lower court merely illustrates the principle that appellate courts will reverse for errors irrespective of whether the case was tried on a statutory or common law basis.

The incapacity of the slave to contract is illustrated by the famous case of *Clark v. Pease*;² this decision is entirely in harmony with similar instances in other states.

Perhaps the most striking instance of the tolerant spirit of New Hampshire is found in an advisory opinion of the Supreme Court in 1861.³ The court was asked to pass upon the constitutionality of the act of June 26, 1857, which among other things provided that color should not bar from citizenship, or from the privilege of voting, that slaves who came or were brought into the state should be free, and that anyone who held another in slavery within the state should be guilty of a felony and punished accordingly. The immediate problem was whether or not the act was in conflict with the federal act known as the Fugitive Slave Law and hence unconstitutional. The court took the position that under settled rules of construction, no statute would be deemed unconstitutional if it was evidently not intended to conflict with federal law, merely because the act could not properly apply to all persons. It was said further that the state act was designed to remove doubts that might have arisen after the *Dred Scott* decision,⁴ and was not designed to affect the rights of fugitive slaves or of persons lawfully reclaiming them.

¹ P. 540, *infra*.

² P. 541, *infra*.

³ State of New Hampshire, p. 541, *infra*.

⁴ 19 Howard 393.

II.

By the act for establishing courts of law,⁵ the judiciary was organized as follows: The justices of the peace had jurisdiction over cases (except those involving title to realty) not exceeding forty shillings. Either party could appeal to the court of common pleas. In criminal cases appeal lay to the court of general sessions. From both the court of common pleas, and the court of general sessions, the final appeal was to the Superior Court of Judicature of the state.

⁵ Passed Feb. 9, 1791.

NEW HAMPSHIRE CASES

State v. Rollins, 8 N. H. 550, December 1837. [551] "Indictment for assault and false imprisonment, and kidnapping. . . Upon the trial it appeared, that . . the overseers of the poor of . . Exeter placed said Swett, who was a mulatto boy, about six years of age, and one of the paupers of said town, with the defendant, . . as an apprentice; and the defendant . . executed a . . memorandum, . . to have and to hold him by an indenture to be made by the overseers in case he should use the boy well; and that he would clear the town from all expense that might accrue, by not returning the boy to the poor house within one year. . . On the 24th of October, . . defendant carried the boy from his house, . . to . . Jonathan Bennett, . . a distance of forty miles, [552] and left him there. He . . told the wife of said Jonathan that the boy was given to him . . that he had sold him to one Samuel Bennett, of Alabama, . . until he should be twenty-one years old, for the sum of fifty dollars, . . The boy remained there until the 29th of October, when he was taken away by the overseers of Exeter. . . Samuel Bennett . . went to the defendant's, and informed him that the overseers had taken away the boy. . . the defendant paid him fifty dollars. Bennett then asked the defendant for a bond which he had executed to him, . . a discharge was written upon it, and signed by the defendant. . . Bennett returned to Alabama. The bond . . provided that if said Bennett should well and truly return said bound and indented negro boy into the state of New Hampshire, free and independent as other apprentice boys when they had served out their time, the bond should be void, otherwise of force. [553] . . The jury found the defendant guilty upon the fourth count, 'of selling Benjamin Swett, with an expectation of his going into slavery;' and the defendant moved for a new trial, and in arrest of judgment."

New trial granted: [559] "It is objected that the provisions of the common law for the punishment of the crime of kidnapping have never been in force in this state; . . [560] We are of opinion that this position cannot be maintained. . . [561] There seems to be no reason to doubt, . . that the body of the English common law, . . so far as they were applicable to the condition of the people, were in force here, . . [562] The form . . of civil government adopted by the congress of the colony, January 5, 1776, was intended for a temporary purpose, and made no change in this respect. The declaration of independence was read and published in . . 1776, and the colony assumed the name . . of New-Hampshire; . . [565] We are of opinion that the first count, for an assault and false imprisonment, is well sustained on the evidence before us. . . Every restraint upon the liberty of a free man will be an imprisonment. . . The defendant held Swett for the time as an apprentice, or servant, and might lawfully exercise authority over him as such; but when he took him and

carried him to Northwood, under a contract to transfer him, or his services, . . . out of the state, that was a restraint upon his liberty and an unlawful imprisonment. . . . It would be idle to say there was no restraint because there was no struggle, or because a boy of six years old was not conscious of it. . . . [566] But as the indictment stands, there should be a finding that the intention was that he should be held in slavery during life. . . . The defendant's only authority was to hold the boy as his servant, until the overseers claimed him. . . . When, therefore, he sold him into servitude until he should become twenty-one, . . . he was guilty of kidnapping. . . . [568] But no judgment can be rendered on this verdict, as it does not find the offence charged in either count. A sale of the boy, with an expectation of his going into slavery, is not, necessarily, either kidnapping or false imprisonment. The verdict being imperfect, a *venire facias de novo* must be awarded."

Clark v. Pease, 41 N. H. 414, December 1860. [415] "It is a familiar principle, . . . that the essence of a contract is the [416] . . . agreement of the mind of both parties, and that there is no contract unless the parties there to assent, and 'when such assent is impossible, from the want, . . . or incapacity . . . there can be no perfect contract.' . . . Upon this principle certain . . . persons are held to be incompetent to make contracts. Such are infants . . . slaves, . . . [428] Take also the case of a slave. There the general rule is, that he is incompetent to contract; and if a man were about to purchase a note, and, upon inquiry as to who the signer was, should learn that he was a slave, that would be sufficient notice to him that the note was void, because all contracts made by all slaves usually are so, because while in that condition they must necessarily be constantly under a duress of body, mind, and will."

State of New Hampshire, 41 N. H. 553, June 1861. "To the Honorable House of Representatives: The undersigned, Justices of the Supreme Judicial Court, . . . submit the following opinion: The first and fourth sections of the act referred to are as follows: Section I. . . . 'That neither descent, near or remote, from a person of African blood, whether such a person is or may have been a slave, nor color of skin shall disqualify any person from becoming a citizen of this State, or deprive such person of the full rights and privileges of a citizen thereof. Section 4 Section first of chapter twenty-five of the Compiled Statutes shall not be so construed as in any case to [554] deprive any person of color, or of African descent, born within the limits of the United States, and having the other requisite qualifications, from voting at any election; but such person shall have and exercise the right of suffrage as fully and lawfully as persons of the white race.' We do not understand that the constitutionality of these sections has ever been questioned, nor are we aware that they made any change in the . . . law. The second section provides that, 'Any slave who shall come or be brought into or be in this State, with the consent of his master . . . or who shall come or be brought into or be in this State involuntarily, shall be free.' It has been suggested that this section could not be constitutionally applied to a person being carried through this state,

with or without process, under the Act of Congress, . . . the Fugitive Slave Law, or under the provision of the Constitution of the United States, commonly called the Fugitive Slave clause, The third section is: 'Every person who shall hold . . . in slavery, . . . any person, of whatever color, class, or condition, in any form or under any pretence, . . . shall be deemed guilty of felony, and, on conviction thereof, shall be confined to hard labor for . . . not less than one, nor more than five years: . . . [555] The rule of construction universally adopted is, that when a statute may constitutionally operate upon certain persons, or in certain cases, and was not evidently intended to conflict with the constitution, it is not to be held unconstitutional merely because there may be persons to whom, . . . it cannot constitutionally apply; . . . [556] There is nothing in the act of 1857 indicating an intention to obstruct or impede the operation of the Constitution, or any law of the United States; but we are not left merely to presume from this negative evidence that no such purpose existed, for the proviso in the third section, and the general tenor of the act, furnish positive evidence, and clearly manifest the contrary intention. The act was apparently designed to remove any doubts that might have arisen after the decision in the case of Dred Scott, . . . as to the rights of free colored persons in those States where there were no statutes on that subject. It was evidently not designed to relate to, or to have any operation upon the rights of fugitive slaves, or of persons lawfully reclaiming them; and we are of opinion that it is not to be construed to have any such operation. . . . [557] It is not necessary to give such a construction to any section of the act as to render it unconstitutional, and such a construction could not be adopted without violating well settled rules of interpretation. In our opinion, the act entitled 'An act to secure freedom and the rights of citizenship to persons in this State,' passed June 26, 1857, is constitutional."

Pickering v. De Rochemont, 45 N. H. 67, December 1863. "the declaration was as follows: . . . [68] Also, the further sum of \$1771, being the seventh part of the value of twenty-five slaves belonging to the said heirs . . . Also, the sum of \$1200, . . . being the half part of the value of six other slaves . . . Also, the sum of \$3,000.00, being the one seventh part of the hire and earnings of said twenty-five slaves belonging to the said seven heirs, . . . Also, the sum of \$3,000, . . . being the one half part of the hire and earnings of said six slaves . . . Also, the sum of \$2,000, . . . being the one [69] seventh part of the Government compensation under the emancipation act of Great Britain for certain other twenty-five slaves . . . received, . . . by said defendant in trust and to the use of the said seven heirs . . . Also the further sum of \$1200, being the one half part of the Government compensation under the emancipation act of Great Britain, for certain other six slaves . . . [70] the defendant pleaded the general issue, . . . the case was referred to Henry A. Bellows, Esq., as Auditor, who . . . made his report . . . [72] sum of \$2508.01, the auditor finds to be due . . . to the plaintiffs, . . . The auditor's report was admitted, and the defendant excepted."

Held: [75] "It is objected that the declaration alleges an indebtedness of the defendant to the plaintiffs jointly, while . . . the evidence . . . prove[s] an indebtedness to the wife alone before marriage. . . [76] The declaration before us is bad, therefore, for not setting forth the manner in which the wife is interested. . . our statutes authorizing married women to sue and be sued in certain cases, . . . does not affect the rule which is [77] to be applied in other cases and thus provided for. . . [81] we think it must be held that the auditor's report was sufficient *prima facie* evidence to warrant the jury in allowing to plaintiffs all the items which he had allowed. . . the nonsuit was properly ordered, but the plaintiff may amend."

Orr v. Quimby, 54 N. H. 590, June 1874. [591] "Trespass, . . . for . . . cutting down, carrying away, and converting . . . 710 trees and 195 cords of wood. The defendant pleaded . . . a special plea . . . that . . . under . . . authority of an act of congress . . . the defendant entered . . . for the purpose of exploring, . . . the said coast, . . . the plaintiff demurred. The plaintiff claimed, . . . that the defendant could not enter without first tendering compensation;"

Held: [592] "The position was taken by the plaintiff's counsel that this statute . . . requires the assessment of damages for which it provides, and payment or tender of the sum assessed, to precede the taking of property under it, . . . It is clear that this position cannot be sustained."

Dissenting: [603] "the defendant does not deny that he took the plaintiff's property— . . . Property taken for that survey is taken for a public use. . . [605] The plaintiff is equally entitled to compensation, whether his property was taken by the federal or the state government, . . . [620] In 1772, when the number of slaves in England was estimated at 14,000 . . . and their value at not less than £700,000 sterling, the immemorial custom by which they were held was not strong enough, in the opinion of Mansfield and the other judges . . . to be an exception; and it was decided, . . . to be illegal at common law. . . Upon those principles slavery is continuous personal violence, duress, assault and battery, and false imprisonment, for which an action of trespass and an indictment will lie. . . The slave title was derived from a foreign country where a free person had been overcome by a use of force, which, in England, would be an indictable offence. Personal violence, begun in Guinea, was continued in London. . . [621] The thirteen original states were all slave states when they declared their independence in 1776. . . 'How or by what act slavery was abolished in Massachusetts, . . . is not now easy to determine, . . . By the constitution adopted in 1780, slavery was abolished in Massachusetts,' . . . [622] the constitution (including the bill of rights) of New Hampshire having been largely copied from that of Massachusetts, . . . [623] If the national census is correct, the number of slaves in this state in 1790 was 158; in 1800, 8; in 1830, 3; in 1840, 1. Dr. Belknap, . . . says,—'The state of New Hampshire established their constitution in 1783; and in the first article of the declaration of rights, it is asserted that "all men are born equally free and independent." The construction there put on this

clause is, that all who have been born since the constitution are free, but that those who were born in slavery before are liberated by it. By reason of this construction . . . the blacks in that state, are . . . distinguished into free and slaves.' . . . [624] On the question whether the people of New Hampshire, when they adopted the constitutional reservation of the right of personal liberty in 1783, understood that it would abolish slavery, either instantly or gradually, very little if any direct evidence has been discovered. . . . A small number of slaves continued to be taxed to their masters a few years after the adoption of the constitution of 1783. In the tax law of 1789, slaves were not one of the items of the list of taxable property. . . . [625] If it were a matter of public history that Massachusetts, in making the reservation in her declaration of rights, intended to abolish slavery, there would be some legal ground for holding that New Hampshire intended the same thing. But, . . . it does not appear that Massachusetts had such an intention. . . . In 1774 the continental congress, not authorized . . . to abolish the chattel slavery . . . declared, . . . that the inhabitants . . . were entitled to life, liberty, and property. Such language, . . . was universally understood to be qualified, . . . by the exceptional custom of African slavery. . . . [638] While the reservation of the rights of life, liberty, and property is unequivocal, it must be admitted that exceptional cases, within the letter of it but held not to be within its meaning, have extensively disseminated the idea that it is a transcendental theory devoid of all legal force. . . . The compulsory purchase of the plaintiff's property, without compensation, is not an exception, but as plain a violation of the right as is possible."

MAINE
INTRODUCTION

I.

When Maine was separated from Massachusetts, in 1820, and became an independent state in the Union, slavery had long since ceased to exist in Massachusetts, and it never existed in the state of Maine. It seems therefore that there is no Maine legislation on the subject of slavery to record, except an act of 1857 requiring all county attornies to defend all persons arrested and claimed as fugitive slaves within their respective counties.¹

The application of general statutes to negro or slave paupers is evidenced by the case of *Hallowell v. Gardiner*,² in which the question arose as to whether or not the pauper had acquired a legal settlement in the defendant town. It was held that the pauper had not acquired a settlement because her father was a slave and she was never emancipated. Her mother was a free black woman, but had no settlement since her husband had none.

In *Bailey v. Fiske*,³ the demandants claimed certain real estate as the heirs of their father. Their claims were denied by the trial court and the supreme court of the state overruled exceptions to the verdict of the trial court on the grounds that the claimants were illegitimate, their father being a mullato and their mother the daughter of a white father and a mother who was one-eighth Indian. Under a state statute the marriage of white with colored persons was prohibited, and since the issue of such a marriage were illegitimate they could not inherit from their deceased father.

II.

The Maine Constitution of 1820⁴ provided as the highest tribunal of the state a Supreme Judicial Court, which an act of the same year⁵ organized to consist of a chief justice and two associate justices, increased to three in 1847,⁶ and to six in 1852.⁷ A peculiar act of 1855,⁸ beside adding another associate justice, provided that for hearing and determining questions of law and equity and for trying capital offences four justices, of whom the chief justice should always be one, should be specially designated by the governor from among the members of the court. This was repealed in 1856, and the number of associate justices was reduced to six, but from 1857 till after the date at which our scrutiny of the reports comes to an end (1875) their number was seven.⁹

¹ Public Laws of 1857, ch. 43.

² P. 546, *infra*.

³ P. 549, *infra*.

⁴ Art. VI., sect. 1.

⁵ Act of June 24, 1820. Laws of 1830, ch. 54.

⁶ Public Laws of 1847, ch. 15.

⁷ Public Laws of 1852, ch. 246.

⁸ Public Laws of 1855, ch. 174.

⁹ Public Laws of 1856, ch. 272; Laws of 1857, ch. 3.

MAINE CASES

Hallowell v. Gardiner, 1 Me. 93, September 1820. “*Assumpsit* for the support of a pauper alleged to have his legal settlement in Gardiner. . . Harriet, the pauper, was the grandchild of Isaac Hazard Stockbridge and Cooper his wife. Hazard was a negro man, imported from Africa about . . . 1740, . . . and . . . a slave by purchase by Doctor Sylvester Gardiner, . . . and resided with his master, in Boston, . . . until about the year 1766. In . . . 1765, Hazard, with the consent of his master, was legally married to Cooper Loring, a free black woman, . . . Hazard . . . was ordered to . . . an estate of his master in . . . Gardinerstown, . . . afterwards Pittston, . . . he resided with his wife and [94] children, among whom was Lucy Stockbridge, mother of the pauper, on the west side of the river, now Gardiner, on a new farm of Dr. Gardiner’s. In . . . 1776, Dr. Gardiner left . . . Massachusetts, to which he never returned. He arrived at Newport in the State of Rhode-Island in 1786, where he died . . . the Doctor intrusted the care of his estates . . . to his son William, who . . . required the services of Hazard . . . and frequently furnished him with supplies . . . until the death of Hazard in 1780. . . Gardinerstown was incorporated by the name of Pittston in . . . 1779, Lucy then being about ten years of age. . . Lucy went to Augusta, . . . until 1792, during which time she became the mother of Harriet, the pauper, who is illegitimate. She then returned to . . . Gardiner, . . . until 1809.”

Held: [98] “plaintiff rests his cause on four distinct grounds: and if either of them be substantial the settlement of the pauper and her children must be adjudged to be in the town of Gardiner. . . [99] As to the first point, we do not perceive any facts which shew that Dr. Gardiner ever did, . . . emancipate his slave. . . no manumission . . . could be availing, unless a bond . . . were given, . . . no such bond was given . . . As to the second point;—though . . . slaves have no civil rights, . . . it is provided by the Provincial Stat. 4 Ann. c. 6 . . . that ‘no master shall unreasonably deny marriage to his negro with one of the same nation, . . .’ . . . The third point is of more importance. Could the wife of a slave gain a settlement by residence in a town with her husband at . . . its incorporation, though her husband could not; . . . [100] it seems to be settled that a slave can neither acquire nor communicate a settlement, like a free man. . . the reason . . . why a wife cannot have a settlement separate from her husband, is, that it would lead to a separation of husband and wife; . . . the wife of Hazard could not . . . gain a settlement in her own right, by her residence with her husband in the town of Pittston at the time of its incorporation. The last point . . . is, whether Lucy, . . . being about ten years old, . . . did, . . . gain a settlement in that town. . . [101] the language . . . of Stat. 1793, c. 34, . . . is general. ‘*All persons, . . . dwelling and having their homes in any unincorporated place, at the time when the same shall be incorporated into a town . . . shall thereby gain a legal settlement*

therein.' . . . the clause must be understood . . . as the legislature . . . intended; . . . that all persons legally capable of gaining a settlement in any other mode, should, . . . gain one in the method mentioned in that article; but not, that a married woman, or a slave, should thus obtain a settlement. . . . Lucy lived in the family with her parents at the time of the incorporation, which marked her [102] . . . as not emancipated, and so not capable of gaining a settlement. If a child, . . . living in her father's family in a town one year before the 10th day of April 1767, without being warned to depart, could not gain a settlement . . . when the parents gained none; we do not perceive upon what principle such child could, . . . gain a settlement by living in a town at the time of its incorporation. . . . Plaintiffs Nonsuit."

Polydore v. Prince, 19 Fed. Cas. 950 (1 Ware 402, 411), August 1837.

"This was a libel for an assault and battery committed by the master on a passenger, on a voyage from Guadaloupe to Portland. It appears . . . that the libellant was a slave in Guadaloupe, that he was put on board the vessel by his master, Mons. Bercier, in company with his son, Eugene, a youth of about seventeen years of age, whom he was to attend during his residence in this country, as his servant. One morning, some days after they had been at sea, the captain ordered Polydore to clean out a hen-coop, in which there were some live fowls. Polydore refused, and the captain . . . says, that he behaved otherwise insolently to him. . . . But . . . Polydore did not understand a word of English, nor did the master [of the ship] understand much more of French. It is also alleged by the master that in consequence of his taking Polydore at a low rate of passage money, he receiving sixty francs for Polydore and one hundred and fifty for Eugene, that Polydore was to perform such service in relation to Bercier, and also such service on board the vessel as might be properly required of him; that the fowls were for Eugene, and that it was Polydore's business to attend to them. But there is no proof in support of the first part of this allegation, and it appears in point of fact, that the fowls . . . were used as a common stock on board the vessel. Upon the refusal of Polydore to do the service that he was ordered, the captain gave him a pretty severe flogging with a piece of dry twisted cowhide; some days afterwards, the cowhide was abstracted from the cabin and not to be found; on the captin's inquiring for it, he was told that Polydore had taken it and thrown it overboard, when in fact it had been taken and secreted by Eugene for the purpose of bringing it to this country and exhibiting in court, as the instrument with which Polydore had been flogged. Both Eugene and Polydore concurred in deceiving the captain. The captain then gave Polydore another flogging with a small rope."

Held: Polydore may maintain the action in his own name: [956] "it is not for me to say what would be the judgment of a court sitting within a jurisdiction where slavery is allowed, but sitting as this court does, in a place where slavery by the local law is prohibited, I do not feel myself called upon to allow that disqualification when it is alleged by a wrongdoer, as attaching to the libellant by the laws of a foreign power, for the

purpose of withdrawing himself from responsibility for his own wrong." [Ware, Dist. J.]

U. S. v. Libby, 26 Fed. Cas. 928 (1 Woodb. and M. 221), May 1846. Libby, of Scarborough, Maine, was master of the brig *Porpoise*, a vessel owned by a citizen of Maine, which sailed from Portland on a freighting voyage. On reaching Rio Janerio, the consignees there [929] "entered into a charter party for her with one Franceco, a Brazilian, . . . to carry no persons not free, and no goods illegal in character." She [930] "sailed from Rio in February, 1844, for the eastern coast of Africa, with several passengers on board, who were Brazilians, and some of them agents of Franceco, with a cargo consisting of rum, cotton goods, iron bars, gunpowder, brass rings, etc., being articles such as are in demand on that coast, and such as usually are sold for money and slaves purchased sometimes with the proceeds, or such as are often exchanged for slaves. The cargo was landed there at different factories, under the direction of Paulo [a partner of Franceco in the slave trade] and others, and a launch, which belonged to him. The *Porpoise* arrived there in April, 1844, and remaining on the coast till December, 1844, landing the cargo at the places described, tended to show Libby's knowledge of their business, and for the same purpose he was proved also to have gone on shore occasionally during the time to get provisions at the factories; sometimes dined there by invitation with Paulo; saw slaves in their yards, and some of the witnesses swear he was present at times with themselves, when some were bought and branded by Paulo. It was further shown, that he sailed in company from Lorenzo de Marks to Inhambane, with a vessel called the *Kentucky*, and under the control of Franceco and Paulo, and took on board there some of her crew, who were Americans, as passengers, before the *Kentucky* loaded with slaves under a Brazilian captain and crew, and sailed with them as she did to Brazil; that the *Porpoise* and *Kentucky* hung out lights in the night for each other in going from Lorenzo de Marks to Inhambane, a voyage of sixty or seventy hours; that Libby took on board there one African boy, . . . [931] called Guilheme, and another on his return at Lorenzo de Marks, called Pedro,¹ but both supposed to have the manumission papers before described, and carried no other Africans, unless he knowingly received Luez,² as charged in the indictment, and carried him about fifteen miles to Inaak, where he was landed with Paulo and the pilot's crew; . . . [931] that after Libby's return from Inhambane, he waited by direction of those chartering the *Porpoise*, till a slave vessel, the *Gala-felia*, was loaded and sailed the same day he did for Rio but he with no cargo on board the *Porpoise*, and merely provisions and water and some free passengers and the two boys, Guilheme and Pedro." [929] "On her return she [the *Porpoise*] was informed against by Johnson, a free colored man on board, who had been severely punished in Africa for taking a boat ashore without leave, and after examination at Rio before the

¹ [930] "Both of them were then in court, nobody claiming them as slaves since they came on board."

² Luez, a slave, was the brother of Pedro, and [935] "came on board in the same boat with the pilot as well as with Paulo; . . . the master was then busily engaged."

American minister, consul, and the commander of the American squadron, was sent home by the latter for a breach of the laws of the United States against the slave trade." Libby "was charged with having received on board said brig . . . within flow of the tide, at a place called Lorenzo-Marquez, on the eastern coast of Africa, a negro called Luez, not held to service by the laws of the United States or either of them, and with an intent to make him a slave."

Held: I. [935] "if . . . in the pressure of business, and crowd of people, he did not know or notice that any black came on board in the pilot's boat, except his colored oarsmen,¹ he did not receive him designedly . . . on board within the meaning of the law, so as to make the master [of the ship] punishable with death, as receiving him with a view to make him a slave." II. "Did he intend to make Luez a slave? In order to find this against him, it is not necessary that Luez should have been free, and that Libby thus attempted to make him a slave for the first time. It is enough, if he meant to co-operate as a party in interest and power, and design, to perpetuate his condition as a slave, and received him on board for that purpose."² [Woodbury, Circ. J.]

Bailey v. Fiske, 34 Me. 77, 1852. "Writ of entry. The demandants claim as heirs at law of their father Tobias Jones. The evidence . . . proved, that Tobias was a mulatto; that their mother, . . . was a daughter of a father who was entirely white, and of a mother who was one-eighth Indian, she having been the child of a man who was a quarter Indian. The Judge considered the marriage of Tobias Jones to have been null, and ordered a nonsuit, to which the demandants excepted."

Exceptions overruled: "There is a difference of opinion respecting the proportion of African blood, which will prevent a person possessing it from being regarded as white. Some Courts . . . held, that a person should be so regarded, when his white blood predominated both in proportion and in appearance. Those least disposed to consider persons to be white, who [78] have any proportion of African blood, have admitted, that persons possessing only one-eighth part of such blood should be regarded as white. . . . There was in Abigail Jones, according to her testimony, but one-sixteenth part of Indian blood, and she must be considered a white woman. She was married to a mulatto, who could not be regarded as a white man. The marriage of white with colored persons was then forbidden by statute. Their children were therefore illegitimate, and they could not inherit from their father."

Inhabitants of Raymond v. Inhabitants of North Berwick, 60 Me. 114, 1871. "Assumpsit for pauper supplies furnished by the plaintiffs to one Geo. A. Jones, a pauper found in need of relief in the plaintiff town. . . . [115] It appeared on the part of the plaintiffs, that . . . pauper supplies were furnished . . . to the pauper, found in their town, . . . in 1858; that

¹ [932] "which crew it was necessary to have temporarily on board, and to carry whom, while piloting the vessel, was, of course, not within the spirit or letter of the act of Congress."

² See *U. S. v. Corrie*, vol. III., p. 468, of this series.

the defendants, . . . paid the bill; that the pauper was found in Gray, in 1860, . . . was supplied by that town, and that . . . the defendants paid that bill. The plaintiffs made out a *prima facie* case and stopped. It appeared, . . . that Tobias Jones, the grandfather of George A. Jones, the pauper, had his settlement in North Berwick, and that he was the father of Levi Jones, who was the father of the pauper; that Tobias Jones was a mulatto, and that Abigail Green, his reputed wife, and the mother of Levi Jones was a white woman; . . . The plaintiff claimed that Levi Jones gained a derivative settlement in the defendant town from his father Tobias; and if . . . not . . . through his father, then through his mother, or in his own right, by actually dwelling and having his home in the defendant town on March 21, 1821. The defendants contended that the marriage between Tobias Jones and Abigail Green was void, . . . Levi Jones . . . illegitimate and followed the settlement of his mother, and . . . that George A. Jones, the pauper, followed and had the settlement of his mother, . . . the Court instructed the jury, that if the parents of Levi Jones were in fact married to each other before he was born, and afterwards lived together as husband and wife in good faith, believ[116]ing the marriage to have been legal, and there was nothing to invalidate it except that the father was a mulatto and the mother a white woman, . . . it was immaterial whether Levi was . . . legitimate . . . or . . . illegitimate . . . To this ruling the defendants alleged exceptions."

Exceptions sustained: [117] "Tobias Jones, . . . had his settlement in the defendant town. He was a mulatto, and . . . his reputed wife, . . . was a white woman. Their marriage was void, and their children illegitimate. . . . Levi Jones, . . . was living with his father, in the defendant town, . . . At that time he was a minor. . . . Being illegitimate and not emancipated . . . he had the settlement of his mother at the time of his birth. Where that settlement was at the time of the birth of the son, is nowhere shown. It was for the plaintiffs . . . to prove . . . Nor, though the mother might gain a new settlement by residence in the defendant town . . . would the settle[118]ment of the son, while a minor, . . . follow that of the mother. . . . illegitimate children, under age, . . . retain the settlement which she had at their birth. It is not pretended that the pauper had, . . . in his own right, a settlement in the defendant town. It is seen that his father not having any, he did not gain one by derivation, nor by residence."

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