

The Somerset Case (1772)

In this famous case, the lawyer for West Indian slave James Sommersett (Somerset) argued that his client should be freed after his arrival in Britain. The lawyer's statement that "the air of England is too pure for a slave to breathe" meant that the moment a slave stepped on British soil, he or she should be free. However, the new federal constitution of the United States explicitly required all states, especially those that outlawed slavery, to police the institution. This clause caused violence and indignities for escaped slaves and free blacks, as well as white opponents of slavery, and would help to feed the fires of controversy over slavery in the coming decades.

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The Case of JAMES SOMMERSETT, a Negro, on a Habeas Corpus,* King's-Bench: 12
GEORGE III. A.D. 1771-72.

Of this Case only a Statement of the Facts, and Mr. Hargrave's learned Argument were inserted in the former edition of this Work. I have here added the other Arguments, and the Judgment of the Court, from Lofft's Reports, in which is a Note of the Case under the name of Sommersett against Stewart.

On the 3d of December 1771, affidavits were made by Thomas Walklin, Elizabeth Cade, and John Marlow, that James Sommersett, a negro, was confined in irons on board a ship called the Ann and Mary, John Knowles commander, lying in the Thames, and bound for Jamaica; and lord Mansfield, on an application supported by these affidavits, allowed a writ of Habeas Corpus, directed to Mr. Knowles, and requiring him to return the body of Sommersett before his lordship, with the cause of detainer.

Mr. Knowles on the 9th of December produced the body of Sommersett before lord Mansfield, and returned for cause of detainer, that Sommersett was the negro slave of Charles Steuart, esq. who had delivered Sommersett into Mr. Knowles's custody, in order to carry him to Jamaica, and there sell him as a slave. Affidavits were also made by Mr. Steuart and two other gentlemen, to prove that Mr. Steuart had purchased Sommersett as a slave in Virginia, and had afterwards brought him into England, where he left his master's service; and that his refusing to return, was the occasion of his being carried on board Mr. Knowle's ship.

Lord Mansfield chusing to refer the matter to the determination of the court of King's-bench, Sommersett with sureties was bound in a recognizance for his appearance there on the second day of the next Hilary term; and his lordship allowed till that day for settling the form of the return to the Habeas Corpus. Accordingly on that day Sommersett appeared in the court of King's-bench, and then the following return was read:...

* The very important matters which this case involved, viz. first, The rights over the person of a negro resident here, claimed by another person as the owner of the negro; and, supposing such rights to exist, secondly, The extent of them; and thirdly, The means of enforcing them, were, I believe, never, except in this case, made the subject of a suit at law in England. But in Scotland two cases of this sort have occurred before the Court of Session; 1, That of Sheddan against

Sheddan, A.D. 1756; 2, That of Knight against Wedderburn, A.D. 1775-1778.

Of these two cases the following reports are printed from the 'Dictionary of Decisions,' tit. 'Slave,' vol. 33, pp. 14,545, et seq.:

"Robert Sheddan against a Negro, - July 4, 1757.

"A Negro, who had been bought in Virginia, and brought to Britain to be taught a trade, and who had been baptized in Britain, having claimed his liberty, against his master Robert Sheddan, who had put him on board a ship, to carry him back to Virginia, the Lords appointed counsel for the negro, and ordered memorials, and afterwards a hearing in presence, upon the respective claims of liberty and servitude by the master and the negro.

"But, during the hearing in presence, the negro died; so the point was not determined."

"Joseph Knight, a Negro, against John Wedderburn. - January 15, 1778.

"The commander of a vessel, in the African trade, having imported a cargo of negroes into Jamaica, sold Joseph Knight, one of them, as a slave, to Mr. Wedderburn. Knight was then a boy, seemingly about twelve or thirteen years of age.

"Some time after, Mr. Wedderburn came over to Scotland, and brought this negro along with him, as a personal servant.

"The negro continued to serve him for several years, without murmuring, and married in the country. But, afterwards, prompted to assert his freedom, he took the resolution of leaving Mr. Wedderburn's service, who, being informed of it, got him apprehended, on a warrant of the justices of peace. Knight, on his examination, acknowledged his purpose. The justices found 'the petitioner entitled to Knight's services, and that he must continue as before.'

"Knight then applied to the sheriff of the county, (Perthshire), by petition, setting forth, 'That Mr. Wedderburn insisted on his continuing a personal servant with him,' and prayed the sheriff to find, 'That he cannot be continued in a state of slavery, or compelled to perpetual service; and to discharge Mr. Wedderburn from sending the petitioner abroad.'

"After some procedure in this process, the sheriff found, 'That the state of slavery is not recognized by the laws of this kingdom, and is inconsistent with the principles thereof; that the regulations in Jamaica, concerning slaves, do not extend to this kingdom; and repelled the defender's claim to a perpetual service.' Mr. Wedderburn having reclaimed, the sheriff found, 'That without wages, is slavery; and therefore adhered.'

"The defender removed the cause into the court by advocacy. The lord ordinary took it to report upon informations. Being a question of general importance, the Court ordered a hearing in presence, and afterwards informations of new, upon which it was advised.

"Pleaded for the Master : That he had a right either to the perpetual service of the negro in this

country, or to send him back to the plantations from which he was brought. His claim over the negro, to this extent, was argued on the following grounds:

"The productions of the colonies, ever since they were settled, have been cultivated by the means of negro slaves imported from the coast of Africa. The supplying the colonies with these slaves has become an extensive trade; without which, the valuable objects of commerce, now furnished by the plantations, could not be cultivated. British statutes have given sanction to this trade, and recognized the property of the master in such slaves; 10th W. 3, c. 26; 5th Geo. 2, c. 7; 23d Geo. 2, c. 3.

"The property which, in Jamaica, was established in the master over the negro, under these statutes, and the municipal law there, cannot be lost by a mere change of place. On principles of equity, rights acquired under the laws of foreign countries are supported and enforced by the courts of law here. A right of property will be sustained in every country where the subject of it may come. The status of persons attend them wherever they go; Huber, lib. 1, t. 3, c. 12.

"The law of the colonies is not to be considered as unjust, in authorizing this condition of slavery. The statutes which encourage the African trade show, that the legislature does not look on it in that light. The state of slavery is not contrary to the law of nations. Writers upon that law have enumerated several just and lawful origins of slavery; such as contract, conquest in a just war, and punishment of crimes. In cases where slavery is authorized by the laws of Jamaica, it must be presumed to have proceeded on a lawful origin. The municipal law of no country will be presumed unjust.

"A state of slavery has been universally received in the practice of nations. It took place in all the ancient nations, and in all the modern European nations, for many ages. In some of them it still remains; and in none of them has it been abolished by positive enactments, declaring it unjust and illegal, but gone into disuse by degrees, in consequence of many different causes. Though, therefore, the municipal law of this country does not now admit of this state of slavery in the persons of citizens, yet, where foreigners, in that state, are brought into the country, the right of their masters over them ought not to be annihilated.

"In this case, the master is not insisting for the exercise of any rigorous powers. He only demands, that he shall be intitled to the personal services of the negro, in this country, during his life. His right to this extent, at least, is not immoral or unjust; nor is it even reprobated by the municipal law of this country. A person may bind himself to a service for life; Ersk. Inst. b. 1, t. 7, § 62.

"But, in this last place, if this is denied, the master must, at last, be permitted to compel the negro to return to the plantations, from whence he was brought; otherwise he is intirely forfeited of his right.

"Some cases from the English law-books were adduced to show, that, in England, the master's right of property in his negro remains after he is brought into that country; Butts contra Penny, 1677; Keble's Rep. p. 3, p. 785. Gilly contra Cleves: 5th William and Mary, lord Raymond, Rep. 5, p. 147; and the opinion of two very eminent lawyers, in the year 1729, sir Phillip Yorke, then

attorney-general, and Mr. Talbot, solicitor-general, in these words: 'We are of opinion, that a slave, by coming from the West-Indies, either with or without his master, to Great Britain or Ireland, doth not become free; and that his master's property or right in him is not thereby determined or varied; and baptism doth not bestow freedom on him, nor make any alteration in his temporal condition in these kingdoms. We are also of opinion, that the master may legally compel him to return to the plantations.'

"Answered for the Negro : The only title on which any right of dominion is claimed over this African, is the institution of the municipal law of Jamaica , which authorizes the slavery of Africans brought into that island. Under that law, this negro, a child when brought into Jamaica, while he remained there, was subjected to the unjust dominion which it gives over these foreigners; but the municipal law of the colonies has no authority in this country. On grounds of equity, the Court, in some cases, gives effect to the laws of other countries; but the law of Jamaica, in this instance, will not be supported by the Court; because it is repugnant to the first principles of morality and justice.

"Subordination, to a certain extent, is necessary; but there are certain bounds, beyond which, if any institution, subjecting one individual to another, should go, the injustice and immorality of it cannot admit of a doubt. Such is the institution of slavery, depriving men of the most essential rights that attend their existence, and which are of a nature that admit not of any equivalent to be given for them. The most express consent, given in a voluntary contract, cannot authorize the assuming of these rights, or bind the consenting party to submit to the condition of a slave. A stipulation of that kind affords intrinsic evidence of an undue advantage taken, and is therefore sufficient to void the contract.

"But, although it were justifiable to admit of a slavery proceeding on a title of contract, of conquest, or of punishment, the law of Jamaica would not be the less unjust. In subjecting the Africans to slavery, that law requires no title under any of these grounds. The circumstances, that the negroes are brought into Jamaica, is all that is requisite to fix on them indiscriminately the condition of slavery. It is, therefore, a slavery established on force and usurpation alone, which no writer on the law of nations has vindicated as a justifiable origin of slavery.

"If the law of Jamaica had made any distinction, or required any title to the slavery of an African, this negro would never have been reduced by it to that state. Being a child when he was brought into Jamaica, he could enter into no contract, commit no crime, and conquest cannot give a right to kill or enslave children.

"The means by which those who carried this child from his own country got him into their hands, cannot be known; because the law of Jamaica makes no inquiry into that circumstance. But, whether he was ensnared, or bought from his parents, the iniquity is the same. - That a state of slavery has been admitted of in many nations, does not render it less unjust. Child-murder, and other crimes of a deep dye, have been authorised by the laws of different states. Tyranny, and all sorts of oppression, might be vindicated on the same grounds. - Neither can the advantages procured to this country, by the slavery of the negroes, be hearkened to, as any argument in this question, as to the justice of it. Oppression and iniquity are not palliated by the gain and advantage acquired to the authors of them. But the expediency of the institution, even for the

subjects of Great Britain, is much doubted of by those who are best acquainted with the state of the colonies; and some enlightened men of modern times have thought, that sugar and tobacco might be cultivated without the slavery of negroes.

"The dominion, therefore, given by the law of Jamaica over the pursuer, a foreigner there, being unjust, can receive no aid from the laws of this country. The modification proposed of this claim of slavery, makes no difference on the merits of the question. It is plain, that, to give the defender any right over the pursuer, the positive law of Jamaica must always be resorted to; consequently, the question recurs, Whether that law ought to be enforced beyond its territory? But a service for life, without wages, is, in fact, slavery. The law of Scotland would not support a voluntary contract in these terms; and, even where wages are stipulated, such a contract has been voided by the Court; Allan and Mearns contra Skene and Burnet, No. 5, p. 9454, voce Pactum Illicitum.

"The answer was given to the other claim, of sending the negro out of this country, without his consent, that it supposes the dominion given over the pursuer by the law of Jamaica to be just. The negro is likewise protected against this by the statute 1701, c. 6, which expressly prohibits the carrying any persons out of the kingdom without their consent. The words are general, and apply to all persons within the realm.

"In support of this argument for the negro, authorities of French writers were adduced, to show, that formerly, by the laws of France, negroes brought into that country from the plantations became free. This was their law, until lately, that, by special edicts, some alterations were made upon it; Denisart, tom. 3, v. Negro. On the law of England, several cases were mentioned, in which different judges had expressed opinions, that a negro coming into England is free there; 1 Salk. 666, Smith contra Brown and Cooper; Shanley contra Nalvey, in Chancery 1762; Hargrave's Arg. p. 58.

"But the late case of Sommersett, the negro, decided in the King's-bench, in the year 1772, was chiefly relied on, and said to be in point; at least upon this question, Whether the negro could be sent out of England?

"The Court were of opinion, that the dominion assumed over this negro, under the law of Jamaica, being unjust, could not be supported in this country to any extent: that, therefore, the defender had no right to the negro's service for any space of time, nor to send him out of the country against his consent: that the negro was likewise protected under the act 1701, c. 6. [The 'Act for preventing wrongous imprisonment, and against undue delays in Trials,' more particularly.... enter their heads; they make slaves of whom they think fit. For the air of England; I think, however, it has been gradually purifying ever since the reign of Elizabeth. Mr. Dunning seems to have discovered so much, as he finds it changes a slave into a servant; though unhappily he does not think it of efficacy enough to prevent that pestilent disease reviving, the instant the poor man is obliged to quit (voluntarily quits, and legally it seems we ought to say,) this happy country. However, it has been asserted, and is now repeated by me, this air is too pure for a slave to breathe in: I trust, I shall not quit this court without certain conviction of the truth of that assertion.

Lord Mansfield . - The question is, if the owner had a right to detain the slave, for the sending of

him over to be sold in Jamaica. In five or six cases of this nature, I have known it to be accommodated by agreement between the parties: on its first coming before me, I strongly recommended it here. But if the parties will have it decided, we must give our opinion. Compassion will not, on the one hand, nor inconvenience on the other, be to decide; but the law: in which the difficulty will be principally from the inconvenience on both sides. Contract for sale of a slave is good here; the sale is a matter to which the law properly and readily attaches, and will maintain the price according to the agreement. But here the person of the slave himself is immediately the object of enquiry; which makes a very material difference. The now question is, Whether any dominion, authority or coercion can be exercised in this country, on a slave according to the American laws? The difficulty of adopting the relation, without adopting it in all its consequences, is indeed extreme; and yet, many of those consequences are absolutely contrary to the municipal law of England. We have no authority to regulate the conditions in which law shall operate. On the other hand, should we think the coercive power cannot be exercised: it is now about 50 years since the opinion given by two of the greatest men of their own or any times, (since which no contract has been brought to trial, between the masters and slaves;) the service performed by the slaves without wages, is a clear indication they did not think themselves free by coming hither. The setting 14,000 or 15,000 men at once loose by a solemn opinion, is very disagreeable in the effects it threatens. There is a case in Hobart , (Coventry and Woodfall,) where a man had contracted to go as a mariner: but the now case will not come within that decision. Mr. Steuart advances no claims on contract; he rests his whole demand on a right to the negro as slave, and mentions the purpose of detainure to be the sending of him over to be sold in Jamaica . If the parties will have judgment, 'fiat justitia, ruat coelum;' let justice be done whatever be the consequence. 50l . a-head may not be a high price; then a loss follows to the proprietors of above 700,000 l . sterling. How would the law stand with respect to their settlement; their wages? How many actions for any slight coercion by the master? We cannot in any of these points direct the law; the law must rule us. In these particulars, it may be matter of weighty consideration, what provisions are made or set by law. Mr. Steuart may end the question, by discharging or giving freedom to the negro. I did think at first to put the matter to a more solemn way of argument: but if my brothers agree, there seems no occasion. I do not imagine, after the point has been discussed on both sides so extremely well, any new light could be thrown on the subject. If the parties chuse to refer it to the Common Pleas, they can give themselves that satisfaction whenever they think fit. An application to parliament, if the merchants think the question of great commercial concern, is the best, and perhaps the only method of settling the point for the future. The Court is greatly obliged to the gentlemen of the bar who have spoke on the subject; and by whose care and abilities so much has been effected, that the rule of decision will be reduced to a very easy compass. I cannot omit to express particular happiness in seeing young men, just called to the bar, have been able so much to profit by their reading. I think it is right the matter should stand over; and if we are called on for a decision, proper notice shall be given.

Trinity Term, June 22, 1772.

Lord Mansfield . - On the part of Sommersett, the case which we gave notice should be decided this day, the Court now proceeds to give its opinion. I shall recite the return to the writ of Habeas Corpus, as the ground of our determination; omitting only words of form. The captain of the ship

on board of which the negro was taken, makes his return to the writ in terms signifying that there have been, and still are, slaves to a great number in Africa; and that the trade in them is authorized by the laws and opinions of Virginia and Jamaica; that they are goods and chattels; and, as such, saleable and sold. That James Sommersett is a negro of Africa, and long before the return of the king's writ was brought to be sold, and was sold to Charles Steuart, esq. then in Jamaica, and has not been manumitted since; that Mr. Steuart, having occasion to transact business, came over hither, with an intention to return; and brought Sommersett to attend and abide with him, and to carry him back as soon as the business should be transacted. That such intention has been, and still continues; and that the negro did remain till the time of his departure in the service of his master Mr. Steuart, and quitted it without his consent; and thereupon, before the return of the king's writ, the said Charles Steuart did commit the slave on board the Anne and Mary, to safe custody, to be kept till he should set sail, and then to be taken with him to Jamaica, and there sold as a slave. And this is the cause why he, captain Knowles, who was then and now is, commander of the above vessel, then and now lying in the river of Thames, did the said negro, committed to his custody, detain; and on which he now renders him to the orders of the Court. We pay all due attention to the opinion of sir Philip Yorke, and lord chancellor Talbot, whereby they pledged themselves to the British planters, for all the legal consequences of slaves coming over to this kingdom or being baptized, recognized by lord Hardwicke, sitting as chancellor on the 19th of October, 1749, that trover would lie: that a notion had prevailed, if a negro came over, or became a Christian, he was emancipated, but no ground in law: that he and lord Talbot, when attorney and solicitor-general, were of opinion, that no such claim for freedom was valid; that though the statute of tenures had abolished villeins regardant to a manor, yet he did not conceive but that a man might still become a villein in gross, by confessing himself such in open court. We are so well agreed, that we think there is no occasion of having it argued (as I intimated an intention at first,) before all the judges, as is usual, for obvious reasons, on a return to Habeas Corpus. The only question before us is, whether the cause on the return is sufficient? If it is, the negro must be remanded; if it is not, he must be discharged. Accordingly, the return states, that the slave departed and refused to serve; whereupon he was kept, to be sold abroad. So high an act of dominion must be recognized by the law of the country where it is used. The power of a master over his slave has been extremely different, in different countries. The state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political, but only by positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory. It is so odious, that nothing can be suffered to support it, but positive law. Whatever inconveniences, therefore, may follow from the decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged.