

Case No. 817. BALLARD v. EDMONSTON.
[2 Cranch, C. C. 419.]¹

Circuit Court, District of Columbia.

Oct. Term, 1823.

APPRENTICE—MOTHER CANNOT BIND CHILD.

A mother cannot bind out her child as an apprentice.

[Cited in *Charles v. Matlock*, Case No. 2,615.]

The petition of Richard Ballard stated, that on the 9th of April, 1816, one Evan Edmonston, an infant under twenty-one years of age, by indentures signed and sealed by his mother, Sarah Edmonston, was bound to the petitioner for nine years from the 8th of June next following, to learn the trade of a tailor. That he came and served as an apprentice until about two months past, when he left the service of the petitioner, although the nine years have not yet expired, and the said Evan is still a minor, and refuses to return to his service, alleging that he is not bound by the indentures. The petitioner therefore prays that the said Evan may be brought before the court to abide such order as the court may deem just and equitable. The indenture was in the common form, but signed and sealed by the mother, and not by the son. By the 7th section of the act of Maryland of 1793, c. 45, it is provided, that “in case the contract, whether defective in form or not, hath been partly executed, the said county or criminal court may award and compel the terms or any part of the terms to be performed by the master or mistress, or by the apprentice, as justice and equity may require; and the master or mistress of any apprentice may detain the said apprentice in his or her service, till discharged by the court aforesaid; and the said master or mistress may maintain such action against strangers, as if such apprentice had been legally bound to serve.”

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Mr. Ashton, for the petitioner, contended, that under the 7th section of the act, as the contract had been so far executed, on his part, the court should order it to be completed on the part of the boy, although the indentures are defective in form. The act does not mean mere technical form of the indentures, but the invalidity of the indentures from any cause. Here the contract was, that the boy should serve the petitioner as an apprentice. The indentures were only a matter of form; and although they may be defective, the contract continues, and under that section of the law, may be enforced with such modification, or upon such terms as the court may deem just and equitable.

Mr. Coxe, contra. By the common law the infant could not bind himself, nor could the mother bind him. The act of 1793, c. 45, § 4, only authorizes the father to bind out his infant son. The mother has no such power. There were therefore no parties competent to contract, and therefore there was no contract. When a power is given by statute, all the requisites of the statute must be complied with.

THE COURT (THRUSTON, Circuit Judge, absent) decided, that there was no contract binding on the boy, and ordered him to be discharged.

¹ [Reported by Hon. William Cranch, Chief Judge.]