

Case No. 4,735.

FENWICK v. TOOKER.

[4 Cranch, O. C. 641.]¹

Circuit Court, District of Columbia.

Nov. Term, 1835.

SLAVERY IN THE DISTRICT OF COLUMBIA—REMOVAL FROM ONE COUNTY TO ANOTHER.

The right to remove slaves from one county to another in the District of Columbia, under the ninth section of the act of the 24th of June, 1812 [2 Stat. 755], is confined to the inhabitants of the county from which the slaves are to be removed.

This was a petition for freedom. By the Maryland law of 1796 (chapter 67), which was continued in force in the county of Washington, D. C, by the act of congress of the 27th of February, 1801 (1 Stat. 103), it was not lawful to bring into this county any slave for sale, or to reside therein, with, some exceptions not material to the present case. This law was adjudged to apply to a removal of slaves from Alexandria to Washington county, until the act of congress of the 24th of June, 1812 (2 Stat. 755), by the ninth section of which it is enacted, "That hereafter it shall be lawful for any inhabitant, or inhabitants, in either of the said counties, owning and possessing any slave or slaves therein, to remove the same from one county into the other, and to exercise freely and fully all the rights of property in and over the said slave or slaves therein, which would be exercised over him, her, or them, in the county from whence the removal was made, any thing in any legislative act in force at this time in either of the said counties to the contrary notwithstanding." The mother of the petitioner [William Fenwick, a negro] was the slave and in the possession of Robert Patton, who was an inhabitant of, and resided in Alexandria county, in the year 1817; and evidence was given on the trial, that in that year she was sold and delivered by him in Alexandria 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.

Mr. Key, for petitioner, contended that the power of removal of slaves from Alexandria to Washington, under the act of 1812, was confined to inhabitants of Alexandria owning slaves therein; and that an inhabitant of Alexandria could not bring slaves from Washington to Alexandria, nor an inhabitant of Washington bring slaves from Alexandria to Washington.

Mr. Jones and Mr. Bradley, for defendant [Launcelot Tooker], contended that under the act of 1812, an inhabitant of Washington, owning slaves in Alexandria, had a right to bring them to Washington; and cited a decision of this court to that effect in the ease of *Lee v. Lee* [Case No. 8,194], in May, 1832.

THE COURT (MORSELL, Circuit Judge, contra), upon the prayer of the petitioner's counsel, instructed the jury, that if they should be of opinion, from the evidence, that

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the petitioner's mother, in the year 1817, was living in Alexandria county, the property, and in possession of Robert Patton, then an inhabitant of that county, and residing there; and that Mr. Tennison, then being an inhabitant of, and residing in Washington county, went to Alexandria and there bought her of the said Robert Patton, who thereupon delivered her into the actual possession of the said Tennison in Alexandria, who brought her forthwith to Washington county, to reside therein, then such importation is not within the provision of the ninth section of the act of the 24th of June, 1812; and that if the petitioner was born after that importation, he is entitled to his freedom.

CRANCH, Chief Judge, observed, that in *Lee v. Lee* [supra], the point was decided without argument; and that upon further reflection, his opinion was changed as to the meaning of the word "therein," in the ninth section of the act of the 24th of June, 1812.

Verdict for the petitioner.

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