

Case No. 8,636.

LYNCH v. ASHTON.

{3 Cranch. C. C. 367.}¹

Circuit Court, District of Columbia.

Dec. Term, 1828.

ORPHANS—JUSTICE OF THE PEACE—POWER—CONTRACT—PART
PERFORMANCE—SPECIFIC PERFORMANCE.

1. Justices of the peace have no power to bind out orphan children on a day in which the orphans' court is in session.
2. It is only where there is a contract in part executed that the court can compel the parties to execute it in an equitable manner, under the seventh section of the Maryland act of 1793, c. 45.

Petition, by an apprentice, to be discharged from the indentures, because not bound by the orphans' court, but by two justices of the peace, on a day in which the orphans' court was in session; in which case this court decided, in October last, in the case of *May v. Bayne* [Case No. 9,331], that the justices had no power to bind out an apprentice.

THE COURT (nem. con.) was of opinion, in this case, that there was no contract, for want of jurisdiction in the justices of the peace, who undertook to bind out the boy.

And CRANCH, Chief Judge, said, the boy has no power to bind himself; nor has the mother alone, or with his assent, a right to bind him out, without the authority of some tribunal. The two justices had no authority to bind him out, as the orphans' court was in session on that day. There was, therefore, no contract; and it is only where there is a contract in part executed, that this court can compel the parties to execute it in an equitable manner, under the Maryland act of 1793, c. 45, § 7.

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