

Case No. 11,019.

PETER ET AL. V. CURETON ET AL.

{2 Cranch, C. C. 561.}¹

Circuit Court, District of Columbia. April Term, 1825.

SLAVERY.

Children of a female slave born while the mother was in the temporary service of a vendee for years, are slaves of the vendor or vendee. Quære, which?

[Cited in *Brooks v. Nutt*, Case No. 1,958.]

Bill in equity [by negroes Peter and Lewis against D. T. Cureton and A. W. Preuss] for an injunction, and for leave to sue for freedom, in forma pauperis.

The cause was set for hearing on bill and answer. The facts of the case appeared to be as follows: Anthony Addison, being the owner of negro Joanna, the mother of the complainants, in the year 1797, sold her to Walter D. Addison for the term of twelve years, without saying any thing of her increase. The bill of sale says, "I sell and deliver the negro Joan to the said Walter as a servant for the term of twelve years," "to hold the said Joan as a servant," and he warrants the said Joan to the said Walter for that term, "as his right and property." Nothing is said in this bill of sale respecting the condition of Joan after the expiration of the term. Walter D. Addison transferred her to Peter Savarie, in whose family the complainants were born, during the term of service, viz., Peter in 1801, and Lewis in 1803. Savarie died. The defendant 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. The bill, which was accompanied by an affidavit of Mr. Hewitt, the complainants' counsel, that he believed the facts stated in it to be true, prayed for an injunction to prevent the removal of the complainants from the jurisdiction of this court, and for leave to sue for their freedom in forma pauperis. The injunction was granted by the court.

Mr. Hewitt, for complainants, contended that at the birth of the complainants, their mother was not a slave of Savarie, but of Anthony Addison, and that if they were slaves at all, they also were his slaves, and not the slaves of Savarie, and that he had a right to manumit them. He also contended that Preuss, by selling them as slaves for life when they had only a few years to serve, had forfeited all right to their services, and that they were now entitled to their freedom. *Ellison v. Woody*, 6 Munf. 368; *Maria v. Surbaugh*, 2 Rand. (Va.) 230; *Scott v. Dobson*, 1 Har. & McH. 160; *Somerville v. Johnson*, Id. 348, 352; 1 Cruise, Dig. 279; Laws Md. 1796, c. 67, § 15; Laws Va., Dec. 25, 1795 (page 346).

Peyton & Mason, contra, contended that, Savarie having the use of the slave Joan for twelve years, her children born during the term became the absolute property as slaves ³¹³ for life. *Scott T. Dobson*, 1 Har. & McH. 160; *Somerville v. Johnson*, Id. 348, and *Dulany's* opinion in 352, 557, 559; *Sarah v. Taylor* [Case No. 12,339], in this court, November, 1818; and *Fanny v. Kell* [Id. 4,639], in this court at May term, 1824.

THE COURT (THRUSTON, Circuit Judge, contra,) was of opinion that 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.

CRANCH, Chief Judge, was of opinion that they were born the slaves of Savarie.

MORSELL, Circuit Judge, Inclined to the opinion that they were the slaves of Anthony Addison, who had a right to manumit them, and that they would be free at the age of thirty-one.

THRUSTON, Circuit Judge, was understood to be of opinion that it was the intention of Anthony Addison, when he sold the negro Joan to W. D. Addison as a servant for twelve years, to manumit her at the expiration of that term, which intention was manifested by his having actually manumitted her. That she was, therefore, not an absolute slave at the time of the birth of the complainants; but was in the condition of a servant, and imparted that condition to them; and that when the mother became free they also became free.

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

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