

SEMMES v. SHERBURNE.

{2 Cranch, C. C. 637.}<sup>1</sup>

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

SLAVERY—LOSS OF SLAVE—JUDGMENT—HIRE OF  
SLAVE—ESTOPPEL.

1. If the plaintiff's slave be hired to the defendant in the District of Columbia, who carries her to New Hampshire without the consent or <sup>1060</sup> authority of the plaintiff, by means whereof she is lost to the plaintiff, he may, in trover, recover the value of the slave. But if the plaintiff assented to the defendant's taking the slave to New England either before or after he took her, and she was lost without any negligence or omission of the defendant, the plaintiff is not entitled to recover.
2. In trover for a slave, the plaintiff cannot recover if he has obtained judgment against the defendant in a previous suit for the hire of the slave to a period subsequent to the commencement of the action of trover; but if, in making his claim for the hire of the slave, he did not mean to charge for the hire to a period later than the commencement of the action of trover, then such mistaken claim and the judgment thereon are not conclusive evidence against the plaintiff in the action of trover.

Trover for a slave. This cause having come on to trial again upon the amended pleadings {Case No. 12,655}.

Mr. Key and Mr. Morfit, for plaintiff.

Mr. Coxe, for defendant.

THE COURT, at the prayer of the plaintiff's counsel, instructed the jury, that if they believed from the evidence that the defendant, without the consent or authority of the plaintiff carried his female slave away to N. Hampshire and did not tiring her back again and return her to the plaintiff, and that by reason of her being so carried away, the plaintiff has lost her, the plaintiff is entitled to recover the value of the slave. But at the prayer of the defendant, further instructed the jury that if they should find from the

evidence that the plaintiff had claimed and recovered judgment against the defendant for the hire of the slave up to a time subsequent to the institution of this suit, such claim and judgment are conclusive evidence of a waiver, by the plaintiff, of any unlawful conversion by the defendant prior to the commencement of this suit, and the plaintiff is not entitled to recover in this action. But if the plaintiff, in making his claim for the hire of the slave, upon which he had recovered judgment, did not mean to charge for the hire of the slave to a period later than the commencement of this suit then such mistaken claim so made by the plaintiff, and the judgment thereon, are not conclusive against the plaintiff in this action.

THE COURT further instructed the jury, at the prayer of the defendant, that if they should find from the evidence that the plaintiff assented to the taking of the slave to New England, either before or after the defendant took her, and that such slave was lost without any negligence or omission of the defendant, the plaintiff is not entitled to recover.

Verdict for the plaintiff, \$360, and judgment.

{See Case No. 12,760.}

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]

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