

## SMITH v. ELWOOD.

{4 Cranch, C. C. 670.}<sup>1</sup>

Circuit Court, District of Columbia.

March Term, 1836.

APPRENTICE—POWER OF JUSTICE OF PEACE TO  
BIND—PRACTICE.

1. Justices of the peace have no power to bind out an orphan child not brought before them.
2. If the court discharge an apprentice, they will order him to be bound out by the orphans court to a person named in the order.

Henrietta Smith, a colored child, between nine and ten years of age, by J. A. M. Duncausen her next friend, filed her petition stating that she has no parent but her mother, a free colored woman of bad character, and unable to maintain the petitioner; that for three or four years past she was taken care of by Mrs. Dunkley, from motives of charity, who recently, on leaving this city, provided a home for the child with the said Duncausen, where she now is, and who is willing to keep her 533 as an apprentice. That the mother, to prevent the child being bound to the said Duncausen, has recently gone before two justices of the peace and entered into some writing purporting to be an indenture of apprenticeship, binding the child to one Isaac Elwood, who claims her as his apprentice. That the child was not brought before the said justices and that it was done on the day of the sitting of the ORPHANS' court. It prays that Elwood and the mother may be cited to appear and answer the petition; that the supposed indentures may be declared void; and that the said Elwood and the mother may be enjoined from taking the child. The answer of the defendants denies all the facts charged in the petition,

except that the mother was unable to maintain the Child; and that the child never was before the justices.

W. L. Brent, for defendant, contended that it was not necessary that the child should be before the justices at the time of binding, or at any other time.

THE COURT, however (nem. con.), was of opinion that the justices had no jurisdiction, as the child was not before them.

Mr. Duncausen and Mr. Elwood, each applied to the court to have the child bound to him. THE COURT said they were willing to hear the statements of both, and any evidence which either might produce.

Mr. Duncausen then read a statement of the facts which preceded the present application; whereupon

THE COURT ordered the child to be discharged from the indentures, and to be bound out to Mr. Duncausen by the ORPHANS' court, on the terms mentioned in the discharged indentures;

CRANCH, Chief Judge, doubting; being rather of opinion that it was a case in which the court could only discharge, and could not make, any further order.

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

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