

UNITED STATES v. GODLEY.

[2 Cranch, C. C. 153.]¹

Circuit Court, District of Columbia. Nov. Term, 1818.

LARCENY OF SLAVE—INDICTMENT—AVERMENTS.

An indictment will not lie, at common law for stealing “a mulatto boy, called. William Foote, of the price of 500 dollars, of the property, goods, and chattels of one F. T.,” if he is not averred to be a slave.

Indictment at common law [against James Godley] for stealing a “mulatto boy, named William Foote, of the price of 500 dollars of the goods and chattels of one Fanny Thomas.”

Mr. Swann and Mr. Taylor, for the prisoner, moved the court to quash the indictment, and contended that it was no offence at common law to steal a slave, because slavery was not known at common law. It is made an offence, by the Virginia statute, in one case only, namely: when stolen from the possession of the owner or his overseer; and the courts of that state have decided that the possession of a person to whom the slave was hired, is not the possession of the owner or overseer. *Com. v. Williams* (in 1792) 1 Va. Cas. 15; *Com. v. Hays* (in 1798) 1 Va. Cas. 122. Those courts have also decided that an indictment at common law for stealing a slave cannot be supported.

N. Herbert and Mr. Mason, contra. Slaves in Virginia are goods and chattels, and it is felony at common law to steal goods and chattels, therefore in Virginia, it is felony at common law to steal a slave. Judge Lyon’s opinion, 2 Wash. [Va.] 7. The Virginia statute is cumulative. The decision of the courts of that state are not conclusive ¹³⁴² upon this court. *State v. Hall*, 2 Hayw. N. C. 105.

THE COURT (nem. con.) quashed the indictment, because it did not aver the boy to be a slave.

Mr. Herbert, then moved that the prisoner should be recognized to appear at the next term to answer to a new indictment.

But THE COURT (nem. con.) refused; being of opinion that the decisions of the courts of Virginia, that an indictment at common law, for stealing a slave, cannot be supported, are conclusive upon this court.

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

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