

Wetmore's Minutes of the Trial¹

Essex Inferior Court, Newburyport, September 1771

Caesar v. Taylor. Trespass for detention in slavery. Plea non cul. Besides the usual proof of liberty, the plaintiff brot witnesses to prove a contract between him and defendant that he shoud be free on payment of a sum of Money and that the money was partly paid and that the Time of payment is not yet expired.

For defendant was read the province Law shewing negroes to be slaves and that they can't be manumitted without first giving bond,² which was not done in the present Case &c.

But answerd by Plaintiff that the Province law doth not make any negroes slaves if it did it being contra. to Laws of God and reason { 60 } must be void. And [. . .] error &c. [about?] in different matters may make [jus] but not in essentials as life liberty &c.

¹. Wetmore Notes. Adams Papers, Microfilms, Reel No. 184. This document, and those which follow from the Wetmore Notes contain many contractions (here mostly expanded) and little punctuation (here partly supplied). Particular passages may be difficult to interpret, but the sense is clear.

². "An Act Relating to Molato and Negro Slaves," 28 July 1703, c.1, 1 A&R 519.

Wetmore's Minutes of the Argument¹

Essex Superior Court, Salem, November 1771

At the Superior Court November the defendant offered to give in Evidence on plea of non Cul his right to Caesar by purchase &c. The Council for Caesar objected that it could not be admitted on this plea and the Court doubted. It was compared to the Cases in Trials pr pais² and Gilbert L.E. [Law of Evidence]³ where title agreements &c. are good evidence, when they don't go in discharge of trespass but in denial of plaintiffs declaration. And the Cause was contin'd. A special verdict was proposed.

¹. Wetmore Notes. Adams Papers, Microfilms, Reel No. 184.

². 2 Duncombe, *Trials Per Pais* 549: "The Defendant may prevail on Not guilty in Trespass, by making Title to the Land."

³. Gilbert, *Evidence* 242: "Evidence on Not guilty for the Defendant in Trespass. The Defendant may prevail in this Issue, First, By making Title to the Land; for then he satisfies the Declaration, for he proves that he did not enter into the Plaintiff's Close, but his own; and consequently that is a very just Disproof of the Plaintiff's Declaration."

Wetmore's Minutes of the Argument¹

Essex Superior Court, Salem, November 1771

Taylor v. Caesar. Trespass for enslaving the defendant. Plea non cul. Evidence offered was a bargain between Caesar and Taylor that on payment of £— he would set the boy free and proof was of payment of consid[erable] sum, and Taylor offered bill of sale in Evidence to which it was objected that its improper and doth not tend to support the plea and Trials per pais and Gilbert L. Evid. were produced. The Court doubted at first but since it was (I think June 1772) rejected by whole Court.

¹. Wetmore Notes. Adams Papers, Microfilms, Reel No. 184.

Wetmore's Minutes of the Argument¹

Essex Superior Court, Salem, November 1771

Trespass for enslaving Plaintiff; plea non cul. Plaintiff offered evidence of beating imprisoning and abusing the plaintiff by defendants { 61 } vendees. As the defendant was the first cause ~~of~~ by illegal conveyance the Court unanimously admitted the proof, altho' said that it cannot appear by records.

Caesars wife offered as a witness. Objected to her as his wife and interested, and proof offered of cohabitation. Answer that there was no contract but what was dissolvable at will and said to be determined that no negro could be a bastard, but J[udge] Trowbridge said that proof of Cohabitation was proof of marriage, and evidence by witnesses was admitted of cohabitation for a course of years. White woman married to negro *Slave* not allowed to sue without naming him.²

Adams. It has been ruled in 3 cases by the Court, in *Slewman*, in *Billings*, and at Cambridge that negroes are presumed to be slaves and must make their freedom appear.³

Lowell.⁴ Made difference between property in matter and moral beings.

Hut[chinso]n. The Evidence not admissible on the plea.

Trowbridge of the same opinion.

Oliver also, of the same opinion.

Lynde in doubt.

Cushing not in[. . .].

1. Wetmore Notes. Adams Papers, Microfilms, Reel No. 184.

2. That is, the husband would have to be joined in the action as a plaintiff.

3. The three cases are probably *Slew v. Whipple*, No. 38; *Newport v. Billing*, No. 39; and *Margaret v. Muzzy*, No. 40.

4. John Lowell, counsel for plaintiff.

Wetmore's Minutes of the Argument¹

Essex Superior Court, Ipswich, June 1772

Essex Novemr. 1771.

On motion to give property in evidence on non cul. ruled that in this case it must not be, ruled by 3 of the Justices. R[opes] and Cushing gave no Opinion having heard no argument.

Mr. Adams then moved for a repleader. Objected that its grantable not of right but[favor?] and its error when granted or refused wrongfully. Its grantable in cases where the right of the suit cant be determined by the issue.² Also objected that this is after verdict below.

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J. Trow[bridge]. The diff[iculty?] is that the defendant by repleader deprives the plaintiff of the advantage. Hut[chinson]and Trow[bridge] against it because the plaintiff may lose an advantage. Cushing inclining to replead. J. Ropes says nothing. J. Oliver against a repleader.

Adams moved to ask the plaintiffs witnesses whether the plaintiff was not reputed a Slave and used as such by his master the defendant (in mitigation of Damages).

Proof was given that Taylor owned ³ a bargain between Caesar and him for his freedom for £600 O[ld] T[enor] and that part of it had been paid.

Note. J. Trowb[ridge] said in this case that the pleadings allowed the plaintiff to be a person and one able to sue. He is therefore not property which is a thing and a thing can't maintain an action. By English laws a person must be free, else no murder to kill him.

Said by Mr. Adams that Superior Court in J. Sewall's day determined from civil law authorities produced by Mr. Gridley and Pratt, that the children of a woman slave were the property of the master of the mother, and that negroes are in *classe rerum* and are Slaves in this Country.⁴

¹. Wetmore Notes. Adams Papers, Microfilms, Reel No. 184. The date heading the document refers to the term from which the case was continued, because William Cushing and Nathaniel Ropes were not appointed to the Superior Court until 15 Jan. 1772. Whitmore, *Mass. Civil List* 70.

2. “Occasionally the Court would order a *repleader*, that is to say, that the pleadings should start afresh, for it might turn out that owing to some error which had been overlooked the fact on which issue had been joined did not dispose of the questions between the parties, so that the Court was after all not in a position to give judgment either way, no matter how that question of fact had been determined.” Sutton, *Personal Actions* 134.

3. That is, admitted.

4. Stephen Sewall (1702–1760) was Associate Justice of the SCJ from 1739 to 1752, Chief Justice from 1752 to 1760. The case in question has not been identified. On Jeremy Gridley's use of civil law authority on behalf of the *defendant* in a slave case, see No. [38](#).

Adams' Minutes of the Trial¹

Essex Superior Court, Ipswich, June 1772

Tayler vs. Caesar. Salem Novr. 1771

contd.

Mem. examine civil Law, and Villenage, to see what Rules are to govern these Negro Causes.

*Sergeant.*²

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Tim. Fuller. Known Caesar between 20 and 30 years. I bought him, about 12 years old. A new Negro, right from Guinea, could not talk English. Tayler bound him, 3 Years. He came to me to buy him when Hircum owned him. I hired him of Tayler, a Month. He gave me Liberty to hire him, and I paid the Negro. Tayler said if he behaved well and got him his Money, he should be willing to let him have his Time. I said if he did not get the Money by such a Time³

Indian Woman rejected because Caesars Wife.⁴

*Josh. Felt.*⁵ Tayler told me, that he sold him, because he behaved⁶

Trials Per Pais 538. Regula.⁷ But read the Cases that follow in Illustration of the Rule, which shew that the Rule takes Place where a Person meddled with the Property of another.⁸

Wilson 254.⁹ Court gave Leave to Defendant to withdraw the general Issue and Plead a Justification.

Court determined that the Master should not give in Evidence that Caesar was a slave.

¹. *Adams Papers, Microfilms*, Reel No. 185. Apparently JA wrote the title of this minute and noted the continuance at the Salem Superior Court, Nov. 1771. But the notes seem to have been taken at the Ipswich Superior Court, June 1772.

². Nathaniel Peaslee Sergeant was Caesar's attorney.

³. The MS breaks off here. The next paragraph is in a clearer hand, suggesting that JA took time off to sharpen or replace his quill.

⁴. "Husband and Wife cannot be admitted to be Witnesses for or against each other, for if they swear for the Benefit of each other, they are not to be believed, because their Interests are absolutely the same, and therefore they can gain no more Credit when

they attest for each other, than when any Man attests for himself.” *Gilbert, Evidence* 135–136.

[5](#). Josiah Phelps, according to the file. *SF* 132190.

[6](#). Sentence left incomplete by JA.

[7](#). “Regula. Upon the General Issue, if by the Evidence the Defendant acknowledge that he did the Wrong, and justify this, and gives the Matter that goes to discharge him of the Act by Justification, this Evidence is not good, but he ought to have pleaded it.”

2 Duncombe, Trials Per Pais 538.

[8](#). “This Rule is demonstrated by those Cases, where, upon Not guilty in Trespass, the Defendant would say the Property was in a Stranger, and that by his Commandment, or as his Servant, he took the Goods.” *2 Duncombe, Trials Per Pais* 538.

[9](#). Taylor v. Joddrell, 1 *Wils. K.B.* 254, 95 *Eng. Rep.* 603 (1749):