Wetmore's Minutes of the Trial[1]

Essex Inferior Court, Newburyport, October 1773

Caesar v. Greenleaf

Trespass for inslaving the plaintiff.

Caesar a molatto man (otherwise called Caesar Hendrick) of said N[ewbury] P[ort]labourer in a plea of trespass for that the said R[ichard] G[reenleaf] at said Newbury Port on the 1 of January last, with force and arms assaulted the plaintiff then and there being in our peace, and then and there with force as aforesaid falsely imprisoned him and so with force as aforesaid and against the plaintiffs will hath then held kept and restrained him in servitude as the said Richard's slave from the same day untill the day of the purchase of this writ and many other injuries and enormities the said R.G. to the Plaintiff then and there did against our peace. Damages £50. Dated March 16. 1773.

Plea. And the said R.G. comes and defends when and where &c. and protesting that the said Caesar is his molatto Slave and that by law he is not held to answer to the said Caesar on his declaration aforesaid yet nevertheless the said R. for plea saith (on the plaintiffs agreeing that he the said R.G. may on the trial give any special matter in evidence for his Justification and that the same shall avail as if specially pleaded) he is not guilty in manner and form as the plaintiff hath declared, and thereof puts himself on the Country.

D. Farnham

And the Plaintiff (agreeing to the above) likewise.

J. Lowell

Farnham.

The Egyptians, Grecians, Jews, Romans, held many in slavery.

Province law. pa. 82.[2] 144–5. 152.[3] Shew there were many slaves { 65 } in the province at the time of making those laws, held in slavery, and not to be manumitted, without security, &c.

Lowell.

The Defendants plea acknowledgeth him a molatto and therefore must have had a white parent, either father or mother.

Certificate of his baptism and that he is a member of Mr. Parson's church,[4] read.

Admitting there are slaves in the province yet the plaintiff may be none and in fact is not one, as he will prove.

Villeins these were known in the English law. We have nothing to do with any other laws. Those of Egypt, Greece or Rome are nothing to Englishmen. At Common law partus*non* seq. ventrem, otherwise it may be in the civil law—but this law never adopted by English law in this case by the English law Villeins follow the state of the father not of the mother.

But objected by Farnham in Villeinage there was marriage, in this case none, so not applicable.

Matrimony a duty and right, and plaintiff by law of nature must provide for his issue, therefore must be free that he may discharge his duty and enjoy his right. No human tribunal can take away natural rights so fundamental.

The precepts of revealed law, golden rule of the gospel are that we are not to sell our brethren, that we are to do as we would be done unto.

He is a Christian and if held in Slavery may not perform his duties as one. His master did not object to his baptism and becoming a xtian.

Liberty is not to be taken from him by implication of law. There must be express law for it.

The province laws read establish Slavery only by implication if it does at all.

Plaintiff must be free unless a slave by common law, Statutes of G[reat] Britain, or law of the province.

But even villeinage is abolished by English law. The Common law abhors slavery.

Somersett case shews every one setting his foot on English ground to be free, wherever he came from.5

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Usage and custom must be for time whereof memory of man is not to the contrary, and must be reasonable, just, constant and right.

But in this country, in the Colonies, none such because records shew the beginning.

The old Colony law shews no slaves but those made by their own consent or by taking in lawful war.6

Sup[erio]r C[our]t hath determined this country too young for usage and custom time whereof &c.7

Foster Crown law, as to legality of impressing mariners, says impress had been ever Since existence of the nation, at least from William the Conqueror.8 Yet if it

was not of public necessity it ought not to be esteemed law but England being an Island there was necessity it must be guarded by ships and seamen and of Course impresses legal. But Hume in his history questions Fosters law.9 And Foster pretends none but temporary right and while exigencies of war require.10

Some Legislatures So[uth]ward in the colonies have enacted, that blacks, as negroes are Slaves.11

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Hobart 87. Act of Parliament. Jura naturae immutabilia. An act of parliament against natural Equity, as to make one Judge in his own cause is void.12

The province law is to be extended only for the purpose mentioned in it, as to manumission, as to charge of supporting them &c. nothing as to the right of enslaving the negroes.

Caesar and Greenleaf (as I suppose) the foregoing case.13

J[udge] *Frye*.14 The defendant by the province law and by the custom of the country seems to justify his doings. The laws suppose slavery. The master by admitting the baptism &c. seems to have in a measure given the plaintiff his liberty. Shall this humanity be taken against the defendant?

N.B. This case I copied from Mr. P[ynchon's] report of it, and am uncertain whether J. Frye gave the above opinion in this case or some other.

1. Wetmore Notes. Adams Papers, Microfilms, Reel No. 184.
2. "An Act against receiving of Stolen Goods," Acts *and Laws of the Province of Massachusetts Bay 82* (Boston, 1759), 13 June 1698, 1 A&R 325 (receiving stolen money or goods from "Indians, Molattos, Negroes, and other Suspected Persons" made punishable by whipping).
3. See No. 39, at note 5.
4. Almost surely Jonathan Parsons (1705–1776), Yale 1728, of the First Presbyterian Church, Newburyport. 1 Dexter, *Yale Graduates* 389–393.
5. Somersett's Case, Lofft 1, 19, 98 Eng. Rep. 499, 510, 20 St. Trials (N.S.) 1, 82 (K.B. 1772) in which Lord Mansfield said that slavery could exist in England only by positive law. Somersett had been the slave of Charles Stewart, an officer of the customs in Boston, and accompanied his master to England in 1769. In 1771, when Somersett ran away, Stewart retook him and tried to ship him to Jamaica, there to be sold. Somersett, however, obtained a writ of *habeas corpus,* on the return of which he was freed. See George H. Moore, *Notes on the History of Slavery in Massachusetts*116–117 (N.Y., 1866).
6.

“It is Ordered by this Court and the Authority thereof; That there shall never be any Bondslavery, Villenage or Captivity amongst us, unless it be lawful Captives taken in just Wars, as willingly sell themselves or are sold to us, and such shall have the liberties and Christian usuage which the Law of God established in *Israel* concerning such persons doth morally require; Provided this exempts none from servitude, who shall be judged thereto by Authority. (1641).” Laws and Liberties of 1672, *Colonial Laws of Massachusetts* 10 (Boston, ed. William H. Whitmore, 1887).

7. This case has not been identified.

8. Rex v. Broadfoot, Foster, *Crown Cases* 154 (Recorder's Court, Bristol, 1743). See No. 56, at note 2.

9. The reference, presumably to David Hume, *The History of England, from the Invasion of Julius Caesar to the Revolution in 1688,* published in 1754–1762, has not been identified.

10. Rex v. Broadfoot, Foster, *Crown Cases* 154, 158 (Recorder's Court, Bristol, 1743): “I think the Crown hath a Right to Command the Service of these People, whenever the publick Safety calleth for it. The same Right that it hath to require the personal Service of every Man able to bear Arms in case of sudden Invasion or formidable Insurrection. The Right in both cases is founded on one and the same Principle, the Necessity of the Case in Order to the Preservation of the Whole.”

11. In an account of his trip to South Carolina in 1773 Josiah Quincy Jr. said: “The brutality used towards the slaves has a very bad tendency with reference to the manners of the people, but a much worse with regard to the youth. They will plead in their excuse 'this severity is necessary.' But whence did or does this necessity arise? From *the necessity* of having vast multitudes sunk in barbarism, ignorance, and the basest and most servile employ! . . . From the same cause have their Legislators enacted laws touching negroes, mulattoes, and masters which savor more of the policy of Pandemonium than the English constitution: —laws which will stand eternal records of the depravity and contradiction of the human character: laws which would disgrace the tribunal of Scythian, Arab, Hottentot, and Barbarian are appealed to in decisions upon life limb and liberty by those who assume the name of Englishmen, freemen and Christians: the place of trial no doubt is called a Court of Justice and equity—but the Judges have forgot a maxim of English law—Jura *naturalia sunt immutabilia—and* they would do well to remember that no laws of the (little) creature supersede the laws of the (great) creator. Can the institutions of man make void the decree of GOD? These are but a small part of the mischiefs of slavery, new ones are every day arising, futurity will produce more and greater.” Howe, ed., “Journal of Josiah Quincy Jr. 1773,” 49 MHS, *Procs.* 424, 456–457 (1915–1916).

An editorial note states that Quincy's MS has a reference after *“Jura naturalia”* as follows: “See Hobart's Reports.” Lowell used the same authority. See the following paragraph in the text, and note 12 below.

12. Day v. Savadge, Hob. 85, 87, 80 Eng. Rep. 235, 237 (C.P. 1615). “[E]ven an Act of Parliament, made against naturall equitie, as to make a man Judge in his owne case, is

void in it selfe, for *Jura naturae sunt immutabilia,* And they are *leges legum."* See No. 44, note 19.

13. The sentence is apparently Wetmore's.

14. Peter Frye of Salem (1723–1820), Harvard 1744, was a Judge of the Essex Inferior Court from 15 Jan. 1772 to the Revolution. 11 Sibley-Shipton, *Harvard Graduates* 399–404; Whitmore, *Mass. Civil List* 84.