Hannah v. Davis

Notes on Argument in the General Court

Extract from Casebook, Tucker-Coleman Papers, Swem Library, College of William and Mary

Richmond, April 20, 1787

Special Verdict in these words—We of the Jury find that Bess was an Indian & was brought from some Indian nation into the County of Richmond since the year 1705, viz. 1712, and *held* & claimed as a Slave to the day of her death. We find that find that[4] plaintiffs are *Descendants* of the said Bess; and if upon the whole Matter etc.

Tho. Nelson, all the acts of assembly relative to Indians as Servants or Slaves, are Acts of 1662, of 1670, Both of which inflict a temporary Servitude on Indian captives—1682. inflicts perpetual Servitude. 1705. perhaps repealed the last.[5] But if act of 1682. be

1. Tazewell dissenting, Lyons and Fleming absent.

2. A point of law might be reserved for argument before the judge after the jury had returned with its general verdict; this was also termed a "special case." Blackstone, *Commentaries*, III, 378; Julius Goebel, Jr., ed., *The Law Practice of Alexander Hamilton* (New York, 1964–), II, 18–19.

3. This is an indication that St. George Tucker may have copied this report from William Nelson's notes.

4. A slip of the pen.

5. Thomas Nelson (d. 1803), the future attorney general of Virginia, presented a reasonably accurate summary of the Virginia law relative to Indian slavery. The act of 1662 provided a method for determining the term of service of servants brought into Virginia for an undefined period of servitude. The act of 1670 differentiated between

unrepealed yet it being contrary to the Law of God & the Law of nature to make Slaves of the Subjects of foreign powers, which the Indians certainly were, this Act is null & void.

Taylor, Pro Deft. The Argument against Slavery applies equally to African as to Indian nations. This court will concieve itself bound by Acts of the General Assembly.[6] Act of 1682. repeals a former Act providing that Indians should not be made Slaves, & enacts that they shall be Slaves when Sold by neighbouring Indians. Act of 1705.* does not repeal this Act. Nor does it require that Slave holder should prove the Slave to have been a Servant, or heathen, in his native Country. Were the onus probandi[7] upon the Slave holder, it must be attended with almost universal Emancipation. No distinction made in any Act of Assembly between Indian & negroe Slaves. If Act of 1782.[8] be repealed by the Act of 1705. ch: 49. the same Act must repeal the Act of 1705. making Slaves real Estate. This has never been supposed.

The Verdict finds Bess to have been brought hither as a Slave & to have been held as such unto the time of her death—plaintiffs as her Descendants, if on the part of the mother must therefore be Slaves. On the other hand if not ex parte mâternâ The court cannot presume that they are descended from a free person ex parte maternâ.

Munroe.[9] Pro plts. Act of 1692.† Opens a free trade with Indians; can it be supposed the Legislature passed this Act with a view only to entrap the Indians & make Slaves of them. Indians must be *Servants* under 1682. to make them Slaves. But it is a most unquestionable fact that they have no Servants among them. Slavery is unknown among them. Their *Women* are the only *Servants*

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non-Christian servants brought into Virginia by sea, who were to be considered slaves, and non-Christian servants brought into Virginia by land, who would serve for 30 years if boys or girls and 12 years if men or women. 2 Hening 169, 283. In 1682 the act of 1670 was repealed, and all servants, except Turks or Moors in amity with Great Britain, not Christians at the time of their purchase, and all Indians thereafter sold by neighboring Indians were to be considered slaves. 2 Hening 490–492. The 1705 act referred to was probably the act opening trade with the Indians; sec. 7 of this statute provided that "the Indians tributary to this Government, shall be well secured and defended in their persons, goods, and properties . . . as if . . . an Englishman." 3 Hening 464–467. Another 1705 act dealing with the status of slaves in Virginia does not make specific provision for Indian slaves. See 3 Hening 447–462.

6. John Taylor's argument was that the court should defer to the legislative policy toward Indian slavery.

7. "The burden of proof."

8. That is, 1682.

9. James Monroe.

they have. Act of 1705. ch: 14. repeals all former acts relative to Indians (this is a mistake—See the purview of the Act).

Marshall, for plts. The Act of 1705. Authorises a free trade with Indians. Will the Court Countenance a flagitious Act done after that Act? Bess though detained in Slavery, if wrongfully detained could still transmit the right of freedom to her posterity. The Act of 1705. ch: 5. only relates to such Indians as were already Slaves.

Taylor. By which of these Acts of 1705. is the Act of 1682. repealed. Examine the purview of both—neither of them does, or can be construed to relate to the Subject of the Act of 1682.

Baker[1] for Defendant. In this special verdict the Jury ought to have found the Law which they concieved comprehended the plt's Case, in order that the Court may Judge if in force. This was the practice in the former General Court.

W. Nelson,[2] for plts. These are public Acts, unnecessary to have been specially found by Jury. Could the people of Virginia make Slaves of a nation with whom they were at peace? Yet the act of 1705. Makes such a peace, & authorizes a free trade with them. The *holding* & *claiming* Bess as a Slave, can not be construed to destroy her freedom. The bare *holding* or *claiming* her, could have no such effect. No marriage Ceremony among Indians, therefore *Descendants* shall be understood to apply to the maternal Line. In pleading the onus probandi lies on him who affirms a fact. The Deft. in his plea, affirms the plt's to be *Slaves*. But it is said plts must shew a title to an Action. All persons primâ facie are entituled to an Action. Their dissability to maintain one must be Specially pleaded.

The court seemed unanimously of opinion that the Act of 1682. was absolutely repealed by the Acts of 1705. "Concerning Servants & Slaves"—and "for opening a trade with the Indians"—therefore, that no Indian brought into this Govt. from the back Country since that period could be made a Slave.[3] They were also of opinion, that the word *Descendants*, in the Case of Slaves, must mean lineal descendents in the maternal Line.[4]

Judgement for plts.

1. Jerman Baker.
2. William Nelson.
3. A citation to the 1792 case of Jenkins v. Tom, in 1 Washington (Va.) Rep. 123–124, was inserted in this manuscript at a later date by St. George Tucker.
4. This point had been considered in Bates v. Fuquay, decided by the General Court on Apr. 13, 1787, and argued by JM on that date.

*Concerning Servants & Slaves. ch: 49. Edo. of 1733.[5]
[†]Title. "For a free trade with Indians." Which may be found in the Edo. of 1733.[6]