CASES

ARGUED AND DETERMINED

IN

THE SUPREME COURT

OF THE

STATE OF TENNESSEE,

JANUARY TERM, 1827.

ABRAHAM VAUGHAN, *vs.* PHEBE, *a woman of colour.* In Error.

Reputation or hearsay, is admissible evidence of descent from Indian ancestors, and may be used as a part of the chain of proof to establish freedom.

Reputation or hearsay, from the necessity of the case, is admissible evidence to establish a right to freedom.

A judgment in favor of the freedom of a maternal aunt of the plaintiff, on account of her descent from Indian ancestors, may be received in evidence in a suit for freedom, so far as to show the prevailing reputation of the existence of the right claimed.

But the record of such judgment must be produced; it cannot be proved by hearsay.

PHEBE sued Vaughan in the court below, in an action of trespass and false imprisonment; Vaughan pleaded that Phebe was a slave and his property; to which plea, Phebe replied, denying she was a slave and the property of Vaughan; upon which replication issue was joined.

The cause was tried at September term 1823 of the Sumner circuit court, and a verdict was returned by the jury for the *plaintiff;* upon which, judgment was entered, "that the plaintiff recover against the defendant her freedom, and her damages, &c." from which judgment Vaughan prosecuted an appeal, in the nature of a writ of error, to this court.

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Vaughan v. Phebe.

At the trial of the cause in the court below, the plaintiff offered to read in evidence, the depositions of Seth R. Pool, Martha Jones and Phebe Tucker. The defendant by his counsel objected to the competency of the evidence contained in Pool's deposition, and to so much of Martha Jones' and Phebe Tucker's as related to hearsay and information from others.

The plaintiff also offered to read to the jury, the record of a verdict and judgment of the superior court of Prince George county (Virginia) in the suit of *Tab et al* vs. *Littlebury Tucker*, which record established the fact, that *Tab* had in that suit recovered her freedom, on account of her descent from *Indian ancestry*. (*Tab was proved to be the maternal aunt of the plaintiff.*) The defendant also objected to the admission of this record as evidence; but the court overruled both his objections; and the *depositions* and *record* were read to the jury. To which opinion of the court, the defendant excepted.

The evidence of Pool, as set out in his deposition, is—"that he had been acquainted with Phebe for fifty years. and that she was always said to be of Indian extraction That he was also acquainted with her mother, called *Beck*, who was always called an *Indian* by descent: and he believes she was the daughter of Moll, the property of William Jones. That Phebe had been deprived of her eye by a ringworm. That *Beck*, her mother, was sister to *Tab*, the property of Benjamin Tucker, who had always claimed her freedom, *and as he believed had got her freedom by due course of law*. That said Phebe is descended from an *Indian mother*, and was always considered free. That said Benjamin or Littlebury Tucker was sued by Tab, the *maternal aunt* of Phebe, and *sister to Beck*, and she recovered her freedom in consequence of her having descended from an Indian mother, who was free. That he had often heard that *Murene* was the grandmother of *Beck* and *Tab*, and that she, *Murene*, was remarkably old, and lived about with her children and grand children, and was always reputed an Indian and was free. That *Murene* was a copper colour, and that *Abner*, the brother of *Phebe*, sued, as he was informed and

believed, Thomas Hardeway for his freedom, and was killed by said Hardeway; and that Phebe had often solicited him to undertake to procure her freedom, but from the long acquaintance he had with her master he would not do it."

Those parts of the depositions of *Martha Jones* and *Phebe Tucker* objected to are, "that they knew many years ago, a coloured woman named Phebe, in the possession of Thomas Hardeway of Dinwiddie county, Virginia; she having lost an eye, as was said, by a tetter or ringworm: they also knew *Phebe's mother*, who was named *Beck*. Beck was always said to be sister to *Tab* by the mother's side. That they had understood that Phebe was brought to Tennessee by Abraham Vaughan. That *Tab* had obtained her freedom by due course of law, and that they believed all Phebe's relations in those parts had also obtained their freedom upon the plea of their having descended from an Indian ancestor. They always understood that Molly Moore, (formerly Evans,) had one of the family named Minor, and several others who had since all got their freedom, as will appear of record.

The residue of the evidence in the cause is not set out in the bill of exceptions.

Rucks, for the plaintiff in error. 1. The evidence of Pool, Mrs Jones and Mrs Tucker, as set out in their depositions, is certainly inadmissible, being merely hearsay; and should have been rejected by the court. Hearsay evidence is inadmissible to prove a particular fact of the nature which it is adduced to prove in this case. A right to *freedom*, is in general susceptible of better proof than mere hearsay, if the right be asserted in time: and the party having slept upon his or her right so long, that direct evidence of the fact (if it ever existed) had perished, is no reason to take the case out of the general rule.

There are but four cases where hearsay evidence is admitted, to wit: to prove pedigree, custom, prescription and boundary; and the case before the court does not come within the letter or meaning of either.

be competent evidence. But they contain some statements which are not considered admissible; and in receiving which, we think the court erred. We allude to the evidence of several of the family having recovered their freedom by due course of law, &c. This ought to have been rejected. It would have been better proved by the records themselves. And it is a maxim of the law of evidence, as true as it is trite, that the best evidence which the nature of the case admits shall be produced. What is said respecting Tab's case, was properly recorded, because the record in her case was produced.

But there is a remaining question. Did the court err by receiving the verdict and judgment in the suit of Tab and others vs. Tucker? That was a suit by Tab for her freedom. She obtained a judgment in her favor on the ground that she was descended from Indian ancestors, as appears from the record. Tab was the maternal sister of Beck, who was the mother of Phebe. We think that hearsay evidence, that the maternal sister of one of Phebe's ancestors was always reputed to have been descended from Indian ancestors, or that she was reputed to be free, as having been descended from Indian ancestors, would be some evidence in a case of pedigree, to show that Phebe also was descended from the same. And, therefore, we consider the solemn verdict of a jury, upon proofs produced to them many years ago, and with the judgment of the court upon it, full as good evidence, to say the least of it, of what was considered the truth in those days.

We do not consider the question as to the introduction, for any purpose, of verdicts between others than parties and privies, as involved in the determination of this case in any manner whatever. Nor is any opinion given as to the admissibility of judgments, except in the single case of a verdict and judgment offered as hearsay evidence in a case of pedigree, as in the case before us. Such a verdict and judgment was held to be admissible by the court of appeals in Virginia, in *Pegram* vs. *Isabel*, (2 *Hen.* and *Mun.* 193,) and we believe properly.

Upon the whole, we are all of opinion, that the following

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judgment and directions be entered in this cause: reverse the judgment and remand it to the circuit court for a new trial and to reject the following words in Pool's deposition, "and that Abner, the brother of Phebe the plaintiff, sued, as he is informed and believes, said Thomas Hardeway, and was killed by him;" and to reject the following words in Martha Jones' deposition, "deponent believes all Phebe's relations in those parts have also obtained theirs, on the plea of their being descended from an Indian ancestor. Has also understood that one of the same family, named Minor, and several others, have since got free, as will appear of record;" and to reject the following words in Phebe Tucker's deposition, "deponent believes all Phebe's relations in those parts, got their freedom on the plea of their being descended from an Indian ancestor—always understood that Molly Moore had one of the family by the name of Minor, and several others, all of whom have obtained their freedom upon the same plea." And to admit the residue of said depositions, and also the verdict and judgment, with the proceedings upon which they were founded, in evidence to the jury.

Judgment reversed.

LUCY HICKMAN, *vs.* WILLIAM H. MURFREE. In Error.

The judgment of a county court, is a lien upon the lands of the party against whom it is rendered, for one year after its rendition; whether the lands are situated in the county where the judgment was obtained, or in any other county in the state.

If A obtain a judgment against B, in the county court of Davidson county, at January term, 1825, and C obtain a judgment against him also, at February term, 1825, of the Williamson circuit court; and the execution of C is first delivered to the sheriff of Lincoln county, (where the lands of B lie,) and afterwards (but within a year from the rendition of A's judgment,) the execution of A is also delivered to him, and he levies, advertises and sells under both executions, A's judgment must be first satisfied.

THIS was a motion, made in the court below, by Murfree, the defendant in error, to order the sheriff of Lincoln county, to pay over to him five hundred and seventy-five dollars, the amount of the proceeds of a tract of land sold by said sheriff, as the property of Oliver Williams, by virtue