

Wm. Sildman.

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The Fifth and Last PART
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Modern Reports:
BEING A
CONTINUATION
OF SEVERAL
SPECIAL CASES
ARGUED and ADJUDGED
IN THE
COURT
OF

King's Bench, at Westminster,
In the Sixth, Seventh, Eighth, Ninth, Tenth,
and Eleventh Years of the Reign of the late
King WILLIAM; and Judgments there-
upon.

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Special Pleadings to most of the said CASES.

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Fortunam ex aliis.*

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In the SAVOY:

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1738

D E

Termino Paschæ.

Anno 8 W. 3. in B. R. 1696.

Chamberline *versus* Harvey, Mich. 7 W. 3. Rot. 123.

Lond. fl. **M**emorand. quod die Mercurii prox. post tres septiman Sancti Michaelis isto eodem Termino, coram Domino Rege apud Westmonast. ven. Willoughby Chamberline per Godfridum Woodward Attorn. suum & protulit hic in Cur. dicti Domini Regis tunc ibidem quandam billam suam *versus* Robertum Harvey Armig. in Custod. Marechal', &c. de placito transgressi. Et sunt pleg. de prosequend. fl. Johannes Doe & Richardus Roe quæ quidem billa sequitur in hæc Verba: fl. London fl. Willoughby Chamberline Ar. queritur de Roberto Harvey Ar. in Custod. Mar. Marechal. Dom. Regis coram ipso rege existen. de eo quod idem Robertus, primo Die Septembris, Anno Dom. Millesimo sexcentesimo nonagesimo quinto, Vi & Armis, &c. un. Æthiopem [Ang. vocat. a Negro] ipsius Wil-

loughby pretii centum Librarum legalis monetæ Angliæ apud London præd. (viz.) in Parochia Beatae Mariæ de Arcubus in Ward. de Cheape, cepit & abduxit & possedit Æthiopis præd. a præd. primo Die Septembris, usque exhibition. hujus billæ ad tunc & ibidem detinuit & custodivit. Ita quod ipse idem Willoughby usum & beneficium Æthiopis prædict. per totum tempus prædict. totalit. perdidit & amisit & al. enor. eidem Willoughby ad tunc & ibid. intulit contra pacem dicti Dom. Regis nunc ad dampnum ipsius Willoughby centum & quinquagint. Librarum & inde producit Sec-tam, &c.

Et præd. Robertus per Robertum Stone Attorn. suum ven. & defend. vim & injuriam, quando, &c. & dicit quod ipse non est inde culpabilis modo & forma prout præd. Willoughby *versus* eum superius queritur, & de

de hoc ponit se super patriam, & præd. Willoughby inde similiter, ideo ven. inde jurat. coram Domino Rege apud Westm. Die Jovis prox. post Cras. Animar. & qui nec, &c. ad recogn', &c. quia tam, &c. idem Dies datus est partibus præd. ibidem, &c. postea continuat. inde processus inter partes prædict. in placito præd. per jur. posit. inde inter eos in respect. coram Domino Rege apud Westm. usque Diem Jovis prox. post quinden. Sancti Martini nisi dilect. & fidelis Domini Regis Johannes Holt Mil. Capital. Justiciar. Domini Regis ad placita in Cur. ipsius Domini Regis coram ipso Rege tenend. assign. prius Die Mercur. prox. post Quinden. Sancti Martini apud Guildhall, London, per formam Statuti ven. pro defen. jur', &c. ad quem Diem coram Domino Rege apud Westm. venit prædict. Willoughby per Attorn. suum præd. & præfat. Capital. Justic. coram quo, &c. misit hic Record. suum coram eo habit. in hæc Verba, Postea Die & Loco infra content. coram Johanne Holt Mil. Capital. Justic. Domini Regis ad placita in Cur. ipsius Domini Regis coram ipso Rege tenend. Assign. Associat. sibi Johanni Ince Gen. per formam Statuti, &c. ven. tam infranominat. Willoughby Chamberline Ar. quam infrascript. Robertus Harvey Ar. per Attorn. suos infracentent. & jur. jurat. unde infra fit mentio exact. quidam corum (viz.) Thomas Sericole, Ric'us Martin. Sam. Stone, Benj.

Hodgson, Jeremias Barrat, & Nathaniel Spinlow, ven. & in jur. ill. jurat. exist. & quia resid. jur. ejusdem jure non comperuer. ideo al. de circumstantibus per Vic. Civitat. præd. ad hoc elect. ad requisition. præd. Willoughby Chamberline ac per mandat. Capital. Justic. præd. de novo apponuntur quorum nomina panell. infrascript. affilantur secundum formam Statut. in hujusmodi casu edit. & provis. ac jur. sic. de novo apposit. (viz.) Thomas Pool, Ric'us Martin, Thomas Ward, Johannes Watson, Ph'us Brewster, & Ric'us Chauncey exact. similit. ven. qui ad veritat. de infra content. simul cum al. jur. præd. prius impanel. lat. & jurat. dicend. elect. triat. & jurat. dicunt super sacrum suum quod quidem Ed'us Chamberline diu ante infrascript. tempus quo, &c. seisit. fuit de quadam Plantation. in Insula de Barbadoes in le West-Indies in partibus transmarinis in Domin. suo ut de feodo & de quibusdam Servis Æthiopicis [Anglice **Negroes-Slaves.**] Servis eidem Plantation. spectan. & pertinen. & præd. infrascript. Servus Ethio- opus diu ante infrascript. tempus quo, &c. infra Insulam præd. nat. fuit de Parentibus Æthiop. [Anglice **Negroes-Slaves**] Servis eidem Plantation. spectan. & pertinen. & quod diu ante infrascript. tempus quo, &c. scilicet, Vicesimo nono die Aprilis, Anno Domini Millesimo Sexcentesimo sexagesimo octavo per quandam Willielmum Willoughby deputat. Guber-

Gubernator. concilium & assemblation. repræsentat. Insulæ illius existens. in ea parte legitime Authorizat. commissionat. apud Insulam illam inactitat. fuit in his Anglican. verbis sequens. Barba-does. An Act declaring the Negro Slaves of this Island to be real Estates. Whereas a very considerable Part of the Wealth of this Island consists in our Negro Slaves, without whose Labour and Service we should be utterly unable to manage our Plantations here, thereby relieving our Wants, and bringing that considerable Increase of Revenue which this Place affords to his Majesty's Treasuries, as well here as in England; And whereas some Law-Suits have arisen, and other great Inconveniencies have follow'd, where divers Persons dying Intestate have left the Right and Interest of their Negro Slaves to be by Law disputed between their Heirs, Executors, and Administrators, wherein the various Judgments and Affections of several Courts, or Juries, have sometimes found for one, and at other Times for the other: For a full Remedy of these Inconveniencies, and to the Intent that the Heirs, and Widow who claims Dower, may not have bare Lands without Negroes to manure the same; and also, that the Condition, Right, and Interest of Negroes to all other Ends and Purposes may be

fully known and determined; the Deputy-Governor, Council and Assembly, being willing that all Ambiguities herein should be removed, and the Law in this Case be declared and put in a Certainty, have ordained and enacted, and it is hereby ordained and enacted by the Deputy-Governor, Council and Assembly, and by the Authority of the same, That from and after Publication hereof, all Negroe Slaves in all Courts of Judicature, and other Places within this Island, shall be held, taken, and adjudged to be Estates Real, and not Chattels; and shall descend unto the Heir or Widow of any Person dying, according to the Manner and Custom of Lands of Inheritance held in Fee-simple, provided always, that no Person selling or alienating any of his or her Negroes, is hereby held or obliged to cause such Sale or Alienation to be enrolled, as is accustomed to be done, and required by the Laws of this Island, as in all other Real Estates, any Usage, Custom or Law to the contrary notwithstanding: Provided this Act, or any Thing therein contained, shall not be taken and deemed to extend unto any Merchant, Factor, or Agent, bringing Negroe Slaves to this Island, and having the Consignments of any Slaves under them; but that in all Respects, they, their Executors,

Administratores et Assigns, may hold, possess, and enjoy such Slaves, or Negroes, in such Condition as they might have done before the Making of this Act, until Sale of such Slave or Slaves hath been made in the Island.] Prout per Actu. ill. plenius apparet quodque præd. Edward. Chamberline diu ante præd. tempus quo, &c. apud Insulam præd. de simili Statu suo de & in Plantation. & Servis Æthiop. præd. ad inde pertinen. obiit se'it. per & post cujus mortem una tertia Pars Plantation. & Æthiop. servorum præd. unde Æthiop. Servus in narr. præd. mentionat. fuit un. descendebat Mariæ Vid. & Relict. præd. Edwardi Chamberline nomine dotis suæ per leges Insulæ præd. & reversio præd. tertiæ Partis & præd. al. duæ tertiæ Partes descendebant præfat. Willo. Chamberline ut Fil. & Hæred. prædict. Edwardi & sic se'it. existen. præd. Maria postea & diu ante tempus quo, &c. cepit in virum suum quendam Johan. Witham Mil. per quod præd. Johannes Witham se'it. fuit in jure Uxor. suæ præd. de una tertia Parte Plantation. & Æthiop. Servor. pro termino vitæ Uxor. suæ præd. ac præd. Johannes Witham sic se'it. existen. infranominat. Æthiop. verum Nativum diu ante infrascript. tempus quo, &c. scil't in Anno Regni Caroli Secundi nuper Regis Angliæ, &c. Tricesimo Sexto infra hoc Regnum Angliæ duxit & postea præd. Æthiop. Servus superius mentionat. remansit in Servitio

ipsius Johannis infra hoc Regnum Angliæ per spacium diversor. Annor. extunc & ante præd. tempus quo, &c. juxta ritus Ecclesiæ Anglicanæ sed absque notitia sive consensu præd. Willoughby Chamberline ibidem baptizat. fuit quodque præd. Johannes Witham postea & post mortem præfat. Uxor. ejus sed diu ante præd. tempus quo, &c. infra hoc Regnum Angliæ Æthiop. Servum præd. a Servitio suo penitus detrufit necnon postea & ante præd. tempus quo, &c. idem Æthiop. Servus alios hujus Regni Angliæ subdit. infra hoc Regnum Angliæ deservisset ac infrascript. tempore quo, &c. infra hoc Regnum Angliæ retent. fuit in actual. Servitio præd. Roberti Harvey capiend. de præfat. Roberto secundam ratam sex Librarum per Ann. pro salario suo in ea Parte sed utrum sup. tot. materiam præd. per Jur. præd. in forma præd. compert. præd. Robertus Harvey sit culpabil. de transgress. infra specificat. necne Jurator. præd. penitus ignorant & pet. ad visament. Cur. hic de præmissis. Et si super totam Materiam præd. per Jur. præd. in forma præd. compert. videbitur Justic. & Cur. hic quod præd. Robertus Harvey sit culpabil. de transgress. ill. tunc iidem Jurator. dicunt super sacrum suum præd. quod præd. Robertus Harvey est culpabil. de transgress. præd. prout præd. Willoughby Chamberline interiorius versus eum queritur. Et asfidunt dampna ipsius Willoughby occasione transgress. præd. ultra

ultra mis. & Custag. ill. ad quinquagint. & tres Solid. & quatuor Denar'. Et si super totam materiam præd. per Jur. præd. in forma præd. compert. videbitur eisdem Justic. hic quod præd. Robertus Harvey non sit culpabil. de transgress. præd. tunc

iidem Jurator. dicunt super factum suum præd. quod præd. Robertus Harvey, non est culpabil. de transgress. præd. prout ipse idem Robertus Harvey interius placitando allegavit & quia, &c.

2 Lev. 201.
Vide 3 Lev.
336, 337.
3 Keb. 785.
Ray. 16.
2 Salk. 666,
667.
Cro. Car. 19,
391, 545.
Cro. Eliz.
126, 545.
Cro. Jac. 262,
463.

Trespas for taking a Negroe Slave of the Value of One hundred Pounds: Upon Not guilty pleaded, the Jury found a Special Verdict at the Guildhall, London: Il. That before the Trespass committed, one Edward Chamberline was seized in Fee of a Plantation in Barbadoes, and of certain Negroe Slaves thereunto belonging; that the Negroe now taken was born within the said Island, of Negroe Parents, being Slaves belonging to the said Plantation. They find an Ordinance made by the Deputy Governour, Council, and Assembly of the Representatives in the said Island, That the Negroe Slaves there shall be real Estates, and shall descend to the Heir or Widow as Lands of Inheritance, &c.

That Edward Chamberline died seized, &c. after whose Death one third Part of the Plantation and Negroe Slaves (whereof this Negroe was one) came to Mary his Widow and Reliæ, as her Dowry, and the Reversion of the said Third, and the two other Thirds did descend to the Plaintiff, as Son and Heir of Edward Chamberline. That the said Mary did afterwards marry Sir John Witham, who thereupon was seized in her Right for her Life of one third Part of the Plantation and Slaves; and being so seized, he did, in the 36th Year of King Charles II. bring this very Negroe into England, where he continued in the Service of the said Sir John Witham several Years; that he was baptized here, but without the Privy or Consent of the Plaintiff; that after the Death of the said Mary, Sir John Witham turned this Negroe out of his Service, who afterwards served several other Masters here, and at the Time when the Trespass was supposed to be committed, was in the Service of the Defendant, and had for his Wages six Pounds by the Year. But whether, upon the whole Matter, the Defendant is Guilty of the Trespass, they refer to the Court.

A Case like this never happened before.

2

There

There were three Questions made upon this Verdict :

1. Whether upon this finding there was any legal Property vested in the Plaintiff ?

2. If any such Property be vested in him, then whether the bringing this Negroe into England be not a Manumission, and the Property thereby divested ?

3. Whether an Action of Trespass will lie for taking a Man Pretii centum Librarum.

As to the First, Tho' the Word Slave hath but a very harsh Sound in a free and Christian Country, yet perfect Bondage hath been allowed in such Places ; and the Power which doth naturally arise to the Lord over such Bondmen or Slaves, is by Reason of his supplying them with Food and Raiment during their Lives, as a Recompence for their Labour ; such is the Usage of the Island of Barbadoes. And the Jury have found a Law there, which makes these Slaves Part of the real Estate, and this Negroe was born of Negroe Parents there. Now the Children of such Parents are Slaves as well as they ; so it was amongst the Romans, where both Parents were Aliens, the Children were so too.

Vide March
12.
Hob. 283.
Ray. 16.
2 Lev. 201.
3 Lev. 336.
2 Salk. 667,
See, ante.

This Ordinance made in Barbadoes, being subject to the Crown of England, hath the same Force there as an Act of Parliament hath here. Now if this had been the Case of a Villain here, the Jury have found enough to make him Regardant to a Manor ; in which, by the Law of this Land, the Lord had so absolute a Property, that if he be taken away, the Party detaining him gained no Property in him ; for then the Writ de Nativio habendo must be brought against him, but it is only directed to the Sheriff to take him where-ever he may be found, &c.

Vide 2 Salk.
411, 412.

An Action of Trover will not lie, but where the Plaintiff hath a Property in the Thing demanded. Now it cannot be denied, but that Trover will lie for a Negroe ; for so was the Case of, &c.

It is true, there is no Judgment entred in that Case, but that may be the Fault of the Attorney in not bringing in the Postea.

2. Nothing here found doth amount to a Manumission or Enfranchisement.

Manu-

§. 204.

Manumission is defined by Littleton to be, when the Lord makes a Deed to his Vassal to enfranchise him, this is one Kind of Manumission; the other is, when the Lord doth some Act, which, in Judgment of Law amounts to make his Vassal free, as by making a Feoffment in Fee to him, and delivering Seisin accordingly, &c. It is true, he may have several temporary Privileges whereby he may be exempted from the Seisin of the Lord, as entering into Religion, &c. but can in no Case be enfranchised but where the Lord is an Ador; and even in such Case, if the Lord himself had enfranchised him by Deed, cum tati sequela sua procreata & procreanda, this was not a sufficient Manumission of such Children which he had before the Execution of the Deed without special Words, because they were Vassals in Possession at that Time.

Co. Lit. 137. b.
5 H. 7. 14. a.
Br. Tit. Villenage, placcito, 26.

But here is nothing of the Lord's Consent found in this Verdict, but the contrary.

Then bringing him into England by Sir John Witham will not make him free, because he was a Trespasser in so doing; for he ought not to have removed him from the Plantation to which he was regardant. If therefore taking him from the Plantation was Tortious, then the finding that he continued in his Service, and that he was afterwards turned away, will not amount to a Manumission.

The chief Question then is, Whether Baptism without the Privy of the Lord will amount to a Manumission?

Now if a bare Consent, without any other Act of the Lord, will not be sufficient to make his Vassal free, so as to divest himself of that Property which he had in him; then a Fortiori, what the Vassal doth without the Consent of the Lord, cannot acquire a Manumission.

Co. Lit. 136. b.

That a bare Consent alone is not sufficient, appears by my Lord Coke's Comment on Littleton, and the Authorities there cited in the Margin; That if a Nief regardant to a Baron marries a Freeman without the Licence of the Lord, who afterwards makes a Feoffment of the Baron, and then her Husband dies, the Lord shall still have the Nief, and not the Feoffee.

If Baptism should be accounted a Manumission, it would very much endanger the Trade of the Plantations, which cannot be carried on without the Help and Labour of these Slaves; for the Parsons are bound to baptize them as soon as they can give a reasonable Account of the Christian Faith; and if that would make them free, then few would be Slaves.

Econtra.

It was argu'd on the other Side, That it was against the Law of Nature for one Man to be a Slave to another. 'Tis true, a Man may lose his Liberty by a particular Law of his Country, or by being taken in a War, for there he owes his Life to those that preserve him, or where a Man voluntarily sells himself for Sustenance, or Alimony; but no such Thing is found in this Verdict, and nothing shall be presumed but what is in Favour of Liberty.

'Tis by the Constitutions of Nations, and not by the Law of Nature, That the Freedom of Mankind hath been turned into Slavery: Thus saith Bracton, *Fiunt etiam servi liberi homines captivitate de jure gentium*. But our Laws are called *Libertates Angliæ*, because they make Men free; and therefore even in the Time of Villenage here, the Lord had not such an absolute Property over his Slave, but that in some Cases that very Slave might have an Action against his Lord, as an Appeal for the Death of his Father; so where the Lord is indebted to the Testator of his Villain, he may bring an Action against him as Executor; so may the Wife have an Appeal of Rape, being ravished by her Lord. Lib. 1. c. 6.
Litt. §. 189,
190.

If Slavery in Barbadoes, and Villenage here, were the same Sort of Servitude, the Plaintiff may be seized of this Negro as a Villain in Gross, or as Regardant to the Plantation; for there were but two Sorts of Villains here, either in Gross, or Regardant to particular Manors.

Now this cannot be a Villain Regardant to the Plantation, for then the Plaintiff and his Ancestors must be seized of this Negro, and his Ancestors Time out of Memory of Man, which could not be, because Barbadoes was acquired to the English within Time of Memory; and he cannot be a Villain in Gross, because 'tis found that he was born of Parents belonging to the Plantation. Litt. §. 181,
182.

But if the Plaintiff hath any Property in this Negro, he must either have an absolute or qualified Property in him at the Time of the Trespass supposed to be committed.

He could not have an absolute or general Property, because by Magna Charta, and the Laws of England, no Man can have such a Property over another.

And if he had only a qualified Property, then an Action of Trespass will not lay, but an Action per quod servitium amisit.

But if the Plaintiff had any Right to the Servitude of this Negro, that Right is now divested by his coming into England; for the Ordinance made in Barbadoes shall not make him so Regardant to the Plantation there, as to go to the Heir, because that is only *Lex loci*, and adapted to that particular Place (as the Law of Stannaries in Cornwall, and extends only to that County) so long as he is occupied in Service on that Plantation; and if he be brought into another Country where that Law hath no Effect, that amounts to a Manumission; so that the bringing him into England, discharges him of all Servitude, or Bondage, especially being turned out of the Service of his Master, and not allowed Sustainance by him, for Food and Cloathing are the only Recompence for Servitude.

§. 202.

But being baptized according to the Rite of the Church, he is thereby made a Christian, and Christianity is inconsistent with Slavery. And this was allowed even in the Time when the Popish Religion was established, as appears by Littleton, for in those Days, if a Villain had entered into Religion, and was professed, as they called it, the Lord could not seize him; and the Reason there given is, because he was dead in Law, and if the Lord might take him out of his Cloister, then he could not live according to his Religion.

The like Reason may now be given for Baptism, being incorporated into the Laws of the Land; if the Duties which arise thereby cannot be performed in a State of Servitude, the Baptism must be a Manumission.

That such Duties cannot be performed is plain, for the Persons baptized are to be confirmed by the Diocesan when they can give an Account of their Faith, and are enjoined by several Acts of Parliament to come to Church: And it cannot be an Objection of any Weight to say, That though he was baptized, yet it was not by the Consent of the Lord, because he is enjoined by the Law.

But if the Lord hath still an absolute Property over him, then he might send him far enough from the Performance of those Duties, (*viz.*) into Turkey, or any other Country of Infidels, where they neither can or will be suffered to exercise the Christian Religion.

4 Inst. 46.

The Law is so careful of the Liberties of Men under its Protection, that the King himself, who hath so great a Right to the Duty and Service of his Subjects, cannot send any one out of England against his Will to serve in any other Place, even in his own Dominions, for this, my Lord Coke saith, would be *perdere Patriam*; and therefore the Lord could not send a Villain

lain in Gzoss out of the Kingdom, because the King had a Right in him.

Thus it is also in the Case of Apprentices, who, though they voluntarily submit themselves to serve their Masters for a certain Number of Years, yet they cannot be sent out of the Kingdom, tho' it be to their Master's House, and in his Service, unless it be the Agreement, or the Nature of the Apprenticeship is such.

Brownl. 1.
Pf. 67.
Hob. 134.
idem Coventry
Woodall.

Captives taken in War are under the most Slavish Degree of Servitude; and those to whom they are subjected have thereby the highest Right in them, because it is lawful not only to dispose of them at their Pleasure, but even to destroy them. But it is observed amongst the Turks, That they do not make Slaves of those of their own Religion, though taken in War; and if a Christian be so taken, yet if he renounce Christianity, and turn Mahometan, he doth thereby obtain his Freedom.

Molloy de
jure Mariti-
mo, 355.

And if this be a Custom allowed amongst Infidels, then Baptism in a Christian Nation, as this is, should be an immediate Enfranchisement to them, and they should thereby acquire the Privileges and Immunities enjoyed by those of the same Religion, and be entitled to the Laws of England.

3. This Action will not lie for taking a Ban, pretii centum librum. First, because 'tis not found that either the Widow or the Heir was in Possession of this Plantation, and Negro Slaves at the Time of the Action brought; for if this Negro be Part of the real Estate, then Sir John Wytham was a Disseisor by bringing him into England, and a Disseisee cannot have an Action of Trespass before a Re-entry, because the Freehold is in the Disseisor.

Roll. Abr.
2 Pf. 553.

The Aggrancy of a Villain, or a Peise, is the Fault of the Lord; and therefore Anno 7 R. 2. it was held, If a Stranger marry such Peise, not knowing to what Lord she belonged, he is not a Trespasser, which is this very Case in Point. Adjournatur. Afterwards, in Hillary Term, Judgment was given for the Defendant, that the Bill shall abate; for the Court were of Opinion, That no Action of Trespass would lie for the taking away a Ban generally, but there might be a special Action of Trespass for taking his Servant, per quod Servitium amisit.

Fitz. Abr.
Tit. Bar.
Placito 240.

Carth. 396.
397.

Roberts versus Withered.

1 Salk. 233.

Mid. ff. **F**Ran'cus Roberts qui
tam pro Dom' Rege
quam pro seipso in hac parte se-

quitur queritur de Thoma Wi-
thered in Custod. Mar. &c. de
Placito quod reddat. dicto Dom.
Regi