

No. 8817

Supreme Court of Illinois

David Hone

vs.

Godfrey Ammons

71641  7

Plas before the Hon. Wm H. Under-
wood held at the Court house in the
town of Carleton on the 6th of May A.
D. 1849, in and during the May
term of said year of the Clinton
Circuit Court of the 2d Judicial
Circuit State of Illinois

David Hone

vs
Godfrey Ammons.

Assumpsit.

The said plaintiff by Henry &
Bisell having filed process, bond
for costs &c on the 23d day of April
A.D. 1849, files his declaration as
follows to wit:

"Of the May term of the Clinton County
Circuit A.D. 1849

David Hone plaintiff in this said
by Henry and Bisell, his attorneys com-
plains of Godfrey Ammons, defendant herein
of a plea of trespass on the case on promise
for that said defendant heretofore to
wit, on the 14th day of November 1844
at the County of Clinton aforesaid, made
his certain promissory note or due bill
in writing of that date and delivered
the same to the said plaintiff where-
by he the said defendant promised to pay
the said plf or his order, on the first day
of April then next (to wit: the 1st day of
April 1845) two hundred dollars

Declaration

and if not paid punctually, to draw ten per cent from the time due until paid for value received. Yet although the said due bill has long been payable according to its tenor and although the said defendant has often been requested to pay the same yet he has wholly neglected to pay it or any part of it up to this time to the damage of said plaintiff of three hundred dollars and therefore he sues.

Hurray & Repell "attys for plffs"

in which said declaration there is endorsed a copy of said note or due bill.

To which said declaration the said defendant by Bruce and Bond on the 16th of May 1849 filed this plea as follows:

"1. Jefferson Ammons Deft
advs

David Bone, Plff.

And the said deft by Bruce & Bond his attys comes and defends the wrong and injury when & as and says plff affirms (actis non) because he says that the said due bill declared on was given by said defendant to the said plaintiff for no good or valuable consideration and this he is ready to verify, wherefore he prays judgment.

And for further plea in this behalf the said defendant says plaintiff affirms

Declaration

1st plea

22
plea

said (actus non) because he says that said
due bill was executed and delivered by said
deft to said plff on the sale by said
plff to said deft of a certain negro man
named Vin, then running at large in the
State of Illinois which the said Plff then
and there falsely and fraudulently affirmed
to said defendant was a servant for life
of him the said plff, and of the age
of from twenty five to thirty years
and that he said Plaintiff had a good
right title and claim to said negro which
he said plff then and there warranted
to said deft, and the said deft avers
that relying upon the said representation
of the said plff and in consideration of
the premises aforesaid he the said
deft did then and there execute and
deliver to said plff the said due
bill in said declaration mentioned, where-
as in truth and in fact the said negro
man was not then and there a servant
for life, but was a free man, and so
the said defendant says that said
due bill was made and executed
for no good or valuable consideration
and this he is ready to verify, where-
fore the said deft prays judgment
Breed & Bond

Whereupon the said plaintiff by
Bipell and Koerner on the day &
year last aforesaid filed his

Demurrer sustained, Plaintiff demurs to 2^d plea

demurrer, to the defendants second plea, assigning the following grounds

1. That said plea is multiparous & double
- 2 That it contains irrelevant matter
- 3 That it is informal and is official

In which said demurrer the said de²endant joins issue, and after the arguments of counsel and the Court being sufficiently advised thereon, the said plaintiffs demurrer is sustained, whereupon the said plaintiff files his replications as follows:

"None so Ammons

1. And the pl^{ff} for replication to the defendants first plea says, that the said due bill was given for a good or valuable consideration, and this he prays may be enquired of by the Country.

2. And the pl^{ff} says that by reason of any thing in the said second plea alleged preclude non, because he says that said negro was not a free² man and if this puts himself upon the Country.

3. And the said pl^{ff} for replication to the defendants ~~first~~^{second} plea says preclude non, because he says, that the said due bill mentioned in the said second plea was not given in consideration of

1. 2. 3 Replications to the pleas

the premises stated in the said second plea and of this he puts himself upon the country.

Whereupon the said defendant joins issue on the said several replications, and the it is therefore ordered that a jury be empanelled to try the same, and thereupon the Jurors of the County came to wit: Joseph N Watkins and eleven others, twelve good and lawful men who being elected tried and sworn to try the issue joined, after hearing the testimony &c retired to consider &c and thereupon the jury returned in to court the following verdict to wit: "We the Jury find for the defendant," whereupon the plaintiff interposed his motion for a new trial, which the Court then and there overruled. It is therefore considered by the Court that the said defendant recover of and from the said plaintiff his costs and charges in and about his said suit expended and that he have execution therefor &c.

And now the 16th of May 1849 the said plaintiff counsel Bisell and Korman filed the following bill of exceptions.

"Hon^{ors} our An^{ts} &c.

Be it remembered that on the trial of the above cause the defendant in order to sustain the issue under the first plea introduced one Lockhart

motion for new trial & judgment. Rendition of Verdict

Bill of Exceptions

who testified that the evening before the note was given by Ammons to Bone, a negro who calls himself Bill, but whom Bone called Jim, was seen in the neighborhood on the day of the date of the note, which he gave for a negro. Ammons purchased the said negro for \$200.00, and witness heard of no other note ever given by Ammons to Bone. On Cross-examination said witness stated, that Bone said Jim was a runaway slave. Bone claimed him as such. The contract was made at Ammons's house in this County and State of Illinois. Bone resided in Chippewas, and had come over after Jim. This was all the testimony in the case. Before the cause was submitted to the jury, the plaintiff asked amongst others for the following instruction.

Instruction asked for.

That the contract for the sale of a Slave is good, provided the said Slave is legally the subject of trade, in the State where he belongs, although said contract be made in a free State. -

Which instruction the court refused to give, but gave the 1st instruction asked for by defendant, and also an additional instruction by way of modification, which said instructions are as follows. If the jury believe from the evidence that the note sued upon was given for a run-away negro slave from Chippewas, being in Clinton County in this State, where defendant resided & was then sold by plaintiff to defendant, and the note then & there executed for the same, the jury should find for defendant.

Bill of Rights

Is the refusing of which instructions and the giving of the said last mentioned instructions the counsel for plaintiff at the time excepted. And the jury having found a verdict for defendant, the plaintiffs counsel moved for a new trial for the reason, that the Court refused to give proper instructions and gave improper instructions and other reasons, which said motion the Court overruled, to which the plaintiffs counsel at the time excepted, and prays the Court to sign & seal the said bill of exceptions.

Wm H. Underwood
C. J. 2 D. C. (Seal)

State of Illinois
Clinton County ss Joseph Case Clerk of the Circuit Court within and for said County do certify that the foregoing is a true copy of the record and proceedings had in the above and foregoing entitled Cause.

In testimony whereof I have hereunto set my hand and affixed the seal of the Clinton Circuit Court at Office in Carlyle this 10th day of October A.D. one thousand eight hundred and fifty
Joseph Case Clerk

Copy of Record \$200
Cert & seal 40
240

How
vs
Annuis }

I concur in affirming this judgment on the ground that a contract made in Illinois, for the sale of a person as a slave, who is at the time in this state and to a citizen thereof, is opposed to the policy which the People of Illinois thought proper to adopt in the formation of their state government; & in the very teeth of the express provisions of the Constitution. The state Constitution declares, that "all men are born equally free and independent," and that "there shall be neither slavery nor involuntary servitude in this state except as a punishment for crime whereof the party shall have been duly convicted". In a legal point of view, I would as soon think of enforcing a contract to carry into effect the African Slave trade, as that under consideration. The one is forbidden by an act of Congress, and the other by the fundamental law of the state; both of which are equally binding upon this Court.

As a general rule, the validity of a contract is to be determined by the law of the place where it was made, unless it is to be performed in another country, when the place of performance is to govern.

If valid where made or to be performed, it is by the general law of nations held valid everywhere, and if void or illegal by the law of the place of the contract, it is generally held void and illegal everywhere. These would seem to be principles derived from the very elements of natural justice, and as general principles, are recognized by the ~~general~~ universal consent of all courts and jurists, foreign and domestic. Story's conflict of Laws § 242, 243.

The contract sued on was made in Illinois, and the presumption of law is, was to be performed in Illinois. A part of this contract, the consideration of the note, was the sale of a negro in Illinois, to a citizen of Illinois, as a slave. Is there room for question even, that the sale of a person in this state as a slave, is contrary to the policy of our state Government, to say nothing of the express declarations of the Constitution,

If the defendant had a right to purchase the negro as a slave, and hold him as a slave for one moment I can see no reason why he might not retain him a slave for life; and thus slavery would be introduced into the state in defiance of the declared policy & fundamental law of its people. Will it be said that the purchaser had the right to retain the negro as a slave till he could remove him to a state where slavery

exists, if so, how did he get that right?

The constitution and laws of Illinois certainly do not confer it, and the constitution of the United States recognizes no such right.

The provision in the latter instrument which declares, that "no person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered upon claim of the party to whom such service or labor may be due," and the acts of Congress passed in pursuance thereof, are unquestionably of binding force upon the people of Illinois; but this clause of the constitution of the United States has nothing to do with this case.

The moment the master sold the negro, if the sale was valid he ceased to owe service or labor in the state of Missouri under the laws thereof; but if he owed service anywhere it was in the state of Illinois to one of its citizens and under its laws; Illinois, however, has no law authorizing the holding of persons in slavery, and the purchaser therefore took nothing by his purchase.

The moment the master sold the slave in this state to one of its citizens, he ceased to

be a fugitive from any other, and the right to remove him as such was gone - By the very act of selling the slave here, his master must be considered as having consented to his coming and remaining here, and this made him free.

This principle is clearly settled by the decision in the case of *Fish vs Fisher*, 2 Johnson's Cases 88. That case decides that the elopement of a slave could not be considered a bringing him into the state; but, that the subsequent disposition of him to a resident of the state, instead of reclaiming him, legalized the change of residence by the slave; and that thus the slave by the consent of his master, became domiciled in the state, and that it was, in effect, a bringing in the slave contrary to the statute, whereby he became free. This case is commented upon and sustained by the subsequent one of *Skinner vs Fleet*, 14 John, 263.

Many cases might be referred to, which though not precisely in point settle principles analogous to those involved in this case.

It has been repeatedly held in Mississippi, that all contracts for slaves introduced into that state in contravention of a provision in their state constitution forbidding their introduction as merchandise, were

void; that the consideration of notes given on the purchase of negroes so introduced was illegal as against public policy, & that such notes could not be collected, Green vs Robinson, 5 Howard's Miss Rep. 80; Cowen vs Boyce ib 769; Wooten vs Miller, 7 Stoll, 380

It was held in 2 SalMeld, 666. that in order to maintain an action for the price of a slave, it must be shown on the face of the pleadings, that the party was a slave where he was at the time of the sale. and it is said by Best J. in the case of Forbes vs Lochrane 2 Barn. & Cress, 471. that "there is not any decided case in which the power to maintain an action arising out of the relation of master & slave has been recognized in this country" -

It would not be understood as approving all that is said or decided in these English cases, and only cite them for the purpose of showing how jealous courts are about enforcing contracts which are contrary to the policy of their own government.

It is said by the Supreme Court of Massachusetts, in the case of the Commonwealth vs Aves, 18 Pick. 215, that "in pursuance of a well known maxim, that in the construction of contracts, the lex loci contractus shall

govern. if a person having in other respects a right to sue in our courts, shall bring an action against another, liable in other respects to be sued in our courts, upon a contract made upon the subject of Slavery in a state where slavery is allowed by law, the law here would give it effect."

From what is here said, it is manifest that the Court in Massachusetts would not give effect to a contract made upon the subject of slavery in a state where slavery is not allowed by law; for then the lex loci Contractus would make the contract void -

In the case I am considering, not only was the contract made in Illinois, a state in which slavery is not allowed by law, but the slave who was the subject matter of the contract was at the time in Illinois and the purchaser was also a resident of the same state. For the Court to lend its aid to the enforcement of such a contract would, in my judgement, be a violation of all principle and all authority. If a private sale of this character is valid, then a public sale would be equally so; and the master of a slave who has escaped into this state may expose him to public

sale in any part of the same - If he may do this, he will also have the right to deliver the possession to the purchaser, and the Courts of Illinois will be bound when called upon to aid in carrying out these objects - Such an idea is not, in my judgement, to be tolerated for a single moment in a free state.

I have treated this case as if it clearly appeared from the record, that the negro who was the subject matter of the contract was a slave; and admitting this to be so, am of opinion, that the contract was void and the note without consideration; and that the Circuit Court committed no error in refusing the instruction asked by the plaintiff and giving the one it did.

The second plea filed in the case alleges that the negro whose sale was the consideration of the note, was not a servant for life but a free man, upon which allegations issue was taken; and I agree with judge Catron, that the jury, under the evidence, were warranted in finding him a free man, but chose to place my decision on the other ground.

The judgment of the Circuit Court is affirmed.

Just, C. J. was clearly of opinion
that the plaintiff in error was
entitled to judgment on the note;
and he dissented in total from the
conclusions of the other members
of the Court.

How
vs
Answer
Separate Opinion
by Mr. Justice
Copy

Bellville Oct. 30
1850.

To the Clerk of Supreme
Court

You will please file the within Record
and send for costs, and issue imme-
diately a summons ~~to~~ in Error to
Sheriff of Clinton County. Amounts
are five dollars. &c

Yours very
respectfully.

Approve the bond.

Wm. H. Biddle

State of Illinois, }
SUPREME COURT. } ss.

The People of the State of Illinois,

To the Sheriff of *Clinton* County.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Clinton County*, before the judge thereof, between *David Stone, Plaintiff* and *Godfrey Ammons*

defendant, it is said that manifest error hath intervened to the injury of said *Plaintiff*

as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at *Mt. Vernon* Springfield, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Godfrey Ammons*

that *he* do and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at *Mt. Vernon* Springfield, in said State, on the *2^d* Monday in *November* next, *on the first day thereof* to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *defendant* notice together with this writ.

Witness, the Hon. *Samuel H. Treat* Chief

Justice of our said Court, and the seal thereof, at *Spring Mt. Vernon* field, this *13th* day *November* in the year of our Lord, one thousand eight hundred and

forty- fifty one

Pinney D. Preston
Clerk of the Supreme Court.

I have executed the within writ by reading the same to the within named Godfrey Ammon in presence of William H Ammon and Arthur Lockhart two free hold citizens of Clinton County September the 9th 1853

James J Justice
Sheriff of Clinton County
(JL)

Supreme Court.

David Stone

Plaintiff in error,

vs.

Godfrey Ammon
Defendant in error,

Scire Facias.

Filed.

Sheriff's Men
Service of writ
12 miles travel
returning and
50
60
100

J J Justice Sheriff
\$12.00

The Sheriff of Clinton will please to certify this writ as soon as possible and return it to Clerk of Supreme Court at New Orleans after service.

Supreme Court of Illinois
David Stone

Error to Clinton

vs
Godfrey Ammons.

I do hereby enter myself
security for all costs that may accrue in the above
case either to the opposite party or the officers of the Court
approved of by me J. D. Preston, Clerk Wm. B. Smith (L)

Howe vs Ammons

Opinion by Catron

The evidence shows that a negro man was seen in Clinton County, the day on which the note was given. That Howe claimed that he was his runaway slave. For this negro the note was given - the defence set up by the second plea was that the negro was a free man. I think beyond all question the evidence sustained this plea. - The negro being in this state the presumption of law was that he was a free man - such has been the repeated and uniform decisions of this Court, and I do not feel called upon to vindicate its propriety. - The moment the defendant proved that this negro was on our soil he established prima facie that he was free - Not a shadow of evidence was adduced tending to rebut this presumption; not even the semblance of possession or controul by Howe, either at that or any former period, either in this state or elsewhere. The negro was walking abroad as free as Howe himself, and for aught that appeared had ever been so. - The bare claim of title by Howe was no evidence of slavery, nor did the bare fact of purchase by Ammons upon this claim of title amount to an admission on his part that the man was a slave. Had the law presumed or did the proof show that the man

was a slave, it might then be said with more
show of propriety, that the fact of purchase admitted
title in How, for a title must necessarily have
rested in some one and there would have been
no affirmative presumption of law that the
title was in some one else rather than in How.
But it is different as to the condition of slavery,
which requires affirmative proof to overcome
the legal presumption of freedom. The proof being
that the note was given for a free man and not
for a slave, all the instructions asked, founded
on the supposition of his being a slave were
inapplicable to the case, and for that reason
alone the Court was justified in refusing them,
and I prefer to place my decision ^{upon} the evidence
in the case, which to my mind clearly entitled
the defendant to the verdict which the jury
gave him - When the questions raised by the
instructions shall be presented upon a state
of facts which involve them, I shall then
be prepared to give an opinion upon their
propriety.
I am of opinion the judgement should be
affirmed.

Just, C. J. was clearly of opinion
that the plaintiff in error was
entitled to judgment on the note,
and he dissented in whole from
the conclusion of the other members
of the Court.

How is Ammons
Opinion by
Calore
Copy

David Bone
vs
Godfrey Ammend. } Supreme Court
} Mount Vernon. Co
} November Term 1857

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this Court, in pursuance of the laws of this state. Dated this 12 Nov. 1857, and given in lieu of another bond filed before the last term, at the filing of the record and the precept in the case, which is now ~~actually~~ lost

Gustavus Hoerner

David Bone

m

Godfrey Ammons

Bond for Costs

Weld name for time
with leave of
Court this 12th
day of November 1857.

Henry D. Ruston
Clerk

8817