

Commonwealth v. Lambert Smyth

PAS Papers Box 4A Manumissions

"Documents concerning court cases in which slaves were awarded freedom"

Silva, a teenaged Cuban girl, was brought from Cuba to Rhode Island. She was manumitted upon arrival, but forced to serve a period of indentured servitude. The PAS argued that this was a violation of the 1807 Act of Congress outlawing the importation of slaves.

Com. Welth
V
Lambert Smyth
Habeas Corpus

Silva a black girl of the age of 15 who has been brought before me on a Habeas Corpus is claimed by Elizabeth Lana, as her servant til the age of 20 years. It appears that Silva was formerly the slave of Elizabeth Bertrand a French woman who resided in the Island of Cuba, M^r Bertrand was one of those unfortunate persons, whom the Spanish Government from motives of policy, compiled to leave Cuba, she came to Rhode Island in the spring of last year and in the month of August following arived in this City, bringing Silva with her, On the 9th of last August M^r Bertrand executed a deed of manumition of Silva, who on the same day bound herself by Indenture as a servant to M^r Bertrand her executors and assigns for 13 years from the date of meat, drink, cloathing, washing and lodging, This indenture was executed in the presence of Alderman Douglass, On the 13th of July 1810, M^r Bertrand in consideration of 200\$ assigned the Indenture to M^r B, did not come to the United States with a view of settling there and since the assignment of the Indenture she has gone to France.

It is contended on the part of Silva that under the circumstances of this case the indenture is void because she was entitled to her freedom immediately upon her importation into Rhode Island, and therefore the deed of manumition in consideration of which the Indenture was given, was useless ceremony which only tended to deceive her. Several (?) of of this Sate respecting the Abolition of Slavery have been introduced into the argument, but I do not think this case will turn upon them,

It has been customary for negroes in Philadelphia claimed as slaves by persons living in other States to bind them for different periods not exceeding the age of 20 years by way of compromise with their masters, and although we have no Act of Assembly expressly authorizing such bindings yet in cases where the right of the master is clear or even where the law is doubtful, I am not prepared to say that the Indenture is void, It is true that by the common Law of England, an infant cannot bind himself for a period beyond the age of 21 years, But the common Law of England where Slavery is not known is not strictly applicable to the United States where slavery is permitted by Law.

It is a sound principle that an infant may make a contrast for his own benefit, now nothing can be more for his advantages than to commute a state of slavery for

servitude til 20 years. If such Indentures are void the consequence will be that persons residing in other states, who may find their slaves in this state, will appeal to the strict law and if their claim is established, they will take their slaves home especially when the negro has acted under the direction of the Abolition Society or any of its members ought if possible to be supported, I have said there is no Act of Assembly expressly recognizing an Indenture to serve til the age of 29 years But the Act for the gradual Abolition of slavery (Sec 13) does by necessary inference affirm the validity of Indenture by which an infant has covenanted to serve til 28 years; It seems from the 12th Section of that law, that the Legislature had in view the case of negroes brought into this state from the other States under Indenture. But the words of the 13th section are general, not do I know that any Judicial construction has yet been given, by which theu have been restricted to persons brought into this state from other places, It is unnecessary however to commit my self by an opinion on that point, and therefore although I have thrown out those sentiments, I gave no opinion, Silva was not free by the Acts of Assembly of Pennsylvania when he executed the Indenture, But the case turns upon the Act of Congress passed the 2nd attempt 1807 (....Laws US 262) Mr Langer counsel has argued that upon a fair construction of that Act that mistress right to the property of the slave was not affected because she was not imported for the purpose of being sold within the United States. What the opinion of Congress would have been, had they forever a case of this kind it is impossible to say, we must take the law as it is, The title of the Act is "To prohibit the importation of Slaves into any part or place within the jurisdiction of the united States from and after the 1st January 1800," Nothing can be plainer than the intent here expressed, and in conformity to it the 1st section enacts, "That from and after the 1st January 1800 it shall not be lawful to import or bring into the United States or the territories thereof from any foreign Kingdom, place, or country, any negro, mulatto, or person of color, with intent to hold, sell, or dispose of such negro, mulatto, or person of color as a slave, or to be held in service or labour

The 2nd & 3rd sections and the first part of the 4th Section inflict penalties and forfeitures for breaches of the law, and the latter part of the 4th Section declares that neither the importer nor any person or persons claiming from or under him shall hold any right or title whatsoever to any negro, mulatto, or persons of color, not the service or labor thereof, who may be imported or brought within the United States or the territories thereof, in violation of this law"

The only question then is was Silva imported in violation of the Law? It appears to me that she was imported clearly in violation of the letter and spirit of the 1st Section. From the facts which have been proved I must suppose that she was imported for the purpose of being held by her mistress as a slave, and she was actually so held from the spring til August 1809.

This being the case how will the Indenture stand? There is no evidence that Silva had the assistance of friends or counsel, or that, he had any idea of a right to freedom except what was derived from the deed of manumission, which bear the same date as the Indenture, and must be considered as haveing been executed immediately before it. Taken together, these two instruments from one transaction, Thus an ignorant girl binds herself to serve for 13 years for no other consideration than meat, drink, washing, and lodging. No education is to be given. no art trade or useful business to be taught, she is not even to receive freedom dues(?), on what principle can such an Indenture be supported? Can it be said that the infant derives any benefit from it? It was determined in *Commonwelth V. Sheppale* (2197) that an

indenture of an infant living in the state, to serve til the age of 15 even with the consent of her guardian was void. That was the case of a white child but there is no authority or reason for making any distinction between black and white, except it may be in the cases of compromise which I have before mentioned-I am therefore of opinion that the Indenture was void and the Prisoner must be discharged

Hearing before Wm Tilghman

Silva

Vs.

Lambert Smith