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## **Pennsylvania v Aberilla Blackmore. Washington County, PA. 1790.**

**PAS Papers. Box 4A Manumissions  
"Habeas Corpus Actions"**

Washington County

Pennsylvania vs. Aberilla Blackmore

On application to me, a Writ of Habeas Corpus was directed to Aberilla Blackmore, returnable before me, for Cassandra and Lydia two negro women whom she held as Slaves. At the return of the writ, the Claim appeared to turn on this question. Whether Samuel Blackman, late husband of Aberilla, was an inhabitant of the County of Westmoreland, on 23<sup>d</sup> September 1780. This being a question involving facts asserted and denied, it was agreed, that this should be put in the form of an issue, and be tried in the (See act of assemble 13 April 1782) court of Common Pleas. It was accordingly tried this term, and it was agreed that the jury should return a Special verdict, to be drawn up by me. The object of the counsel for Aberilla Blackmore was, to have the proceedings removed into the Supreme Court, for the opinion of that court on the facts found. Afterwards I proposed, and it was agreed, that instead of a special verdict, there should be a Special return to the Habeas Corpus, stating all the facts found by the verdict; and that the case should go up to the Supreme Court, on a Certiorari directed to me, in this shape, of the writ and Return only. The return was as follows.

"In obedience to the within writ, I have here Cassandra and Lydia, as within required; and as the cause of their being taken and detained, I certify and return: That the said Cassandra and Lydia, negroe women were slaves to my deceased husband, Samuel Blackmore, in the state of Maryland, where he lived and they with him, as part of his family, before and in the month of March in the year of our lord one thousand seven hundred and eighty. That in march 1780, he came into the then County of Westmoreland, in the state of Pennsylvania, to purchase land; and on the 24<sup>th</sup> day of that month purchased a tract of land then in the County of Westmoreland, but now in the County of Washington; and state of Pennsylvania for £22.000. continental money; and gave his bond for this money, which he afterwards paid. That returning to Maryland, where his family still remained, he told one of his neighbours, who was then about to remove, and, in april 1780, did remove thence into the County of Westmoreland aforesaid, that he should have a certain part of this land; bade him put a fall crop in, if he did not get there in time himself; gave him appletrees to plant, and said he would be out there himself in September. That, having sold his land in Maryland, he, about the

middle of December and not before, arrived with his family, at the land which he had bought, then in Westmoreland, now in Washington County in Pennsylvania. Lydia was then with him, and Cassandra had been sent up about two weeks before with two of his sons. That, from that time, till his death, he continued to reside on this land, with his family, keeping Lydia and Cassandra part of it as slaves, That "an act" to redress certain grievances within the Counties of Westmorland and Washington, passed 13<sup>th</sup> april 1782 enabling certain inhabitants of those Counties to register their Slaves, he registered Cassandra and Lydia with the Clerk of the peace of Washington on the nineteenth day of December in the year of our Lord one thousand seven hundred and eighty two, as follows, to wit. "Samuel Blackmore of Township Cass a negro slave 22 yaers Lyddy a negro slave 20 years." By virtue of which they were and are Claimed and held as Slaves, in the State of Pennsylvania. And this is rhe cause of their being so kept and detained. Aberilla Blackmore.

The proceedings having been removed into the Supreme Court, it was agreed, by the Counsel on both sides, that the validity of the return should be argued at the next court of Nisi prius, in Washington, and the determination of the claim be made, by the Judges then attending. Accordingly, it was argued before Yeates<sup>1</sup> and Smith<sup>2</sup> Judges of the Supreme Court, on 18<sup>th</sup> May 1797 at a Court of Nisi prius<sup>3</sup> at Washington. Brackenridge for the Sufficiency of the return read the act of a the Gradual abolition of slavery; and the act of 13<sup>th</sup> April 1782 to redress certain grievances within the Counties of Westmoreland and Washington; and the act confirming an agreement entered into between this state and the state of Virginia; and made two questions.

1 Whether of the act of 13<sup>th</sup> April 1782 related to inhabitants within the counties of Westmoreland and Washington, at the date of ↑the↓ act, or on the 23<sup>rd</sup> September 1780, when the agreement between the two states was closed 2 Whether Blackmore was on an Inhabitant of Westmoreland county on 23<sup>d</sup> September 1780

He contended that by the purchase of a tract of land, sending up appletrees, &c, he became an inhabitant.

As to registration, the abolition act is directory only: provided the truth be that the persons are registered, mere formalities are not regarded. It is a law takeing away property, and will be construed liberally in favour of the owner,

<sup>1</sup> In 1797, Jasper Yates was an Associate Justice of the state Supreme Court. Cornelius William Stafford, *The Philadelphia Directory for 1797*, Appendix, 25.

<sup>2</sup> In 1797, Thomas Smith was an Associate Justice of the state Supreme Court. Cornelius William Stafford, *The Philadelphia Directory for 1797*, Appendix, 25.

<sup>3</sup> The phrase, *nisi prius*, refers to a specific system of court organization where a large Supreme Court is created for the state and its various members are divided into groups to circulate through the state and adjudicate important state cases. In Pennsylvania in 1797, courts of *nisi prius* were convened in each county "[a]t such times as the justices of the Supreme Court shall judge most convenient for the people." Periodically all of the members of the Supreme Court would reconvene as a single court to resolve other challenging cases. Cornelius William Stafford, *The Philadelphia Directory for 1797*, Appendix, 25.

not of the Slave. In 1780, this country was considered as virginia, and its inhabitants as not bound by laws of Pennsylvania.

This law is not published in Dallas 3 edition of the state Laws.

The form of registration was made part of the return on the application of W Ross at the argument against the return. The abolition act provided against any introduction of Slaves after the date of the act. All brought in after (1<sup>st</sup> 859-840 841) the act, instantly became free; all born after the act are declared free at the age of twenty eight; and the registration of slaves then within the state is secured by the penalty on the owner, of loss of property in any not registered according to the directions of the act. The two negroes in question having been brought into this state after the first of March 1780, are free, because not within the state on 1<sup>st</sup> March 1780, nor, if within it, recorded before 1<sup>st</sup> November 1780. The act of thirteenth april 1782, reciting that "many of the inhabitants of Westmoreland and Washington counties, conceiving themselves under the jurisdiction of Virginia, had no opportunity of entering or registering their slaves, agreeable to the act for the gradual abolition of Slavery," "enacts" that it be lawful for all such inhabitants of the said counties, who were on the 23<sup>rd</sup> of September 1780, possessed of Negro or molattoe slaves, or servants until the age of thirty one years, to register such slaves or servants agreeable to the directions of the act aforesaid for the gradual abolition of slavery, on or before the first day of January next; and that the master or masters, owner or owners, of such slaves or servants, shall be entitled to his, her, or their service as by the said act directed ; and the said slaves or servants shall be entitled to all the benefits and immunities in the said act contained and expressed." But this act cannot make those slaves, who were free under the act of march 1780. And these women having been brought in after 1<sup>st</sup> March 1780 were free instantly after their being brought in. If they became free instantly after they were brought in, they remain free: for it is not in the power of any laws to make a free man a Slave. The object of the 5<sup>th</sup> section of the abolition law was to describe the sex and age of the slave, and the trade and residence of the master, so particularly, that slaves might at any time, be certainly traced back, For this purpose, the directions of the act must be strictly complied with. But in the registry underwhich this claim to slavery is Suported, there is no township, district or profession of the master, nor sex of the slave. One of these negroes is named Cass: this leaves it uncertain whether the person be man or woman, or the name Cassius or Cassandra. Strong indeed must be the leaning against liberty if without anything on the record to determine this court shall say that it was this woman Cassandra who was then registered. Liddy is somewhat different It is not so doubtful of what sex that slave was. But this less degree of doubt arrises not, as it ought to do, from the record, but from our knowledge, that there is no name so like Liddy ↑as↓ Lydia which is a woman's name.

As to the law of 1782, it is certain that the legislature is not more the sovereign than the Executive is. The legislature is the people acting under a

limitation and can enact no law contrary to the constitution. The Courts will be vigilant over the laws; for on the pure administration of Justice, according to the Spirit of the Constitution, our liberty and safety depend.

Can the legislature by a law; declare a free person to be a Slave, when the Constitution, under whose authority they act declares all men free, and freedom to be an unalienable right? If they can make one freeman a slave, why not a whole country? It is no answer to this that he was a slave, and, by an omission became free; nor that he is a Black. All are alike in the sight of God. If he has reason, he is answerable for his conduct. No legislature has such a power over white men; and none, therefore has such power over black.

But it is objected that it is doubtful, whether these counties were under the jurisdiction of Pennsylvania, It turned out that they were. This was ascertained before November 1780. This was one of the grievances to be remedied. But there was no power in the legislature, to give the remedy attempted. As well might they have made a law to introduce, as slaves, after the peace, slaves of Pennsylvanians, absent with their masters in the army. Samuel Blackman could have been in no uncertainty. He was not here He was in Maryland, and had no slaves here to register on the 23<sup>rd</sup> September 1780 or the 1<sup>st</sup> November 1780. It was not on such that the law of 1782 was to operate; but on such as, on the 23<sup>rd</sup> September 1780 were inhabitants of the disputed territory. on the 23<sup>rd</sup> September 1780 the dispute ceased and it was no longer doubtful that the laws of Pennsylvania were to govern every man here. The law of 1782 was not then made; Samuel Blackmore was not then here; and, coming in afterwards, he brought in his negroes under the operation of the law of 1780; by that law, they became free immediately after their arrival here; and being once free they must so remain. Having land here does not make an inhabitants. Inhabitants of Europe have land here. Intention does not make fact. Intending to be a resident is not being a resident.

I hope the Court will construe these acts liberally in favour of liberty and strictly against the owner, who does not pursue the injunctions of the law. As the claim of slavery is so contradictory to the principles of reason and nature, I hope the Court will go as far as possible to reconcile them and say, there shall be no slavery, but where every particular of the law is complied with with. If this were the case of white women, the construction would be liberal. It must be so, in the case of blackwomen. Their case is worse than that of Criminals. They, confined for a few years, have the prospect of liberty at last. These never. Were an american prisoner in Algiers claiming the benefit of a law there, which declared free all slaves not specially registered, to be told, that such law was a mere formality, what should we think of that country? Should it be told in Algiers, that we have a constitution, which declares all men free, and a law to register the name and sex of every slave; they would ask "Why complain of us? If by that law, free men are declared slaves, why do you boast of a constitution?"

I argue this case without any recompence, but that which every man finds, in the satisfaction of doing a good action. And I am confident that this court will take hold of the least flaw, to restore these women to the unalienable rights of nature.

Braskenridge in reply. On principles of nature, there can be no slavery. But we live under an express constitution; and on constitutional principles, there can be no slave, for the constitution declares all men born free; and the question is are these of human species? Another section protects property: this was a species of property; and the protection of the constitution is claimed for it, Such construction will be given, as to render the whole consistant; and the construction will be secundum subjectam materiam<sup>4</sup>. These sections relate only to the parties to the contract. These negroes were not parties to it; they were none of the people. If it apply to all men, and a negroe be a man, there is an end of the question. If negroes be property, this can only be taken away by consent of the owner.

The compact between the states of Pennsylvania and Virginia was in fieri, till 1784; and the act of 1782 was made, not to correct (201L207) but to prevent, a grievance. The resolution for accepting the cession was not a law; for the state of Laws is, Be it enacted (?) To give perfect relief, the act of 1782 ought to be construed as applying to inhabitants at the date of the act; because the boundary was not then run, nor the cession compleat.

As to residence, he had bought land, with intention to remove and reside on it; he had sent out an agent, apple trees &c. He was no longer an inhabitant of Maryland.

Next day, the Judges delivered their opinion that the Negroes were free

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<sup>4</sup> Literally, "according to the subject matter," meaning that a decision must be made in context of the arguments made.