

Habeas Corpus Petition (Entire Case) - opinion

Elizabeth Turner

Black Indentured Servant

1867

5463-18



PRICE THREE CENTS

MARYLAND "APPRENTICESHIP" LAWS.

COLORED CHILDREN HELD IN SLAVERY

DECISION OF CHIEF JUSTICE CHASE

INDENTURES DECLARED VOID

"INVOLUNTARY SERVITUDE" PROHIBITED.

CHILDREN RESTORED TO PARENTS

CIVIL RIGHTS LAW CONSTITUTIONAL

An Important Decision of Chief Justice Chase.

The *habeas corpus* case of Elizabeth Turner, colored, aged 14 years, before Chief Justice Chase (in chambers), of which previous mention has been made, was yesterday disposed of by Chief Justice Chase, she being discharged from the custody of Philemon T. Hambleton, of St. Michael's, Talbot county, to whom the Orphans' Court of that county had apprenticed her on the 3d of November, 1864, and given over to the care and guardianship of her mother, Elizabeth Minokey (formerly Turner), whose husband, Charles Henry Minokey, through counsel, Messrs. Henry Stockbridge, O. F. Bump and N. M. Pusey, filed the petition for the writ, which was made returnable on Tuesday. In the petition it was stated that she is restrained of her liberty and held in custody by said Hambleton in violation of the Constitution and laws of the United States; that she is restrained of her liberty by virtue of certain alleged indentures of apprenticeship made, not in accordance with the laws of the State of Maryland applicable to the binding of white children; that at the time of making the said alleged indentures of apprenticeship the mother of petitioner was able, ready and willing to support her; that petitioner was not summoned to appear before the Orphans' Court of Talbot county on the day of making the said alleged indentures of apprenticeship, and that the said Hambleton is not bound by the said alleged indenture of apprenticeship to give petitioner any education in reading, writing and arithmetic, all of which requirements are made necessary by the laws of the State of Maryland in the case of the binding of white children.

The indenture of apprenticeship filed by the respondent on Tuesday provides that Elizabeth Turner shall be taught the art or calling of a house servant, and that the master shall provide said apprentice with food, clothing, lodging, and other necessaries, and shall pay to Betsy Turner, her mother, \$10 at the end of 16th year, \$10 at the end of 17th year, \$12.50 at another period, and \$15 to the girl at the end of her term of service, on the 18th of October, 1874, she having been born October 18, 1856; that she was apprenticed "by the consent of her mother present in court" on the 3d of November, 1864. In the event of the death of her mother, the wages are to be paid to the girl.

There was no appearance of counsel in behalf of the respondent, and the Chief Justice filed the following important opinion in the case:

In the Matter of Elizabeth Turner, Petitioner for Writ of Habeas Corpus: The petitioner in this case seeks relief from restraint and detention by Philemon T. Hambleton, of Talbot county, in Maryland, in alleged contravention of the Constitution and laws of the United States. The facts, as they appear from the return made by Mr. Hambleton to the writ, and by his verbal statement made in court, and admitted as part of the return, are substantially as follows:

The petitioner, Elizabeth Turner, a young person of color, and her mother were, prior to the adoption of the Maryland Constitution of 1864, slaves of the respondent. That Constitution went into operation on the 1st of November, 1864, and prohibited slavery.—Almost immediately thereafter many of the freed people of Talbot county were collected together under some local authority, the nature of which does not clearly appear, and the younger persons were bound as apprentices, usually if not always to their late masters. Among others Elizabeth, the petitioner, was apprenticed to Hambleton by an indenture dated on the 3d of November, two days after the new Constitution went into operation.

Upon comparing the terms of this indenture (which is claimed to have been executed under the laws of Maryland relating to negro apprentices) with those required by the law of Maryland in the indentures for the apprenticeship of white persons, the variance is manifest. The petitioner under this indenture is not entitled to any education; a white apprentice must be taught reading, writing and arithmetic. The petitioner is liable to be assigned and transferred at the will of the master to any person in the same county; the white apprentice is not so liable. The authority of the master over the petitioner is described in the law as "a property and interest;" no such description is applied to authority over a white apprentice. It is unnecessary to mention other particulars.

Such is the case. I regret that I have been obliged to consider it without the benefit of any argument in support of the claim of the respondent to the writ. But I have considered it with care, and an earnest desire to reach right conclusions.

For the present, I shall restrict myself to a brief statement of these conclusions, without going into the grounds of them. The time does not allow more.

The following propositions, then, seem to me to be sound law, and they decide the case.

1. The first clause of the thirteenth amendment of the Constitution of the United States interdicts slavery and involuntary servitude, except as a punishment for crime, and establishes freedom as the constitutional right of all persons in the United States.

2. The alleged apprenticeship in the present case is involuntary servitude, within the meaning of these words in the amendment.

3. If this were otherwise, the indenture set forth in the return does not contain important provisions for the security and benefit of the apprentice which are required by the laws of Maryland in indentures of white apprentices, and is, therefore, in contravention of that clause of the first section of the Civil Rights law enacted by Congress on the 9th of April, 1866.

4. This law having been enacted under the second clause of the thirteenth amendment, in enforcement of the first clause of the same amendment, is constitutional, and applies to all conditions prohibited by it, whether originating in transactions before or since its enactment.

5. Colored persons equally with white persons are citizens of the United States.

The petitioner, therefore, must be discharged from restraint by the respondent.

The Chief Justice passed the following order: Ordered by the Court, this 16th day of October, A. D., 1867, that Elizabeth Turner be discharged from the custody of Philemon T. Hambleton, upon the ground that the detention and restraint complained of is in violation of the Constitution and laws of the United States, and it is further ordered that the costs of this proceeding be paid by the petitioner.

Petition of
Elizabeth Turner (Colored)
by her next friend Charles
Henry Menckey for
Habeas Corpus

September 18, 1867

I allow the writ of Habeas
Corpus as within prayed,
about the blank of the Circuit
Court of the U. States for the Dis-
trict of Massachusetts will issue
returnable at the Court Room
in the City of Baltimore on
Tuesday the 15th Oct. 1867

S. P. Chase

Chief Justice U. States

clk 4 30
Mar 11. 67

Copy for Starkbridge

Filed 20th September 1867
Habeas Corpus issued

To the Honorable Salmon P. Chase, Judge of the
Circuit Court of the United States for the Fourth
Circuit, in and for Maryland District

The Petition of Elizabeth Turner (col-
ored) by her next friend Charles Henry Minoky, re-
spectfully represents that she is the child of
Elizabeth Minoky (formerly Elizabeth Turner);
That she is restrained of her liberty and held in
custody by Philemon J. Hamilton, residing in St.
Michaels, Talbot County in the State of Maryland,
in violation of the Constitution and Laws of the
United States.

That your Petitioner is restrained of her lib-
erty by the said Philemon J. Hamilton by virtue
of certain alleged indentures of Apprenticeship
made not in accordance with the Laws of the
State of Maryland as applicable to the bin-
ding of white children. That at the time of
making the said alleged indentures of Appren-
ticeship the mother of your Petitioner was able,
ready and willing to support her; that ~~the~~
your Petitioner was not ~~summoned~~ summoned
to appear before the Orphans Court of Talbot
County on the day of the making of the said al-
leged indentures of Apprenticeship, that the said
Philemon J. Hamilton is not bound by the said ^{alleged}

indentures of Apprenticeship to give your Petition-
er any education in reading, writing and arithme-
tic, all of which requisites are made necessary
by the Laws of the State of Maryland in the case
of the binding of white children.

Your Petitioner therefore prays your Honor to
grant unto her the writ of Habeas Corpus, ad-

dressed to the said Philemon T. Hamilton requiring
him to produce in this Honorable Court upon a
day in the said Writ to be named, the person
of your Petitioner, to certify the true cause of her
detention and to show cause, if any he has,
why your Petitioner should not be discharged
from her said unlawful custody and detention
and as in duty bound &c.

Henry Stockbridge &
Nathan M. Pusey
Atty^s for Petitioner

State of Maryland

City of Baltimore, to wit

I hereby certify that on this 17th day of
September in the year Eighteen Hundred and sixty
seven before me a Commissioner of the United States
personally appeared Elizabeth Minocky and made
oath in due form of law that the matters and facts
stated in the foregoing Petition are true as therein
set forth to the best of her knowledge & belief.

Garret Brooks Jr
United States Commissioner
for District of Maryland

Ordered by the Court this 16th day of October
A. D. 1867 that Elizabeth Turner be discharged
from the Custody of Philemon T. Hamilton
upon the ground that the detention & restraint
complained of is in violation of the Constitution
& Laws of the United States & it is further ordered
that the Costs of the this proceeding be paid
by the Petitioner Respondent.

J. M. M.
Chief Justice of the United States

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To The Honorable Salmon P. Chase Chief Justice of
the Supreme Court of the United States

In Obedience to the Command of the within
writ. I herewith produce the body of Elizabeth
Innes together with a Copy of the Indenture of
Apprenticeship, showing the Cause of her Capture
and detention - and Respectfully await the Action
of Your Honor.

P. S. Hamilton

US
Stamp
5'ch

THIS INDENTURE, Made this *third* day of *November*

in the year of our Lord one thousand eight hundred and *sixty four* by and between

Thomas N. Leonard and *Henry P. Hopkins* — Judges of the Orphans' Court

of the State of Maryland, in and for Talbot County, of the one part, and *Philemon J. Hambleton* of the said county of the other part

—WITNESSETH, that the said *Thomas N. Leonard* and *Henry P. Hopkins* as Judges of the Orphans' Court aforesaid,

by virtue of the power and authority to them given in and by the Acts of the General Assembly, *and by the consent of the mother, present in Court*

have placed and bound, and by these presents do place and bind out *Betsy Turner* *an indigent negro girl*

as an apprentice to the said *Philemon J. Hambleton* to learn the art, trade, or mystery *of a house servant*; the said *Betsy Turner* after the manner of an Apprentice, to dwell with and serve the said *Philemon J. Hambleton* from the day of the date hereof, until the *Eight* day of *October* in the year eighteen hundred and *seventy four* at which time the said apprentice, if she should be living, will be *Eighteen* years of age, having been born on the *Eight* day of *October* eighteen hundred and *fifty six* during all which time or term the said Apprentice *her* Master well and faithfully shall serve, *his* secrets keep, and *his* lawful commands everywhere and at all times readily obey, and shall well and truly behave, conduct, and demean *himself* in every respect, as a good and faithful Apprentice ought to do. And the said *Philemon J. Hambleton* on *his* part doth hereby promise, covenant and agree, to teach and instruct the said apprentice, or cause *her* to be instructed, in the art, trade or calling *of a House servant* by the best way or means *he* can :

and shall well and faithfully find and provide for the said Apprentice good and sufficient meat, drink, clothing, lodging and other necessaries, fit and convenient for such an apprentice, during the term aforesaid, *and shall pay to Betsy Turner her Mother \$10.00 at the end of her 16th year, \$12.50 at the end of her 17th year, and \$15.00 to the girl at the end of her term of service.*

In the event of the mother's death the wages to be paid to the Girl.

IN TESTIMONY WHEREOF, the said *Thomas N. Leonard* and *Henry P. Hopkins* as Judges of the Orphans' Court in and for the County of Talbot aforesaid, and the said *Philemon J. Hambleton* hereunto set their hands and seals affixed, the day and year first herein before written.
Signed, sealed and delivered }
in the presence of }

W. Soloborough

Thos N. Leonard
Henry P. Hopkins
P. J. Hambleton

SEAL
SEAL
SEAL
SEAL

I hereby Certify that the Within is
a true and perfect Copy of the Original In-
strument of Petsey Turner to P. J. Stumblen
now of record remaining in my office



In Testimony Whereof
I have set my hand and
Affix the Seal of my office
this 9th day of October A.D. 1867
Wm. G. Johnson, J. P. of Mills
for Talbot County

3rd day of November 1864

Petsey Turner

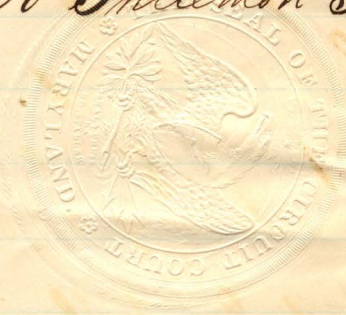
To
P. J. Stumblen

Instrument

Copy

Dec. Oct 15 1867

The United States of America
District of Maryland, to-wit
To Philemon J. Hamilton, residing in St. Michaels
Talbot County in the State of Mary:
and Greeting:



You are hereby Commanded to be
and appear before the Honorable
Salmon P. Chase Chief Justice of
the Supreme Court of the United States at the United
States Court Rooms in the City of Baltimore, on the
15th day of October 1867 and that you have with
you the body of Elizabeth Turner (Colored), now in
your custody as it is said, and that you Certify and
make known the day and cause of the Caption and
detention of the said Elizabeth Turner, and that
you then and there do Submit to and receive
whatsoever the said Chief Justice shall determine
upon concerning you in this behalf according to
law and have you then and there this writ.

Witness the Honorable S. P. Chase Chief
Justice of our Supreme Court the first Monday
in December in the year of our Lord one
thousand eight hundred and Sixty Six
I gave the 20th September 1867

James W. Chew Clerk
Circuit Court

W. H. Ingham
Boston

This writ delivered to
J. T. Hambleton in the
presence of W. J. Burdett
This 23^d day of 1827

In the Matter of the
Petition of Elizabeth
Turner by her next friend
Charles Henry Minot

Habeas Corpus.

N. Stockbridge
N. M. Insey.

Mr. Ingham will please take
this paper with petition & Remittan
of Sr. Nicholas, and make return
of date of return & privilege
of Mr. Burdett
W. H. Ingham

Elizabeth Turner } Habeas Corpus
or
P. J. Hambleton }

Sewing process
150 miles

\$ 2.
9.60
\$ 11.60

In the Matter of Elizabeth Turner;

Petition for writ of Habeas Corpus:

The petition in this case seeks relief ^{from} restraint & detention by Philemon T. Hamblton of Talbot County, in Maryland in alleged contravention of the Constitution and laws of the United States.

The facts, as they appear from the return made by Mr Hamblton to the writ & by his verbal statement made in Court and admitted as part of the return, are substantially as follow.

The petitioner, Elizabeth Turner, a young person of color, and her mother were privy to the adoption of the Maryland Constitution of 1844 slavery of the respondent. That Constitution went into operation on the 1st of November 1844 and prohibited slavery. About immediately thereafter the many of the free people of Talbot County were collected together under some local authority, the return of which does not clearly appear, and the younger persons were bound as apprentices, usually if not always to their late masters. Among others Elizabeth, the petitioner was apprenticed to Hamblton by an indenture dated on the 3^d of November, two days after the new Constitution went into operation.

Upon comparing the terms of this Indenture, ^{which is claimed} with those required by the law of Maryland in Indentures for the apprenticeship of white persons the variance is manifest. The petitioner under this Indenture is not entitled to any education; a white apprentice must be taught reading, writing & arithmetic. The petitioner is to be assigned & transferred at the will of the master to any person in the same County; the white apprentice is not thus liable. The authority of the master over the petitioner is described in the law as a property

and intend? so such description is applied to authority on
a white apprentice. It is unnecessary to mention other particulars.

Such is the case. I regret that I have been obliged to
consider it without the benefit of any argument in support
of the claim of the respondent to the writ. But I have considered
it with care and an earnest desire to reach justly with conclusions.

For the present I shall not pretend myself to a long statement
of these conclusions without ^{going} into the grounds of them.
~~The time~~ The time ~~is so~~ ~~disposed~~ ~~to~~ ~~be~~ ~~so~~ ~~over~~ ~~with~~ ~~allow~~ ~~me~~.

The following propositions ^{then} seem to me to be established sound
law and they decide the case.

I. The ^{first} clause of the
Thirteenth Amendment of the Constitution of the United
States interdicts Slavery & involuntary servitude except as a
punishment for crime; and establishes freedom as the ^{constitutional}
^{right of all persons} in the United States.

II. The apprenticeship, in the present case, is involuntary
servitude, within the meaning of these words in the amendment.

III. If this were otherwise, the indenture set forth in the return
does not contain important provisions for the security & benefit
of the apprentice which are required by the law of Maryland in
indentures of white apprentices, and is therefore in violation of
that clause of ^{part} of the Civil Rights Law enacted by Congress on the 9th
of April 1866.

IV. This law, having been enacted ~~in~~ ~~enforcement~~ under the
second clause of the Thirteenth Amendment is enforcement of the
first clause of the same Amendment is constitutional as applied to
all conditions prohibited by it whether originating in transactions
before or since its enactment.

V. Colored persons, ~~as~~ ~~to~~ ~~equally~~ with white persons, are citizens
of the United States.
The Petitioner, therefore, must be discharged from ^{proceed} ~~the~~ ~~writ~~.



James M. Chew Esqr
Clerk U.S. Dist Court
Baltimore
Md

Washington D.C.
November 1st 1864

Dear Sir,

I see that the order in the case of Elizabeth Turner, as printed in the newspapers, directs that the costs be paid by the Petitioner. This is wrong. The costs should be paid by respondents.

If the order signed by me has this direction, it was through inadvertence. You will please correct the error if it exists by striking out Petitioner and inserting "respondents."

Yours truly,

A. S. Pack

James W. Chew Esq.
Clerk. U. S. Div. Ct.