

and that every court is the judge whether a contempt has been committed against it. That proposition is not controverted, but it is equally well settled, that if a court, assuming to pronounce a judgment of contempt, or any other judgment, has no jurisdiction, the judgment is *coram non iudice* and void. The question here is, did the city court of Selma have jurisdiction over the subject matter and over the parties, at the time it assumed to pronounce the judgment? If it had no jurisdiction of the subject matter, to wit, the papers, matters and things described in the subpoena, it could not require their production at the hands of any one. It does not clearly appear, from the record, whether this judgment of contempt was based solely upon the failure of the petitioners to produce the papers, matters and things in question, though the affidavit of Turner, to the effect that he was not required to go before the grand jury, and no questions were asked him touching any violation of law, in his knowledge, within the jurisdiction of the city court of Selma, indicates that the judgment of contempt was based solely upon the failure to produce the papers, matters and things in question, and not upon the failure to appear *instantly* in person, in response to the subpoena. The subpoenas are for George Turner and Charles E. Mayer, and these gentlemen, like other citizens of the state of Alabama, owe duties of obedience to her laws, and the process of her courts, and the fact that they are officers of the United States will not, and does not, absolve them from the duties which they owe as citizens of the state of Alabama. It cannot be maintained, however, that the duties which they owe, of obedience to the process of the state courts, overbears and overrides their duties as officers of the United States, required, as they are by law, to attend upon the sessions of the courts of the United States, held in the district of their appointments. It appears, from the record of the proceedings of the city court of Selma, that these officers made answer in writing, under oath, to the subpoena served upon them, and informed the court of the official positions which they respectively held, and stated the facts which prevented their attendance in person and *instantly* upon the city court of Selma, and it appears, from the record, that these returns were before the court when judgment of contempt was pronounced against them. The facts stated by them in their respective answers are not traversed, and it will hardly be contended that the duty of these officers to attend *instantly* and in person upon the session of the city court of Selma is of higher obligation than their duty, under the laws of the United States, to attend upon the sessions of the courts of the United States, of which they are officers. This is a question of vital importance: it touches the very foundation of the powers and jurisdiction of the federal courts.

Courts cannot exist without officers to conduct their business, serve their process and execute their mandates. If officers of the courts of the United States can be arrested and imprisoned by process from state courts, for alleged violation of state law and authority, for acts done or omitted by them in the execution of the laws of the United States and the orders of her courts, and there is no remedy, then the courts of the United States are liable to constant obstruction in the exercise of their jurisdiction and powers, and their usefulness and efficiency, if not their very existence, is imperiled. It is true that the jurisdiction of the United States is limited and statutory, but it is also true, that wherever their jurisdiction attaches it is within the scope of that jurisdiction supreme and paramount. If that jurisdiction is invaded, or if the officers of the courts are interfered with in the discharge of their duties, the means are not wanting, nor their potentiality doubtful, to vindicate the just authority of the court in the administration of the laws of the United States.

The result of these views is, that the petitioners, George Turner and Charles E. Mayer, must be discharged from custody, and it is so ordered.

Case No. 14,247.

In re TURNER.

[1 Abb. U. S. 84; 1 Chase, 157; 6 Int. Rev. Rec. 147; 1 Am. Law T. Rep. U. S. Cts. 7.]

Circuit Court, D. Maryland. Oct. 13, 1867.

CONSTITUTIONAL LAW—CIVIL RIGHTS BILL—APPRENTICESHIP—NEGRO.

1. An indenture purporting to bind a child of negro descent apprentice, which does not contain important provisions for the security and benefit of the apprentice, which are required by the general laws of the state in indentures of white apprentices, is void, under section 1 of the civil rights bill of 1866 [14 Stat. 27].

[Cited in Slaughter House Cases, 16 Wall. (83 U. S.) 69.]

2. The civil rights bill of 1866 is constitutional, and applies to all conditions prohibited by it, whether originating in transactions before or since its enactment.

3. Colored persons, equally with white persons, are citizens of the United States. So held, of one who was formerly held as a slave, and was emancipated in the general abolition of slavery throughout the state, accomplished by a new state constitution.

Hearing upon a writ of habeas corpus. The petition in this case was preferred in behalf of Elizabeth Turner, by her next friend, Charles Henry Minoky. It alleged that Elizabeth Turner was the daughter of Elizabeth Minoky, formerly Elizabeth Turner; and that she was restrained of her liberty, and held in custody by Philemon T. Hambleton, of Saint Michael's, Talbot county, Maryland, in violation of the constitu-

1 [Reported by Benjamin Vaughan Abbott, Esq., and here reprinted by permission.]

tion and laws of the United States. The petition further showed that this restraint was claimed and exercised by virtue of certain alleged indentures of apprenticeship; but alleged that these indentures were not made in accordance with the laws of the state of Maryland, as applicable to the binding of white children; and, in particular, that at the time of making the alleged indentures of apprenticeship the mother of the petitioner was able, ready, and willing to support her; that the 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 Hambleton, as master, was not bound by the alleged indentures of apprenticeship to give the 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 petition was filed September 20, and endorsed "Writ granted as prayed, returnable October 15, 1867." Signed. S. P. Chase, Chief Justice of the United States.]²

The respondent, P. T. Hambleton, made the following return to the writ: "In obedience to the command of the within writ, I herewith produce the body of Elizabeth Turner, 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." The indentures of apprenticeship filed by the respondent, provided 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 necessities, and shall pay to Betsey Turner, her mother, ten dollars at the end of her sixteenth year, twelve dollars and fifty cents at another period, and fifteen dollars to the girl at the end of her term of service, on the 18th of October, 1874, she having been born October 18, 1856. They recited that the child was apprenticed "by the consent of her mother, present in court," on November 3, 1864. They provided that in the event of the death of her mother the wages should be paid to the child. It further appeared, on the argument, that the child and her mother were formerly held as his slaves by the respondent. They were emancipated by the new constitution of the state, which took effect November 1, 1864.

[Slavery had existed by the common law of Maryland since its first settlement, and under its later state constitutions, the general assembly had been prohibited from passing laws interfering with it. So the laws and institutions of that state continued until 1864, when a convention was held to frame a new constitution, which was done. A clause in the new instrument abolished slavery in Maryland, and prohibited its fu-

ture existence or introduction. This constitution was submitted to the people for ratification by popular vote, which being had, it appeared that a majority of the votes cast at the regular voting places was against the adoption of it, but by counting certain votes returned as cast in their camps, some of which were not in Maryland, by certain Maryland troops then engaged in the armies of the United States in the Civil War a majority of votes appeared to have been in favor of the ratification of it. The constitution was thereupon declared by proclamation of the then governor to have been adopted, and was put in operation.]³

The child was bound apprentice to the respondent, November 3, 1864, two days after she became free; and the indentures were made in pursuance of a general law of the state regulating the apprenticing of children previously held as slaves, and differing in many provisions from the law governing the apprenticing of white children.

Mr. Stockbridge and Nathan M. Pusey, for petitioner.

⁴ [The law of congress, called the "Civil Rights Bill," was passed since the child was indentured (April 9, 1866), and everybody told him that the law did not interfere with this case.

[Mr. Stockbridge, for the petitioner, said the return made to the writ does not traverse any of the allegations of the petition. It was manifest upon the face of the paper that the allegations were true, and that the law of the state has not been complied with. The petition and return disposes of the whole case.

[The Chief Justice: State the points upon which you claim a discharge.

[Mr. Stockbridge then read the law relating to white apprentices, to show that its various provisions had not been complied with in the indentures in this case. Under the law of congress, he said, there can be no distinction between blacks and whites, and therefore the law relating to white apprentices only is applicable. The chief justice said he desired that the whole case should be fully discussed, and would prefer that the respondent should be represented by counsel. The questions in the case, said the chief justice, are: Is this indenture in conformity with the general law of the state? Is said general law consistent with the act of congress to protect the colored people in their civil rights? Does said act of congress apply to this case? Was the passage of said act a constitutional exercise of the power of congress? The court inquired of the respondent if he desired to retain the girl, and, if so, if he had not better procure counsel?

[The respondent said he wished to retain the girl, but he did not feel sufficient inter-

² [From 6 Int. Rev. Rec. 147.]

³ [From Chase, 157.]

⁴ [From 6 Int. Rev. Rec. 147.]

est in the case to spend any money on it. He was satisfied to leave the case with the court. The counsel for petitioner then proceeded to argue the questions in the case. Mr. Stockbridge said the sort of apprenticeship adopted in Maryland was an evasion of the constitutional amendment abolishing slavery and involuntary servitude, and the constitution by its own powers executes itself. The civil rights bill was passed to remedy existing wrongs, and was designed to extinguish all existing institutions, and divers existing rights to hold persons to slavery in any form. Although the indentures were made in 1864, and the law was passed in 1866, it was retroactive to that extent that it would reach this case. It was not a law impairing the obligation of contracts, although there is no prohibition upon the power of congress to pass such a law. Congress is itself the judge of its power to pass such a law, and is alone the judge of the existing necessity for it. The decision of this case would affect the condition of thousands of colored minors whose term of slavery had been protracted from five to ten years by this illegal mode of apprenticing them. He quoted Chief Justice Marshall, in *McCulloch v. Maryland*, 4 Wheat. [17 U. S.] 316, on the powers of congress, and other authorities, and discussed other points of the case.⁴

The respondent appeared on the hearing, in person, and stated that he desired simply to submit the case to the judgment of the court. The chief justice said that the questions in the case were so grave and important that he should prefer to be advised by the argument of counsel on the part of the claimant. He would adjourn the court until next day at nine o'clock, in order to give the claimant or any person interested in the decision of the case an opportunity to appear. If no person appeared he would then dispose of the case. The child was retained in the custody of the court until the next day, when the following opinion was filed:

CHASE, Circuit Justice. 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 November 1, 1864, and prohibited slavery. Almost immediately thereafter many of the freed people of Talbot county were collected to-

gether 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 indentured to Hambleton by an indenture dated November 3, 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 to 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 indenture of white apprentices, and is, therefore, in contravention of that clause of the first section of the civil rights law enacted by congress on April 9, 1866, which assures to all citizens without regard to race or color, "full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens."

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.

⁴ [From 6 Int. Rev. Rec. 147.]

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.

Case No. 14,248.

TURNER'S CASE.

[1 Ware (83), 77; 2 Wheeler, Cr. Cas. 615.]¹

District Court, D. Maine. June 10, 1825.

SEAMEN—CHASTISEMENT—MASTER'S RIGHT TO ARREST DESERTERS—ABUSE OF POWER.

1. The master of a vessel has a right, by the marine law, to chastise a disorderly or disobedient seaman in a moderate and reasonable manner.

2. He may retake a deserting seaman, and confine him on board the vessel: and the authority given by the statute of 1790, c. 56 [1 Story's Laws, 102; 1 Stat. 131, c. 29], to arrest deserters by a warrant from a magistrate, does not supersede the authority which he has under the general maritime law.

3. A court of admiralty will not discharge a seaman from his contract, on account of a punishment by the master, unless in a clear case of an abuse of power.

Isaac Turner, a man of color, was on Monday, the 8th, brought before the district judge of the United States for this district, by habeas corpus, to the prison-keeper of the county of Cumberland. In the petition for the habeas corpus it was stated, that Turner was shipped as a seaman, or cook, on board the brig *Effort*, of Salem, Captain Miller, then lying at a wharf in the port of Portland, and that he had been confined on board the brig in chains attached to the leg, for several days and nights successively, until he had finally succeeded in filing them off, and made his escape; but that he was retaken and committed to the custody of the gaoler. The prison-keeper made his return that the prisoner was in his custody by virtue of a lawful warrant from a magistrate authorized under the law of the United States, issued against Turner as a deserter from the brig, on which he was apprehended and committed to prison. It was admitted by Turner that he had been regularly shipped at Salem, as cook of the vessel; and that after the arrival of the brig at Portland, he had been absent three times successively in the evening, from the vessel; the first time, as it appeared, with leave. That

on the second evening he absented himself without leave, and did not return until after breakfast on the following day; and that again, on the ensuing evening, he was absent without permission, and did not return until late in the following forenoon; when, according to the statement of the owner, who appeared to resist the application, the cook was brought on board by him with the assistance of a civil officer. It appeared by the declaration of the owner, that the captain, by his direction, then caused a chain to be fastened to the cook's leg by a blacksmith, with an iron rivet above the ankle; and that the chain, which was of sufficient length to enable him to traverse the deck, was secured by a lock to an iron ring bolted into the deck. It appeared that during the daytime, he was kept in this situation, confined to the caboose-house or galley, at his work as cook. At night, his chain was unlocked, and secured, in a place particularly fitted up for him between the decks, so as to enable him to get in and out of his berth, but at the same time so as to prevent his escape. He was kept in this situation alternately day and night for the space of from five to seven or eight days, by order of the owner; he considering it, as he alleged, more for the benefit of the cook himself, than to cause him to be committed to prison under the statute, at the expense of the cook himself, which he several times solicited. There was no proof, however, of any ill-treatment on the part of the owner or officers of the vessel, beyond what might necessarily arise or be inferred from these circumstances, except from the declaration of the cook himself that he was quite unwell during a part of the time; and that one night in particular, he suffered extreme pain from a disorder of the bowels, causing them to swell to a distressing degree, until he succeeded in rousing the mate to his relief. He was not permitted to have communication with any person on shore, from an apprehension that they might assist him in escaping. It was acknowledged by the cook that he finally contrived to file off the rivet round his leg, and made his escape from the vessel, as it appeared, during supper time; although he complained that his leg was so much galled as to prevent his escaping to any considerable distance. He was retaken within a day or two after, on the warrant which has been mentioned; and these circumstances appearing as thus stated, on the examination upon the habeas corpus, it was moved on his behalf, that he should be entirely discharged.

The ground assumed in support of this motion, in behalf of the prisoner, was that the mode of restraint and treatment practised in this instance, by direction of the owner, and protracted for such a period by the master, on board a vessel lying at one of the principal wharves in the port, was such an unauthorized exercise of the rights of

¹ [Reported by Hon. Ashur Ware, District Judge, 2 Wheeler, Cr. Cas. 615, contains only a partial report.]