BAPTISTE, et al. vs. DE VOLUNBRUN.

[NO NUMBER IN ORIGINAL]

COURT OF APPEALS OF MARYLAND

5 H. & J. 86; 1820 Md. LEXIS 18

June Term, 1820, Decided

PRIOR HISTORY: [**1] APPEAL from Baltimore city court. This was a petition for freedom, and was submitted to Baltimore city court, upon the following statement of facts, viz. That the defendant, (the appellee,) being driven from the island of Saint Domingo by an insurrection of the negroes, fled to the city of New-York, carrying with her the petitioners, (the appellants.) She arrived at New-York in 1797, but finding the climate unfavorable to her health, removed to the city of Baltimore, with the petitioners as part of her family, in 1802. That she has constantly and uniformly declared her intention to return to her own country, when circumstances should permit, and for this reason never became a citizen of the United States, or of this state. That the petitioners having attempted to escape to Saint Domingo, she caused them to be sent to New-Orleans, as her property, subject to her future orders. Baltimore city court gave judgment upon this statement against the petitioners, and they appealed to this court.

DISPOSITION: JUDGMENT AFFIRMED.

COUNSEL: Raymond, for the appellants. The facts upon which the petitioners ground their claim to freedom are, that they, and the defendant, were, in 1797, citizens of the Island of [**2] St. Domingo, a colony of France, and subjects of the French empire. That in 1797, they emigrated to New-York, and there remained five years. That in 1802, the defendant removed to Baltimore, and brought the petitioners with her, where they continued to live till after the filing this petition, and that the defendant is an alien. Since this petition was filed, and the summons served on the defendant, she has sent the petitioners to New-Orleans. This was a high-handed contempt of the justice of the state, and cannot therefore benefit the defendant. The foregoing facts are relied on as bringing this case within the first section of the act of 1796, ch. 67, which enacts, "that it shall not be lawful to import or bring into this state, by land or water, any negro, &c. for sale or hire, or to reside within this state; and any person brought into this state as a slave, contrary to this act, if a slave before, shall thereupon immediately cease to be the property of the person or persons so importing or bringing such slave within this state, and shall be free." The second section containing an exception in favour of citizens of other of the United States, coming to this state to reside, and [**3] bringing their slaves with them; but as the defendant is an alien, and not a citizen of any of the United States, she can claim no benefit from this section. The fourth section contains an exception in favour of travellers and sojourners: It is this, "that nothing in this act contained shall be construed or taken to affect the right of any person or persons travelling or sojourning with any slave or slaves within this state, such slave or slaves not being sold, or otherwise disposed of in this state, but carried by the owner out of this state, or attempted to be carried." Upon this section the defendant founds her right to retain the petitioners in bondage. The question for this court to decide, therefore, is, whether the

defendant was a traveller or a sojourner within this state, from 1802 till 1818, the time when this petition was filed, or whether she was not a resident in this state during that period; if a sojourner, then the petitioners are not free. What then is the difference between a resident and a sojourner? A difference there must be, else the two sections of the statute are co-extensive, and the one repeals the other. Did the defendant in 1802, come to this state to reside, [**4] and has she resided here ever since, or did she come here to sojourn, and has she sojourned here ever since? The precise meaning of these words, and the difference between them, cannot be ascertained by reference to lexicographers, who usually give nearly the same meaning to both words. But in law, and when used in statutes, they have a technical meaning, and are contra-distinguished one from the other. Thus, when sojournment ends, residence commences, and vice versa; so that the two words cover the whole time. A man's home, where his family is established, or where he himself is established in business, or takes up his abode for a permanent or indefinite period, is his residence. If a man from a neighbouring state rents a farm in this state for one year, and removes his family to it, he becomes a resident the moment he does so, although he may intend to return at the end of the year. So if a man from an adjoining county rent a house in Baltimore for six months only, and remove his family there, he becomes a resident. So the defendant, by living sixteen years in Baltimore with her family, has not only become a resident long since, but has shown that she came there to reside, the moment [**5] she came to the state, although she may have some distant and uncertain hope of leaving the state at some future period. The word sojournment is derived from the French substantive sejour, or the French verb sejourner, which means a temporary residence or dwelling for a short time. Sejour or sejourner is a compound word. To the word jour, which literally signifies a day, is prefixed the personal pronoun se, which gives it a personal signification, and restricts its application to persons. Neither the word sejour, nor any of its derivations, can with any propriety be applied to brute animals, or to any thing but the human species. It cannot with propriety be said of a horse that he sojourns in a place. Hence the literal meaning of the word sejour, or sejournment, is a dwelling in a place for a day only; and by an extended, and some-what figurative mode of expression, it is used to signify a dwelling in a place for a short time, without ascertaining the precise length of time. This time of sojournment may be longer or shorter, in relation to the object to which it is applied. Thus it is said, that the children of Israel sojourned four hundred and thirty years in the land of Egypt. This [**6] is a figurative mode of expression, but may nevertheless be allowed, in regard to a nation, whose term of existence is indefinite, and may last many thousand years. In relation to a nation then, 430 years may be said to be a short time; but to speak of sojournment, in relation to an individual, for that period, would be absurd; and it would be very little less than absurdity to suppose the legislature, in their use of the term sojournment in this statute, contemplated a residence of sixteen years. If this latitude is given to the term, no reason can be given for limiting it to a period short of the duration of life. That the legislature did not use this term in any such unlimited sense, is manifest from the very nature and object of the statute. The object of the law was to restrain the further increase of slaves in this state by importations; but if such a latitude is given to the word sojournment, what is there to prevent the West India planters from removing to this state with their slaves, and remaining as long as they please? But the legislature has given a construction to this statute, from which this court is not at liberty to depart. By an act passed in April 1783, ch. 23, [**7] the introduction of slaves into this state was prohibited. This act is in the same terms as the act of 1796, ch. 67, s. 1 and 4, except that the words "for a short time" are annexed to the word sojourners. So that the act reads, travelling or sojourning for a short time, &c. But it has already been shown, that sojourning, of itself, necessarily imports dwelling in a place for a short time. Sojourning, and sojourning for a short time, are precisely equivalent expressions. The words for a short time, are mere tautology; they neither make the meaning more definite, nor limited. The difference, therefore, between the phraseology of these acts, merely shows, that the legislature in 1796, understood the import of the language used, better than the legislature of 1783. The same construction, therefore, which the legislature has put upon the act of 1783, must be put upon the act of 1796. By the act of 1792, ch. 56, it was enacted, that slaves imported, or to be imported, by French subjects, who have removed, or might remove, from any of the French islands into this state, since the derangements in the French government, should remain the property of their masters; but not so as to affect any [**8] right such slaves might have acquired to freedom. It was also provided, by this last act, that the subjects of France, who had sought, or might seek, an asylum in this state, if they became citizens or settlers therein, should be entitled to keep a certain number of their domestic or house slaves,

viz. a master of a family five, and a single man three, and hold them; but if they did not become citizens, or settlers, they might hold their slaves for their own use, but not for sale, during their residence here. It was further directed, that French emigrants, who should import any such slaves, should, within three months thereafter, deliver and lodge with the clerk of the county a list of such slaves, and notify which he intended to retain as his domestic or house slaves, which list should be recorded, &c.

This was saying, in language which can not be misunderstood, that in the opinion of the legislature, under the act of 1783, the exiles from St. Domingo could not bring their slaves into this state, and retain them. For, if under that act those exiles could bring any number of slaves into this state, as it is contended may be done, what necessity was there to pass the act of 1792? [**9] It is also to be observed, that the act of 1792 is an enabling, and not a restraining statute. The terms of the act are, that those exiles may bring so many slaves, &c. and not that they may not bring more than five, &c. It follows, that in the opinion of the legislature, without the act of 1792, those persons could not bring any slaves into this state, and retain them in slavery. Hence it follows, that the legislature has given a construction to the act of 1796; for where the terms of two acts are the same, a construction given to one, by the legislature, is a construction to both. The defendant can claim no benefit under the act of 1792, because it was repealed by 1797, ch. 75, before the petitioners were brought into the state; and besides, if it had not been repealed, the provisions of the act have not been complied with. The legislature, therefore, having said, that under the act of seventeen hundred and eighty-three, persons in the predicament of the petitioners could not be retained in slavery, this court is bound to say the same under the act of 1796. The defendant's counsel will rely upon the case of De Fontaine, et al. vs. De Fontaine, decided in this court in 1818, as a [**10] conclusive authority against the present petitioners a. In the first place it may be observed, that the court did not state the ground of their decision in that case, and it is wholly impossible to imagine upon what ground it was decided. It may, however, be presumed, that the court adopted the position taken by the Attorney General, the defendants' counsel in this case--which was, that the importation there was not a voluntary one, but an importation from necessity, which does not work a forfeiture. It is difficult, it is true, to discover any necessity for the importation in that case, unless the mere convenience of the master be a necessity; but whether there was any necessity in that case, or not, there certainly was none in this. These petitioners were first brought to New York, and there remained five years, and there surely was no necessity for there being brought to Baltimore, unless the defendant, not being allowed to hold them as slaves in New York, or the possible contingency, that the climate of Baltimore might be more congenial to her health, shall be considered a necessity. However vaguely the word necessity may be used in common parlance, yet in law it has a precise, [**11] technical meaning. Inevitable necessity, and the act of God, are always used in law as equivalent expressions, and if any other meaning be given to the word necessity, than the act of God, there is amend to all precision and certainty in the use of the term; it will have a different meaning in every new case. The prospect of enjoying better health--the greater security of property--nay, the more profitable use of that property, may be converted into a necessity; and any number of slaves may be imported upon this plea. Such a latitude has never been given in law to the word necessity. If a vessel were driven by tempest upon our coast, with slaves on board, it would be an importation from necessity; but where the party has a choice whether he will import or not, although it be a choice of evils, the importation can never be said to be involuntary, either in the legal or popular acceptation of the term. The importation, therefore, in this case, was not involuntary, or from necessity, even into New York; and a fortiori, was it not so into this state. But this case differs from that of De Fontaine, et al. vs. De Fontaine, in another important particular. In that case the defendant made [**12] several attempts to take the petitioners out of the state, but was unable to do so. In this, no such attempt has been made. This case is, therefore, clearly distinguishable from that, and is not necessarily affected by it, and even if it was, that case ought not to be supported in direct opposition to the will of the legislature. When a legislature has given a construction to a statute, that construction is emphatically the will of the legislature.

> UNKNOWN a See that case reported at the end of this case.

But these petitioners are free upon higher ground. In 1797 they were citizens of St. Domingo, a colony of France, and of course subjects of the French empire. It is a public notorious historical fact, that at that time there were no slaves in St. Domingo, and of course these petitioners were then free. If then free, they are free now. In 1794 the

French Convention passed a decree emancipating all the slaves in the French colonies. 1 Bain's Hist. 133. This was the legitimate act of the then legislative power of France, and it took effect immediately. All other legislative acts of that body have been recognised as valid. The sale of the royal domains, the sequestration of the [**13] ecclesiastical estates, the forfeiture of the estates of the royalists who fled from France, are recognised by the present Dynasty of France, as valid acts. This act of emancipation was equally valid and effectual. It is true, that in this state the African race are presumed to be slaves, and the onus probandi of freedom lies upon the petitioner; but this presumption arises out of a statutory provision, and cannot extend beyond the limits of the state. When it is proved, or admitted, that a person has been brought into this state from a foreign country, there can be no presumption of slavery arising from the colour of his skin. Such would be a most violent and unnatural presumption, more especially when it is known that the person has been brought from a country where slavery does not exist. In a country where the slave trade is tolerated, it might be expected that such a presumption would be made. The presumption would be perfectly in character with the trade, and those engaged in it; but in a country where this abominable traffic is condemned and prohibited under the severest penalties, where man's natural right to freedom is recognised, and proclaimed in the most solemn manner, [**14] for a court of justice to presume, merely from the complexion, without any other proof whatever, that a man is a slave, would be so repugnant to natural law, common sense, and common justice, as requires only to be stated, to be repudiated. The bare statement of such a doctrine shocks natural reason. Such a presumption, nine times in ten, would be contrary to the fact, for a small portion of the human race, with black skins, are slaves; and to presume that all persons without this state, as well as all within it, are slaves, because their skins are black or yellow, would be to give our statute an operation as extensive as the globe itself. But when it is admitted, that the petitioners were brought from a country where there were no slaves, to presume, in opposition to this, that they were slaves, would be carrying the doctrine of presumptions to an unheard of extent, and this too, in the opposite direction to which presumptions are usually carried; for it is a maxim of law that presumptions are to be taken in favorem libertatis; and in regard to all persons, extra-territorial, whether white or black, our statute does not interfere with this maxim, Whenever, therefore, it appears from [**15] the evidence in a cause, that a person has been brought into this state from any foreign state or country, the presumption of freedom immediately arises, and the onus probandi of slavery is thrown upon the party claiming. As, then, it does not appear that the petitioners in this case ever were the slaves of the defendant, or of any other person, but on the contrary, that there were no slaves in St. Domingo in 1797, the time when they left that island, it must be presumed that they were then free, and if then free, they are still so. The legislature of this state appears to have acted upon the idea that the slaves of St. Domingo were all emancipated by the decree of the French Convention, and to have considered that they had no right to afford protection to persons fleeing from that island to this state, with those blacks who were formerly their slaves. The act of 1792, ch. 56, was passed for the express purpose of protecting the exiles from that island. In 1794, the decree of the French Convention was passed. In 1797, our legislature repealed the act of 1792. No reason can be assigned for this repeal, except that the legislature were of opinion, that they had no right to protect the [**16] exiles in the possession of their slaves, after the decree for their emancipation had passed. There was the same, nay a stronger reason, for keeping the act in force in 1797, than there was for passing it in 1792, provided the condition of the slaves, and the rights of masters, had continued the same. The troubles commenced in St. Domingo in 1791, in consequence of an act of the French Convention, placing the free mulattoes and mustees upon an equal footing with the whites. The civil war then commenced which gave rise to our act of 1792. In 1794 the emancipating decree passed. This increased the troubles, and caused the war to rage with greater violence; and so it continued till 1802, when the French government, with Buonaparte at its head, as first consul, revoked the decree of 1794, and decreed that all the blacks that had been emancipated by that decree, should be again reduced to slavery; and to enforce this decree, Gen. Le Clerc was sent to St. Domingo with an army. Then it was that the troubles were at their height, and the demon of carnage and desolation stalked through the island in all his majestic horrors. Then it was that the greatest portion of whites fled from their houses, [**17] to Baltimore, for an asylum. And can any other reason be given, why the enabling act of 1792 should not have been kept in force till this time, except that the legislature believed all the blacks to be free, and therefore they had no right to aid their original owners in retaining them in slavery?

Rogers, for the appellee. Protesting against the

defendant's being considered as coming within the provisions or policy of any of the prohibitory laws of this state against the introduction of slaves, contended, provided this court are of a different opinion, that this case, by the very terms of the statement of facts, comes within the fourth section of the act of 1796, ch. 67. It cannot be, nor has it been contended, that this case comes within that clause of the first section, which prohibits an importation for sale, but it has been exclusively rested upon the ground of an intention to reside. It becomes then essentially important to the proper determination of the question, to come at the meaning intended by the legislature to be given to the term "to reside." In itself it is certainly indefinite, but all doubt is removed, and its intended meaning fully explained, by the fourth section, [**18] which points out what description of persons should not be considered as coming within the term, viz. Travellers and sojourners. By the introduction of the term sojourner, it also palpably appears, that the legislature meant to exclude from the prohibition and penalty of this law, not only persons who were passing through the state, but persons whose stay here was not of a permanent nature. That the legislature, which passed this act, intended a more liberal construction should be given by courts of justice to the term sojourners, and that the circumstances under which they came to the state should have more effect in determining the opinions of courts of law on the question of sojournment, than the mere lapse of time, the court are requested to notice the fact, that by the second section of the act of 1783, ch. 23, which gives to travellers and sojourners the privilege of bringing their slaves into this state, that privilege is expressly limited to persons sojourning here for a short time. Whereas by the act of 1796, ch. 67, which repeals that law, the limitation of time is entirely omitted, and sojourners generally are declared entitled to the privilege of holding their slaves. Do [**19] the facts of this case bring the defendant within the meaning of the term sojourner? If they do, then is she equally within the exception, whether she came directly or indirectly from St. Domingo. According to that great philologist, Doctor Johnson, to sojourn means "to dwell any where for a time--to live as not at home--to inhabit as not in a settled habitation. Sojourn, a temporary residence--a casual and no settled habitation." Do not then the facts in this case show the defendant to have lived here as not at home? Has not this state been to her a casual, and not a settled habitation? Her coming here has been the effect of a double compulsion; first, to avoid being massacred by the insurgent negroes; and secondly, to avoid the fatal severity of a northern climate upon the constitution of a person, who had been born, and always had lived between the tropics, under a burning sun. But could facts more conclusively be stated of her character of sojourner, than the admission, that since the time of her arrival she has constantly and uniformly declared her intention to return to her own country, as soon as circumstances would permit, and that, under this expectation, she refused to become [**20] a citizen of the United States? But this case need not be brought within any of the exceptions in the act of 1796, since we are warranted, by the opinion of this court in De Fontaine vs. De Fontaine, in saying, that the unfortunate refugees from the island of St. Domingo do not come within the law prohibiting the importation of slaves into this state. Cases of voluntary importation come only within the provisions of that law. These unfortunate exiles were driven by a force, which they could not resist, from their homes, which was a colony of France. The sanguinary revolution, which at that moment raged in the mother country, only offered them the alternative of being butchered by whites, instead of blacks, should they go there; whilst this country held out to them, as it has always to oppressed humanity, in every shape and under every circumstance, the hospitality of an asylum, and they embraced it. To deprive them, under these circumstances, of the miserable pittance of property which they were able to collect at the moment of embarkation, (for their domestics constituted the principal part of it,) would be saying to them--True, you, and all the oppressed and persecuted of the world, [**21] have, as it were, a right to the common benefits of our country, but as the price of this hospitality, you must consent to be reduced to beggary. We did not inform you, though you were ignorant even of our language, that any terms or conditions were attached to your coming, because you might, by removal, have then avoided the penalty of these terms; but there has been now discovered a latent meaning in our law, which at this day strips you of your only means of support in your old age; you may still enjoy the privileges of freemen in our land of liberty, but only on the condition of absolute poverty. We, the natives of the country, esteem it no crime in us to hold slaves; the laws give us the same absolute property in them as in our horses, but you are strangers, who must starve without the assistance of yours. If such were the decisions of our courts, might not these individuals, with some appearance of justice, accuse us of having invited them to our shores with one hand, for the purpose of stripping them with the other? Of such crying inhumanity, as well as injustice, we are happy to say, we

have already been relieved by the decision of this very court in De Fontaine vs. De Fontaine, [**22] a case more favourable in its circumstances to the petitioners, than the present, since they were sent to this state from the island of Cuba, by the master, who never came to the United States. It cannot, therefore, for a moment be believed to be within the power of counsel, however ingenious, to point out to the court such discriminating circumstances between the two cases, as to induce it to pronounce the present petitioners free men, after having determined those in the case of De Fontaine vs. De Fontaine to be slaves.

JUDGES: The case was argued at this term, before BUCHANAN, EARLE, JOHNSON and DORSEY, J.

OPINION BY: BUCHANAN

OPINION

[*96] BUCHANAN, J. delivered the opinion of the court.

The claim of the appellants to freedom is founded on the *first* section of the act of assembly of 1796, *ch.* 67, by which it is enacted, "that it shall not be lawful to import or bring into this state, by land or water, any negro, mulatto, or other slave, for sale, or to reside within this state; and any person brought into this state as a slave, contrary to this act, if a slave before, shall thereupon immediately cease to be the property of the person or persons so importing or bringing such slave [**23] within this state, and shall be free." The object of the law was to prevent an increase of the number of slaves in the state by voluntary importation; and it cannot be presumed, that the legislature contemplated the extreme case of fugitives for their lives from the horrid scenes of slaughter in *St. Domingo*, during the servile wars in that island; or if they were thought of, they were intended to be embraced by the *fourth* section, which [*97] contains a saving of the "rights of any person or persons travelling, or sojourning, with any slave or slaves, within this state." The mere bringing slaves into the state is manifestly not prohibited. There must be something else; they must be brought "for sale or to reside." The *animus quo* fixes the character of the act; and if they are not imported or brought into the state for either of those purposes, it is neither within the letter, nor the spirit of the law. The intention must accompany the act; and though, where a man voluntarily brings slaves into the state, the presumption of law is against him--yet the law will never intend, that he who is forced to fly from his country, by causes not within his control, and with his [**24] slaves seeks refuge here, brings them either for sale or to reside. A man arriving here, under such circumstances, must be supposed to come without any purpose beyond that of saving himself and his property, and the presumption is decidedly against his bringing his slaves with any intention to violate the laws of the state.

The doctrine of necessity is well known to the law, and not now, for the first time, set up. The defendant in the case before us was driven to this country from *St. Domingo* by an insurrection of the negroes, and brought with her the petitioners, as her slaves; she was compelled to come by necessity, a *vis major*, which she could not resist, and that necessity is her protection. But it is said, that she first arrived at *New York*, and though she may have been driven by necessity from *St. Domingo*, the same necessity did not pursue her, after she reached *New York*, where she might have remained in safety, and that her coming into this state was a voluntary act. The answer to that argument is, that it appears, from the case stated, that she moved from *New York* to *Baltimore*, in consequence of the climate of the former being injurious to her [**25] health. She therefore had no choice, between becoming a sacrifice to the climate of *New York*, and going to some other place better suited to her constitution. It is, moreover, admitted, that she "has constantly and uniformly declared her intention to return to her own country whenever circumstances will permit her to do so with safety," and for that reason has never become a citizen either of this state, or any other of the *United States*. These declarations must be taken as a part of the *res gesta*, and are evidence of her [*98] intention, and with the fact, that she has never become a citizen, are conclusive. She is a stranger in the country--an alien, without a fixed home--a sojourner wherever she goes, awaiting some favorable event, that may invite her back to the land from whence she has been driven. Under such circumstances, we think that her coming into this state from *New York* cannot affect her rights, or deprive her of any privileges to which she would have been entitled if she had come immediately from *St. Domingo* to *Baltimore*.

This cannot well be distinguished from the case of *De Fontaine vs. De Fontaine*, decided in this court at the June [**26] term 1818. In that case, M. and Madame *De Fontaine* were driven from *St. Domingo* by an

insurrection of the negroes. He fled to the Island of *Cuba* with his two slaves, the petitioners, and she to *Baltimore* with her infant son. In the year 1805, he sent the two slaves to his wife and son in *Baltimore*. In 1808, Madame *De Fontaine* returned to *St. Domingo*, leaving her son, and the two slaves, whom she put into the hands of *Bonard*, under an agreement that they should be considered as a pledge for the return of a sum of money that he had advanced to her, and which she did remit. After she had gone, the negroes filed their petition for freedom in the court of oyer and terminer, &c. in *Baltimore*, where it was adjudged, that they were not entitled to their freedom; and on an appeal to this court, the judgment was affirmed.

In the course of his argument, the counsel for the appellants read, from *Bains's* history of the wars of the *French* revolution, an extract of a decree of the National Convention of the 25th of April, in the second year of the *French* republic, "which declares, that negro slavery, in all the colonies, is abolished," and earnestly [**27] contended, that as that decree was passed before the defendant was driven from *St. Domingo*, the petitioners were thereby liberated, and no longer remained the slaves of their former owner. But as foreign laws are facts, which, like other facts, must be proved before they can be received as evidence in courts of justice, the decree of the National Convention must be considered as not in the case, not being proved in any other way than by the book from which it was read, and no attempt to obtain an authentication of it appearing to have been made. It is not, therefore, necessary to inquire, what [*99] would be the effect of that decree, if it was properly before us.

JUDGMENT AFFIRMED a.

UNKNOWN a The case of DE FONTAINE *et al. vs.* DE FONTAINE, by BONARD his Guardian, in this court at June term 1818, and referred to in the preceding case, was an *Appeal* from the court of oyer and terminer, &c. for *Baltimore* county. It was a petition for freedom preferred by the appellants, and the case was submitted to the court below upon this statement of facts, viz.

That M and Madame *De Fontaine*, the lawful parents of *Faustin De Fontaine*, the defendant, a minor, were driven from their estate in the island of *St Domingo*, by an insurrection of the negroes; and being in different parts of the island at the moment of the insurrection, the husband fled to *St. Jago*, in the island of *Cuba*, carrying with him his two slaves, the present petitioners, whilst the wife fled to *Baltimore* with their only child and heir, the present defendant. That towards the latter end of the year 1805, *De Fontaine*, the father, in consequence of the persecution of the *French* inhabitants in the island of *Cuba*, found himself compelled to leave that country, and being a military man, joined the *French* army under *Ferrand*, at *St. Domingo*, in hopes of recovering his former possessions by arms. That at his departure, it not being possible to take them with him, he shipped the petitioners to his wife and child, in *Baltimore*, where they arrived in 1805, and have since continued. That Madame *De Fontaine* was frequently desirous of leaving this state to join her husband, and at one period was on the point of doing so, with her child and the petitioners, but learnt at that moment that *St Domingo* was besieged by the blacks, and that her husband had fallen a sacrifice to the war. That, at length, in November 1808, finding herself and family without the means of existence, she left this place for *St. Domingo*, in hopes of collecting the little property her husband might have died possessed of at that place, where she now resides. That at her departure, not finding herself possessed of a sufficiency to pay her son's, and the petitioners' passage, and that by the death of her husband she had lost all hope of recovering his fortune for her son, she determined on putting him to school three of four years, and then binding him to a trade. That for the purpose of accomplishing this object, as her only means, she left the petitioners, who are the defendant's property, in care of a certain Mr. *Bonard*, her agent, in order that they might, by their services, afford him the conveniences of washing and clothing, and by their wages support their other expenses. That *Bonard*, in pursuance of Mrs *De Fontaine's* direction, placed the defendant during three or four years at school, both in *Philadelphia* and *Baltimore*, and in December 1814, bound him an apprentice for three years, (at the end of which period he will be of age,) to Mr *Glasgow*, cordwainer of *Baltimore*, who in consideration of the period when he was bound, it being during the war, refused taking him, without a fee of fifty dollars, and *Bonard* paying all expenses, except

his shoes and board which have been paid out of the wages of the petitioners. That *Bonard* has the instructions of the mother to ship her child and the petitioners to her at *St. Domingo*, as soon as her son's apprenticeship is terminated, or sooner if his time can be purchased. That Madame *De Fontaine*, not being able to pay the debts she had contracted in *Baltimore* or the price of her passage, *Bonard*, from motives of humanity, advanced her money sufficient for the purpose; and that *Bonard*, expressing some apprehension for the payment of his money. Madame *De Fontaine* agreed that the petitioners should be considered as a pledge for the remission of his money to him from *St. Domingo*; which has been done. That *Faustin De Fontaine*, the defendant, is the only legitimate heir of his parents, and was alone entitled to the petitioners at the death of his parents; provided, they should not be considered by this court as emancipated by the laws of this state. Upon this statement, judgment was rendered for the defendant in the court below, and the case was brought by appeal to this court. It was argued before BUCHANAN, EARLE, JOHNSON, MARTIN and DORSEY, J. by *Raymond*, for the appellants, and by *Martin* (attorney general) for the appellee, who cited *De Kerlegand vs. Negro Hector*, 3 H. & McH. 185. THE COURT OF APPEALS *affirmed* the judgment of the court below.

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