



HAY, et al. VS. CONNER.

[NO NUMBER IN ORIGINAL]

COURT OF APPEALS OF MARYLAND

2 H. & J. 347; 1808 Md. LEXIS 24

December, 1808, Decided

PRIOR HISTORY: [**1] APPEAL from Baltimore County Court. The appellants, by their next friend, brought an action of trover in that court against the appellee, for the conversion of a mulatto male slave called James Perry. The general issue was pleaded. The facts are stated in the following opinion of the county court, delivered at the trial in February 1802, by

H. RIDGELY, Ch. J. In this case the evidence offered to the jury is, that John Hay, deceased, father of the plaintiffs, in his life-time executed a bill of sale to the plaintiffs, who were and still are infants under the age of twenty-one years, by which he sold to them a negro slave by the name of James Perry, (who is the slave mentioned in the declaration;) that John Hay departed this life intestate, leaving his said infant children in the care and under the protection of their mother, Martha Hay; that Martha Hay afterwards took upon herself to hire for wages the negro slave, James Perry, to the defendant, Captain Conner, to perform a voyage from Baltimore to Hamburg, and thence back to Baltimore, as a cook on board the ship Mary, which the defendant commanded in the voyage. The slave's name was signed under the ship's articles, in pursuance [**2] of the said hiring, as a cook; and that the defendant promised Martha Hay that he would bring back the negro, or pay her a generous price for him, in case he should not. The ship Mary, on her arrival at Hamburg, in the prosecution of her voyage, was sold by the orders of her owner. The negro slave was, after the sale of the ship, put by the defendant on board the ship Fidelity, Captain Weems, bound to Baltimore,

and the defendant furnished him with provisions for said voyage. It is admitted that the plaintiffs, at the time of the hiring of the slave by their mother, were the legal and sole proprietors of the said slave, and that the mother of the plaintiffs was not appointed the guardian of the plaintiffs, or either of them, by their father, or by the orphans court, and that they, at the time of the hiring, were under the age of fourteen. It is also admitted, that an action of assumpsit has been instituted in this court, and a recovery had for the slave's wages for said voyage, against the defendant, by Martha Hay; and now the present action is brought to recover the value of the slave, upon the ground that this slave has been converted by the defendant to his own use. The great question [**3] then, upon which this case depends is, whether under a view of these circumstances the defendant is guilty of a conversion? If he is, the plaintiffs are entitled to a verdict; if he is not, the verdict ought to be for the defendant.

It remains to be considered how this slave came on board the defendant's ship, by what authority he was shipped, and in what capacity he was received by the defendant? He was shipped by Martha Hay, at and for the wages of 20 dollars per month, for the voyage. He was received by the defendant at and for these wages to perform the voyage. Who was the contract between? The defendant on the one part, and Martha Hay on the other--The slave was no party to the contract. It is a mutual contract binding both the parties; on the part of Martha Hay, that the slave should perform the voyage; on the part of the defendant, that he would pay the wages.

This I take to be the substance of the contract. Then, had Martha Hay power to make this contract? It results, from the relation in which she stands to the plaintiffs, that she had. She is their guardian by nature; as guardian by nature, she has the custody of the persons of her children, and the management of their [**4] personal property, and she is accountable to them for the profits. It follows then that she has a right, and is bound to use the property in such a way as to make it most productive; but she cannot vest the right of property in any other person, or change the species of property, that being in her children, from whom that right cannot be taken without their consent, and they are not capable of giving that consent until they arrive at the age of twenty-one. I hold that the contract is valid and binding on the parties; each had a right and a legal capacity to make it. What legal obligations are imposed on Martha Hay by this contract? I take it she is bound and answerable that her slave shall conduct himself, as other seamen do in similar stations on board a ship; on the other hand, the defendant is bound by the contract to conduct towards the slave in the same manner, in every respect, as to other seamen, and if he deserts the ship, Mrs. Hay is liable to all such losses as would result to a free mariner who should, under the same circumstances, desert his ship. I mention the contract thus particularly, and its legal operation on both the parties, to show that this slave was shipped or [**5] hired by a person having proper authority, and that the defendant did no wrong, and was justified in receiving and employing him in the manner he did, and so far was not guilty of a tort. Is there any thing in the defendant's conduct afterwards that can make him guilty of a tort? Had he a right to send the slave back in another vessel? If he had a right to send the other seamen back in another vessel, he had a right to send the slave back in the same way. The act of congress has thought it a reasonable way, and it is a good rule for us. Did he pay him the two months wages? It is right and proper he should not have paid them; if he had he would have been bound to pay them again to Mrs. Hay, with whom the contract was made. Perry was a slave, and could do no act, but such as Mrs. Hay authorized him to do. The defendant put the slave on board Captain Weems, bound for Baltimore, to be brought back; by the act of God the vessel was driven out of her course, and compelled to go to one of the Islands. This was no wrong by the defendant. But when there, Perry makes his escape. Is this the wrong of the defendant? We think not. Suppose Perry had ran from the ship, and drowned himself, would [**6] the defendant be answerable? Would it be a conversion? No. Suppose he

had, when compelled to go to this Island, committed an offence against the laws of the state, and was imprisoned, would the defendant be answerable? No. Suppose the slave had taken a knife and cut his own throat, would it be said that the defendant ought to have been standing always by to arrest the blow, and that he, having neglected to do this, is answerable? No. Upon the whole, we think that Martha Hay had a right to hire, and that there was no wrong in the defendant in receiving the slave on board as a seaman; that the defendant did all he was bound to do afterwards to ensure the return of the slave, and if he deserted, it was not the defendant's fault; and therefore, it is the opinion of the court, that the defendant is not guilty of a conversion upon the facts so offered and admitted to be proved to the jury. The plaintiffs excepted; and the verdict and judgment being for the defendant, the plaintiffs appealed to this court.

DISPOSITION: JUDGMENT REVERSED, AND PROCEDENDO AWARDED.

CORE TERMS: slave, captain, action of trover, voyage, vessel

HEADNOTES

Where a mother, as the *natural* guardian of her infant children, who were under the age of 14 years, hired a slave belonging to them, to a sea captain, to perform a voyage on wages, the slave to be returned, &c. and the vessel being sold at the port to which she sailed, by her owners, the slave was put by the captain on board of another vessel bound home, and furnished with provisions for the voyage, but never returned home In an action of *trover* by the children, prosecuting by their *prochein amy*, against the captain, for the value of the slave--*Held*, that the action was well brought.

COUNSEL: Brice, for the Appellants, stated, that the principal questions were--1. Whether Mrs. Hay, the mother, was guardian by nature, if so, whether [**7] as such she had any such power over the property of the children? And 2. Admitting she had such power, whether the defendant has not, by putting the slave in the custody of another person without the knowledge or consent of Mrs. Hay, or her children, exercised such an act of ownership over the slave as to amount to a conversion? As to the first question, he cited Fonbl. 247. Co. Litt. 119, b. (note B) Brown's Civil Law, 131; and the act of 1798, ch. 101.

Purviance, and S. Chase, Jr. for the Appellee.

[*350] THE COURT said, the action of trover was well brought, and reversed the judgment.

JUDGES: The cause was argued before CHASE, Ch. J. BUCHANAN, and NICHOLSON, J.

JUDGMENT REVERSED, AND PROCEDENDO AWARDED.

OPINION