

Court of Appeals. December Term 1819.

John Wicks et al. } Appeal from Chancery.

as reported

Araminta Chew et al.

by John Davis their
 next Friend

Dec. 8. Pres^t Buchanan, Earle,
 Johnson & Dorsey, J.

Boyle for appellants. applic^r. to record a deed of
 manumission dated 10 may 1805 - regularly acknow. but
 not ~~rec~~ recorded ^{til} ~~it~~ may 1814. - The only question whether
 the C^t of Chaw. had power to direct the deed to be
 recorded under the various acts of assembly

First act 1796 ch 67-f. deeds of manumission auth^d.
 to be recorded in O m^o. in cy c^t.
 2^d see whether it c^d be recorded must advert to
 act of 1785 ch 72 § 11. reads the section -

In the construction of the act to get at the design
 of the Legislature - c^d. not intend that deeds of manumission
 to be embraced - only meant when valuable consid.
 & where one thing passed from one person to an^r.
 Deed spoken of - what a deed 3 requisites - grantor
 grantee & a subject matter to operate upon. This
 deed only one party - there is a subject matter, but
 no grantee - Have c^d. not make a contract

a flaw no party to the deed & not a deed within
 the meaning of the act - other things to show
 the act did not mean to embrace manum.
 words used the recording not omitted ^{by the party claiming and} from fraudulent
 design - This shows the word party - also the word
premises - shows it applies to real est. - The
 latter part of the clause in turn speaks of thing.

next act 1791 ch 79 reads the preamble
 only - The act applies exclusively to non residents
 & the enacting clause same as the act of 1785

next act 1792 ch 41 § 3 reads the preamble -
 applicable to persons who had removed ^{out of the State.} - The 3^d Sect.
 similar to the act of 1785.

The Chaw. decree under the act of 1792 ch 41 § 3
 & there is no allegation in the petition to show that
 the parties were non residents ^{or had removed out of the State} - The preamble is
 to increase the jurisdiction of the Ct. of Chaw. w^h not
 embraced by the act of 1785. - The Chaw. paper an
 order of publication - The petition does not state who
 were the heirs & assigns of Darnale - Some parties
 have appeared - but not known that all have appeared

It does not appear that all the parties are before the Ct. — The allegation in the petition by next friend — The practice of the Ct. of Chanc. If a petition by next friend must state they are minors — not stated they are minors — The fact is they were not minors — a sp. jurisdiction to come in when minors by next friend cannot come in as next friend unless minors — Where freedom claimed must apply to the Ct. & can only apply there — It is a sp. jurisdiction given to that Ct. The act of 1796 is a sp. jurisdiction.

The act of 1796 since the other acts therefore the acts of 1785, 1791 & 1792 c^d have no operation upon deeds of manumission — Under the act of 1785 the party has never been sum^d to appear — The act of 1792 to parties removed — No allegation in the petition that the parties had removed out of the state. — The deed when so recorded shall have the same effect of the ^{12th Sect. of} act of 1785 cl. 72. — The ^{12th Sect.} act of that ^{act}, not upon the subject of recording deeds. —

The act of 1791 refers to the same section of the act of 1785 —

Evident the Ct. of Chanc. had not jurisdiction to direct the deed of manumission to be recorded.

Stephen on the same side. This a novelty in a judicial
 proceedings - for a negro slave to come into a court of
 Justice to enforce a proceeding of his master -
 The Legals w^d never have left a case like this to
 be inferred - They w^d have given it in express terms -
 It is only by inference from the various acts of off.
 Slaves ~~have~~ consid. as property - They have ^{legal} no will
 of their own - have no faculty - perfectly under the
 control of their master - a deed of manumission
 a relinquishmt. of right - not a deed of convey - but
 a discharge from a state of bondage - The act
 speaks of athing to be transferred - Until the
 deed regularly recorded - the slave no capacity -
 Who party here the slave. comes in & sues his
 master while in a state of slavery to enforce
 freedom - This is to enforce a right inconsistent with
 & the right of the master - This case so plain
 it needs nothing to enforce it - Slaves is capable
 of contracting marriage & so considered in this state. They
 have no legal rights - But are a property

The act of 1785 the party claiming under the deed to the
 Chas. says it embraces all deeds - must take the
 whole clause together - must be omitted to be recorded
 with a fraudulent design - a slave could have no fraudulent
 intention not to record - a deed of man. convey
 nothing until regularly recorded - there was nothing
 conveyed.

The novelty is a party while a slave
 to come into court to enforce a right. even Villain
 in England had no such right to come into court
 to enforce rights of his master - Villain may
 marry - slave cannot - they can enjoy no
 right inconsistent with the right of the master -

The act speaks of the party claiming or his
 legal representation. - The representative could have
 no right unless the ancestor had. - They are slaves,
 no avail to come into c. to give freedom to the
 ancestor who is dead - a slave can have no
 representation - If the word descendant - offspring
 it might be different. But to say a slave might
 enforce the recording a deed of man. is absurd.
 If they were intended to be embraced plainer
 language would have been used by the Legislature.

The peculiar situation of these unfortunate people
is not to be considered by this court -

Brewer contra. refers the court to the arguments
used by the Chan. in his decree. It is full &
needs no further argument to enforce the reasons
he has used -

said the property parties not before the Ct
no adm. in Darnall's estate - said the
acts ~~do not~~ say the party or his rep. or person
may come in who claim under the deed.

Maguier in reply. The party who files the petition
who were slain when the petition filed - The
Chan. acted upon a new principle that
where there was a right there was to be
a remedy. Her a deed not complete - for 11 yrs
unexecuted. turns the region as the grantee did not accept
the grant -

The act of ap. gives no new jurisdiction - a deed not
 recorded is a contract & the C. of Chan. w^d decree
 a specific perf - This act to prevent the trouble
 says the deed may be directed to be recorded by
 the Chan. - Evident not to untrace a deed
 of Man. - The party claiming under the deed
 must have a fair & equitable claim - w^d
 is a claim w^d the C. of Chan. w^d enforce
 if applied to by bill to enforce - This deed is
 a grant of nothing - It is merely a ^{direction} ~~direction~~ of right
 If this confid. part a deed & it is recorded, and the
 negro had been sold - then the purchaser &
 party under the deed do not claim the same
 thing. - a deed for land recorded by the Chan.
 the right goes back to the date of the deed - sup^d
 this deed recorded, w^d the right to freedom go
 back to the date of so. c? not the negro call
 upon the master for the value of their services
 during the time the deed remained unrecorded
 This seems to be the opⁿ of the Chan. - He seems to
 think that the slave ~~was~~ was free during the C. M. after

It is if not recorded than slavery recommences, &
 The Chaw. has the power to decree the specific
 perf. of a contract - c^d. he to decree upon this
 deed on the applicⁿ of the slave - This no deed
 at all unless all the formalities are observed.
 The Chaw. not to decree the recording of a
 deed unless binding upon all the parties.
 The Chaw. says the possⁿ of the deed gave them
 a right to apply by their next friend to
 have the deed recorded. The Chaw. took
 for granted the reverse of wh^{ch}. Law has been
 concluded - The legal presumption was
 that the master had made up his mind
 to give his slave freedom - It is not having
 it recorded shews he had not - It might
 have burnt it the moment after it was
 executed. Until recorded, ^{as usual to law} he was not bound
 by it. - Until recorded it was no more binding
 than a bare promise unperformed - The act
 speaks of the right of the party claiming under
 the deed to record it. - c^d. the slave by force get possⁿ

of the deed & have it recorded as the will of the master.
It was for the master to read it & it was his omission &
not that of the slave that the deed was not recorded.

This d. has decided it can be no deed unless a deed
recorded having been recd? before two witnesses.

Gaithers v Negro James.

The Chanc. said as there was no evd. that the
master had not changed his mind. - There was
no legal mind to change - It was not his mind
to give freedom until the deed was recorded

Dec. 10. Buchanan, J. delivered the opinion of the
Court reversing the Decree of the Chancellor -