

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,