37/15

JULY 1845 #01

MARIA (a woman of color) } freedom under statute of 1835
vs
EDWARD ATTERBURY
HOWARD COUNTY

Assault + Battery
False imprisonment
claimed freedom from owner in KY.

Women
Slaves
Kentucky
Wills

Pleas in the Howard circuit court begun and held at the town of Fayette within and for the County of Howard in the State of Missouri, on the fourth Monday of May in the year of our Lord one thousand eight hundred and forty three, before the Hon. John D. Leland, Judge of said Court.

Be it remembered that heretofore, to wit: on the twenty sixth day of April, A.D. eighteen hundred and forty four, Maria a woman of colour, filed in the office of the clerk of the circuit court of said County of Howard, the following petition to sue as a poor person for freedom, to wit:

Pet to sue as a poor person

"To the Honorable John D. Leland, Judge of the circuit court of Howard County:

Your petitioner would respectfully by leave to represent to your Hon. body that she is now held in slavery by Edward Atteberry Administrator of Thomas Atteberry late deceased, That she is entitled to her freedom under a deed of emancipation from her master formerly, duly recorded in the recorder's office in Hart County & State of Kentucky. She would further state that she obtained an order from your Honorable body at a former term of the Howard Circuit Court allowing her to sue as a poor person, and reasonable liberty to attend her counsel: That your Honorable body appointed as her Counsel Messrs Bell & Clark, and in consequence of the want of documentary evidence which your petitioner

from want of pecuniary means was unable to procure, but which can be procured, - the suit for her freedom, instituted by your petitioner was dismissed - Your petitioners counsel have advised her on examination, and from the letter written by Robert W. Basey the acting Judge in Hart County, Kentucky, when the deed of emancipation was acknowledged, she believes that she is entitled to her freedom, and asks of your honorable body to make an order allowing her to sue as a poor person, and also that she have reasonable liberty to attend her counsel and the court as occasion may require; that she be not removed beyond the jurisdiction of the ~~court~~ circuit court of Howard County, and be subjected to no security on account of her said application for freedom. Your petitioner would further state that since the dismissal of the suit originally instituted by her for her freedom the County Court of Howard County have made an order directing Edward Allberry administrator of Thomas Allberry deceased, to expose your petitioner to public sale on the first Monday of May next; and from what your petitioner has lately heard, she apprehends that she may be removed beyond the jurisdiction of your honorable court before she can have a trial on the merits of her case: She would therefore request of your honorable body that you issue a warrant under your hand, according to the statute in such case made and provided, directed to the Sheriff of Howard County, commanding him to take possession of your petitioner whenever

she may be found, and bring her before your Hon. body, and to summon the person in whose possession she may be found, to be and appear before your Hon. body on a day and place to be therein specified. And your petitioner as in duty bound will ever pray &c.

her
Maria X
mark

Test.
Jesse Attebury
J. L. Belt "

And attached to the said petition is the following order allowing said Maria to sue as a poor person, and appointing counsel for her, which is signed by the Hon. John. D. Leland Judge of the Circuit Court of said County of Howard. to wit:

Order endorsed by Judge

"Whereas on inspection of the petition of Maria a woman of colour, for leave to sue as a ~~poor~~ person for her freedom, the petition contains sufficient matter for the commencement of a suit; it is hereby ordered by the undersigned Judge of the 2nd judicial circuit, that the said Maria be allowed to sue in the circuit court of Howard County as a poor person to establish her right to freedom. And Thomas L. Belt and John B. Clark are hereby assigned as her counsel to prosecute her said suit for freedom in her behalf.

And secondly, it is hereby ordered that the said Maria have reasonable liberty to attend her counsel and the court as occasion may require, and that she be not removed out of the jurisdiction of the circuit court of Howard County, also that she be not subject to any security on account

of her said application for freedom.
April 24th 1843. Jno. D. Leland"

And afterwards to wit: on the twenty sixth day of April A.D. 1843, the said Maria a free woman of colour, by her attorneys Clark & Belt, filed in the office of the Clerk of the Circuit Court of Howard County, her declaration in Trespass for false imprisonment which said declaration is in the words & figures following, to wit:

Declaration

"Howard Circuit Court, May Term. 1843.
Edward Atteberry administrator of all and singular the goods and chattels, rights and credits which were of Thomas Atteberry late of said County, deceased, was attached to answer unto Maria, a free woman of colour in a plea, wherefore with force and arms, at the County aforesaid, he the said defendant made an assault on the said plaintiff, on the first day of January eighteen hundred and forty one, and then and there beat, bruised, wounded and ill treated her the said plaintiff, and then and there imprisoned the said plaintiff, and kept and detained the said plaintiff in prison for a long time until she the said plaintiff was forced and obliged to lay out and expend, and did lay out and expend a large sum of money in obtaining her discharge from such imprisonment without any reasonable or probable cause whatever contrary to the laws of this State, and against the will of said plaintiff, and other wrongs and injuries to the said plaintiff then and there did, to the great damage of the said plaintiff

J-

and contrary to the peace, government and dignity of this State; and whereupon the said plaintiff by her attorneys Clark and Belt, complains that the said defendant on the said first day of January eighteen hundred and forty one aforesaid at the county aforesaid with force and arms, that is to say, with staves, sticks, clubs and fists made an assault on the said plaintiff, and then and there beat and bruised, wounded and ill treated the said plaintiff, and imprisioned her and kept and detained her, for a long time, that is to say for the space of two years and six months then next following, until she the said plaintiff was forced and obliged to lay out and expend, and did lay out and expend a large sum of money, that is to say, the sum of three hundred dollars in obtaining her discharge from such imprisonment without any probable or reasonable cause whatever, contrary to the laws of this State, and against the will of the said plaintiff; and the said plaintiff avers that before and at the time of the committing of the grievances aforesaid, the said plaintiff was and still is a free person, and that the said defendant held and still holds her in slavery, against the peace, government and dignity of this State and contrary to the will of the said plaintiff, and to the damage of the said plaintiff of three hundred dollars, and therefore she brings her suit &c.

Clark & Belt
attys for Plff."

And on the back of which said declaration is the following endorsements to wit:

"Maria, a free woman of colour vs Edward Atteberry admr. of Thos. Atteberry – Trespass for false imprisonment. Damages $300.00 –

Clerk will please issue summons to Howard

Clark & Belt. attys
for Plff.

And afterwards to wit: on the said twenty sixth day of April A.D. the clerk of the said circuit court of Howard county, issued and sent out of his office the following summons attached to said declaration, to wit:

writ. "State of Missouri } Sct.
County of Howard } The State of Missouri;

To the Sheriff of the County of Howard. Greeting.

We command you to summon Edward Atteberry administrator of all and singular the goods and chattels, rights and credits which were of Thomas Atteberry late of said County, deceased, that he be and appear before the Judge of our circuit court at the next term of our said court to be held at the town of Fayette, within and for the county of Howard on the fourth monday of May next, then and there to answer unto Maria a free woman of colour of a plea wherefore with force and arms at the county aforesaid he the said defendant made an assault on the said plaintiff on the first day of January eighteen hundred and forty one, and then and there beat, bruised, wounded and ill treated her the said plaintiff, and then and there imprisoned the said plaintiff, and kept and detained the said plaintiff in prison for a long time, until she the said plaintiff was forced and obliged to

lay out and expend, and did lay out and expend a large sum of money in obtaining her discharge from such imprisonment without any reasonable or probable cause whatever, contrary to the laws of the State, and against the will of the plaintiff to the damage of the said plaintiff as is said of three hundred dollars. And have you then and there this writ.

(L.S.) Witness Marshal Bynum clerk of our said Court, at office, in said County, on the 26th day of April, A.D. 1843.

Marshal Bynum, clerk."

Copy of order

And on the back of which said writ, the said clerk endorsed the following copy of the order signed by the Hon. John B. Leland Judge of said Circuit Court, allowing said Maria, a free woman of colour to sue as a poor person, - and which said order was filed in said Clerk's office with the petition of the said Maria to be allowed to sue as a poor person, heretofore refered to - to wit:

Copy of order

"Whereas on the inspection of the petition of Maria a woman of colour for leave to sue as a free person for her freedom, the petition contains sufficient matter to authorise the commencement of a suit; it is hereby ordered by the undersigned Judge of the 2nd Judicial circuit that the said Maria be allowed to sue in the circuit court of Howard County as a poor person to establish her right to freedom, and Thomas L. Bell and John B. Clarke are hereby assigned as her counsel to prosecute her said suit for freedom in her behalf.

And secondly it is hereby ordered that the said Maria have reasonable liberty to attend her counsel and the court as occasion may require, and that she be not removed out of the jurisdiction of the circuit court of Howard county, and also that she be not subject to any severity on account of her said application for freedom

April 24th 1843.

Jno. D. Leland."

a true copy of orders endorsed on petition

"Test. Sarshel Bynum clerk"

And afterwards to wit: on the said fourth monday of May A.D. eighteen hundred and forty four, the said Sheriff, to wit, Lewis Leigler Sheriff of Howard County, returned into the said circuit court, the said declaration and writ, with his return endorsed on said writ as follows, to wit:

Sheriffs Return

"I certify that I executed the within declaration and writ by reading the same to Edward Allberry on the 28th day of April 1843, in Howard County.

L. Leigler Sheriff H.C.

By J. C. Leigler D.S."

And afterwards to wit at the May Term of our said Court, A.D. 1843, & on the 22nd day of said Month, our Clerk of said Court, by the direction of the Judge thereof, issued a warrant directed to the Sheriff of Howard County, which said Warrant reads as follows, towit.

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Warrant. "State of Missouri } Sct.
County of Howard } To the Sheriff of Howard County; Greeting.

You are hereby Commanded to Seize and take immediately into your possession Maria; a free woman of Color and petitioner for her freedom in the Circuit Court of Howard County wherever she may be found, and bring her before the Hon Jno. D. Leland Judge of our Circuit Court, in the Court house in Fayette on 23rd of May A.D. 1843, and summon the person in whose possession she may be found to appear before the Judge of our Circuit Court - and have you then and there this warrant - and hereof fail not at your peril.

(L.S.) Witness Sarshel Bynaud Clerk of our said Court, at Office in said County on the 22nd day of May 1843.

Sarshel Bynaud Clerk"

And afterwards, to wit - on the same day of the issuing of said warrant, our Sheriff of Howard County, returned the same with his return thereon indorsed as follows, to wit.

Sheriffs Return } "I executed the within by reading the within to Edward Atterbury on the 22d. day of May 1843, in Howard County.

L. Creglar Sheriff H.C.
By J. C. Creglar D.S."

And afterwards, to wit, on the twenty third day of May 1843, being the second day of the May term of said Court in said year -

Order for Sheriff to hire out Maria

"Comes the Plaintiff aforesaid by her attorney, whereupon the said Edward Atterbury fails and refuses to enter into recognizance as directed by the Judge of the Howard Circuit Court. It is therefore ordered by the Court that the Sheriff of Howard County, to wit Lewis Criglar take possession of the above named Maria, and hire her out to the best advantage from time to time during the pendency of this suit, & take a bond from the hirer payable to the State of Missouri in the penalty of six hundred dollars, with good and sufficient security to be approved of by the Sheriff, conditioned that the petitioner or plaintiff shall during the pendency of the suit have reasonable liberty of attending her counsel & this Court, and that she shall not be removed out of the jurisdiction of this Court, and that she shall not be subjected to any severity on account of her application for freedom, and that the hirer will pay the hire to the Sheriff, and return the said Maria at the expiration of the term for which she shall be hired".

"

And afterwards, towit, on the said 23rd day of May 1843

Plea N. G. filed } "The said defendant by his attorney files his plea of not-guilty to the plaintiffs declaration"

Which said plea reads as follows - Towit

Plea. Edward Atterbury Admr &c
ads
Maria A Woman of Color

And the said defendant by his attorney comes and defends the force and injury when &c - And says that he the said defendant is not guilty of the said several trespasses in the declaration mentioned, or any or either of them in manner and form as the said plaintiff hath above thereof complained against him ~~the~~ the said defendant - And of this he puts himself upon the Country &c. Leonard & Davis
Attys for defendant"

And afterwards towit, at said May term of said Court, & on the 6th day of June in said last mentioned Year -

issue j.d. "The said plaintiff by her attorney joins issue upon the plea of the said defendant, and thereupon this Cause is ordered

Continuance to be continued until the next term of this Court."

And afterwards to wit at the December Term of said Court A.D. 1843, & on the 13th Day of said Month.

Continuance "This Cause is ordered to be Continued till the next term of this Court."

And afterwards to wit at the June Term of said Court & on the 8th Day of said Months A.D. 1844.

Continuance "On motion of the said Plaintiff by his attorney this Cause is ordered to be continued till the next term of this Court".

And afterwards to wit, at the December Term of said Court, & on the 5th Day of said Month, A.D. 1844.

Appearance & Jury "Come the parties aforesaid by their respective attorneys, and thereupon also come a jury to wit. John Lee, Robert L. Coleman, Abram Ley, Wm. D. Ewin, Isaac McDaniel, Thomas H. McKean, David Pulen, Joseph Page, Elijah Snell, Jesse Riddlesbarger, David Kunkle & Samuel Maddox, twelve good and lawful men who being duly Elected Tried & Sworn

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Jury permitted to separate

Well and truly to try the issue joined between the parties aforesaid and having heard part of the testimony are by agreement of parties permitted to separate till tomorrow morning 10 o'clock".

And afterwards, to wit, on the sixth day of December in the year last aforesaid -

Nonsuit

"Come again the parties aforesaid by their respective attorneys, as also the jurors aforesaid, whereupon the said Maria a woman of Color being solemnly called comes not, nor doth she further prosecute her action aforesaid against the said Edward Atterbury - It is therefore considered by the Court here, that the said Maria a woman of Color take nothing by her said writ - And thereupon on motion of the said plaintiff by her attorney she has leave to move to set aside the nonsuit entered herein - which motion is filed by the plaintiff", in the following words, to wit -

M: to set aside nonsuit

"Maria a woman of Color
by
Edward Atterbury Administrator
of Thomas Atterbury deceased

In Howard Cir Court. December Term 1844.

And the said ~~[illegible]~~ plaintiff by her attorneys come and move the Court to set aside the nonsuit

takes in this Case and grants him a new trial for the following reasons.
1st. The Court excluded from the jury the record from the County Court of Hart County and State of Kentucky, offered by Plaintiff.

2nd. The Court excluds the will of Thomas Allenbury deceased, offered in evidence on part of the plaintiff.

3rd. The Court excluded from the jury the Copy of the Certificate of Emancipation offered in Evidence by plaintiff.

4th. The Court on Motion of defts. attys after the evidence of Jesse Allenbury was given, excluded said evidence from the jury.

Bell & Clark
attys for Plff's.

And afterwards, towit, on the same day & year last aforesaid -

Order for Sheriff to hire out Plff. "It is ordered by the Court that the Sheriff of Howard County, Court Jacob Headrick take possession of Maria the plaintiff in the above action and hire her out to the best advantage during the pendency of this suit, and take bond from the person hiring her payable

to the State of Missouri, in the penalty of six hundred dollars, with good and sufficient security to be approved of by the Sheriff, conditioned that the said Maria the plaintiff shall during the pendency of her suit have reasonable liberty of attending her Counsel and this Court, and that she shall not be removed out of the jurisdiction of this Court, and that she shall not be subjected to any severity on account of her application for freedom, and that the hirer will pay the hire to said Sheriff, & return the said Maria at the expiration of the term for which she shall be hired."—

And afterwards, to wit, on the seventh day of December in the year last aforesaid—

Mo. to set aside non suit, over ruled

"Come the parties aforesaid by their respective attorneys, whereupon all and singular the premises upon the motion of the said plaintiff to set aside the nonsuit ~~verdict of the jury~~ and for a new trial herein, being seen and heard, & by the Court here fully understood, it is considered that the same be overruled."

And afterwards, to wit, on the same day & year last aforesaid.

"Comes the plaintiff aforesaid

affidavit for appeal filed. And files her affidavit & moves the Court to grant her an appeal to the Supreme Court which being heard & by the Court fully understood, it is considered & ordered that such appeal be granted, Appeal granted. and the Clerk of this Court is ordered to certify the same to the Supreme Court"

Which said affidavit for appeal reads as follows towit.

Affidavit for appeal. "Maria a woman of Color } In the Howard Circuit
by } Court Dec. Term
Edward Atterbury - Administrator } & 1844.
of Thomas Atterbury dec'd.

I do solemnly swear that the Appeal in this Case from the decision of the Judge of the Howard Circuit Court is not made for vexation or delay, but because I believe that I am aggrieved by the decision of the Judge of the Howard Circuit Court.

Maria her X mark a woman of Color

Subscribed and Sworn to before me the undersigned Clerk of the Howard Circuit Court on this Seventh day of December 1844.

S. Bryan Clerk

And afterwards on the 14th of December 1844.

Bill of Ex. filed. "The said plaintiff by his attorney presents to the Court her Bill of exceptions, which is Signed Sealed, ordered to be made part of the record."

Which said Bill of Exceptions reads as follows, towit.

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Howard Circuit Court
Dec Term 1844
on appeal

Manah a free woman of Color
vs
Edmund Atterbury admr of
Thos Atterbury deceased

Be it Remembered that on the trial of this Cause the Plaintiff produced in Evidence the Statute Laws of the State of Kentucky entitled "A digest of the Statute Laws of Kentucky, of a Public Nature from the Commencement of the government to the Session of the Legislature ending on the 24 February 1834 with references to Judicial decisions, Two Volumes by C S Morehead and Mason Brown Frankfort Ky printed by Albert G Hodges 1834. and Read in Evidence so much of the said Statute law as related to the Emancipation of Slaves (& it is now agreed by the Counsel in the Cause that said printed Statute Laws shall be used upon the hearing of this Cause instead of transcribing the same into this Bill of Exceptions)

The plaintiff then offered in Evidence a certain document purporting to be a transcript from the Records of the Hart County Court in Kentucky which together with the certificates was as follows

"Among the records and papers of the Hart County Court in Kentucky are the following Court, Hart County Court april Term 1837. Thomas Atterbury Sr of Hart

County by Richard Atterbury his attorney in fact and agent, a deed of Emancipation from Thomas Atterbury fueing a certain negro woman by the name of Mariah aged years five feet high rather a yellow black weighing about 120. in vesting the said negro woman with full freedom which deed of Emancipation as acknowledged in open Court and it is ordered that the Clerk issue to said woman a deed of Emancipation according to Law.

Power of attorney from Thomas to Richd Atterbury

Know all men by these presents that I Thomas Atterbury of Hart County and State of Kentucky do make Constitute and appoint Richard Atterbury as my attorney in fact to allieve release and set free my negro woman named Mariah and to assign my name as her security that she dont become Chargeable on the County aforesaid and to do singularly and severally every or any act necessary for to be done for the Emancipation of said Slave that I Could do in my own person which when done shall be as valid in Law as if I had done it in my proper person.

Given under my hand and seal this 9th day of April 1837.

Test Robert A. C. Horsey — Thomas Atterbury Seal
Philip Wells —

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Kentucky Set. I George T Wood Clerk of the Hart County Court do Certify that this Power of attorney from Thomas to Richard Attenbury was this day duly Recorded in my office — Given under my hand this 17th April 1837—

G T Wood

Deed of Emancipation named in the before recited order of Court—

I Thomas Attenbury Senr of Hart County Kentucky have this day and doth by these presents Emancipate and forever set free my negro woman Slave, Maria, to go out and forever free and to have and enjoy all the rights and privileges of a free Woman of Color — Given under my hand and seal this 10th day of April 1837— —

Thomas attenbury SEAL

By Richard Attenbury his agent and attorney in fact— — — —

Kentucky Set— I George T. Wood Clerk of the Hart County Court. Do Certify that this deed of Manumission has been duly Recorded in my office

Given under my hand Apl 14. 1837

George T Wood C.H.C

Certificate of Emancipation issued in pursuance of the foregoing Order — —

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State of Kentucky }
Hart County set } I George T. Wood
Clerk of the County Court for the County
and in the State aforesaid do hereby
Certify - To all To whom these presents
shall Come - That at a County Court
Commenced and held for Hart
County, at the Court house in the town
of Munfordville on the 10th day of
April 1837 - Thomas Atterbury Senr.
by Richard Atterbury his agent and
attorney in fact produced into Court
a deed of emancipation from Thomas
Atterbury freeing a certain Negro woman
by the name of Maria aged Years
five feet high, rather a Yellow black
weighing about 120, investing the said
Negro woman with full freedom, which
deed of Emancipation was acknowledged
in open Court, and it was ordered that
the Clerk issue to said woman a deed
(Certificate) of Emancipation.
(County seal) In testimony of which I have
hereunto Subscribed My name
& affixed the seal of My Office at
Munfordville the 14th of April 1837 & 45th year
of the Commonwealth.

George T. Wood CM

Order of Court upon obtaining the
record of Emancipation &c
Hart County Court January Term 1844
Satisfactory proof having been made
to the Court that the Certificate of

Sc

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Emancipation granted by this Court to Maria a woman of Color on the 14th day of April 1837. who was emancipated by Thomas Allenbury was lost or mislaid so that it Could not be had and that it was intended to be used as evidence by the said Maria in a suit instituted by her freedom in the Circuit Court of Howard County in the State of Missouri Therefore in pursuance of an act of the general assembly of the Commonwealth of Kentucky approved 13th day of November 1823. It is ordred that the Clerk of this Court Copy the record of Emancipation in relation to said Maria in pursuance of the act of assembly aforsaid and deliver the same either to said Maria or her attorney

Commonwealth of Kentucky
Hart County Sct

I George Tillord Clerk of the County Court for the County and in the Commonwealth aforsaid do hereby Certify that the forgoing Copies of the records and papers Relating to the Emancipation of the Negro woman slave maria by Thomas Allenbury Sr by Richard Allenbury his Allenbury his attorney in fact and agent are Correctly taken from the original

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records and papers &c of Record and on file in my office—

In testimony of all which I have hereunto subscribed my name and affixed the seal of my office at Munfordville the 17th day of January 1864 and the 88th year of the Commonwealth, of Kentucky

G. T. Wood C.

Commonwealth of Kentucky } ss
County of Hart } I. Alex Gardner presiding Justice of the Hart County Court in the Commonwealth aforesaid Do hereby Certify that the signature of George T. Wood as Clerk of the Hart County Court as appended to the above and foregoing Certificate is genuine That said Wood is the acting Clerk of said Court and was such at the time of signing said Certificate duly qualified to act as such that full faith and Credit are due to all his official acts as such and that said Certificate is in due form

Given under my hand as presiding Justice as aforesaid the 17th day of January 1864 & in the 88th year of the Commonwealth aforesaid

Alex. Gardner Presiding Justice of the Hart Cty Ct

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Commonwealth of Kentucky
Hart County Sct

I George T Wood Clk of the County Court for the County and in the Commonwealth aforesaid do Cutify that Alexander Gardner whose name is appended to the above and foregoing Cutificate is and was at the time of signing the same the Presiding Judge of the Hart County Court, duly Commissioned and Qualified to act as such, that said Signature purporting to be his is genuine, that said Cutificate is in due form, and that full faith and Credit are due to all his official acts as such.

In testimony of all which I have hereunto Subscribed my name and affixed my Seal of office at Hanfordville the 17th day of January 1844 and in the 52nd year of the Commonwealth

G. T. Wood Clk

To the reading of which the defendants objected and the same was rejected & this opinion excepted to by the plaintiff the plaintiff then offered the same document in Connexion with the testimony of Jesse Atteberry herein after set out, and the document was again rejected, and this opinion

excepted to by the plaintiff.

The plaintiff then offered in evidence the following document from the Record Books of the Recorders office of Howard County, which reads as follows to wit:-

Record of Certificate of Emancipation

"Kentucky Sct.

Be it remembered that at a County Court Commenced and held for Said County at the Court house in Mumfordville, on the tenth day of April in the Year of our Lord one thousand eight hundred and thirty seven.

Thomas Atterbury by Richard Atterbury his Agent and atty, infant, Came into Court and Emancipatio, Manumitted and Set free a certain negro woman by the name of Maria aged between thirty and forty Years, five fut high, rather a Yellow black, weighing about one hundred and twenty pounds - Therefore She the said Maria is hereby Emancipated, Manumitted and forever Set free and to enjoy as full freedom as if She had been born free.

(L.S.) In testimony of all which I as Clerk of said County, have hereunto Set my hand and affixed the seal of my said office in Mumfordville, this Eleventh day of April A.D. 1837.

Wm. H. Otter D.C. H.C.
for Geo. T. Wood C. H.C."

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State of Missouri } ss.
County of Howard } The foregoing instrument of writing was delivered to me for record on the 4th. day of December 1840.

Gray Bynum Clk"

And proved by the Recorder that an instrument of writing Certified under the Seal of the Hart County Court in Kentucky was produced to him by the plaintiff & recorded in his Office, & that the writing now produced is a true Copy of that instrument with its accompanying Certification, and that the original document was lost or destroyed so that it Could not be produced in Court. To this evidence the plaintiff also objected, and the same was rejected and this opinion excepted to by the plaintiff. The plaintiff then offered the same document last above mentioned proved as before Stated as a sworn Copy, which was also objected to by the defendant & rejected, & this opinion ~~[illegible]~~ excepted to by the plaintiff - The plaintiff then introduced Jesse Attenbury as a witness & proved by him that in July 1840 witness went to Thomas Attenbury now deceased to hire plaintiff from him, who then said that he had no Control over her - that he had Emancipa

to her in Kentucky previous to his removal to this State, and that she was a free woman, & that witness must go to plaintiff & make his bargain with her - witness went accordingly to plaintiff & hired her as a free person & paid the hire to her. That said Thomas Atterbury told witness since her removal to this State that he had three or four years previous set plaintiff free in Kentucky, & that she had her free papers with her, & repeated this conversation several times to witness - This evidence was rejected, & this opinion excepted to by the plaintiff - The plaintiff then offered the following document, without any evidence that it had been proved in the County Court, or that it had been executed by Thomas Atterbury - which reads as follows - towit.

Thos Atterbury Will - "In the name of God Amen I Thomas Atterbury of the County of Howard and State of Missouri, being of an advanced age, and knowing that the time of my Mortal existence is not long, do by these presents make and publish the following as and for my last will and testament, hereby annulling and revoking all former wills and codicils by me heretofore made -

Item first - It is my will that my Executor hereinafter named pay

Out of My Estate Slaves Excepted) all My just debts, and Cause My body to be buried in a decent Christian like manner.

Item Second. After the payment of my debts and burial as aforesaid, I give and bequeath to My beloved wife during her natural life, all the rest and residue of my Estate, Real personal and mixed for her to have use and enjoy the same in any manner she may deem necessary for her support - but she is not in any Event to sell My Slaves hereafter named, or remove them out of this State.

Item third - At the death of my said wife Ruth Atterbury, or at My death (if I should survive her) it is My will and I do hereby direct and will that my Slaves, Viz; Mariah and her five children, Henry, Lewis, Malinda, Brown and Maria Jane, and all their future increase be then set at liberty and free from involuntary Servitude - And I do hereby Manumit and set free the said Slaves above named and their future increase, to take Effect at the death of me and My wife as above stated - And I do further give and bequeath to the said Slaves the whole of My Estate that may be in existence at the time their said Manumission takes Effect. And I do hereby direct My Executor to deliver over to

said slaves share and share alike such of my property as may then be in being.

Having full confidence in the Honesty and Capacity of Hampton L. Boon, I do hereby Constitute and appoint him my Executor of this my last will and testament.

In witness whereof I have hereunto set my hand and seal this 12th day of February 1840. "

Signed sealed & published in our presence, and we subscribe our names hereto as witnesses in the presence of the testator, at his request and in presence of each other

James B. Pendleton
John Morin "

Thomas his mark Atterbury (Seal)

To the reading of which the defendant objected, & the paper was rejected, and the plaintiff excepted to this opinion - This was all the evidence given or offered upon the trial - & thereupon the plaintiff took a nonsuit, with leave to move to set the same aside - The plaintiff then filed her motion to set aside the nonsuit as follows - to wit -

Mo. to set aside nonsuit -

"Maria a woman of Color
vs
Edward Atterbury, Administrator of Thomas Atterbury deceased

In Hon Cir Court December Term 1844.

And the said plaintiff ~~defendant~~ by her attorneys

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come and move the Court to set aside the nonsuit taken in this Case and grant him a new trial for the following reasons

1st. The Court excluded from the jury the record from the County Court of Hart County, and State of Kentucky, offered by plaintiff.

2nd. The Court excluded the wife of Thomas Allsbury deceased offered in evidence on part of plaintiff.

3rd. The Court excludes from the Jury the Copy of the Certificate of Emancipation offered in evidence by plaintiff.

4th. The Court on motion of defts attys after the evidence of Jesse Allsbury was given, excluded said evidence from the jury.

Bell & Clark
attys for plff."

And the Court overruled the same & the plaintiff excepted - To all which opinions of the Court the plaintiff excepts & prays his exceptions may be allowed him, signed, sealed & made a part of the record, which is now done accordingly.

Jno. D. Leland (Seal)"

State of Missouri } Set.
County of Howard } I Samuel Ryman Clerk

of the Circuit Court within & for the County of Howard aforesaid, do hereby Certify, that the above & foregoing twenty nine pages Contain a true full & Complete transcript of all the Record & proceedings of our said Court, in the above entitled Cause, wherein Maria a woman of Color is plaintiff & Edward Allenbury, Administrator of Thomas Allenbury deceased is defendant, as fully & amply, as the Same now remains of record in My Office.

In testimony whereof I have hereunto Signed My Name & affixed the Seal of said Court at Office, in said County, on the thirty first day of December A.D. 1844.

Samuel Bynum Clerk

~~[illegible]~~ 7. (21.)

Maria, a woman of color

vs Ez Trans.

Edwd Atterbury

Clerks fees for copying 7000 words & figures at 10 cts pr 100 — $ 7.00
Certif. & Seal .50
$ 7.50

Filed Jany 3. 1845.
H. L. Boon clk

Horan

Judicial act,
The act of the Ayant afterwards adopted by Atterbury

Thana a woman of color
vs
Edward Atterbery &c.

In Supreme Court
June Term 1825

The plaintiff by her attys. comes and says there is error in the decision of the Circuit Court in this case and assigns the following as errors:

1st. The Court erred in not permitting plaintiffs attys to read in evidence to the jury, the ~~copy~~ Record from the Harford County Court in the State of Kentucky, establishing plaintiffs right to her freedom &c.

2nd " Circuit Court erred in not permitting plaintiff to read to the jury the Record above mentioned in connexion with the testimony of Jesse Atterbery:

3rd " Court erred in permitting Jesse Atterbery to testify and afterwards excluding his evidence from the jury:

4th " Court erred in excluding from the jury the copy of the certificate of emancipation from the Record Books of the Recorders office of Howard County Md, with the endorsement of S. Brown Clerk of said Court —

5th " Court erred in excluding the testimony of Jesse Atterbery proving the admissions of Thomas Atterbery

decd. that plaintiff was a free woman.

Belt & Clark
for plaintiff

6th Court erred in refusing to set aside nonsuit.

Belt & Clark
attys for plff:

And the Defendant in Error by his attorney comes & joins in Error

Leonard for
Atterberry

Maria (of color)
v
Chr.s Atteberry

Filed Jany 18. 1845.
H. L. Born clk

Joinder filed Feby 4th
1845 H. L. Born clk

Maria
vs
Edward Atterberry

Appeal from the Howard Circuit Court

This was a suit for freedom brought by Maria against Atterberry. Maria took a nonsuit & after an unsuccessful motion to set it aside & for a new trial has brought the case here by appeal.

In support of her right to freedom Maria offered in evidence a transcript of the records of the County Court of Hart County in the State of Kentucky authenticated in pursuance of the act of Congress of the 27th April 1804. The act of liberation in the record, is in these words Thos. Atterberry Gen. of Hart County by Richard Atterberry his attorney in fact and agent — a deed of emancipation from Thos Atterberry freeing a certain Negro woman by the name of Manah aged — years five feet high rather a yellow black weighing about 120, investing the said negro woman with full freedom, which deed of emancipation as acknowledged in open Court, and it is ordered that the Clerk issue to said woman a deed of emancipation according to law". Power of attorney from Thos to Rich Atterberry. Know all men by these presents that I Thos Atterberry of Hart County and State of Kentucky do make constitute & appoint Richard Atterberry as my attorney in fact to allien release & set free my negro woman named Maniah & to assign my name as her security that she dont become chargable on the County aforesaid & to do singularly & severally [redacted] and every act necessary for to be done for the emancipation of said slave that I could do in my own person which when done shall be as valid in law as if I had done it in my proper person. Given under my hand &

seal this 9th day of April 1837.

Thos Atterberry Seal

Teste. Robert Dorsey & P Wells

The following is a copy of the deed of emancipation referred to in the before recited order of court. I Thos Atterberry Sen of Hart County Kentucky have this day & doth by these presents emancipate & forever set free my negro woman slave Mariah to go out & forever free & to have & enjoy all the rights & privileges of a free woman of color. Given under my hand seal this 10th day of april 1837 Thos. Atterberry Seal

By Richd atterberry his agent & attorney in fact

Both of the forgoing instruments were certified to have been recorded.

A Certificate of emancipation made out by the clerk in pursuance of the order of the Court follows in the record the entry of these instruments.

The record was authenticated as before said under the act of Congress of the 27th April 1804.

Objections were made to the reading of this record in evidence and the same were sustained by the Court.

The certificate of freedom granted in Kentucky was recorded in Howard County in this State & a copy of this record in connexion with the testimony of the Recorder was offered in evidence, the original certificate having been lost.

Testimony going to shew that Thos atterberry had frequently declared that Mariah was free & that he had liberated her in Kentucky was also offered in evidence. Also a will of Atterberry liberating Mariah. This will was without probate & no evidence was offered in proof of its execution by the testator. All this evidence was rejected on the trial

& the rejection thereof is the error complained of.

It was agreed that the laws of Kentucky ~~might~~ in relation to the emancipation of slaves might be read as evidence in this Court, although not spread upon the record.

An act of the Kentucky Legislature of the 27th. Feby. 1798 provides that it shall and may be lawful for any person by his or her last will & testament, or by any other instrument in writing under his hand & seal, attested & proved in the County Court by two witnesses or acknowledged by the party in the Court of the County where he resides to emancipate or set free his slave, who shall thereupon be entitled and fully discharged from the performance of any contract entered into during his term & enjoy their full freedom, as if they had been born free: And the said Court shall have full power to demand bond with sufficient security of the emancipator for the maintenance of any slave, that may be aged or infirm either in body or mind to prevent him from becoming chargable to the County; and every slave so emancipated shall have a certificate of his freedom from the clerk of such Court on parchment with the County seal affixed thereto.

A Statute of the same State of the 15th Decr. 1800 provides that any person of the age of 18 years being possessed of or having a right to any slave or slaves may by his last & testament or by an instrument of writing emancipate such slave or slaves.

It was contended by the appellee Atterberry that the Appellant Maria could only obtain a right to freedom by showing a compliance with the terms of the Statute by which the mode of acquiring it is prescribed. That the Court

having nothing to do but barely receive the evidence in proof of the execution of the instrument or its acknowledgement, neither the order declaring that the acknowledgement had been taken nor the certificate of freedom signed by the Clerk made out any title to freedom. That her right to freedom could only be established by the production & proof of a deed executed with the formalities required by the laws of Kentucky.

The case of Talbot vs David decided in Kentucky in 1810. 2 Mar Rep. 618 is cited in support of this view of the case. In the cause reference to two orders were given in evidence. One of them was in these words. July Court 1810. On Motion of Lyon Griffith ordered that Jack aged 29 years, Jane aged 25 years & George aged 21 years, her slaves, be manumitted & set free agreeable to a deed which said Griffith has filed.

The other was as follows: July Court 1810. On Motion of Lyon Griffith ordered that Jack aged 29, Jane aged 25, George 21 are manumitted: The Court before which the cause was tried on these orders & some parol evidence not affecting this question, instructed the jury that they were bound from the records to presume a deed of emancipation from Lyon Griffith to Jane the slave above named who was the Mother of the plaintiff David duly executed. This instruction was deemed erroneous The Court of Appeals holding that the first of the above recited orders having been made by the clerk in a book unknown to the law & unauthorized by it, was of no validity. With regard to the last order the Court after referring to the act of 1798 relative to the liberation of slaves, says; "to effect the emancipation of slaves the requisites of this act must be complied with, there can be no question. But we are of opinion that the act cannot upon

any rational principle of interpretation be construed to require of the Court an order of manumission to effect the liberation of a slave. The owner is the only person capable of releasing his slave from bondage & the law has prescribed the mode by which it may be done, but the only act for the Court to perform, is, to receive proof the execution of the will or deed by which the manumission may be effected. To give to the act of the Court in taking the proof any judicial effect it is true it is essential that an entry should be made in court, but immediately upon that being done & without any order of manumission the slave becomes ipso facto free & released from all obligations of servitude".

Hence the Court held that the County Court having no authority to make an order manumitting a slave, although there was a presumption in the law, that to have been done correctly which is done by a Court of competent jurisdiction, it cannot be conclusively inferred from such an order on the records, that a deed of emancipation has been duly executed. But the court held, that even such an order was evidence to be left to a jury in proof of the existence of a deed of emancipation, the weight of which was to be ascertained by them. So this case only determines that an order of emancipation by the County Court is not necessary to confer freedom, and the law will not conclusively presume from the existence of such an order on the records that a deed of emancipation has been duly executed. But the case is a very strong one in favor of the plaintiff. H. Rhodes

that when a proper order is made by the Court, that order is a judicial act. Indeed it cannot be intended, that the deed of emancipation ~~is effectual~~ under the act of 1798 is effectual without the action of the Court. The deed must be attested by two witnesses & proved or acknowledged in open Court, without which freedom cannot be imparted. The Court must determine whether the proof or acknowledgment is sufficient. It is not bound to receive & record whatever proof or acknowledgment is offered, but ~~that~~ the sufficiency of that which is offered is judged of by the Court, and this exercise of the judgment in determining its sufficiency or insufficiency is a judicial act. It is not like the case of a deed for land which passes title without any proof ~~or~~ or acknowledgment & recording, formalities which are enacted merely for the protection of purchasers & creditors. The case of Talbot vs David cannot be read without coming to the conclusion, that had the order of the County Court been formal & contained the necessary facts it would have been deemed conclusive as a judicial act as to the right of David to freedom. If the ~~order~~ entry in this case containing an acknowledgment of the deed of emancipation would have been regarded as a judicial act by the Courts of Kentucky it is clear it must be so regarded here, & if such an ~~order~~ entry there would shew a right to freedom, the same ~~order~~ entry properly authenticated would be as good evidence in our Courts. This view of the subject answers the objection that the power of attorney should be shown by the record to have been proved or acknowledged; for adopting the language of the Court in the above case, that "there is a propriety in the law presuming that to have been correctly done which is done by a Court of competent jurisdiction, we can

question what effect these records are to have, when used in other States without showing their force in the State where they are created, it does not seem to be settled. In Louisiana it has been held that if a copy of a similar domestic record would be admissible for any cause, it will be held equally so when coming from another State, unless the lex loci giving it a different effect be affirmatively shown. Norwood v Green 5 Mar. Lou. The contrary was held in Alabama Mitchell vs. Mitchell 3. Stew. & Por. So it seems is the law in Indiana. Elliott vs. Ray 2 Black. 31. And this seems to be in consonance with what was said by this Court in the case of Nelson vs. Mann 8 Mo. Rep 1. that the courts of one state will not take judicial notice of the Statute laws of a sister State, but on common law questions, the common law of a sister State will be presumed like that which prevails in this State. This question however does not arise in this case as the laws of Kentucky in relation to this matter are in evidence before us & for the reasons before given we are of the opinion the record would be evidence in ~~his own~~ her Courts.

The record in this case was authenticated under the act of 26 May 1804. It being a judicial act it should have been authenticated under the act of 27th April 1790. One of the judges is of the opinion that the authentication under the act of 1804 would be a good authentication under the act of 1790. The Court not being full & for fear of no objection being made to the authentication suppressing from the nature of the suit, that the parties are anxious for a trial on the merits, the judgment will be reversed and the cause remanded.

We will observe, that this opinion has been formed after mature consideration of the

not suppose that the court would have made an entry that Thos Atterberry sen by his attorney in fact & agent acknowledged a deed of emancipation, unless it had been satisfied that the attorney in fact had been properly constituted. Indeed if any aid was wanting to a presumption so reasonable it would be found in the fact that the power of attorney & deed of emancipation are found in the record immediately following the order of Court & it appear that they were contemporaneously recorded. Other cases may here be referred to showing that we are warranted in saying that the taking of the acknowledgment of an instrument is a judicial act. When the acknowledgment or record is the act of a court & partakes of the nature of a judicial proceeding, it has been treated as within the provisions of the law of congress of May 26 1790. In Kentucky a power of attorney was produced purporting to have been executed by the plaintiff in Virginia, it had been acknowledged by the plaintiff in a county court of the latter State & the acknowledgment ordered to be certified. It was held that the record of the acknowledgment & order duly certified under the regulations of the law of congress above referred sufficiently proved the execution of the power without further evidence & this although the power itself had not as yet been recorded. Rochester vs. Toler 4 Bibb 106. A copy of a deed acknowledged in a Court of a neighboring State & recorded there was held to come within the act of Congress in Strode vs Churchhill 2 Litt. 75. So this Court has held that the probate of a will in another State is a judicial proceeding. The same has been held in Louisiana Balfour vs. Chew 5 Mar. N.S. As to the

case of Winny vs Cartwright 3. Marshall 493 and Dyarnett, adm'r. vs. Fanny 2. J. J. Marshall which arose under the before recited act of 1800: Moreover let it be borne in mind, that the case of Talbot vs. David which was cited by the appellee was decided long after the act of 1800 took effect and the deed of emancipation & order were made after that event.

Judgment reversed Judge McBride concurring: Judge Stapleton & Scott absent.

11 ~~7~~ 35.

Maria
vs
Atterberry

opinion

Scott

atty

Files Oct 21st 1848.

St. L. Boon clk

Manah a woman of color
vs
E. Atterberry admr &c.

In Supreme Court:
Jan Term 1845.

This was an action of trespass vi et armis for false imprisonment &c: commenced in Howard circuit Court, for freedom, under our statute of 1835 plaintiff brought her action for assault and battery, and false imprisonment, and alleged that she was free.

Defendant pleaded not guilty, the only plea in the defence. The plaintiff insists that the judgment of the Circuit Court was erroneous, and should be reversed for the following reasons.

1st. The Circuit Court erred in excluding from the jury the record offered in evidence by the plaintiff from Hart County Court, in the State of Kentucky: See Laws of U.S. May 26. 1790 Ch. 11.
Ferguson vs Harwood 7th Cranch 408.

The only issue was, under

the pleadings presented on the record, the assault and battery, and under their plea of not guilty, court erred in rejecting said record. See Carney vs Hampton 3 Monroe's Rep. 228. Talbot vs Williams 2 Mar, 203, 4. J. J. Mar, 105-6 If defendants justify imprisonment because plaintiff was a slave, they should have pleaded specially Wheaton's Selwyn, title, assault and Battery vol 1. idem, title False imprisonment, vol 2. 917— Chittys Pleading vol 1. 539-40. 744.

2nd Any instrument of writing in Kentucky emancipates slaves: See the Digest, agreed upon by Counsel in the bill of exceptions Laws of 1800. also 2 J. J. Mar, Rep. 230, Fanny vs Dejanets heirs: 3 Marshall's Rep 495-6 Winney vs Cartright.

3rd Court erred in rejecting the record in connexion with the testimony of Jesse Atterberry; and also in permitting Jesse Atterberry to testify, and then excluding his testimony from the jury: by his (Atterberry) testimony,

it appears that Manah had acted as a free person some years before the death of Thomas Atterberry decd: Administrator is in law presumed to know this, and placed on same ground as assent of administrator to a legacy See Nancy vs Snell 6th Dana 154. Lord Saye & Sele vs Guy 3 East, 121. Duppa vs Mayo 1 Saunders 278. 5th Coke's reports 12 b. Chamberlain vs Chamberlain 1 Chancery cases 256 Bastard vs Stucky [illegible] 2nd Sev. 209. When the assent is once given, it is irrevocable Paramour vs Yardley, Plowden 539. Young vs Holmes 1 Strange 70.

4th By the laws of Kentucky, the certificate of emancipation is evidence, when uncontradicted of freedom, and by the laws of the U. S. all records of other states have the same effect in sister states, as at home; Hence Court erred in excluding a copy of the certificate of emancipation in connexion with the testimony of Sarshel Bynum

5th Court erred in excluding from the jury the admissions of Thos. Atterberry decd in his lifetime that Manah was a free woman & that he had freed her in Kentucky, and she had her free papers with her. This admission operates as an estoppel upon the representative of the deceased.

Court erred in refusing to set aside nonsuit & grant a trial to plaintiff

~~Thos.~~ Chas. Belt
for plaintiffs

Quaere. Does the statute inhibit a man, during his lifetime, and when his act takes effect during his life, from emancipating his slaves, in any manner, and in this case as proved by the admissions, and acquiescence of Thomas Atterberry decd. ~~Fr.~~ Chas. Belt
for pepp

Supreme Court
Jan Term 1845

Maria ake a woman
of color
vs
E. Allerberry adm
of Thos. Allerberry Dec

Plaintiffs brief

T. L. Bell
atty for pltff

3 Phil 1257

Edward Atterbury, administrator of Thomas Atterbury, deceased, appellee, ads. Maria (a woman of colour) appellant

Appeal from a judgment at Law of the Howard circuit court.

This was an action of trespass instituted in the Howard circuit court by Maria, the appellant, against Edward Atterbury as administrator of Thomas Atterbury deceased, and was tried at the December Term 1844. to try her title to freedom.

The Plaintiff (Maria) claimed her freedom under a deed of emancipation of the 10th of April 1837 alleged to have been made in Kentucky by the intestate Thomas Atterbury through Richard Atterbury, his attorney in fact and to have been acknowledged in the Hart county court in that State

In support of her title, she gave in evidence the Statute Laws of Kentucky in relation to slaves and slavery (2 Monroe & Browns Digest Title. "Slaves" Sec J. By the 27 sec. of the act of February 1798 in relation to this subject, every person is authorised to emancipate his slaves either by last will & testament, or by deed, attested & proved by two witnesses, or acknowledged

in the county court of the county, where he resides, and every slave so Emancipated is entitled to have from the clerk at the expence of the Emancipator a certificate of his freedom, under the seal of the court.

The Plaintiff then offered in Evidence a transcript of several orders and instruments relating to the Emancipation of Mariah by Thomas Atterbury certified by the clerk of the Hart county court to be correctly taken from original records and papers of record and on file in his office, with a certificate of the presiding Judge of the court to the official character of the clerk, and to the form of his certificate - This transcript contains the following documents.

1. An order of the Hart county court of April 1837, which if read as written is merely nonsensical, but by the aid of interpolations and alterations is made to declare that Thomas Atterbury, by Richard Atterbury his attorney in fact, produced in court a deed of Emancipation of the slave Mariah, and that the deed was acknowledged in open court and directed the clerk to issue to the woman a certificate of Emancipation according to law -

2d a power of attorney attested by two witnesses from Thomas Atterbury of the 10th of April 1837 to Richard Atterbury authorising him to execute in his name a deed of emancipation ~~&c~~ to the slave Mariah

3d An unattested deed of Emancipation of the 10th of April 1837 executed in the name of Thomas Atterbury by Richard Atterbury as his attorney

4th The clerks certificate of free dom of the 14th of April 1837. and

5th An order of the Hart county court of January 1844 which recites that it had been shown to the court that Mariah had lost her certificate of free dom and that she was desirous of using the same upon a trial of her right to freedom in the Howard circuit court and directs the clerk of the court to make out and deliver to her a copy of the record of the courts relations to that matter -

The Plaintiff at the same time offered to prove by a witness that the intestate Thomas Atterbury had frequently after his removal to this State declared that he had Emancipated Mariah in Kentucky and that she had her free papers with her

All this evidence was objected to by the Defendant and rejected by court -

The Plaintiff then proved that

the certificate of freedom granted to her by the Hart county court had been presented to and recorded by the ~~RR~~ clerk of the Howard circuit court in the Recorders office of that county and that the original was lost or destroyed and offered in evidence a copy of the record so made which was objected to and rejected by the court.

The Plaintiff then offered in evidence an original instrument of writing purporting to be the last will & testament of Thomas Atterbury, executed in this State, manufacturing Maine, but offering no proof of its execution or of its probate ~~by~~ in any tribunal authorized to take proof of its execution, it was rejected by the court, and thereupon the Plaintiff suffered a nonsuit, which the court afterwards refusing to set aside she has appealed to this court

And now in support of the judgment of the circuit court the counsel for the appellee, Atterbury will rely on the following

Points & Authorities

First. The Plaintiff having been originally a slave in Kentucky and claiming her freedom under the laws of that State could only acquire it by the deed or last will of her Master executed in the manner prescribed by the laws of Kentucky to give it validity as an instrument of manumission and the county court having no duty to perform in relation to the instrument other than to take the proof or acknowledgment of its execution neither the order declaring that the acknowledgment had been taken nor the certificate of freedom issued by the clerk, made out any title in the Plaintiff to freedom. It devolved on her to show in evidence a deed of manumission from her Master executed with the formalities required by the Statute and nothing short of such a deed could go in evidence to the jury to establish in her a right to freedom.

Talbot vs David 2. Marshalls Rep. 608
Donaldson vs Judge 2. Dubbo Rep. 57.

Second- Where the deed of manumission is executed under a power, both the deed and the power must be attested and proved or acknowledged in the manner prescribed by the statute- It is not sufficient that the deed is duly attested & proved- or acknowledged, if the power be not so also nor is it sufficient enough that the power is duly executed, if the deed be not in like manner executed with all the formalities required by law- These formalities must be observed in relation to each instrument the power and the deed- Any other construction would in effect repeal the statute- Now here the order of the last county court of April 1837, even if read as the Appellant desires, only establishes that an acknowledgement of the execution of the deed was made in court, while there is no Evidence whatever of the proof by witnesses, or of the acknowledgement by the grantor, of the execution of the power-

~~Third- Although the opinion of the circuit court, ruling out the paper, offered in evidence as the last will of Thomas Atterberry, without any probate, or any proof whatever of its execution was excepted to below, that matter will not it is presumed be relied upon here for Error~~

Third- The alleged deed of Emancipation was not entitled to go to the jury ~~be [illegible] in evidence~~ upon the proof or acknowledgement taken in the Hart county court and their being no other proof of its execution, it was properly rejected ~~without ground~~ for want of such proof ~~of its execution~~

Fourth- Although the opinion of the circuit court ruling out the paper offered in evidence as the will of Thomas Atterberry, without any probate or any proof whatever of its execution, was excepted to below, that matter will not, it is presumed be relied here for Error

Sup. court.

Atterberry
appellee

ads { Appellee's
Brief

Mariah (a woman of colour)
appellant —

Leonard
counsel
for appellee