Trammell, Philip vs Adam, a free black man Saline 105/20

Cause
Trespass, Assault & Battery False Imprisonment

#1 Trammell's residence in IL equated "contract" for freedom
Adam

#2 Slaves,

#3 Voided Damages requested after start of action;

Dissenting opinion

1

State of Missouri towit.

Pleas before David Todd Esquire Judge of the Saline Circuit court in the state of Missouri at the courthouse at the town of Jefferson on the seventeenth day of July in the year one thousand eight hundred and twenty eight.

Be it remembered that heretofore, towit, on the thirteenth day of June in the year of our Lord one thousand eight hundred and twenty seven Adam a free black man, filed in the clerks office of Saline circuit court, a declaration against Asa Findley and Philip Trammell in the following words. towit.

declaration

" State of Missouri, Saline county towit, Circuit court of July term 1827. Adam, a free black man by P. R. Hayden his attorney complains of Asa Findley and Philip Trammell of a plea of Trespass: For that the said defendants heretofore, towit, on the first day of January in the year of our Lord eighteen hundred and twenty seven, towit, at the county of Saline aforesaid, with force and arms &c. made an assault upon him the said Adam, and then and there seized and laid hold of him the said Adam, and with great force and violence gave and struck him the said Adam a great many violent blows and strokes, on and about his head, face,

back, shoulders, legs, arms, and divers other parts of his body, with certain sticks which they the said defendants then and there had and held in their hands, and also then and there forcibly and violently shook and pulled and dragged about him the said Adam, and then and there imprisoned him the said Adam, and kept and detained him in prison there, with force and arms, without any reasonable or probable cause whatsoever, for a long space of time, towit, for the space of six months then next following, contrary to the laws and customs of the State aforesaid, and against the will of the said Adam, whereby he the said Adam was then and there not only greatly hurt bruised and wounded, but was also thereby, then and there greatly exposed and injured in his credit and circumstances, towit, at the County of Saline aforesaid. And the said Adam doth aver, that before and at the time of committing the said several grievances by the said defendants as aforesaid, he was a free man, and that he the said Adam ever since, and still is a free man, and that the said defendants held and detained and still holds and detains him the said Adam in slavery, towit, at the County of Saline aforesaid - and other wrongs to the said Adam, then and there did against the peace and dignity of the State, and to the damage of the said Adam of one thousand dollars, therefore he brings his suit &c

P. R. Hayden atty. for the plaintiff."

And at the request and by the direction of the said plaintiff a writ was sued out to the said County of Saline, upon the back of the said declaration, in the following words, to wit.

Writ. "The State of Missouri, to the Sheriff of Saline County, You are hereby commanded to summon Asa Findley and Philip Tramell to appear before the Judge of our Circuit Court at Jefferson on the first thursday after the second monday in July next to answer unto Adam a free black man in a plea of trespass assault and battery and false imprisonment to the damage (as is said) of one thousand dollars. And see that you fail not to execute this writ, and have it then and there before our Judge aforesaid. Witness B. Chambers Clerk of our circuit court this 13th day of June A.D. 1827. with my private seal there being no official one yet provided

(Seal)

B. Chambers Clk

And at the request and by the direction of said plaintiff, a copy of said declaration was made out, and a counterpart of the said writ was issued to the County of Howard where the defendant Tramell was said to reside, which counterpart is in these words, to wit, "The State of Missouri to the Sheriff of Howard County Greeting. You are hereby commanded to summon Asa Findley and Philip Tramell to appear before the Judge of our Circuit Court at Jefferson

Counter part writ.

on the first Thursday after the second Monday in July next to answer unto Adam a free black man in a plea of Trespass against and battery and false imprisonment to the damage (as is said) of one thousand dollars, And see that you fail not to execute this writ and have it then and there before our Judge aforesaid. Witness B. Chambers clerk of our Circuit Court this 13th day of June A. D. 1827 with my private seal affixed there being no official seal yet provided. B. Chambers Clk."

(Seal)

Endorsed "This is a counterpart of the original writ issued to Saline County.
B. Chambers Clk."

And at a circuit court held for said County of Saline at the Court house in Jefferson on the thirteenth day of July one thousand eight hundred and twenty seven, being the first thursday after the second monday in said month. The said original writ was returned by the Sheriff of Saline County, with the following return endorsed, which was filed to wit. "I certify that this writ came to hand too late to serve. July 4th 1827. Abram Smith Sheriff of Saline County" And the Counterpart thereof, was returned by the Sheriff of Howard County with the following return endorsed thereon, which was filed to wit." I executed this writ in Howard County the 19th day of June 1827

Returns

by reading the within writ and declaration to the within named Philip Tramell, as Findley not found in Howard County" Signed "David Prewitt. S. H. C."

Tramells appearance plea & issue

And the said plaintiff by his attorney then and there came, as also the said defendant Philip Tramell by his attorney, and the said defendant filed his plea of not guilty to which the plaintiff joined issue — and on the motion of the plaintiff It is ordered that an alias writ issue against the said defendant Asa Findley directed to the Sheriff of Saline County returnable on the first day of the next term of this court, until which time this cause is continued.

Alias writ vs Findley Cont'd

And the plea filed by the said Tramell and the issue thereon is in the following words "In the circuit court of July term 1827 Tramell impleaded with Findley ads Adam a black man. And the said defendant by his attorney comes and defends the force and injury when &c. and says that he is not guilty of the said supposed trespass above laid to his charge or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him and of this he the said defendant puts himself upon the country &c." Signed "Leonard attorney for Tramell" "and the said plaintiff doth the like." Signed Hayden atty."

And afterwards towit, on the eighth day of august 1827.

Als. vs Findley

There was sued out by the plaintiff a copy of the declaration filed, and an alias writ against Asa Findley, which writ is in the following words" The State of Missouri to the Sheriff of Saline County Greeting: You are hereby commanded to summon Asa Findley Esq. as we have heretofore commanded you, to appear before the Judge of our circuit court at Jefferson on the first Thursday after the second monday in November next then and there to answer unto Adam (a free black man) in a plea of trespass assault and Battery to the damage of said plaintiff (as is said) of one thousand dollars - And fail not to execute this writ, and have it then and there before our Judge afore said. Witness B. Chambers clerk of our circuit Court this 8th day of August 1827. with my private seal there being no seal of office yet provided B. Chambers Clk."

Seal

And afterwards towit, at a circuit court held at the town of Jefferson in said County of Saline on the first thursday after the second monday in the month of November 1827 - the Sheriff of said County made return upon the said writ, in the following words

return

" Executed by leaving a copy of this writ and the declaration at the house of Asa Findley in Saline county on the 9th day of October 1827. Abram Smith Sheriff of Saline County."

And at the same Circuit Court held by adjournment on friday the sixteenth day of

7

November one thousand eight hundred and twenty seven, came the said plaintiff by his attorney as well as the said defendants Asa Findley and Philip Tramell by their attornies, and the said Asa Findlay by his attorney filed his plea of not guilty, to which the plaintiff joined issue, and the cause is continued until the next term.

Findley app. & plea.

Cont.d

The plea of the said defendant Findley and the issue thereon, is in the following words, towit. "In the Circuit court November term 1827. Findley impleaded with Tramell ads. Adam a black man, And the said defendant by his attorney comes and defends the force and injury when &c and says that he is not guilty of the said supposed trespass as above laid to his charge or any part thereof, in manner and form as the said plaintiff hath thereof above complained against him, and of this he the said defendant puts himself upon the country &c signed "Leonard for def.t" "and the plaintiff doth the like" signed "Hayden attorney."

And afterwards towit, at a circuit Court held for said County of Saline on the 13th day of March 1828, being the first thursday after the second monday in said month —

Cont.d

On this day came the parties aforesaid by their attornies, and by their consent this cause is continued until the next term of the Court.

And afterwards, towit, at a circuit court held at Jefferson for the County of Saline on the 17th day of July 1828. being the first

thursday after the second monday in the said month, came the parties aforesaid by their attornies, and thereupon came a Jury to wit, James Warren George Rhodes, Abel Hampton Jury Daniel Thornton, Abner Gwinn, Robert G. Thompson, Josiah Huff, Nathaniel Walker Amos Gooding, William M'Daniel Robert Rogers and Isaac Epler, who being elected tried and sworn well and truly to try the issue joined upon their oaths do say that the said defendants are guilty ~~not guilty~~ of the trespass assault and battery and false imprisonment complained of, and that the said plaintiff was at the time alledged and still is a free man, and that the said defendants at the said time and now do detain the said Adam the plaintiff as a slave, and they do assess the damages the plaintiff hath sustained by reason of the premises to one hundred and eleven dollars and forty three cents besides costs, Therefore it is considered by the court that the said Adam the plaintiff be liberated and forever set free from the said defendants and all persons claiming by, thro, from or under them or either of them, and that the plaintiff recover of the defendants the damages aforesaid in manner and form aforesaid assessed and also his costs by him about his suit in this behalf expended and the said defendants in Mercy &c. —

Verdict

Judgt.

And the said defendant Framell by his attorney moved the Court to arrest the judgment in this cause: Because there is no petition filed in this cause by the plaintiff nor leave given to sue: And the said defendant also moved the Court that no judgment of freedom can be given or entered in this cause for the reason aforesaid. Thereupon the said Motions were argued & heard, it is considered that the same are insufficient in law to arrest or alter the judgment of the Court, and that they be overruled with costs.

Mo. to arrest.

Judgt.

Pending the trial of this cause and before the Jury had retired from the bar the defendant Framell by his attorney took several exceptions to the opinions of the Court, which were signed sealed and ordered to be made a part of the record in the cause: Which said exceptions are in the following words towit

Exceptions of deft.

" July term 1828. Philip Framell impleaded with Asa Findley ads Adam, a free black man. Be it remembered that on the trial of this cause the plaintiff to support the issues on his part introduced the following evidence

That the defendant Framell in the year eighteen hundred and ten lived at the United States Salin at Shawnee town in the State of Illinois that the plaintiff who is a negro man lived there

also in the possession of said Framell as his slave - that he exercised acts of ownership over said negro as his slave - that Framell and the negro remained there untill the year one thousand eight hundred and seventeen (the negro still in possession of Framell) when they removed to this State. Since that time the negro has been in the possession of the defendant Framell and the defendant Findlay ever since as a slave. And no other evidence was given on either side thereupon the defendant ~~moved~~ Framell moved the court to instruct the Jury that they cannot on the aforesaid evidence find for the plaintiff or against said defendant but must find for the defendant - which instructions the Court here refused to give, but instructed the jury that they might on the evidence aforesaid find for the plaintiff against said defendant - to which opinion of the court the said defendant excepts. The said defendant then moved the Court to instruct the Jury that unless they find an assault & Battery and false imprisonment of the plaintiff by the defendant they must find for the defendant, which instructions the Court here refused to give to the jury to which opinion of the Court the defendant excepts. The said defendant then moved the Court to instruct the Jury that unless they find an assault & battery of the plaintiff by the defendant they must find for the defendant - which instructions the court here refused to

give – to which opinion of the Court the defendant excepts. The defendant here then moved the Court to instruct the jury that if the plaintiffs cause of action, which was the last detainer of the slave in the State of Illinois (if any) accrued more than two years before the commencement of this suit, they must find for the defendant, unless they find that the case comes within some one or more of the provisoes or exceptions [redacted] in that statute of limitations – which instructions the Court here refused to give the jury – to which opinion of the Court the defendant excepts.

The defendant then moved the Court here to instruct the jury that by the act of congress the deft. might keep his slaves at the time specified by the witnesses at the United States Saline, near Shawneetown in the State of Illinois without giving said slave thereby any right to his freedom; which instructions the Court here refused to give, but instructed the Jury that if they found from the evidence that the defendant voluntarily took the plaintiff being his slave into any part of the State of Illinois with the intent there to reside, and did so reside as a permanent citizen therein, and there kept him, it amounted to a contract between the Master and said slave that said slave should be free – and that he accordingly became free – and further that there was no law authorizing a person to keep a slave at the said United States Saline

to which opinion of the court refusing said instructions so asked as aforesaid - and to the opinion of the court giving the instructions so given as aforesaid the said defendant excepts -

The defendant then moved the court to instruct the jury that they could not give the plaintiff any damages for any labour or for any detention or imprisonment which accrued or happened since the commencement of this suit - which instructions the court refused to give the jury but instructed the Jury that they might give damages for detention or imprisonment up to the time of trial this day, to which opinion of the court refusing the instructions aforesaid asked, and in giving the instructions aforesaid the defendant excepts which said exceptions are prayed to be signed sealed & enrolled and made part of the record herein, which is done accordingly" signed "David Todd (Seal)"

And at the time and place aforesaid after rendering Judgment in said cause, the defendant Tramell moved the Court for an appeal to the Supreme Court of the State whereupon he made an affidavit in open Court as the law directs, which is ordered to be filed; and with John Smith and Cornelius Davis, who were approved by the Court, personally acknowledged themselves to owe and be indebted to Adam a black man in the sum of two hundred dollars (which

the Court decrees him to be the penalty of the recognizance) to be levied of their goods and chattels lands and tenements. Yet to be void upon condition that the said appellant shall prosecute his appeal with effect, and pay and satisfy the condemnation money and all costs; or otherwise abide the judgment of the Supreme court in such appeal

And thereupon it is ordered that the said appeal be granted the defendant in said cause.

The affidavit filed by the said defendant Tramell is in the following words."

"Philip Tramell impleaded with Asa Findley ads Adam a free black man. On application for an appeal to the Supreme Court: affidavit &c. Philip Tramell one of the defendants in the above cause & impleaded with Asa Findley as aforesaid maketh oath & saith that his application for an appeal in this case is not made for the purpose of vexation or delay but because this affiant believes that he is aggrieved by the judgment in this cause"

signed "Philip Tramell"

Sworn to & subscribed
in open Court this 17th
July 1828. B. Chambers Clk"

State of Missouri to wit

I Benjamin Chambers Clerk of the Circuit Court of Saline County in said State doth certify that the foregoing sheets of thirteen pages, contains a full true and perfect record of all the proceedings had in the said Circuit Court wherein Adam a black man is plaintiff and Asa Findlay, and Philip Trammell are defendants, as fully as the same remains of record in said Court.

In testimony whereof I hereto set my hand and affix ~~the seal~~ my private seal. there being no official seal this 6th day of September 1828.

B. Chambers Clk

Filed 8 September 1828.

Gray Bynum, clerk
S.C. 1st J. D.

(5) Adam 1828
vs
Findlay & Trammell

P. Tramell
Appellant
vs
Adam (a black man)
Appellee

In the Supreme Court
First Judicial District
of May Term 1829.

And now at this present term of the Supreme Court comes the said Philip Tramell by his Attorney and says that in the record and proceedings aforesaid as well as in the rendition of the judgement aforesaid in the cause aforesaid

There is manifest error in this court that by the record and proceedings aforesaid it appears that after the jury was sworn and before the commencement of the examination of the witnesses the defendant moved the court to dismiss the suit from the docket and that the court refused to do so - therefore in that there is manifest error -

There is also error in this court that by the record & proceedings aforesaid it appears that the court refused to instruct the jury that upon the evidence from they could not find their verdict for

the Plaintiff. Therefore in that there is manifest error.

" There is also error in this court that by the record and proceedings aforesaid it appears that the court instructed the jury that upon the evidence given they could find their verdict for the plaintiff. Therefore in that there is manifest error.

There is also error in this court that by the record and proceedings aforesaid, it appears that the court refused to instruct the jury that unless they found an assault and battery and false imprisonment of the Plaintiff by the defendant, they must find their verdict for the defendant. Therefore in that there is manifest error.

" There is also error in this court that by the record and proceedings aforesaid it appears that the court refused to instruct the jury that unless they found an assault and battery of the plaintiff by the defendant they must find their verdict for the defendant. Therefore in that there is manifest error

There is also error in this court that by the record and proceedings aforesaid it appears that the court refused to instruct the jury that if the Plaintiffs cause of action, which was the last detainer of the slave in the State of Illinois (if any) accrued more than two years before the commencement of this suit, they must find for the defendant unless they find that the case comes within some one or more of the provisions or exceptions in the statute of limitations - therefore in that there is manifest error -

There is also error in this court - that by the record and proceedings aforesaid it appears that the court instructed the jury that if they found from the evidence that the Plaintiff being his slave with any part of the State of Illinois, with the intent there to reside and did so reside as a permanent citizen therein, and there kept him, it amounted to a contract between the master and the said slave that the said slave should be free

and that he accordingly became free
therefore in that there is manifest
error.

There is also error in this court
that by the record and proceedings afore
said, it appears that the court refused
to instruct the jury that they could
not give the plaintiff any damages
for any labour or for any detention
or imprisonment which accrued
or happened since the commence-
ment of the suit. Therefore in that
there is manifest error

There is error in this court.
that by the record and proceedings afore
said, it appears that the court instruc-
ted the jury that they might give the
plaintiff damages for detention or
imprisonment up to the time of
trial. Therefore in that there is
manifest error.

There is also error in this court.
that by the record and proceedings afore
said, it appears that a Petition for
leave to sue was not filed by the
plaintiff nor leave to sue given by
the court, and that nevertheless the
court refused to arrest the judgment

therefore in that there is manifest error -

There is also error in this towit that by the record and proceedings aforesaid, it appears that a Petition for leave to sue was not filed by the Plaintiff nor leave to sue given by the court and that nevertheless the court gave judgement of liberation for the Plaintiff - therefore in that there is manifest error -

And the said Philip Tramell prays that the judgement aforesaid in form aforesaid given for ~~[illegible]~~ the errors and others errors in the record and proceedings may be reversed, annulled and altogether held for ~~[illegible]~~ nothing and that he may be restored to all things which he hath lost by occasion of the said judgement -

Leonard and Wells
Attornies for the
Appellant -

Supreme Court

P. Tramell
Appellant
vs } assignment of errors
Adam (a black man)
Appellee

Leonard & Wells, Attys
for Appellant

Filed 25 May 1829
G. Bynum clk.

Tramell &c
Finly
ads
Adam

Saline Circuit Court of
July Term 1828

Be it remembered that after the jury was sworn in this cause & before the commencement of the examination of the witnesses the Defendants moved the Court to dismiss the suit from the Docket because no Petition for leave the sue had been filed by the plaintiff nor leave to sue given to the plaintiff — which motion the Court overruled & refused to dismiss the suit. To which opinion of the Court the Defendants by their Counsel excepted and pray that these three exception may be allowed them signed sealed & made a part of the record which is done accordingly

(signed) David Todd (Seal)

A true copy of the original on file

B. Chambers Clk

P. Trammell

vs Amended Record

Adam a black man

Filed 25 May 1829.

G. Bynum clk.

Tramell
Plaintiff in error
vs
Adam Hackman
Defendant in error

Supreme Court
May Term 1829

The Plaintiff in error moves the court for a rehearing of so much of the judgement in the cause as remands the cause to the Circuit Court for the purpose of ascertaining the damages sustained by the defendant in error

Alexander
Counsel for
Plaintiff in error.

Supreme Court.

— " —

Tramell

vs by

Adam

— " —

Motion for a Rehearing

Filed 30th May 1829.

G. Bynum clk.

In the Supreme Court
May Term 1829.

On appeal from the Salem Circuit Court.

This was an action of assault and battery and false imprisonment instituted by Adam (a black man) in June 1827 in the Salem Circuit Court against Finley and Franco. The Plaintiff never applied for or had leave to sue from him by the Court. The declaration contains one count, charging an assault and battery and false imprisonment and alleges that at the time &c. the Plaintiff was and still is a free person and that the defendants held & still hold and detain him in slavery - The defendants plead "not guilty" upon which an issue of fact was taken and tried at the last July Term of the Salem Circuit Court. After the jury was sworn and before the introduction of any evidence the defendant moved the Court to dismiss the suit from the docket because the plaintiff had never applied for nor had leave to sue from him, which the

Court refused. Upon the trial Adam proved that in the year 1817 Tramell lived at the United States' Salene at Shawnetown in the State of Illinois, that he lived there also in the possession of Tramell as his slave and that Tramell exercised acts of ownership over him. He also proved that Tramell and himself remained there (the negro in the possession of Tramell) until some time in 1819 when they removed to this State, since which time he has been in the possession of Tramell and Tenley as a slave. No other evidence was given on either side.

Upon this evidence the defendant moved the court to instruct the jury, that they could not upon the evidence given find a verdict for the plaintiff, which instruction the court refused and instructed the jury that upon the evidence given they could find a verdict for the plaintiff.

The defendant then moved the court to instruct the jury that unless they found an assault and battery

and false imprisonment of the Plaintiff by the defendant they must find for the defendant which instruction the Court refused to give -

The defendant then moved the Court to instruct the jury that unless they found an assault and battery of the Plaintiff by the defendant they must find for the defendant, and this the court also refused to give. The defendant then moved the ~~Court~~ Court to instruct the jury that if the cause of action which was the false detainer of the slave in the State of Illinois (if any) accrued ~~before the~~ more than two years before the commencement of this suit, they must find for the defendant unless they find that the case comes within some one or more of the provisos or exceptions in the statute of limitations, which instruction the court refused to give

The defendant then moved the court to instruct the jury that they could not give the Plaintiff any damages for any labour or detention or imprisonment which accrued or happened since the commencement of this suit - This instruction the court refused to give and instructed the jury that they might give

damages for detention or imprisonment up to the time of trial. and also instructed the jury that if they found from the evidence that ~~they~~ the defendant voluntarily took the Plaintiff being his slave into any part of the State of Illinois with intent then to reside & did so reside as a permanent citizen therein, and there kept him, it amounted to a contract between the master and the said slave that said slave should be free and that he accordingly became free. To all which opinions of the Circuit the defendant excepted. The jury found a verdict for the Plaintiff and assessed his damages at one hundred and Eleven dollars and forty three cents. and thereupon the defendant moved in arrest of judgement that there was no Petition filed by the Plaintiff for nor leave to sue given and that therefore no judgement of liberation could be entered for the Plaintiff. This motion was overruled and judgement of liberation and for his damages and costs given for the Plaintiff.

The Defendant appealed to this Court and has assigned for error these opinions of the Circuit Court.

And now on the part of the Appellant it is insisted for the reversal of the judgement -

1st that the evidence given to the jury does not show a right in the appellee to his freedom -

2d that as the ~~[illegible]~~ appellee insti=tuted his suit without applying for or obtaining leave for that purpose, the Court ought to have dismissed it upon the defendants motion made after the jury was sworn but before any evidence was introduced -

3d that a negro or mulatto claimed or held in slavery can not in any suit have judgement of liberation unless such suit is instituted according to the statute by leave of the court given upon a Petition filed for that purpose -

4th that the appellee was not entitled to a verdict without proving an as=sault or battery or false imprisonment by the defendant -

5th That in an action instituted to try the Plaintiffs right to freedom, the Plaintiff cannot recover damages for any labour, detention or imprisonment which was done or ~~committed~~ took place after the commencement of the suit - On this point see Brasfield vs Lee, 1 Ld Raymond 329 - 1. Chit. Plead 390. 2 Saund. 171 a. Note 1. Robinson vs Orland 2. Bur. 1087 -

Leonard
of counsel for
the Appellant -

Sff
Supreme Court
—
P. Tramill
Appellant
vs Z Brief
Adam (a black
man) -
—
Leonard
Counsel for
Appellant

1st

Supreme Court

May Term 1829

Adam, a free black man, appellee

vs

Philip Trammell, appellant

This was an action of Trespass assault and battery and false imprisonment brought by Adam for his freedom &c, against the appellant and Asa Finley in the Circuit Court — The Defendants plead not guilty to the action, and issue being joined thereon, a jury were sworn to try the cause — And thereupon the the plaintiff introduced testimony and proved to the jury that in the year 1810, the appellant lived at the united States Saline at Shawnee-Town in the new State of Illinois, and there resided as a Citizen until the year 1817, during all which time he had possession of Adam as a Slave, treated him as such, claimed him as his own and as such exercised acts of ownership over him — That in the year 1817, the appellant removed to this State, and brought with him the appellee as a Slave, and ever since, up to the trial of this Cause, in Conjunction with said Finley, claimed and used him as a Slave as aforesaid — whereupon the testimony being there closed, and none other being given on either side, the jury considered the same and rendered a verdict, pronouncing Adam a free man, and assessed his Damages to $111,43¾ Cents, upon which the Court rendered judgement of Liberation, ~~as~~ also for the Damages assessed — From which judgement the Defendant Trammell hath appealed to this Court, and now at this Term assigns the following

Errors to the judgment proceedings of the Circuit Court –

1st That the Court refused ~~to instruct the jury~~ after the jury were sworn and before the examination of Witnesses, ~~the~~ motion of the Defendant, to Dismiss the ~~the~~ plaintiffs suit from the Docket –

2d That the Court refused to instruct the jury that upon the evidence given they could not find a verdict for the plaintiff –

3d That the Court did instruct the jury that upon the evidence given they could find find a verdict for the plaintiff

4th – ~~That the~~ Court refused to instruct the jury that unless they found an assault and battery and false imprisonment of the plaintiff by the Defendant they must find their verdict for the Defendant –

5th – That ~~the~~ Court refused to instruct the jury, that unless they found an assault and battery of the plaintiff by the Defendant they must find a verdict for the Defendant –

6th – That the Court refused to instruct the jury that if the plaintiff's Cause of action, which was the last detainer of Adam in the State of Illinois (if any) accrued more than two years before the commencement of this suit, they must find for the Defendant, unless they find that the Case Comes within some of the exceptions or provisions of the Statute of Limitations –

7th – That the Court erred in instructing the jury that if they found from the evidence that the plaintiff being the Slave of Transwell, was Carried by his Master into the State of Illinois with an intent there to reside and did so reside there, as a ~~[illegible]~~ permanent

Citizens and then ~~[illegible]~~ kept Adam as a slave, it amounted to a contract between them, and that Adam thereby became free.

8th That it appears that the Court refused to instruct the jury that they could not give the plaintiff any damages for any labour or for any detention or imprisonment, which accrued or happened since the commencement of this suit.

9th That the Court did instruct the jury that they might give the plaintiff Damages for the imprisonment up to the time of trial.

10th & 11th The Court Erred in ~~[illegible]~~ refusing to arrest the judgement, & instead thereof, gave judgment of Liberation, as also for the Damages assessed, notwithstanding there was no petition for leave to sue, nor leave given by the Court to sue, prior to the commencement of the suit.

The Counsel for the Appellee will pass by the 1st assignment of Error, leaving it to be answered with others which will more immediately bring up the point upon which it rests, ~~and~~ attend first to the 2d & third Errors assigned, between which the Court will perceive there is no other difference, than such as is apparent in their form — It was the province of the jury to decide the facts of the cause, and the province of the Court to determine the law — It would therefore have been improper for the Court to have given the instruction mentioned in the second, and equally so for it to have withheld the instruction alleged, as given in the third. For it is very clear from the record, that evidence had been given to the jury, of the freedom of Adam, and by consequence the above rule of law would have been violated, if the Court had ~~the Court~~ instructed the jury that they could not find their verdict upon that evidence for the plaintiff — it would have amounted to a determination of the facts by the Court.

As to the fourth and fifth Errors assigned, they appear also untenable, and admit of one answer, which will appear by adverting to the facts necessarily involved in the issue, and to the statute under which it was prosecuted - By the Statute (See 1 Vol. Digest 404) the action adopted by the plaintiff, is the appropriate one, the remedy prescribed, and by which the freedom of the plaintiff could be inquired into & ascertained - The freedom of the plaintiff therefore being a fact inquirable into in the action adopted, to have given the instructions prayed by the defendant, would have been a virtual prohibition of that inquiry - Unless to constitute the relation of Master & Servant in the given case, it was necessary to prove a continual beating & imprisonment of the appellee by the appellant - Such an idea would be absurd in the extreme -

As to the sixth assignment of Error it seems equally objectionable, as the last - For it seems very clear from the record that the appellant did not relinquish his claim and right to the appellee after his removal to this State - but, on the contrary, that he continued to exercise the same acts of ownership over him here, as in the State of Illinois -

As to the seventh Error it is answered by the 6th Article of the Ordinance enacted by the Congress of the United States for the Government of the Territory of the United States, North west of the Ohio River - See 1st Vol. Laws U. States page 520. See 2 Vol Marshalls Reports page 471 Rankin vs. Lydia.

3a

The Eighth assignment of Error is contradicted by the record, and therefore needs no answer –

The ninth Error assigned cannot be sustained for the reason that the plaintiff was entitled to damages to the extent of the injury, at the time of the finding of the verdict – And this case is distinguishable in its nature, from other cases of tort in this respect, for as much as the principal injury here complained of, is the restraint of the personal liberty of the plaintiff, which necessarily continues to the rendition of the judgment in the action – whereas in those cases of tort, resulting from one single act of a wrong doer, and which in itself is replete, and for which an action would lie, in such case, the plaintiff cannot recover but for such wrong, or for every wrong complained of, and proven to have been committed, prior to the commencement of the action in which the complaint is made – Although it is not now within the recolection of the appellee's counsel, that any adjudication has directly been made upon this point, or in support of the distinction here drawn, yet it is very obvious, that such is the law, and must be so decided, whilst we recognize the maxim that the common law guarantees no right, without affording a remedy for its violation – If this be an axiom of the law, it is not to be denied, or questioned, that it would be violated if the plaintiff were denied his damages for the restraint of his liberty during the prosecution of his suit for freedom – And indeed how imbecile the law would be, were it to require the plaintiff to turn round after his

judgment of Emancipation and ~~finding~~ his freedom thus declared, to prosecute his suit for his damages, arising for his services as a slave &c, and for the restraint of his liberty during the continuance of his suit how long soever it might be.

And the Counsel for the appellee in answer to the 10th & Eleventh Errors assigned, would remark, that upon examining the Statute of this State before mentioned upon the subject of suits for freedom &c, that that section of the statute which requires, a petition for leave to sue &c, is to be construed as a beneficial provision in favour of that unfortunate class of beings of our country, whose condition and situation in life precludes the idea of their being possessed of the necessary means to pursue their rights through the judicial forums of our country, according to the complicated forms of law. Indeed the terms negro, slave, and pauper, when suggested to the mind, are not distinguishable in their import, and are so understood, generally — For it is well known, that by the laws of the land, negroes held in slavery, are incapable of holding property — Such being the case this Court in favour of liberty, will give the construction here given to the statute aforesaid, and in doing so, the Counsel for the appellee humbly conceives the Court will best further the ends of justice, and meet in its decision — the sanction of our statute of Jeofails & Amendments, which independent of every other consideration, protects the appellee's case from the 1st Error assigned, and from other, the entanglings of justice, urged against the judgement herein rendered

P. R. Hayden atty
for Adam

Phillip Trammell appellant
vs
Adam a Black man appellee

This was an action of trespass and assault and Battery and false imprisonment instituted by Adam against Finley and Trammell to recover his freedom. The declaration contains one count charging an assault and battery and false imprisonment and alledges that at the time when he was and still is a free person and that the defendants held and still do hold and detain him in slavery. The defendants pleaded not guilty upon which plea issue was taken and tried Verdict and Judgment for the plaintiff appellee in this court. To reverse this Judgment the defendant Trammell prosecutes his appeal

Before the examination of the witnesses the defendants moved the court to dismiss the suit from the docket because no petition for leave to sue had been filed; and because no leave had been given. It was in evidence on the trial that

Trammell the appellant in the year 1810 resided at the United States Saline in the State of Illinois; and that the appellee who is a negro lived there also in the possession of the appellant and as his slave: that Trammell continued to reside at the said Saline till the year 1817 (Adam still being in his possession) when he removed to the territory (now state) of Missouri: and that since that time the ~~defend~~ appellee has been in the possession of said Trammell & Finley as a slave

No other evidence was given on either side.

It is assigned for error

1st that the court refused to dismiss the suit from the docket on motion of the apt. made before the Jury was sworn

2nd because the court refused to instruct the jury that on the evidence they could not find a verdict for the appellee

3rd because the court refused to instruct the jury that unless they found an assault and battery and false imprisonment of the plaintiff by the defendants they must find for the defendant

The 3rd Section gives the form of the action which is a pt & battery & false imprisonment and says that the declaration shall contain an averment that at the time of committing the grievances he was and still is free

The fourth section requires the plaintiff to establish his freedom and then says that if the issue be found for the plaintiff the Court shall give Judgment of liberation It is argued that unless there is a petition and leave given to sue that the Judgment of liberation cannot be given thoug a common law Judgment for damages alone might be given

My view of this objection is this that the petition and leave to sue are benefits intended for the plaintiff and that he may waive them and rely on his own resource or the goodness of the defendant and the common law powers of the Court to protect him and that he may if he avers in his declaration that he was free and still is free have the statute Judgment there is therefore no error on this point

I will consider the second 3rd & 5th Errors together as I consider the question of the plaintiffs right under the Ordinance of Congress of 1787 is alone involved in them all

One question is whether an actual assault battery & imprisonment must be proved If this were purely a suit at common law and it were proved that the defendant held and exercised mere acts of ownership and authority over the plaintiff as a slave I should think the proof is sufficient to sustain the charge and that in this case the plaintiff having asserted that he was & is a free man and that he is holden as a slave is Enough under the statute if proved to sustain the action and to warrant the Court to consider this a proceeding under the statute and to give the judgment of liberation the defendant has all the benefit ~~provided for him~~ which the statute provides for him as to the reviewing of these Errors the matter has often been decided by this Court for the appellee

As to the fourth point I am of opinion that in every case except in a criminal case the statute of limitations must be

4th that the Court refused to instruct the Jury that if the plaintiffs cause of action accrued which was the last detainer more than two years before the bringing this action they must find for the defendant unless they find that the plaintiff can come within some of the Exceptions in the proviso of the Statute of limitations

5th That the Court instructed the Jury that if they found from the evidence that the plaintiff brought his Slave into any part of the State of Illinois with the intent to reside and did reside as a permanent Citizen and there kept him it amounted to a Contract between the master and the Slave that the Slave Should be free & that he accordingly became free 6th That the Court refused to instruct the Jury that they could not find any damages for any assaut battery & imprisonment happening since the commencement of this Action and that the court gave the contrary instruction

7 That it appears by the record that

in this case that there was no petition filed and leave given by the Court to sue and on this the Court refused to arrest the Judgment

I will Examine the 6th Error first which is that the Court allowed the Jury to assess damages down to the time of the trial This we conceive is clearly Erroneous and and that the Judgment as respects the damages alone ought to be reversed

I will consider the first and seventh Errors together which relates to the petition and leave to be given by the Court to persons claiming freedom before the suit can be instituted

The Act of the legislature passed the 30th december 1824 provides by the first section ~~[illegible]~~ that persons held in slavery may petition the Court for leave to sue and that if the Court think a good ground for freedom is shewn they will give leave order process free of costs and take steps to secure to the petitioner sufficient liberty to attend Counsel and Court

L C

pleaded that not having been done no-
question can be made on it

On the 6th Error the Judgment is
reversed as to the damages alone and the
Cause is sent back to the Circuit to enquire
of those damages and that the residue
of the Judgment is affirmed

M. McGirk Judges
George Compkins

I dissent from the opinion above given
on the ground, that the plaintiff could
recover, as at common only; & at com-
-mon law, the Judgment for damages
is erroneous. To be entitled to the Judgment
of liberation, the petition should be filed
agreeably to the provisions of the statute
R Wash

Adam
vs
Johnson
Trammell