Tiffin, Clayton + Menard, Louis vs Merry, John, a person of Colour 1827 3rd District St. Louis Co 142/8

[Also Merry v Tiffin + Menard]

15

P for F / False imp / A + Batt

May + Nov (sentence) opinion

John born into IL "slavery"

State of Missouri } ss. Circuit Court
County of S Louis } November Term } 1826

Be it remembered that heretofore to wit at the November Term of the Circuit Court for the County of S Louis in the year of our Lord one thousand eight hundred and twenty six John Merry a free man of Colour who is permitted to sue as a poor person by his Attorney J. Charles filed in the Office of the Clerk of the aforesaid Court his declaration against Clayton Tiffin and Louis Menard in the words and figures following to wit —

John Merry a free man of Colour who is permitted by the Court to sue as a poor person, by his Attorney J. Charles assigned as counsel by the Court Complains of Clayton Tiffin and Louis Menard of a plea of trespass. For that the said defendants heretofore to wit on the twenty fifth day of September in the year of our Lord one thousand eight hundred and twenty six with force and arms at the City of S Louis unlawfully an assault did make upon the body of said John and then and there did beat, bruise and ill treat him said John and then and there imprisoned him said John, and kept and detained him in prison without any reasonable or probable cause whatsoever against the Will of said John and have ever since ~~and~~ kept and detained him said John in prison and still keep and detain him in prison against his will without any reasonable or probable cause whatsoever Contrary to the laws of this State, and the said defendant other wrongs then and there did to him said John against the peace and dignity of the State — Wherefore the said John says he is injured, by said defendants and hath sustained damages to the amount of six hundred dollars and therefore he sues —

McGirk & Charles. Atts. pro. Que

And thereupon the Clerk of said Circuit Court issued the following Writ —

County of S Louis ss

The State of Missouri —

To the Sheriff of said County — Greeting —

We command you to summons Clayton Tiffin and Louis Menard, that they be and appear before the Judge of the Circuit Court at the next term thereof to be held at the City of S Louis within and for the County of S Louis on the fourth Monday in November next then and there to answer unto John Merry a free man of Colour who is permitted by the Court to sue as a poor person of a plea of trespass to the damage of said plaintiff of six hundred dollars — And have you then there this writ,

Witness Archibald Gamble Clerk of our said Court at Office this eleventh day

of October in the year 1826. Archibald Gamble Clerk—
Upon which said writ the Sheriff of the County aforesaid made his return in words and figures following—to wit—
Executed this writ October 11th 1826 on Clayton Tiffin and Louis Menard by reading the same to them. R. Simpson Shff—
And at the same term of the same Court the defendants by their Attorney filed their plea in the words and figures following to wit.
Said Clayton Tiffin and Louis Menard comes and defends the wrong and injury and say that they are not guilty in manner and form by said ~~plaintiff~~ John Merry thereof ~~alleged~~ above alledged against them. Lawlep. Atty for Defts—
And afterwards to wit at the March of the said Court for the year eighteen hundred and twenty Come the parties aforesaid by their respective attornies aforesaid and thereupon also come a Jury to wit. Phineas Bartlett. William M Fugate, Beriah Cleland, William R. Grimsby, Richard Dunlavy, Joseph White, David Lowry, John Knight, Joseph Rudisell, John Coons, Benjamin Young and Zachariah Willson twelve good and lawful men who being duly elected tried and sworn well and truly to try the issue within joined between the parties aforesaid upon their oath aforesaid do say that the said Clayton Tiffin and Louis Menard are not guilty in manner ~~and~~ form as the said John Merry hath thereof above alledged against them therefore it is considered that the said John Merry take nothing by his said writ and that the said Clayton Tiffin and Louis Menard go thereof without day—
To which Judgment of the Court the plaintiff excepts and files his bill of exceptions in the words and figures following to wit—
Be it remembered that on the trial of this cause, it was proved on the part of the plaintiff, that John the plaintiff is now about thirty five or thirty six years of age that he was born in the family of Trotier— in the Village of Cahokia in the new state of Illinois; That the mother of said John was held and claimed as a slave in Illinois till her death; that John the plaintiff was born and continued in a state of Slavery in Illinois till about five or six years ago, when said plaintiff entered into a contract or agreement with Louis Pinconeau who then and there held him as a slave in Illinois, for the freedom of himself, his wife and two children, and by said contract or agreement agreed to pay to said Pinconeau for the freedom of himself, his wife and two children, the sum of nine hundred dollars which said sum of nine hundred dollars was to be paid within the term of three years— That soon after the said Contract was entered into between said Pinconeau

and the plaintiff, the plaintiff went at large in the full excercise of his natural freedom, for several months, part of the time in Illinois & under the eye of said Pinçoneau and part of the time in St Louis Missouri; That said Pinçoneau acknowledged to one of the witnesses, that the plaintiff had paid to him, as a part of the money to be paid by him for the freedom of himself, his wife and two children on said contract, the sum of two hundred dollars in money and two horses of the value of fifteen dollars each; That said Pinçoneau also acknowledged to said Witness, that he intended to deprive John of his liberty and put him on board of a boat & send him to Orleans to be sold as a slave; that said Pinçoneau further informed the witness, that he intended to cheat John the plaintiff out of all he had paid on said contract, by sending him to New Orleans to be sold as a slave. It was further proved a few days after said Pinçoneau had declared his intention of depriving the plaintiff of the liberty he then enjoyed and of cheating him out of all the money paid by him the plaintiff on said contract, that the plaintiff was seen on board of the steam boat General Brown, then lying at St Louis, confined in Irons, and that said boat was bound for and did in a short time sail from St Louis for Orleans, that said Pinçoneau was also on board of said boat at the same time with plaintiff for a short time before it sailed. That the plaintiff, after being put on board said boat, was absent for several years — And that at the time of the commencement of this action up^t till the day of trial of this cause said plaintiff was & has been in the possession and custody of Clayton Tiffin one of the defendants ——— The defendant then produced and offered to read the following deposition of Auguste Trotier, to wit,

Auguste Trottier of lawful age sworn on the part of the defendants

He knows John Merry a negroe the plaintiff in the above ~~in~~ suite knows him from his birth about 35 or 36 years ago he was born at his house in Cahokia and was his slave, he got him by inheritance through his father and mother viz. said Johns from his said deponents father the said father and mother of said John were negroe slaves belong to his said deponents father. When said John was three years old or thereabouts he sold the father ~~and~~ mother and child he believes to Mr Pincheneau as said Pincheneau paid him for them — Question by plaintiffs Attorney — When did your father bring them to Illinois? Ans^r. He does not know — Question — Did you know him John a slave in 1787 in the State of Illinois. he was not born but his father and mother were slaves the father was a slave 60 years ago and the mother 40 or more, from his first knowledge he knew her as a slave belonging to his father deponent is 56 years old & John is about 35 years old — Question by defendants Attorney — Did you know the mother of John to be a slave 50 years ago. Ans. I did

She was a negro — Augus Trotter —

The following deposition of Louis Pinconeau the father of Louis Pinconeau the party to the contract with John the plaintiff was read on the part of the plaintiffs, to wit

Louis Pinconeau of lawful age sworn on the part of the plaintiff — Says his son in conversation with the negro the negro observed that he would not serve his master any longer but if he would give him time he would get the money he Pinconeau had given for him. Pinconeau gave him one month to get and then continued for two weeks more. My son never received the money that I ever heard or any property from said negro — Sworn and subscribed to.

Louis his X mark Pinconeau —

No other evidence material to the cause at issue was given on either side and the defendants by their Attorneys then prayed the Court to instruct the jury as follows, to wit, 1st. That if the Jury find that the plaintiff was born a slave in Illinois of a negro mother, held in slavery there before the year 1787, unless they find that said plaintiff has been emancipated by his owner, they ought to find for the defendants —

2. That no contract that may have been made between the plaintiff John Henry and Louis Pinconeau, relative to the freedom or slavery of the said John as the same was spoken of by the Witnesses, is sufficient in law to entitle the said plaintiff to his freedom

3. That even if Pinconeau made a contract with said plaintiff to set him free on the payment of a sum of money — such contract could not operate to effect his emancipation until the entire payment of the money

4. There is no evidence before the Jury of any act of any one of the successive owners of said John Henry which can in law amount to an emancipation of said John

To the giving of which said instructions to the Jury, the plaintiff by his counsel objected; but the Court overruled the objection and gave said instructions to the Jury —

The plaintiff by his Counsel then prayed the Court to give to the Jury the following instructions, to wit;

1st. That if the Jury believe from the evidence, that John the plaintiff was born in the new State of Illinois, subsequent to the passage of the ordinances passed by the Congress of the United States on the 13th. day of July, 1787. for the government of the Territory of the United States, Northwest of the River Ohio that they ought to find for the plaintiff

2nd. If the Jury believe from the evidence that the plaintiff contracted with Louis Pinconeau in the State of Illinois for his freedom and was set at liberty by said

Freemen in pursuance of said Contract, that they ought to find for the plaintiff unless they also find that said plaintiff was not to be free till all the purchase money to be given by said Contract for his freedom was first to be paid –

3rd. That unless the Jury believe from the evidence that John the plaintiff or some of his maternal ancestors were held in Slavery in the Now State of Illinois before or at the time of the passage of the ordinance passed by the Congress of the United States on the 13th. July 1787 for the government of the Territory of the United States Northwest of the River Ohio, by a French or Canadian inhabitant or inhabitants or other Settler or Settlers of the Kaskaskias, St. Vincents, or the neighbouring Villages who professed him, her or themselves a Citizen or Citizens of the State of Virginia at or previous to the passage of said ordinance, that they ought to find for the plaintiff –

To the giving of the said instructions prayed for by the said defendant and refusing to give to the Jury the said instructions prayed for by the plaintiff, and to all of said decisions of said Court, the said plaintiff by his Counsel excepts, and prays the Court that this his bill of exceptions may be allowed signed and sealed for a testimony, by the Judge and be made a part of the Record in the proceedings of this cause, which is done accordingly.

Wm. B. Carr (Seal)

John Merry files his affidavit in this case and prays an appeal to the Supreme Court which is granted and the said plaintiff is not to be held to give Security for Costs and the record and proceedings are ordered to be certified up accordingly –

State of Missouri
County of St. Louis } ss

I Archibald Gamble Clerk of the Circuit Court for the County of St. Louis do hereby certify that the above and foregoing is a correct transcript of the Record and proceedings in the Case of John Merry a free man of Colour vs. Clayton Duffin & Louis Menard as the same remains of record in my office

Witness Archibald Gamble Clerk of our said Court at St. Louis this Tenth day of May 1829 –

Archibald Gamble Clerk

No. 205 (15)

205

John Merry

vs

Clayton Jeffings & Louis Menard

Transcript $2.30

Certificate 50 Tax on Seal 1.00 1.50

3.80

Filed May 11th 1827

T. Douglass Clk

John Merry appellant in error } Supreme Court 3d Judicial Circ't
Clayton Tiffin & Louis Menard defts } May Term 1827

Now at this day comes the plaintiff in error and says that in the record and process aforesaid, and also in giving the ~~[illegible]~~ judgment aforesaid there is manifest error in this, that is to say, that by the record and process aforesaid, it appears that the said Judgment is given for the said Clayton Tiffin and Louis Menard against the said John Merry, when by the laws of this land the said judgment ought to have been given for the said John Merry against said ~~the~~ Clayton Tiffin and Louis Menard. Therefore in this there is manifest error.

2nd There is also manifest error in this. That the said Court gave the instructions asked for by the defendants whereas said instructions should have been refused.

3rd There is also manifest error in this, that the Court refused to give the instructions asked for by the plaintiff, whereas said instructions should have been given. And the said John Merry prays that for these and other errors in the said record the said Judgment may be reversed annulled and held entirely for nothing, and that he may be restored to all things that he has lost by occasion of the said Judgment; and that the said defendants may rejoin to the said errors.

John Merry by
McGirk & Charless Attys

Joined — Error

Cam[illegible]

John Merry
vs
Clayton Tiffin &
Louis Menard

Assignment of Error
McGirk & Charles Attys

Filed May 11th 1827
H. Douglass Clk

John Merry
vs
Jeffers & Menard

Error from St Louis Circuit Court

The case is that an action of Assault &
battery was brought against the defendants in Error by John
for freedom The record shews that the Mother of the plaintiff
before the Ordinance of Congress of 1787 was holden as a Slave
in the Territory Northwest of the Ohio River and in that part now called
Illinois and that after said Ordinance the said mother was
still holden in Illinois as a Slave & while so holden &
about 30 years past in the Illinois John was born
and that he was holden there as a Slave till lately
The Counsel for John asked the Court to instruct the
Jury that by virtue of said Ordinance under these
circumstances John was entitled to his freedom which
the Court refused, many other points were made in
the Court below & assigned for Error none of which
will we notice as we are with the plaintiff in error
on the point above stated The Ordinance is found in
the first Volume of the Laws of the United States ~~laws~~ p 680
The 6th Article says that there shall be neither Slavery
nor involuntary servitude in said Territory otherwise
than for the punishment of crimes whereof the party shall
have been duly convicted this case is not within the exception
We cannot undertake to give this words a construction no words
are to be construed unless a doubt arises here there is no doubt
The ordinance is positive that Slavery ~~does not~~ cannot exist & shall
we or any other Court say otherwise

But it is contended by the Counsel of the defendants Lapin & Menard that although the words are clear enough in themselves yet that when we look at the cession Act of Virginia & the Whole of the Ordinance that there is much room to doubt if these general positive words ought not to be so understood as to admit those who were slaves in that Country at the adoption of the Ordinance and their descendants to continue so because the Ordinance says in an other place that the inhabitants shall be protected in the just preservation of their rights & property and that by the Act of Cession of Virginia it is stipulated that the inhabitants shall be protected in the enjoyment of their right & liberties 1st Vol laws U.S. 473

The whole of these instruments taken together are unable to create any doubt in our minds as to the meaning of the 6th Article of the Ordinance, The express words in the Cession Act of Virginia that the inhabitants shall be protected in the enjoyment of their rights & liberties are completely satisfied by securing to them the enjoyment of such rights as they then had and not that the things or objects that might then happen to be property should be so thought all future time this man was not then born and when he was born into existence the law forbid slavery to exist and at the time of the making the Cession Act this man John was not property and at the time of his birth he could not be property There is nothing in the Cession Act forbidding Congress to fix and point those things which might afterwards be the subject of property According to this view of the subject John is free The Judgment is reversed with costs & sent back to the Circuit Court for a new trial

McLean
G Tompkins
Wayne

7

Meny } Opinion
v
Jeffries & Menard

205

filed 21st May 1827

H. Douglass Clk

STATE OF MISSOURI, }
Third Judicial District. } ss.

The State of Missouri, to the Honorable the Circuit Court of St. Louis County, GREETING:

FOR AS MUCH as in the record and process, as well as in the rendition of Judgment, on a certain plaint which was in our Circuit Court, for our County of St. Louis *before our Judge thereof, between* John Murray a person of Colour *Plaintiff, and* Clayton Tiffin & Louis Menard *Defendant in a plea of* Trespass Vi et Armis *as it is said, manifest error hath happened, to the great damage of the said* Clayton Tiffin & Louis Menard *as by* their *complaint we are informed:* WE, *being willing that the error, if any there be, should be duly amended, and full and speedy justice done to the parties aforesaid in this behalf,* COMMAND YOU, *that if judgment be thereupon given, then a transcript of the record of the judgment, with all things touching the same, you certify and send (with this writ) to our Supreme Court, to be holden at the City of St. Louis, within and for the Third Judicial District, on the* first Monday *of* November *next, that our Judges of our said Court, inspecting the record of the judgment aforesaid, may cause to be done therein, for correcting the said error, what to them of right, and according to law, shall seem meet to be done.*

WITNESS, *THOMPSON DOUGLASS, Clerk of our Supreme Court for the Third Judicial District.*

IN TESTIMONY WHEREOF, *I have hereunto set my hand and seal of Office, at Office, this* Thirtieth *day of* October *in the year of our Lord one thousand eight hundred and twenty* Seven *and of the Independence of the United States of America, the* fifty Second

T. Douglass Clk

No. 11

Novr. Term 1827

Teffin & Monard

vs Writ of Error

John Merry

writ of tax $2.50

State of Missouri } Circuit Court
County of St Louis } November Term } 1826

Be it remembered that hertofore to wit On the seventh day of October in the year of our Lord one thousand eight hundred and twenty six John Merry a free man of Color by his Attorney filed in the office of the Clerk of the Circuit Court of the County of St Louis aforesaid his declaration against Clayton Tiffen and Louis Menard in the words and figures following to wit

State of Missouri } In the Circuit Court
County of St Louis } November Term 1826

John Merry a free man of Colour who is permitted by the Court to sue as a poor person, by his Attorney J. Charless assigned as Counsel by the Court Complains of Clayton Tiffin and Louis Menard of a plea of Trespass. For that the said defendants hertofore to wit on the twenty fifth day of September in the year of our Lord one thousand eight hundred and Twenty six with force and arms at the City of St Louis unlawfully an assault did make upon the body of said John and then and there did beat bruise and ill treat him said John and then and there imprisoned him said John and Kept and detained him in prison without any reasonable or probable cause whatsoever against the will of said John and have ever since Kept and detained him said John in prison and still Keep and detain him in prison against his will without any reasonable or probable cause whatsoever Contrary to the laws of this State, and the said defendant other wrongs then and there did to him said John against the peace and dignity of the State

Wherefore the said John says he is injured by said defendants, and hath sustained damages to the amount of six hundred dollars and therefore he sues &c.

McGirk & Charless
Attys pro Que

Whereupon the Clerk of the said Circuit Court issued a writ of summons directed to the Sheriff of said County in the words & figures following to wit — County of St Louis ss

The State of Missouri To the Sheriff of said County — Greeting

We command you to summons Clayton Jeffries & Louis Menard that they be and appear before the Judge of our Circuit Court at the next Term thereof to be held at the City of St Louis within and for the County of St Louis on the fourth Monday of November next then and there to answer unto John Merry a free man of Color who is permitted by the Court to sue as a poor person of a plea of trespass to the damage of said plaintiff of six hundred dollars and have you then there this writ —

Witness Archibald Gamble Clerk of our said Court at Office this Eleventh day of October in the year 1826.

Archibald Gamble Clerk

And said Sheriff returned said writ endorsed as follows to wit

Executed this writ October 11th 1826 on Clayton Jeffries and Louis Menard by reading the same to them. R. Simpson Shff

And afterwards to wit at the same Term of the said Court the said defendants by their attorney file their plea in the words and figures following to wit —

Clayton Jeffries & Louis Menard vs John Merry — Colored man — Nov. Term C.C. Co St Louis 1827

Said Clayton Jeffries & Louis Menard Come and defend the wrong and injury and say that they are not guilty in manner and form by said John Merry thereof above alledged against them — Lawless. Att. for Defts.

And the plaintiff doth the like — McGirk for Pltff

And afterwards to wit at the March Term 1827 of the said Court Come the parties aforesaid by their respective Attornies aforesaid and thereupon also Come a Jury to wit, Phinehas Barlett, William Hugate, Beriah Cleland, William R. Grimsley, Richard Dunlany

Joseph White David Lowry, John Knight, Joseph Rudesele John Coons Benjamin Young, and Zachariah Wilson twelve good and lawful men who being duly Elected tried and Sworn well and truly to try the issue within joined between the parties aforesaid upon their oath aforesaid do say that the said Clayton Tiffin and Louis Menard are not guilty in manner and form as the said John Merry hath thereof above alleged against them therefore it is considered that the said John Merry take nothing by his said writ and that the said Clayton Tiffin and Louis Menard go thereof without day

And at the same Term of the said Court John Merry files his affidavit in this case and prays an appeal to the Supreme Court which is granted and the said Plaintiff is not to be held to give security for Costs, and the Record and proceedings are ordered to be certified up accordingly—

Whereupon the Clerk of the said Circuit Court certified up accordingly to the Supreme Court a transcript of the Record and proceedings in this case— And afterwards to wit on the twenty fifth day of July in the year of our Lord one thousand Eight hundred and twenty seven the aforesaid Clayton Tiffin and Louis Menard filed in the Office of the Clerk of the said Circuit Court a Certified Copy of the Opinion delivered by the Supreme Court in this Case Reversing the Judgment of the Circuit Court with Costs and remanding the case for a new Trial— Whereupon the same was redoc=ted— And afterwards to wit at the July Term of the said Circuit Court on the 10th day of August in the year of our Lord one thousand Eight hundred and twenty seven Come the parties aforesaid by their respective Attorneies aforesaid and thereupon also come a Jury to wit. Alexander Moore, John Shade, John H. Baldwin Elliott Lee, Joseph A. Wherry, Thomas English, William Thomas Xavier Dugal, Peter Alexander, Enoch Steen Ephraim Town and David B. Hill twelve good and lawful men who being duly

elected tried and sworn well and truly to try the issue in this joined between the parties aforesaid upon their oath aforesaid do say that the said defendants are guilty in manner and form as the said plaintiff hath above thereof complained against them and they assess the damage of the said plaintiff by him sustained by reason of the trespass and detention in the declaration mentioned to the sum of one Cent, Therefore it is considered that the said John Merry be liberated and entirely set free from the said Clayton Tiffin and Louis Menard and all persons claiming from through or under them and it is further considered that the said John Merry recover against the said Clayton Tiffin and Louis Menard his damages aforesaid in form aforesaid by the Jury assessed and also his costs and charges by him about his suit in this behalf expended and that he have thereof execution —

And afterwards to wit on the twenty first day of September in the year 1827 at the same term of the said Court the said Clayton Tiffin and Louis Menard filed their Bill of Exceptions in the words and figures following to wit

John Merry a man of Colour
vs
Clayton Tiffin and Louis Menard } Suit for freedom under the Statute

Be it remembered that at the trial of this cause the plaintiff, in order to support the issue on his part the following depositions Viz: The Deposition of Auguste Frotier taken by consent of parties at the Office of C. B. Penrose Esqr. April 6th. 1827

Auguste Frotier of lawful age, being sworn on the part of the defendant — He knows John Merry a negro, the plaintiff in the above suit, knows him from his birth about 35 or 36 years ago; he was born at his house in Cahokia and was his slave He got him ~~through~~ by inheritance through his father & mother Viz said John from his said deponents father. The father & Mother of said John were negro slaves belonging to his said deponents father When said John was three years old or thereabouts. he sold the

father, mother and child, he believes, to Mr. Pincoursau, as said Pincoursau paid him for them

Question by plaintiff's attorney — When did your father bring them to Illinois? Ans. He does not know —

2. Did you know him, John, a slave in 1787, in the State of Illinois? A. He was not born, but his father & mother were slaves. the father was a slave 60 years ago, and the mother 40, or more. from his first knowledge he knew her as a slave belonging to his father Deponent is 56 years old. and John is about 35 years old —

Question by Defendants attorney — Did you know the mother of John to be a slave 30 years ago? Ans. I did. She was a negro

Deposition of Pierre Bennet, taken as above "says that he knows that Mr. Pincoursau brought John to this State to send him to New Orleans, and that Louis Pincoursau said, in deponents presence that if the negro would the money he had paid for him, he would give him his freedom — Does not know that the negro ever gave Pincoursau any part of the price"

Deposition of Louis Pincoursau, taken as above —

Louis Pincoursau of lawful age being duly sworn on the part of the plaintiff, says, his son in conversation with the negro, the Negro observed that he would not serve his master any longer, but if he would give him time, he would get the money he, Pincoursau had given for him — Pincoursau gave him one month — and then continued the time for two weeks more — My son never received the money, that I ever heard or any property from said Negro —"

The plaintiff also proved by verbal testimony that some time about two years ago, Sullivan Blood (by command of Louis Menard, one of the defendants, who said he was agent for some person in New Orleans who claimed John as his slave) crossed the river into Illinois to get John the plaintiff that John was delivered to him in Illinois, by Mr. Christy who

lives in Cahokia; that he brought him John, to St Louis & put him in jail for safe keeping, where he remained a few days (say 3 or 4) and was then taken out and sold by Menard to Tiffin, the other defendant — That Tiffin had possession of him for some time, and hired him out by the day to one Mr. Walton from some time in June till about the first of August 1826. There was no proof of any possession of or control over the plaintiff, had or exercised by either of the defendants, since the time last above mentioned; It was however in proof that for a long time past said John has been going about as a free man, and hired himself to one of the witnesses who spoke to Tiffin on the subject and received for answer, that he Tiffin, had nothing to do with him; adding, that he John had gained his freedom And no other material evidence was given in the cause

And thereupon the defendants by O Bates their counsel, moved the Court to instruct the Jury — "That if the plaintiff "be a negro, born of a negro mother, at or near Cahokia in the "now State of Illinois — "that the mother was held in slavery by one "of the ancient french inhabitants of that country before the year "1787 — that the plaintiff was born and held in slavery, and "transmitted from hand to hand as a slave repeatedly, from the "time of his birth, till within a few years past, there is no law, "which of itself and indepently of some act of his owner, can "operate his emancipation"

Which instruction the Court refused to give as prayed, but on the contrary, decided and instructed the Jury that whatever might be the opinion of this Court, it felt bound by the decision of the Supreme Court of the State, to instruct them (and the Court do accordingly instruct them) that under the circumstances mentioned in the instruction above prayed for, the ordinance of Congress passed in the year 1787, for the government of the Territory North west of the River Ohio, can and does

operate the emancipation of the said John the plaintiff

To which Opinion and decision of the Court the defendants by their Counsel except, and tender this their bill of exceptions, and pray that the same may be signed for a Testimony, which is done accordingly

Wm. C. Carr

State of Missouri
County of St Louis } ss I Archibald Gamble Clerk of the Circuit Court for the County of St Louis do certify the above to be a true Copy of the Record and proceedings in the case of John Merry vs Clayton Tiffin and Louis Menard as the same remains in my Office

Given under my hand and seal of Office at St Louis this Twenty Second day of October 1827

Archibald Gamble Clerk

No. 11

205

John Merry

vs

Jeffin J Menard

Transcript	$2 " 14
Certificate	0 " 50
Seal	1 " —
	3 " 64

filed Novr 2d 1827

H Douglass Clk

Louis Menard & Clayton Tiffin
pffs

in Error Supreme Court 3 Dist

Jno Merry a Colored man
Deft

Nov. Term 1827

And said Louis Menard & Clayton Tiffin come and say by their atty that in the record & proceedings and record aforesaid there is manifest Error in this to wit that when by the record aforesaid it appears that the Judgment is given for the said John Merry against said Louis Menard and Clayton Tiffin nevertheless the said Judgment by the law of this State ought to have been given for the said Louis Menard and Clayton Tiffin against the said John Merry therefore in this there is manifest Error and they pray that said Judgment for that Error and others in the record may be revoked annulled and held entirely void and that the said Louis Menard and Clayton Tiffin may be restored to all things which they have lost by reason of the Judgment aforesaid and that said defendant may to this assignt of Errors

rejoin

Carlisle
Atty for pffs in Error

Louis Menard and Clayton Tiffin vs John Merry } In Error

And the said defendant, by his attorneys comes &c. and says there is no Error in the record, a Judgment & proceedings aforesaid, as the said plaintiffs in their assignment of Errors have above alledged, wherefore the said defendant prays Judgment, and his costs &c.

McGirk, Charles & Strother attys for pff Deft.

Louis Menard & Clayton
Tiffin "
John Morey

Ass't of Errors

Filed 5th Novr 1827
Th Douglass Clk

Cond'd for Tiffin Clk

Ann Morey in Colonial Court

Louis Menard & Clayton Tiffen } Cr. C. C. S. Louis
Plea of Trespass vi Ablaine

Sir

Take notice that a writ of Error has been sued out in above case ret. bl. to next Nov. term of supreme Court for 3d Dist. by said Defts.

Oct 15th 1827 —

Bates

Yours Defts

To Isaac McGirk Esq
atty for John Morey

Jno Mory

Wm. McEwen

Served a copy of the within notice on Isaac C. McGirk October 16th 1826 in the City of St Louis

Jno Simonds Jr Dfn Sheriff

Service $0.50

filed 5th Novr 1827

Th Douglass Clk

Jeffers & Menow
vs
John Merry } Opinion of the Court

The Judgment of the Circuit Court is affirmed on the authority of this Court in the Opinion delivered May Term 1827 by this Court in this Cause

Mathias McGirk
Thompkins
R Wash } Judges

11.

Jeffers & Menard
v. Bruinen
Mercy

205

filed 12 Novr. 1827
H. Douglass Clk

Know all Men by these Presents, That we, Pr Chouteau Jr & John B Sarpy

are held and firmly bound unto John Merry

in the full and just sum of Two hundred Dollars current money of the United States to be paid to the said John Merry his

certain attorney, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this Fifth day of November in the year of our Lord one thousand eight hundred and twenty eight

WHEREAS lately at a ~~Circuit Court of the United States, for the District of~~ Supreme Court of the State of Missouri in a suit depending in said ~~Circuit~~ Court, wherein Clayton Tiffin and Louis Menard were Plaintiffs in Error and John Merry was Defendant in Error judgment was rendered against the said Clayton Tiffin & Louis Menard and the said Clayton Tiffin & Louis Menard having obtained a writ of error, and filed a copy thereof in the Clerk's Office of the said ~~Circuit~~ Court to reverse the judgment in the aforesaid suit, and a citation directed to the said John Merry citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of January next.

NOW THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said Clayton Tiffin & Louis Menard shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

Edw Bates

P Chouteau Jr [SEAL.]

John B Sarpy [SEAL.]

[SEAL.]

approved

George Tompkins
Judge of the Supreme
Court of the State of Missouri

Clayton Tiffin and
Louis Menard
Plff's in Error

by

John Merry

Bond

James Loper
vs
The State of Missouri

The Clerk of the Supreme Court will please make out the record in this case, and enclose it to me at Washington along with the writ of Error ~~as also the Copy of the bond~~ - The Clerk will retain (to be filed in his office) the Copy of the writ of Error, & the original bond

Loper of course will pay the fees - If the record should be too heavy for my frank, please let Loper know that he should enclose it, & pay the surplus -

E. Bates

Clayton Tiffin
& Louis Menard
vs
John Merry

Same as above -

If Mr Lawless dont pay the fees, I'll see it done

E. Bates

Lopez vs The State

Tiffin & Menard
vs
John Mery

—

E B's memo.

John Merry appellant
vs
Clayton Tiffin and
Louis Mrnard

In Error.

This is an action of assault and battery and false imprisonment, brought in the Circuit Court of St Louis County by John Merry a free colored man for his freedom at the November Term of said Court and at the March Term of said Court judgment was given against ~~said~~ him ~~from~~ to which judgment he excepts.

The facts relied on by the plaintiff in this case are as follows towit

1st. That the said John Merry was born in the now state of Illinois, since the passage of the ordinance by Congress for the government of the Northwest territory of the United States, towit the 13th July 1787. by which ordinance slavery or involuntary servitude is expressly prohibited

2nd. That he said John some five or six years ago entered into an unwritten agreement with one Louis Pencinneau who then claimed and held said John as a slave by which said agreement said John was to pay to said Pencinneau the sum of $700 in the course of three years in consideration of which said sum said John was to have his own freedom together with that of his wife and his two children immediately after said agreement was entered into, said John Paid said Pencinneau $200 in specie, and two horses valued at fifteen dollars each, John was permitted to go at liberty and worked for himself both in Illinois and in the city of St Louis, That sometime afterwards while said John was in the ~~city~~ complete enjoyment of his liberty ~~that~~ he was unlawfully seized and taken by Pencinneau and put on board the ~~Steam~~ Boat Genl. Brown then lying at this port and sent to New Orleans and it was further proved that said John afterwards came to St Louis and was found in the possession of Clayton Tiffin who bought said John of Louis Mrnard the agent of the person who bought

John in New Orleans –

In support of the first point, The plaintiff relies on the 6th Article of the Ordinance above referred to, which is as follows "Article 6. There shall be neither slavery or involuntary servitude in the said "territory, otherwise than in the punishment of crimes whereof "the party shall have been duly convicted. provided always, that "any person escaping into the same from whom labour or service "is lawfully claimed in any one of the original states such "fugitive may be lawfully reclaimed and conveyed to "the person claiming his or her labor or services as aforesaid"

1 Vol Law of the U. States page 480.

By the cession from Virginia Congress became possessed of the full and entire sovereignty over this country, that in the exercise of ~~lawful rights~~ power the said ordinance of 1787 was passed. But it is contended that the following clause in the cession from Virginia authorizes these people to hold slave in contravention of the said ordinance – viz That the French and Canadian inhabitants and other settlers of the Kaskaskias St Vincents and the neighboring villages who have preferred themselves citizens of Virginia shall have their possessions and titles confirmed to them and be protected in the enjoyment of their rights and liberties. Congress passed the ordinance a few years afterwards and these rights and liberties were protected they were not permitted to hold slaves but their laws and customs then in force among them relative to the descent and conveyance of lands and property were secured to them which would seem to explain what was meant by the clause before recited in the cession from Virginia, and shew clearly that these French & Canadians &c were not entitled to greater privileges by under the cession than any other of the citizens, of the State of Virginia or of the other original states, – The power of Virginia to ~~cession~~ or make a conditional cession is not denied; but the support

tion that such was the fact is by no means granted.

But even granting the construction asked for by the defendants counsel, must they not show that the plaintiff was claimed and owned as a slave by some french or Canadian inhabitant or other settler of the Kaskaskias St Vincent or other neighboring villages who had professed themselves citizens of Virginia? Most clearly they must — for it can not be contended that any other persons would be permitted to hold slaves there. this would be defeating entirely the object of the ordinance. If these person were permitted to retain the slave they then had, it surely cannot be contended that they would be permitted to hold negroes in slavery born after the passage of the ordinance, ~~[illegible]~~ if the existence of slavery is not abolished immediately after the passage of the ordinance at what period will it cease? — We cannot interpret the meaning of the clause in the cession from Virginia relied on by the defendant better than by examining the construction given to it by congress (Virginia by her ~~[illegible]~~ representatives consenting thereto) contemporaneously with the acceptance & confirmation of said cession, when congress passed the ordinance for the government of the North Western Territory by which slavery was prohibited to exist there, would not the representatives from the State of Virginia have denied the right in Congress to make a general law excluding slavery entirely? had ~~[illegible]~~ they intended that these people should be entitled to hold slaves? would not ~~[illegible]~~ every exertion be made to defeat the ordinance upon this ground. The clause relied on is one that is generally inserted in every cession of territory by one power to another and its proper meaning &

intent are evident it refers to the confirmation of their titles to land as they existed under the former government and the enjoyment of their civil & religious liberty.

Did Virginia tolerate slavery in this Country previous to the cession of it to the United States? If she did, & wished it to continue, she certainly would not have suffered these people to be deprived of their property by an act of Congress without remonstrating on it to that body.

In support of the above we refer to the charter of Virginia the cession and amendment cession and the ordinance. see 1 vol law U. S. 465. 472 '3 '4 '5 '6 '7 478 '9 '80 '1 '2 - - - - - -

In support of the second point we contend that the contract was executed and that the plaintiff was perpetuated from the performance of it by the act of Pencinnean and that neither he nor those claiming under him can now take advantage of the non performance of said agreement or contract.

It is contended on the part of the defendant that a slave cannot contract with his master - In the general this is true, But where the master makes a contract beneficial to the slave Courts of justice will compell the performance of ~~them~~ it on the part of the Master and lean in favor of liberty and freedom.

In this respect the case of a slave is analagous to that of Villiens - for where the masters stoops to contract with his villien even for a hare he by contracting acknowledges his freedom and ability to Contract.

In support of the last point we rely on the following Authorities Kettletas vs Fleet 7 Johnson Reports 324 Wells vs Lane 9 Johnson Reports 144. Conklins vs Havens Johnson 314 Oakfield vs Waring 14 Johnson Coke upon Littleton Liber 2 Ch II section 172 et sequente

Charles & McGirk Attys for plaintiff

John Merry
vs
Tiffin & Munford

Brief of Appellant

Tiffin & Menard } In Error
adam }
John Merry }

The appellee, brought his suit, under the statute enabling negroes to sue for their freedom, in the circuit court of S Louis County, and claimed his freedom under the Ordinance passed by Congress in 1787, for the government of the Territory Northwest of the river Ohio. At the trial the court instructed the jury in such a way as to induce them to find a verdict for the defendants, & judgment went against the plaintiff in the circuit court. The plaintiff took his appeal to this court & the judgment of the circuit court was reversed at the last term of this court & the cause sent down for retrial. At the last July Term of the circuit court, the cause was again tried ~~in the circuit court~~, and under the instruction

of the court, the jury found a verdict for the plaintiff, & the court gave judgment for him.

From this judgt, the defts have taken their writ of Error, & come here, not with the expectation of reversing that judgment, but for the purpose of appealing from the decision of this court to the supreme court of the U. States.

It is possible that counsel for defendants may wish to argue the whole case over again here for this court. If so, I shall not, unless the court requires it, say one word in defence of the opinion of this court, already given in this cause. It is not necessary for me to state the facts & points of law involved in this cause, as the court is already in full possession of the whole of them.

Whenever the defendants may pray an appeal to the supreme court of the U. S. from the decision here, I beg to be heard before it is granted, as I am quite certain that I can show from the decisions of that court that no appeal lies, & that if it were granted in the present case, that court would dismiss it.

It is improper that I should say any thing & cite any authorities to this point at present.

S. C. McGirk
Atto for pltff

Teffin & Minard
adm } In Error.
John Merry

Defendants Brief

for Judges Tompkins
& McCirk —

Clayton Siffin & Louis Menard
vs
John Merry a black man

} Appeal from St Louis Circuit Court

The appellant John Merry (being permitted to sue as a pauper) brought his action of assault & battery & false imprisonment against the appellees, to try the question of freedom or slavery, in the manner prescribed by the statute; and issue was joined on the plea of the general issue.

The facts are in substance – That John Merry the plaintiff was born at Cahokia in the now State of Illinois 35 or 36 years ago, of a negro woman owned & held in slavery there by one Trotier, a French inhabitant of the village of Cahokia, who so held her as a slave more than fifty years ago. That the plaintiff continued to be held as a slave and was frequently sold & delivered from hand to hand, from the time of his birth until within five or six years past; when he came by purchase to the hands & possession of one Louis Pencineau. That the said Louis Pencineau admitted to one of the witnesses that he had agreed with the said John Merry, that he would liberate him the said John, his wife & two children if he the said John would pay to him the said Louis the sum of $900. That $200, & 2 horses of the value of $15 each, was paid towards the said sum – and that the balance of said sum remains unpaid.

That after said agreement, said Louis Peuveneau permitted said John to go at large for a time, for the purpose of enabling him to make up & pay the said sum of money, but that finding that said John did not pay the same, the said Peuveneau ~~the said~~ ~~Peuveneau~~ took the said John as his slave, and caused him to be transported to New Orleans to be sold as such. That said John Mery, afterward by some unknown means, returned to St Louis - and at the time of the commencement of this suit was in the possession of the defendant Clayton Tiffin, who claimed him as a slave.

The depositions of Augt. Frotier & Peuveneau the father were read, & are embodied in the record.

The defendants prayed for the following instructions viz. which were given -

1. That if the Jury find that the said plaintiff was born a slave in Illinois, of a negro mother, held in slavery there before the year 1787, unless they find that the said plaintiff has been emancipated by his owner, they ought to find for the defendants.

2 That no contract that may have been made between the plaintiff John Mery and Louis Peuveneau relative to the freedom or slavery of the said John, as the same has been spoken of by the witnesses, is sufficient in law to entitle the said plaintiff to his freedom.

3 That even if Pouriveau made a contract with plaintiff to set him free on the payment of a sum of money, such contract could not operate to effect his emancipation, until the entire payment of the money.

4. That there is no evidence before the jury of any act of any one of the successive owners of said John Mary which can in law amount to an emancipation of said John. —

The plaintiff prayed the following instructions to the Jury; which were by the Court refused.

1. That if the Jury find from the evidence that John the plaintiff was born in the new state of Illinois subsequent to the passage of the ordinance passed by the Congress of the U States on the 13th day of July 1787, for the government of the Territory of the U.S. North west of the river Ohio, that they ought to find for the plaintiff.

2 If the Jury believe from the evidence, that the plaintiff contracted with Louis Pouriveau in the State of Illinois for his freedom & was set at liberty by said Pouriveau in pursuance of said contract, that they ought to find for the plaintiff, unless they also find that said plaintiff was not to be free till all the purchase money to be given by said contract for his freedom, was paid.

3. That unless the Jury believe from the evidence that John the plaintiff, or some of his maternal

ancestors, were held in slavery ~~by~~ in the now state of Illinois, before or at the time of the passage of the ordinance passed by the Congress of the U. States on the 13th July 1787, for the government of the Territory of the U. States North west of the river Ohio, by a Frenchman or Canadian inhabitant or inhabitants, or other settler or settlers of Kaskaskias - St Vincents or the neighboring villages, who professed, him, her or themselves a citizen or citizens of the State of Virginia at or previous to the passage of said ordinance; that they ought to find for the plaintiff -

Under the instructions of the Court the Jury found a general verdict for the Defendants, & judgment was rendered accordingly - to reverse which the plaintiff brings the cause by appeal into this Court.

The only two questions of any serious importance, which are presented by this record, are these -

1. Does the ordinance of ,87 for the Government of the N. West Territory, ipso facto effect the emancipation of persons held in slavery there, or so change the nature of the slavery as to effect the emancipation of those born after the passage of the act.

2 Can the agreement mentioned in the bill of Exceptions as made by Louis Pencineau & the plaintiff, effect the emanci=pation of the plaintiff.

We hold the negative of these propositions; and as to the First, insist that it was not the design of the ordinance to divest existing rights to property, but to lay down a general rule for the government of the future inhabitants of that Country.

with an obvious reference to the accomplishment of a great political object, and with an express saving of the rights of the old inhabitants.

We contend further, that whatever may have been the design of Congress, it was not within their legal competency to divest the proprietary rights of individuals, or take away property for any purpose but to be applied to the public service - and then only on rendering a just compensation.

As to the Second point, we insist 1st that no valid agreement was or could be made by Louis Peuniean with the slave John, because a slave is legally incompetent to contract - because a slave has in contemplation of law, no will or judgment, and being already indefinitely bound to another, cannot by agreement, bind himself farther. And second, supposing the possible validity of the agreement, it appears on the record that it was conditional and the condition not fulfilled.

Clayton Tiffan
& Louis Menard
ads.
John Meny a black
man —

Defts brief —

Lawless & Baker

United States of America ss.
The President of the United States

To the Judges of the Supreme Court of the State of Missouri, being the highest Court of law or Equity of said State of Missouri Greeting:—

Because, in the Record and proceedings, as also in the rendition of the Judgment of a plea which is in the said Supreme Court of the State of Missouri, before you or some of you, being the highest Court of law or Equity of the said state in which a decision could be had in the said suit between Clayton Tiffin & Louis Menard Plaintiffs in Error and John Merry Defendant in Error wherein was drawn in question the construction of a treaty of the United States with Great Britain of 1783. Wherein was also drawn in question the construction of the Compact with Virginia, for the cession of the North West Territory and of the ordinance of Congress of 1787. and the right claimed under the said treaty, compact and ordinance was decided against by the said Supreme Court of the State of Missouri, a manifest error hath happened to the great damage of the said Clayton Tiffin & Louis Menard as by their complaint appears. We being willing that error if any hath been should be duly

corrected and full and speedy justice done to the parties aforesaid in this behalf; Do command you, if Judgment be therein given that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States together with this Writ, so that you have the same at Washington together with this writ on the first Monday of August next, in the said Supreme Court to be then & there held, that the Record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done; Witness the Honorable John Marshall Chief Justice of said Supreme Court the second Monday in January in the year of our Lord one thousand eight hundred and twenty eight -

Clayton Tiffin &
Louis Menard
Plffs: in Error

vs

John Merry

Copy Writ of Error