Paca, John vs Dutton, Lemman 1836 3rd St. Louis Co 153/3

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Rec'd Rem.

Manumission; Women; Free Blacks

Hannah
Grace
Lemman

State of Missouri } ss
County of St Louis }

Be it Remembered that on the twelfth day of July in the year of our Lord one thousand eight hundred and thirty four was filed in the office of the Clerk of the Circuit Court within and for the County aforesaid, the petition of Lemman Dutton, in the words and figures following, to Wit. To the Honorable the Judge of the Circuit Court of the County of St Louis. The Petition of Lemman Dutton, a free girl of color, by Grace Dutton her mother and next friend, respectfully represents that her Grandmother Hannah was a Slave owned by one Josias William Dallam in the State of Maryland and that the said Dallam while he so owned the said Hannah as a Slave on the thirteenth day of March in the year one thousand seven hundred and eighty seven executed a deed of manumission by which he emancipated the said Hannah at the expiration of thirteen years from the date of said deed with the provision in said deed that all the children or children's children that might descend from said Hannah and be born in slavery after the date of said deed should be free at twenty three years of age. Your Petitioner represents that her mother named Grace was the daughter of the said Hannah and was born about the year seventeen hundred and ninety two and that your Petitioner was born about the month of June in the year eighteen hundred and sixteen and after her mother the said Grace had passed the age of twenty three years. Your Petitioner further states that the said Grace is now in the enjoyment of her liberty but that your Petitioner is held as a Slave by John Paca within the County of St Louis who claims your Petitioner as his property having obtained your Petitioner as the property of his Wife who is the daughter of the said Josias William Dallam. Wherefore your Petitioner prays that she may be permitted to sue as a poor person to recover her freedom and that Counsel be assigned her according to law and Your Petitioner as in duty bound &c. Grace her mark Dutton next friend. Teste H. R. Gamble. At the foot of which Petition is the following affidavit, to Wit. State of Missouri County of Saint Louis. This day personally appeared before the undersigned a Justice of the Peace of St Louis County Grace Dutton who being by me duly sworn upon her oath says that the facts stated in the foregoing Petition she believes to be true. Grace her mark Dutton. Sworn to and Subscribed before me this 2nd day of July 1834. D. Hough. Justice of the Peace County St Louis. At the foot of which Affidavit is an Order of the Judge in the Words following, to Wit. On the foregoing Petition it is ordered that Lemman Dutton the Petitioner be permitted to sue as a poor person to establish her freedom and that H R Gamble be assigned as Petitioner's Counsel. it is also ordered that the Petitioner have reasonable liberty of attending her Counsel and the Court when occasion may require, and

Petition

Affidavit

Order

that she be not removed out of the jurisdiction of the Circuit Court of St Louis County nor be subject to any severity because of her application for freedom. L. E. Lawless. And on the same day and date in said Office was also filed a

(Declaration

declaration in the Words following, to Wit. In the Circuit Court July Term 1834 Saint Louis County, to Wit, Lemman Dutton a free woman of color by H. A. Gamble Counsel assigned to her complains of John Paca of a plea of tres pass, for that the said defendant heretofore to wit, on the first day of June in the year eighteen hundred and thirty four with force and arms at the County aforesaid an assault did make in and upon the said plaintiff and her the said plaintiff then and there did beat bruise and ill-treat and did then and there imprison the said plaintiff and hath ever since kept and detained the said plaintiff in prison and in slavery and still holds the said plaintiff in slavery she the said plaintiff at the time of committing the said grievances and from thence hitherto and now being a free person to Wit at the County aforesaid and other wrongs to the said plaintiff then and there did to the great damage of the said plaintiff and against the peace and dignity of the State and the said plaintiff saith she hath sustained damage to the amount of five hundred dollars and therefore she sues &c. H. A. Gamble. Atto. for plff. On which Declaration a Summons was issued in the

Summons

Words following, to Wit. County of Saint Louis ss. The State of Missouri to the Sheriff of the County of Saint Louis, Greeting. We command you to summon John Paca that he 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 Saint Louis on the fourth Monday of July instant then and there to answer unto Lemman Dutton a free woman of color of a plea of tres pass wherefore the said plaintiff saith she hath sustained damage to the amount of five hundred dollars and have you then there this Writ. Witness Archibald Gamble Clerk of our said Circuit Court at Office this twelfth day of July in the year of our Lord one thousand eight hundred and thirty four. Archibald Gamble Clerk. On which summons is endorsed the following Return

(Seal)

Return

by the Sheriff. Executed this Writ on John Paca on the 12th July 1834 by offering to read to to him the Writ and Declaration in the City of St Louis which he refused to hear and I did at the same time make him acquainted with the contents of the Order of the Judge of the Circuit Court permitting the Plaintiff to sue &c. John A Walker Sheriff. And afterwards, to wit, At a Circuit Court begun and held

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at the City of Saint Louis within and for the County of Saint Louis in the Third Judicial Circuit of the State of Missouri on the fourth Monday of July being the twenty eight day of said month in the year of our Lord one thousand eight hundred and thirty four were present the Honorable Luke E Lawless Judge of the

Third Judicial Circuit of the State of Missouri, John N. Walker Esquire Sheriff of the County of Saint Louis and Archibald Gamble Clerk, on Wednesday 30th July 1834, the following among other proceedings were had, to wit. Lemman Dutton vs. John Paca. Pleas filed. Which pleas are in the words following to wit. Lemman Dutton vs John Paca. And the said John Paca the Defendant, by E Bates his attorney, comes and defends the force and injury when &c and says that he is not guilty of the wrongs and trespasses above laid to his charge, in manner and form as the said Lemman has above in her declaration alleged, and of this he puts himself upon the Country. Edwd Bates. And for a further plea in this behalf the said defendant says that the said Lemman ought not to have and maintain her action aforesaid against him, because he says that at the said time when &c, the said Lemman was a slave, without that the Lemman was, at the said time, a free person, in manner and form as the said Lemman has above in her declaration supposed, and of this he puts himself upon the Country. Edwd Bates. And afterwards to wit, At a Circuit Court begun and held at the City of St Louis within and for the County of Saint Louis, on the second Monday of March, being the fourteenth day of said Month, in the year of our Lord eighteen hundred and thirty six, were present, the Honorable Luke E Law Esq, Judge, James Brotherton Esquire, Sheriff, and John Ruland Clerk, on Saturday 2nd April 1836, the following among other proceedings were had to wit. Lemman Dutton vs John Paca. And now at this day come the parties aforesaid by their respective Attornies and neither party requiring a Jury, all and singular the premises are by them submitted to the Court, which being seen and heard and by the Court here fully understood the Court doth find as to the first issue within joined, that the said defendant is guilty of the wrongs and trespasses above laid to his charge, in manner and form as the said Plaintiff hath above declared against him and as to the second issue within joined, the Court doth find that the said Plaintiff at the time when &c was not nor is a slave, in manner and form as the said defendant in his said second plea hath alleged, wherefore the said Plaintiff ought to recover of the said defendant, and the said Plaintiff consenting to nominal damages, the Court doth assess the damage by her sustained by reason of the wrongs and trespasses aforesaid, to the sum of one cent. Therefore it is considered by the Court and accordingly adjudged that the said Lemman Dutton be liberated and entirely set free from the said John Paca and from all persons claiming by through or under him, the said Paca, and that she recover of the said Paca her damages aforesaid in form aforesaid by the Court assessed, together with her costs and charges by her about her suit in this behalf expended and that she

Pleas filed

Judgment.

have thereof Execution. And afterwards to wit, at the term last aforesaid of said
65 Circuit Court, on Friday April 8th 1836 the following among other proceedings
were had to Wit. Lemman Dutton Vs. John Paca. Bill of Exceptions filed. Which
Bill of Exceptions Bill of Exceptions is in the Words and Figures following, to Wit. March Term A.D. 1836
Lemman Dutton Vs John Paca. Be it remembered that on the trial of this cause, the
same being submitted for trial to the Court neither Party requiring a jury; the
plaintiff read in evidence the following acts of the legislature of Maryland, to Wit,
"An act to prevent disabled and superannuated Slaves being set free or the manu-
-mission of Slaves by any last Will or Testament" made at a Session of Assembly begun
and held at the City of Annapolis the 3d June 1752 and an act to continue
the acts of Assembly therein mentioned" made at a Session of Assembly begun and
held at the City of Annapolis the 5th November 1785, which acts of the legislature
of Maryland so read in evidence are not herein set forth, it being agreed by
the Counsel of both parties hereto, that the same may be read and the same
advantage had and effect given to the same in the Supreme Court on Error
as if they were incorporated in this Bill. the pltff. then offered to read in evidence
with its authentication thereon endorsed a paper writing purporting to be an au-
-thenticated copy from one of the land record books of Harford County in the State
of Maryland, which paper writing and its authentication are in the Words and
Manumission figures following — Josias Wm Dallam to Sundry slaves — a Manumition. Maryland
ss. To all whom these presents shall come, greeting. I, Josias Wm Dallam of Harford
County in the State of Maryland for Divers good Causes and Considerations me
thereunto moveing do hereby Declare free manumit and enfranchise the negros
following to wit Cromwell, to be free at the expiration of 10 years: Malborough
at the expiration of four years: Orange at the Expiration of five years Lemon
at the Expiration of Eleven years Hannah at the Expiration of Thirteen years
Nance at the Expiration of Fifteen years Sook at the Expiration of Seventeen years
from the Date of this my manumission, all the children or childrans children
that may Desend from said Negroes and be born in Slavery from the date hereof
shall be free at Twenty three years of age hereby acknowledgeing the said Negros
discharged from all claim of Service and right of property whatever from me
my heirs executors administrators at the Periods above specified as witness my hand
and Seal this thirteenth day of March in the year of our Lord one thousand
Seven hundred and eighty Seven. Josias Wm Dallam (Seal) Test. John Archer
Harford County ss. On the Sixteenth day of March in the Year of our Lord 1787
personally appeared before me the Subscriber one of the Justices of the peace
for the County aforesaid Josias Wm Dallam Party to the within Instrument

of writing who acknowledged the said instrument to be his act and deed and the signature and seal thereto annexed to be Respectively his John Archer Received to be recorded the 10th day of April 1787. Same day Recorded and examined by John Lee Gibson Clk. State of Maryland, Harford County Sct. I

Certificates

hereby certify that the within and foregoing is truly Transcribed from Liber I. L. G. No H Folio 77 &c one of the Land record books of Harford County Court. In Testimony whereof I have hereto set my hand and affixed the seal of Harford County Court this Eleventh day of September eighteen hundred and twenty nine. Henry Dorsey Clk. Maryland Harford County Sct. I, Stevenson Archer Chief Judge of the Sixth Judicial District of Maryland, composed of Baltimore and Harford Counties hereby certify that the aforegoing attestation of Henry Dorsey Clerk of Harford County Court is in due form and by the proper Officer, Stevenson Archer. Baltimore Septr 16th. 1829. Maryland Harford County Sct. I hereby certify that Stevenson Archer Gentleman who has signed the within and foregoing Certificate was at the time of so doing Presiding Judge of the Sixth Judicial District of Maryland composed of Baltimore and Harford Counties duly commissioned and sworn. In testimony whereof I have hereto set my hand and affixed the Seal of Harford County Court this twenty third day of September eighteen hundred and twenty nine. Henry Dorsey

Seal

Bill of Exceptions continued

Clk. Harford County Court. to the reading of which the deft. by his Counsel objected but the Court overruled the objection and permitted the same to be read, to which the deft. by his Counsel excepts. the pltff. then read in evidence said paper writing and its authentication and proved that Hannah one of the Slaves named in said paper writing was the mother of Grace who is the mother of the pltff. and it was admitted that Hannah at the time appointed for her liberation in said paper writing was under fifty years of age and capable of maintaining herself - that Grace was born in the year 1792 and the pltff. her child was born after Grace had passed the age of twenty three years. and that the defendant held the plaintiff in Slavery at the commencement of this suit. there being no other evidence on either side, the deft. upon the foregoing testimony moved the Court to decide, that upon the case made the pltff. was not entitled to freedom, but the Court refused so to decide and decided that upon the case made the pltff: was entitled to freedom, to which decision the deft. by his Counsel excepts and prays the Court to sign and seal these his Exceptions which is done accordingly. L. E. Lawless. (Seal) And afterwards, to Wit,

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at the term last aforesaid of said Circuit Court on Friday April 8th 1836, the following among other proceedings were had, to Wit. Andrew Dutton vs. John Paca

Abraham Dutton vs. John Paca and Lemman Dutton vs. John Paca. These three cases having been decided in favor of the Plaintiffs and Bills of Exceptions taken in them all, shewing that they depend on the same facts and principles, it is agreed by the parties that one of the cases shall be taken up to the Supreme Court, and the other two abide the judgment of the Supreme Court, in the case to be taken up, and judgments to be entered in this Court accordingly.

State of Missouri }
County of St Louis } ss. I, John Ruland Clerk of the Circuit Court within and for the County of Saint Louis, do certify the foregoing to be a full true and correct transcript of the Record and proceedings in the case Lemman Dutton vs. John Paca as the same now remain in my Office.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court at Office this thirty first day of May in the year of our Lord one thousand eight hundred and thirty six.

J. Ruland Clerk

2.85
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No

Lemman Dutton
vs — writ of Error —
John Paca

Transcript from St. Louis
Circuit Court. —

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

The State of Missouri, to the Honorable the Circuit Court of Saint 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* Saint Louis *before our Judge thereof, between* Lemman Dutton

Plaintiff, and John Paca

Defendant,

in a plea of Trespass *as it is said, manifest error hath happened, to the great damage of the said* John Paca *as by* his *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* Third Monday *of* June *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.*

In Testimony Whereof, *I,* John Ruland [redacted], *Clerk of our Supreme Court for the Third Judicial District, have hereunto set my hand and seal of Office, at Office, this* Twenty first *day of* April *in the year of our Lord one thousand eight hundred and* thirty six *and of the Independence of the United States of America, the* Sixtieth.

Jn. Ruland Clerk

No. 11.

Supreme Court, 3d Judicial District

June Term 1836

Lemman Dutton

vs ⅔ writ of Error

John Paca

708

$1.50 paid by Mr Allen

Fees clerk C.C.

Transcript . . . $3.10

Certificate & seal .50

Return mdse seal .50

$4.10 p.d by Mr Allen

Filed 1st June 1836

John Ruland Clerk Sup. Ct.

State of Missouri }
County of St Louis } In obedience to the within writ, I herewith transmit to the Supreme Court a certified transcript in full of "the judgment and all things touching the same" in the within entitled case, as the same now remain in my office.

Given under my hand and the seal of ~~said Court~~ ~~at~~ office this first day of June A.D. 1836

John Ruland Clerk Sup. Ct.

By Dpty

J. D. Johnston

Paca
vs
Dutton } In Error.

And now at this day comes the said John Paca says that in the record & proceedings aforesaid & also in the giving the judgt. aforesaid, there is manifest error in this court, that by the record aforesaid it appears that the judgt. aforesaid in form aforesaid given was given for the said Lemuan Dutton against the said John Paca, whereas by the law of the land the said judgt. ought to have been given for the said John Paca against the said Lemuan Dutton.

There is also error in this court, that by the record aforesaid it appears that the Circuit Court permitted to be read in evidence the paper writing with the authentication purporting to be an authenticated copy of one from one of the land record books of Dorchester County in the State of Maryland, whereas by the law of the land the same ought not to have been permitted to be read.

There is also error in this court, that by the record aforesaid it appears that the Circuit Court decided that upon the case made the pltff: was entitled to freedom, whereas by the law of the land, she was not entitled to freedom;

And the said John Paca prays that the judgt. aforesaid for the error aforesaid & other error in the record & proceedings aforesaid may be reversed annulled & altogether held for nothing, & that he may be restored to to all things which he hath lost by occasion of the said judgt, &c

B. Allen
attys for pltff: in error.

Paca
v
Sutton

assignment of error.

Filed June 20, 1836,
Wm. Ruland Clerk

Opinion delivered by McGuire
Austin

Paca
vs
Dutton

Dutton the plaintiff is a woman of colour suing for freedom
It appears that in the 1752 The Colonial legislature of Maryland
passed an Act ~~[illegible]~~ authorising persons owning negroe
slaves of a certain description to set them free under certain restrict
tions That on or about the year 1787 One Josias William Ballan
owned and passed the grand Mother of the defendant in error as a slave
and that said Ballan did by a deed under his hand and seal attested by one
witness and duly recorded emancipate said grand Mother to take effect in future and that by said deed
the mother of the defendant in error also became free according to the terms of said
said deed and ~~[illegible]~~ the defendant in error also claims by said deed to
be free The defendant in error had a judgment of freedom in the cir
cuit Court and the plaintiff has brought the cause up by Writ of error

On the trial the plaintiff in that court offered in evidence
a certified Copy of the deed of emancipation which was objected to by the
defendant. The Act of the Maryland legislature provides that the deed
of emancipation shall be recorded in the office of the Clerk of the county court
where the deed is made And that a copy of the registry shall be evidence
of the fact of emancipation. The first objection made to receiving this copy
is that it is not the best evidence the nature of the case admits of and that
the Original alone in this case will suffice The defendant in error
to replies to this the 1st sect of the 4th Art of the constitution which says that,
"Full faith and credit shall be given in each state to the public acts records and
"Judicial proceedings of every other state and the congress may by general laws
prescribe the manner in which such records and proceedings shall be proved and
the effect thereof and also ~~[illegible]~~ the Act of Congress of the 27th March 1804
(Ingersol's digest 76 & 77) which declares that "From and after the
passage all records and exemplifications of office books which
are or may be kept in any public office of any State ~~[illegible]~~ not appertaining to a court shall be proved or admitted in any other court
&c on being authenticated in a certain way. The act after
some other regulations as to the Authentication proceeds

to declare that the said records and exemplifications authenticated as aforesaid shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the State from whence the same are or shall be taken" It appears to us there is according to this act of congress no room for dispute the Maryland act expressly declares that the copy shall be evidence of the fact of Manumission the copy must have the same effect here if it be duly authenticated Let us now proceed to enquire whether the copy is so authenticated that it can be received in evidence

There is no objection made to the first certificate of the clerk by which he certifies that the paper is a perfect copy The ~~Judge then certifies~~ clerk certifies as the clerk of Hartford County Court of Maryland The Judge then certifies as follows to wit, Maryland Hartford County Set I Stephen Archer Chief Judge of the Sixth Judicial district of Maryland composed of Baltimore and Hartford Counties hereby certify that the foregoing attestation of Henry Dorsey Clerk of Hartford County court is in due form and by the proper officer Then Henry ~~do~~ Dorsey certifies as follows I certify that Steven Archer Who has signed ~~to~~ the within and foregoing certificate was at the time of so doing Presiding Judge of the Sixth Judicial district of Maryland composed of Baltimore and Hartford Counties duly commissioned and sworn

It is objected by the counsel for Paca that these certificates do not pursue the act of Congress It is argued by Mr Allen for the plaintiff in error that the certificate of the Judge should in itself contain an affirmation that the Judge was presiding Judge of the County court of Hartford County And that the certificate of the clerk as to the official character of the Judge should affirm that the Judge is presiding Judge of Hartford County Court It is our opinion that it should appear by the certificate of the Clerk when he comes to certify as to the official Character of the Judge that the Judge is presiding Judge or Justice of the court of which he is clerk This has not been done But the certificate affirms that Archer is presiding Judge of the district composed of Baltimore and

and Hartford Counties without saying he is presiding Judge of any court whatever The act says the certificate of the clerk or keeper of the records shall be accompanied with a certificate of the clerk if the certificate of the clerk be given by a presiding Justice of a court with a certificate of the clerk that he shall certify that the presiding Justice is duly commissioned and qualified By these papers and by the emancipation act of Mary land it appears the registry of which the copy offered is an exemplification of right should be kept and made by a clerk of a court and that was the clerk of the County court of Hartford What the presiding Judge of the district composed of Baltimore and Harford Counties had to do with the County court of Hartford we cannot easily see If by virtue of Judge Archers being presiding Judge of the district he is presiding Judge or rather Justice of the County Court of Hartford the styles of his certificate should have so declared

Another Objection taken to the final certificate of the clerk is that it says the Judge was duly commissioned and sworn and the act of Congress says the certificate shall say duly commissioned and qualified It is best to pursue the very words of the Act We are not entirely certain that congress meant by the word qualified no more than that which is comprehended by the word Sworn

The admission of the Copy as evidence was erroneous and for that the Judgment is reversed But the Counsel on both sides have expressed a desire to have the Opinion of this court on the effect of the deed of emancipation of Dallas to the ancestor of the petitioner for freedom We will as the case is properly before us proceed to do so —

That part of the act to be considered declares, That where any person shall be possessed of a Slave or Slaves who are or shall be of a healthy constitution sound in Mind and body capable by labor to procure to himself sufficient food and raiment with other requisite necessaries of life and not exceeding fifty years of age such Owner being willing and desirous to set free

or Manumit such Slave or Slaves may by writing under his hand and seal evidenced by two good and sufficient witnesses at least grant such Slave or Slaves his or her freedom And that any deed or writing whereby freedom shall be given or granted to any such Slave which shall be intended to take place in future shall be good to all intents constructions and purposes whatever from the time that such freedom or Manumission is intended to commence by the said deed or writing so that such deed and writing be not in prejudice of Creditors and that such Slave at the time of such freedom or manumission shall take place or commence be not above the age aforesaid and be able to work and gain a sufficient livelihood and maintenance according to the true intent and meaning of this act Which instrument of writing shall be acknowledged before one Justice of the peace of the County where the person or persons granting such freedom resides which Justice shall indorse on the back of such instrument the time of the acknowledgement of the party making the same which he or they or the party concerned shall cause to be entered among the records of the County Court where the person or persons granting such freedom shall reside within six months after the date of such instrument" The act then provides for making a copy and declares the same to be evidence of the fact of freedom It appears that the deed in question under which the party claims freedom only by reason of her descent from her grandmother who was freed by the deed was only attested by one witness Para; Counsel contend that the deed must be attested by two witnesses The counsel for the petitioner contend that the first branch of the statute provides a mode of Manumission for two classes of persons the first part provides for manumitting those whose freedom is to commence immediately and in that case requires a deed sealed and attested by two witnesses and that when this is done and the deed delivered to the slave he is free and that as to those whose freedom is to commence in future the law seems [illegible]

Neither to require a deed nor witnesses but requires a writing or deed which is to be acknowledged in solemn form before a justice of the peace and to be recorded &c

We are of opinion the petitioners counsel are right in their view of the Act If all that part of the Statute which precedes the words and that were stricken out yet the balance of the Statute would be perfectly intelligible and no word would or need be lost or expunged to make the meaning clear and complete The Statute would then read that where any person owns a slave and is desirous to set him free the freedom to commence in force The same can be done by a deed or instrument in writing But the instrument must be acknowledged before a justice of the peace of the county and must be recorded Provided the slave at the time his freedom is to commence is not over 50 years of age and is capable by labor to support himself &c Now all this can clearly be well made out without any reference whatever to that part of the Act which requires a deed under seal to be attested by two witnesses

So on the other hand all before the the words and that may be completly cut of from the balance and both the sense and object of that part will be complete and then the case will be made out as to the mode of emancipation in presenti

So far then as regards the petitioners right depending on the Maryland Statute our opinion is for the petitioner

But for the errors aforesaid the Judgment is reversed and the cause remarded for a new trial

M. McGirk
George Tompkins
R Wash

Dutton
vs
Paca
vs Spinson
Dutton

Filed July 5. 1836.
Jno. Rutland Clerk

Paca
v.
Dutton. In Error

This was a suit instituted by Lemman Dutton against John Paca to recover her freedom.

The declaration is in the usual form under the Statute, plea not guilty & that the pllff: was at the time when &c. a slave. Issues found & judgt. given for the pllff: to reverse which judgt. this writ of error is prosecuted.

It appears from the testimony in the cause that the legislature of Maryland by an act of 3d. June 1752 continued by an act of 6. Nov: 1786 enacted that any person possessed of a slave healthy &c. & not exceeding fifty years of age might by writing under his hand & seal evidenced by two good & sufficient witnesses at least grant to such slave his freedom, & that any deed or writing whereby freedom shall be given or granted to any such slave which shall be intended to take place in future shall be good &c. so that such deed or writing be not in prejudice of creditors & that such slave at the such freedom or manumission shall take place be not above the age aforesaid, which instrument of writing shall be acknowledged before one justice of the peace of the county wherein the person granting resides, which justice shall endorse on the back of such instrument the time of the acknowledgement & the party making the same, which he or the party concerned shall cause to be entered among the records of the County Court where the person granting &c. shall reside within six months after the date of such instrument of writing & the clerk of the County Court shall immediately upon the receipt of such instrument endorse the time of his receiving the same & shall ~~shall~~ enroll such deed or instrument in a good & sufficient book &c. among the records of the County Court &c.: & that a copy of such record duly attested under the seal of such office shall at all times hereafter be deemed good evidence to prove such freedom.

It further appears that the pllff: offered to lead in evidence with its authentication thereon endorsed a paper writing purporting to be an authenticated copy from

One of the land record books of Harford County in the State of Maryland, which expresses that one Elias W. Dallam of said County declares free manumits & enfranchises certain negroes among them one Hannah (of whom the said Lemman Dutton was descended) at the expiration of thirteen years from the date of the act of manumission (13. March 1787) all the children or children's children, that may accrue from said negroes shall be born in slavery from the date thereof shall be free at the age of twenty three years. The act of manumission was under seal attested by one witness only (John Archer) the acknowledgement appears to be made 16. March 1787, before one John Archer a justice of the peace for the County of Harford aforesaid. The authentication consists of a certificate of the Clerk of Harford County Court under seal of Court that the writing is truly transcribed from one of the land record books of the County Court of Harford County, of a certificate of a district judge that the said attestation is in due form by the proper officer & of a certificate, under seal of Court, of the Clerk of Harford County Court, that the judge certifying is the presiding district judge. To the reading of which writing the deft. objected but the Court overruled the objection & permitted the same to be read. The pltff. then read the same in evidence & proved that Hannah one of the slaves named in the said paper writing was the mother of Grace who is the mother of the said Lemman Dutton. By the admission of the deft., that Hannah at the time appointed for her liberation was upwards fifty years of age & capable of maintaining herself. That Grace was born in the year 1792 & the pltff. her child was born after Grace had lapsed the age of twenty three years & that the deft. held the pltff. in slavery at the commencement of the suit. Upon this evidence there being no other the deft. moved the Court to decide (the cause being submitted to the Court

neither party-requiring a jury) that upon the case made the pltff: could not recover, but the court refused so to decide & decided that upon the case made the pltff: was entitled to her freedom.

It is insisted in this case on the part of the pltff: in error,

1st. That the reading of the act of manumission in evidence was inadmissible for the following reasons.

3d. It was not attested by two witnesses.

1st. It was not the best ~~evidence of which the~~ ~~Nature of~~ the thing was capable. Ph: Ev: p 178.

2d. It was not properly authenticated.

See authentication Act of Congress 27. Mar: 1804. Ingersolls Dig: p 77.

the office where this record was kept appertained to a court.

the judge who certifies does not appear to be the presiding judge of the court of the district or county ~~court~~ in which the office is kept.

the certificate of the Clerk does not shew that the judge is duly commissioned & qualified.

B. Allen attys.

Paca
v
Button.

Brief of plff: in error.

Authorities. Phil: Evidence.
Ingersoll's Digest of Laws
of US:

B. Allen attⁿ.

John Paca

vs

Lemuan Dutton

This was an action for freedom brought by plaintiff against defendant in Error.

The facts are that the grandmother of the Pltff below was emancipated in Maryland by a deed to take effect in future under an act of the colonial legislature. The evidence of emancipation was a certified copy of the deed authenticated according to the act of Congress.

The questions arising on the record are whether the deed as executed was effectual to work the emancipation of the grand mother of the defendant below and whether the copy was properly certified.

The objection to the deed taken below was that it was not attested by two witnesses. It will be seen that the act has two classes of cases, in one of which the witnesses were required, and in the other there was no such requisite.

Besides here there was a subscribing witness and an acknowledgment before a Justice of the Peace which would satisfy the Statute even as to a deed in presente

The authentication of the copy of the deed is strictly in accordance with act of Congress

J H R Gamble
for Deft in Error

John Paca

vs

Lemuan Dutton

Defendants Brief