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NEGRO APPPENTICESHIP SYSTEM.

THE NEW CONSTITUTION SUSTAINED.

CHILDREN REMANDED TO PARENTS.

This morning Hon. Judge Bond, of the Criminal Court, delivered the following opinion in the matter of the *Habeas Corpus vs.* John W. Perry, Jesse A. Dashiell, Samuel C. Dashiell, and others, of Somerset county, who "held to service," against the wishes of their parents, several colored children between the ages of four and fourteen years, who were slaves at the time of the adoption of the present Constitution of the State, and whom the parties above named had had indentured to them as apprentices by the Orphans' Court of said county, in order to hold them until they are twenty-one years of age. The case has excited considerable attention, and the opinion will be read with interest throughout the State, as the Judge remands the children to the custody of their parents, considering the "apprenticeship" proposed nothing but "Slavery," which the Constitution has abolished:

The discharge of the parties in whose behalf these writs have been issued is asked, first, because the law authorizing the proceedings of the Justices of the Peace and the Orphans' Court of Somerset County, as contained in article 6, sections 31 and 40 of the Code of Public General Laws, and in the Public Local Law relating to Somerset county, is in conflict with the provisions of the 24th article of the Bill of Rights.

That article provides "That hereafter in this State there shall be neither slavery nor involuntary servitude, except in punishment of crime whereof the party shall have been duly convicted, and all persons held to service or labor as slaves are hereby declared free." And, secondly, because the local law of Somerset county respecting negro apprentices is repealed by article 3d, section 32, of the present Constitution, which provides that "The General Assembly shall pass no special law for any case for which provision has been made by an existing general law."

In considering the constitutionality of the laws referred to, it is to be remembered that the Constitution lately abolished by the people of Maryland, and under which these enactments existed, was essentially different in its provisions and in some of its fundamental principles respecting the power of the Legislature over the free negroes of the State from that under which we now live.

The former Constitution (of 1851), article 21, provided "that no *free man* ought to be taken, or imprisoned, or disseized of his freehold, liberties or privileges, or be outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or by the law of the land; *provided that nothing in this article shall be so construed as to prevent the Legislature from passing all such laws for the government, regulation and disposition of the free colored population of this State as they may deem necessary.*"

Maryland was also by law declared a slaveholding State. The presence of a free negro population was considered inimical to the interests of the masters, and the power was therefore given to the Legislature to "dispose" of that population—though free—absolutely as they should deem best. This being the policy of the State, every construction by the courts of the laws under that Constitution was necessarily given to support the interests of the masters.

With this view the Court of Appeals, in the case of Spencer *vs.* negro Dennis (9 Gill, ppg. 318 319,) went so far as to hold that even the laws of manumission were not made in behalf of the negro, but of the master. The Court say; "The Acts of Assembly of Maryland authorizing the manumission of slaves were not passed in consequence of any legislative hostility to slavery, or in gratification of any general wish or policy to diminish or destroy it, or to confer benefits upon slaves and promote their comfort and happiness. * * * * *That the design of these enactments was to gratify the masters of slaves, to enlarge their* privileges, and to give them an authority to dispose of their slaves in a way which otherwise they did not possess." The present Constitution of Maryland changes the policy of the State entirely. It establishes a policy in favor of freedom and against the despotism of slavery. Its framers have gone so far as to add to the well remembered words of the Declaration of Independence so as to leave no doubt of their intention utterly to subvert the former system.

They say, Article 1, "That we hold it to be self evident that all men are created equally free; that they are endowed by their Creator with certain unalienable rights, among which are life, liberty, *the enjoyment of the proceeds of their own labor* and the pursuit of happiness;" and while at the same time they forbid slavery or involuntary servitude forever, and all special legislation upon cases provided for by general law, it is plain it was their intention also to make all men equal before the law and hereafter to discard all class legislation based upon difference of races.

Hence, every construction of the law by the courts under the new system must now tend to protect and defend the liberty of the person, as it formerly tended to favor the masters of slaves.

The articles of apprenticeship which are filed herewith the return, in justification of the custody of these children, can only be supported so long as the provisions of the code under which they are made are not in conflict with the provisions of the Constitution.

At common law they could not be enforced. Their apprenticeship was by indenture. It was by deed; was for a consideration; had mutuality of contract, and could be enforced by either party in an action of covenant.

But the sections of the code under which these are supposed to be authorized give them no such characteristics, and however the Justices of the Peace or the Orphans' Court may have seen fit to insert obligations not required by the statute, if the law itself create a system of involuntary servitude forbidden by the Constitution, no modification of it on their part can give it legal validity.

By the terms of the code (section 35) these papers are not required to set forth anything but the name of the master and the name and age of the apprentice. There is no requirement that a consideration should be stated, or that any covenants or obligations should be entered into or assumed by the master. Whatever it be the statute creates, it is not the contract of apprenticeship, but statutory servitude.

It does not appear that this system differs in any respect from the system of slavery for a term of years, except that in the latter the children of the slave for a term born during servitude became slaves for life, while under this system the children of the bound can be held to service for a term of years—for section 31 of the Code of Public General Laws, which authorizes this proceeding, is applicable to the children, not of vagrant, worthless or idle free negroes, but of any free negro, and the child of an apprenticed negro whose labor, under the statute, is for the master, could not be supported by its parent, and, therefore, must itself be bound under the law.

The slave for a term was to be taught to labor.—These children are held to be taught to labor, not in any art, trade or particular businesss as apprentices, but to be "made to work."

Slaves were not required to be taught to read and write. Section 36 of the Code provides that the Orphans' Courts and Justices should not exact "any education" for the negro apprentice.

Upon the death of the master the property and interest in the slave passed to his widow, executor or assignee.

Section 38 of the Code provides that the *property* and *interest* in the apprentice shall pass in like manner.

If a slave for a term ran away the Orphans' Court extended his time of service.

Section 40 provides the same remedy in the case of an absconding negro apprentice, and with the exception just now stated respecting the issue of slaves and that if the master of an apprentice should shoot him in attempting to recapture him he might be indicted for murder—which article 66, section 11, of the code, forbid in the case of absconding slaves—there appears to be no difference between slavery for a term of years and that system of involuntary servitude provided for the children of free negroes by the sections of the general code and of the local code relating to Somerset county.

It has been argued at Bar that the new Constitution never intended to do more for the slaves than to put them in the position of free negroes within the State. That is true. But the present Constitution, when it prohibits involuntary servitude prohibits such servitude for free negroes as well as for whites, and must disable any machinery by which, under the injustice of a former system, any free man could be reduced to such servitude or deprived of the enjoyment of the proceeds of his own labor. And in rendering void and of no effect the former provisions of the Code in relation to negro apprentices, whereby unjust distinctions were made against them because of and for the safety of Slavefy, which is now abolished, the new Constitution has remitted them to the beneficent provisions in relation to all apprentices, and to which, in the proper circumstances, the children of all freemen are subject.

The same rule, by which Slavery was the fundamental law, every statute was made to support the interest of the master, requires that now where freedom is the basis, courts should construe liberally and in favor of freemen all laws affecting the person. Hence any law which was suffered because of a system now passed away, and the consequence of which was to destroy the family relation among a portion of the freemen of the State; and to deprive by force the parents of the labor and the comfort and society of their children, and to prevent the children from supporting their aged parents; and whose further consequence would be to maintain an involuntary and unrequited servitude, and to enable masters to uphold and enforce under another name and as a sort of compensation to themselves for what, by its right name, has been forever abolished in Maryland, must be held to be repealed—not less by every necessary intendment of such abolition than by the express words of the Bill of Rights.

I have less reluctance in coming to this conclusion, because there is upon the statute book a general system of apprenticeship applicable to all, and in its provisions just and equitable, under which the orphan, indigent and vagrant children of the State may have maintenance, may obtain protection, education and instruction in some useful art or trade in return for their service and labor.

It is not necessary to consider the other ground of the petitioners, since the point already decided disposes of this case. It may, however, be pertinent to observe that it appears to the Court that the local law of Somerset county relating to negro apprentices is special, both as regards its subjects and locality; and since there is a general statute embracing the same subject matter, it would seem liable to the objection urged. It should seem that when the power of enacting such law is taken away, no action can be had under such law, and that when the Legislature is prohibited from passing any such enactment as this, if it be special within the meaning of the words of the Constitution, it must be repealed by that clause.

It is, however, proper to notice some remarks of counsel respecting the propriety of issuing a writ of *habeas corpus* from the Criminal Court to parties residing in Somerset county. The writ of *habeas corpus* is a writ of right. It is not in the discretion of Judges whether they will issue it or not; and any man in the State has a right to appeal to the first Court or Judge he comes to for the privilege of the writ in any case where the law provides it shall issue. Besides which there is an express provision of the Constitution which declares it the duty of all Judges to discharge from slavery, whether called by that name or another, all persons in Maryland upon *habeas corpus*, when that writ is applied for.

The claimants in this case having, by indulgence of the Court, gone home, an order will be passed discharging the petitioners from their custody and the question of costs will, for the present, be reserved.

Republican City Convention.

The Republican Judiciary Convention of the city met at Scheutzen Hall last evening for the purpose of nominating a candidate for Associate Justice of the Supreme Bench of Baltimore, to fill the vacancy upon the ticket caused by the nomination of Hon. Hugh L. Bond for Governor upon the Republican ticket.

The Convention was called to order by Archibald Stirling, Jr., President. On a call of the wards it was ascertained that all were represented.

LETTERS OF ACCEPTANCE.

The Chair stated that written communications had been received from most of the candidates nominated by the Convention, and those who had not accepted by letter had done so orally with the exception of Mr. Isaac P. Cook, who bad left the matter stand just as upon the receipt of his first letter.

The following communications were then read:

LETTER FROM JUDGE BOND.

CRIMINAL COURT OF BALTIMORE,
October 14, 1867.

Gentlemen—I have received your letter announcing my nomination as one of the Associate Judges of the Supreme Bench of Baltimore City by the Republican Judiciary City Convention.

Such an endorsement and approval of my judicial conduct during a service of more than seven years can be only grateful at any time, but it is doubly so upon consideration that that service was performed during a period of revolution and amid difficulties which the most judicious could scarcely hope to overcome.

The riot and disorder prevailing in Baltimore in 1860, the year of my appointment—the outbreak of the rebellion immediately following, and the massacre of the United States troops in 1861—the continued petty hostility, during the war, of a faction here, toward the soldiers of our army present in Baltimore, and the ever recurring excitements of victory and defeat either to the National or Rebel armies, rendered the office of Judge of the Court having exclusive jurisdiction of all misdemeanors and felonies in a city of a quarter of a million inhabitants—never a sinecure—still more laborious, difficult and important.

This nomination is satisfactory to me because the Convention by it expresses the approbation by my loyal fellow-citizens of an administration of criminal law which within a month restored to Baltimore in 1860 its reputation for peace and good order; which charged the Grand Jury, immediately after the disgraceful riot on the 19th of April, 1861, that the perpetrators of that great crime were guilty of treason and murder, and must be brought to punishment, a course which resulted in the speedy conviction of some and the flight and self-imposed banishment of others.

And not less does the Convention by this action endorse the exercise of the power of the Criminal Court, which more recently saved our city from riot and bloodshed that seemed to threaten again the peace of the nation.

Since the adoption of the Constitution of 1864, which abolished slavery, the Criminal Court has been appealed to from all parts of the State to rescue from a system of statutory servitude the children of those whom you had made free by that instrument, and who were being carried in wagon loads to the Orphans' Courts to be reduced to the involuntary servitude from which their parents had just been released.

It was my duty, as it was my pleasure, to send the State's writ of *habeas corpus* into every house where this wrong was done. I would gladly accept your nomination and again become a candidate for a position on the Bench, if for no other purpose than to have the fair judgment of my fellow-citizens upon my conduct in this respect. I am content, however, to know that throughout the State the weakest and most defenceless of our fellow-citizens look to the Criminal Court of Baltimore with gratitude and with that confidence which every man feels who, upon appeal to the law, finds it his security and defence.

But, since your nomination, the Republican State Convention have named me as their candidate for the place of Governor of Maryland, and have cast upon me the duties and the labor involved in a canvass of the State.

I am so convinced that the public discussion of our views and our advocacy of Republican principles will induce the citizens of Maryland not only to acquisce in the abolition of slavery, but to permanently establish freedom and its consequences—to cherish and defend it by law, as earnestly as they once did slavery, that I feel compelled to accept that nomination and the labor and discussion it involves. I do not believe it will be difficult to convince them that the security of each class in society depends upon the measure and security of the freedom of the lowest and the weakest class—that the ballot is the chief defence of the American citizen—that universal suffrage secures universal freedom, and that universal education secures the intelligent exercise of the ballot.

I have, therefore, determined, now that Maryland has entered the career of a free State, to devote myself to the cause of the party of progress, without being deterred by any temporary reverse or the falling off of some who were adherents only while it was profitable, nor by threats, nor by abuse.

As the acceptance of the nomination of the State Convention involves the abandonment of the one you have tendered, I beg you to make this known, with my reasons, to the Judiciary Convention; and accept for yourselves and them my acknowledgement for the compliment you have offered.

Very truly yours, &c.,
HUGH L. BOND.

To Archibald Stirling, Jr., President Judiciary Convention. J. Gabriel Glynn, J. W. Diggs, Secretaries.

THE LESSON OF THE MARYLAND ELECTION.

Those who may have imagined that the ultimatum of the contest in Maryland at the late election was the mere success of Gov. Swann, as a candidate for the senatorship, or a merely sentimental triumph of the secession party in that State, know little of its meaning and aim. There was an ulterior purpose of the pro-slavery party, the bare mention of which will be sufficient to open the eyes of such as have not already suspected it. It was nothing less substantial than the procurement of compensation for the slaves emancipated by the adoption of the new Constitution in 1864. This instrument, while it makes the submission of the question of a convention or no convention to the popular vote, obligatory every twenty years, nevertheless, gives the power to the Legislature to call a convention at the pleasure of two-thirds of the members of each branch thereof; thus opening the way for the future authorization of compensation for slaves.

Here, then, we have the secret of the not otherwise explainable intensity and bitterness of the zeal displayed, not only in Baltimore, whose large delegation to the Legislature was a tempting prize, but throughout the rural districts generally, and the more pro-slavery of them particularly, for the return of what, in that State, are, significantly enough, called "conservatives." This issue was kept out of sight as much as possible during the late contest; but it was not the less a vital one in the struggle at the ballot-box. Hence the desperation of that struggle, and the unwonted resorts of Gov. Swann in the appointment, in the first instance, of partisan registrars, and, in the second, the supersedure of the old commissioners of police, by the appointment of two of his own most faithful and determined adherents in their stead.

Few persons outside of Maryland, probably, have any thing like an adequate conception of the magnitude of the pecuniary stake of the ex-slaveholding but still pro-slavery party. We will therefore make it clear with the actual figures. Estimating the value of each emancipated slave at three hundred dollars, — which is understood to be less than the seekers of compensation really claim, — the whole assessment would amount to $46,807,521.37. Of this sum, which is based upon the real and personal property of the whole population as returned by the State comptroller, the less slaveholding counties, whose non-slaveholding inhabitants would receive back nothing, would be compelled to furnish more than twenty millions to pay the slaveholders for their slaves. The more slaveholding counties would receive $16,367,721.37 more than they paid; while the less slaveholding counties would be just that sum the worse off by the proposed arrangement, in addition to all they have already been called upon to pay, in blood and treasure, as a consequence of the Rebellion which the slaveholders themselves precipitated upon them. And it is worthy of note, that the less slaveholding counties referred to, to wit, Alleghany, Baltimore, Carroll, Cecil, Frederick, Harford, and Washington, constitute only one-third of the State's whole number. The county of Baltimore alone, including her always well-nigh free city, — whose assessment would be upwards of twelve millions, — would have to furnish more than fourteen millions as her trifling shared of this little contribution to her slaveholding neighbors.

Now, we can see what her delegates and Senators, whose aggregate number is nearly equal to the majority on joint-ballot claimed by the conservatives, were actually worth to her Union-loving property-holders in dollars alone, — to say nothing of their desire to sustain their principles through them. And we can also begin to see, in this light, why they have fought the good fight so persistently in the persons of their tried police officials, with the incidental aid of that plucky lover of justice and the right, Judge Bond. But their situation becomes still more fully revealed by the light of the not very palatable reflection, that in the event of the rather impecunious and craving F. F. M's., of Prince George's and Charles Counties and elsewhere, getting what they have been aiming at in their very facile takings of the iron-clad oath, and their drivings of their opponents from the polls, they will, man by man of them, find the tax-gatherer at their doors, coolly asking them for about one-tenth of all they are worth, — like an American tithe-man, as he literally will be! And just precisely this is what the ex-slaveholders have been swearing and voting for in Maryland, and will, there is reason to fear, obtain, if they can continue to carry the election by the overwhelming majority they have now secured in the Legislature of that supposedly free State, which actually amounts to two-thirds of each of its branches.

There is, however, after all, some slight consolation in the reflection, that a most wholesome discipline has been administered to those of our more radical friends in Maryland, who, while they have seen and admitted the justice of impartial suffrage in the abstract, have thus far shown themselves to be lacking in the courage to openly espouse it. Perhaps, after the proposed tithes shall have been missed a while from their emptied pockets, their pluck will be strengthened by their privation, to make itself felt, hereafter, in whatever conventions, national or local, they may be moved to attend for consultation with the more plucky men of their own section, or wherever else occasion may call for it. Suffering is not seldom needed to make men morally stronger; and a little more of it on the border, where the soul of slavery is found marching on, while its body lies mouldering in the grave of infamy, may be found providentially indispensable to make her progressive men have more of that fellow-feeling, which, if the poet truly sings of it, would render them more sympathetic towards their true national allies.

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New York, Dec. 5, 1866.

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COLORED APPRENTICES---IMPORTANT DECISION OF JUDGE SPENCE.

Those of our readers who, during the first week of November, 1864, witnessed the action of our Orphans' Court in apprenticing colored children who had just been emancipated by the adoption of the new Constitution doubtless yet retain a vivid recollection of the eagerness and servility with which they prostitued their judicial position to the worst passions of our fallen nature. Almost ere our loyal citizens had ceased ringing bells and firing cannon in honor of the emancipation of these people, these Judges were busily engaged in summoning their children before them. Even while they were offering up to the Great Father of All their heartfelt thanks for so great a deliverance—while the husband and wife were just beginning to realize that they were one flesh, and what God joined together their ex-masters were now powerless to put asunder—while the mother, clasping her child to her bosom, felt for the first time that it was all her own, no more to be bartered away to liquidate gambling debts of highstoned gentlemen or to furnish luxuries for heartless women—the officer of the Court entered their doors, seized their children, and bore them off, to be consigned to slavery under another name, in utter defiance of all law, justice and humanity.

In many instances those apprenticed were over eighteen years of age, and were actually hired out by their new masters, before they left the court room, for as much as eighty dollars a year. These youths, who were able and eager to help support their younger brothers and sisters, and aged parents, were ruthlessly taken from them, and they were left to face the winter as best they could.

After about a hundred and fifty had been thus apprenticed, Gen. Wallace, then in command of this department, being apprised of the facts, issued an order which put an immediate quietus upon the high-handed proceedings of the Court. Having a saluatry dread of military protection being extended to the freedmen, the Court, under protest, cancelled the indentures of all whom they had apprenticed since the first day of emancipation.

Under these circumstances, a few declined to take their apprentices home, and suffered them to remain with their parents. Most of them, however, held on to them, and still retain them in their service, or are hiring them out, and pocketing the money.

Of the former number is Mr. Geo. E. Austin, to whom seven children were bound. Subsequently, however, he sued out a writ of replevin for one of the children. He did not prosecute it before the magistrate, but suffered judgment to go against him. He then took an appeal to the Circuit Court, and the case came up for trial at the November term just closed. Messrs. Wallace & Milbourne appeared for Mr. Austin, and Mr. David Straughn, Jr., a young member of the bar, for the mother of the child. After the evidence had closed, the Judge said that, as it was an important case, and might affect a large number of persons, he desired that it should be fully argued, and thereupon appointed Messrs. Henry & Sullivane to assist Messrs. Wallace & Milbourne, and Messrs. Chas F. Goldsborough and Geo W. Jefferson to assist Mr. Straughn. Ample time was also given them to prepare their arguments.

On Thursday of last week the case, after having been fully and ably argued by the respective counsel, was submitted to the Court, and on the following morning the Judge delivered his decision. We wish we were able to give our readers a full report thereof, but as the Judge, as is usual with him, spoke without notes, we can only give a synopsis of it.

He said he had given the case the best consideration he was able in the limited time at his disposal. Several points made by the counsel it was not necessary for him to examine, as the point upon which he should decide the case rendered it unnecessary to give his views upon the other points made in the argument.

I. The Orphan's Courts of this State are Courts of limited jurisdiction, with no powers but such as are expressly given by law.

II. That before the Orphans' Court can take cognisance of any case under the law relating to negro apprentices the requirements of the law giving them jurisdiction must be fully complied with.

III. That before any action can be taken by the Orphans' Court information, either orally or in writing, must be made to the Court.

IV. That the child and parents must be summoned.

V. That examination must be had.

VI. That it must appear that the parents had not the means to support such child, or, if they had the means, were unwilling to support it.

VII. That the wishes of the parents were to be consulted as to the master; and, if they refused, the wishes of the child should be consulted.

VIII. That the child should be bound to some white person.

IX. That all these things must appear affirmatively upon the record, or be shown by competent evidence.

X. That these things do not appear upon the record, and were not shown by evidence on trial, and that no presumption can be made in favor of Courts of limited jurisdiction.

XI. The record not showing that the requirements of the law have been complied with, the Orphans' Court did not posses jurisdiction, and therefore the indenture is null and void.

This decision is of the utmost importance to the colored people. Every indenture of the Orphans' Court is identical with the one herewith rendered null and void. Therefore immediate steps should be taken to bring all the other cases before Judge Spence by writ of *habeas corpus*. It is essential that there shouldn't be a moment's delay, for the vampire crew known as the Maryland Legislature will soon be in session, and then all hope is gone, for about the first act that body will pass will be one making valid the defective indentures.