

*“Intended to Endure”:
The Conservation & Legacy of John Marshall’s Supreme Court Robe*

“Witness to Injustice” QR Code Extensions: John Marshall and the Freedom Cases

The Marshall Court heard the following seven cases regarding slavery and freedom between 1805 and 1830, but these compose only a fraction of the some fifty slavery cases that the Court adjudicated during Marshall’s tenure, from 1801-1835. However, scholars emphasize these seven cases because Chief Justice John Marshall wrote the Court’s ruling. In not one of these seven cases did Marshall side with the enslaved; only the enslaver. These cases involve enslaved people whose statuses became complicated in contract and property cases, estate and debt settlements, and the sale of enslaved property. Most of the cases below took place in Washington, D.C. courts, though Virginia and Maryland statutes governed the capital city’s local laws at the time. In these appeals cases, Marshall often reversed decisions from local courts, in favor of applying whichever Virginia, Maryland, or even federal laws that protected the institution of slavery. On his bench for more than thirty years, John Marshall encountered slavery and enslaved people “at the crossroads of freedom and bondage,” and he determined their fate in the Courts. Below, please find brief explanations of these seven slavery cases, detailing background on the case and Marshall’s decision, as well as suggested sources for further reading.¹

Telfair v. Stead’s Executors (1805)

In the first of Marshall’s slavery cases, he heard a case in Georgia involving Revolutionary War-era debts, land, and enslaved people. Prior to American independence, two men--John Rae and John Sommerville--worked as merchants in Georgia and were jointly indebted to a British creditor named Stead. Instead of paying off their debts with their profits during their lifetimes, Rae and Sommerville invested in land and enslaved people. Both men died in the early 1770s before paying off their debts to Stead. Each party named executors to inherit their property, and thus, also inherit responsibility to pay off their debts. Sommerville’s executor, Edward Telfair, inherited Sommerville’s share of the debt and the Georgia circuit court deemed Telfair responsible for repayment of 3,864 pounds sterling. Likewise, Rae’s executors were also charged to repay his portion. The Court decreed, “For the satisfaction of the debt, the real estate of the deceased debtors should be sold”... with “the net proceeds applied to the payment of the

¹ Finkelman, Paul, *Supreme Injustice: Slavery in the Nation’s Highest Court*, (Cambridge: Harvard University Press, 2018), 30, 53.

complainants' demand." Because several of Rae's original executors and administrators had also died, Rae's debts rolled over to those individuals' personal heirs, and they now found themselves responsible to pay off Rae's debt--a man they did not know personally--(with accrued interest) to the creditor, Stead. At the heart of the case existed the phrase: "to be party to the case." Rae's series of executors and administrators, totalling at least ten different people, appealed the court order to repay the debts because they were not "party to the case"; were not directly involved and never met the debtor Rae. Nonetheless, the Georgia court and eventually the Supreme Court and Chief Justice Marshall ordered that "it is not necessary that the heirs should be made parties. The lands [and any properties] are assets until all the debts are paid...the executor is the representative of the testator as to lands as well as to the personal estate until the debts are paid." The Georgia courts seized not only property originally owned by both Sommerville and Rae, but also forced the sale of private property belonging to Rae's initial team of deceased executors, *and* their personal heirs, who were not "party" to the case. In repayment of the debt, various properties owned by both Sommerville and Rae's executors and their heirs were sold, including at least twenty-five enslaved people: Boston, Jenny, Phillis, Boy Boston, Molly, Peter, Sally, Ned, Cuffey, Bet "with her children," Nelly, Peter, Nancy, Toney, Mary, Jenny, Suckey, Doll, Young Sambo, Billy, Chance, Oronoka, Fanny, Diana, and Nero. These enslaved people likely were not even owned by John Rae, but rather the *heirs* of his deceased executors, and therefore, these twenty-five people were torn from their homes and personal networks and sold to the highest bidder to repay the debts of a man they never met. To the Court and to John Marshall, these people were but property to be sold. He was only concerned that the debts and accrued interest dating back to the early 1770s was paid off and in Early Republic America, enslaved people composed valuable property to sell, and very often were the first to be sold to repay debts.²

Scott v. Negro London (1806)

In 1802, London's enslaver, Charles Scott, brought him into the Alexandria, Virginia section of the District of Columbia where he remained and worked for a year on a rental basis. In order to deter importation of enslaved people into Virginia, the state's law dictated that enslavers needed to register their enslaved with a county clerk, declaring their legal status as enslaved; if an enslaved person remained unregistered for a year, a 1792 Virginia law declared them a free person. Scott failed to register London in Alexandria. In 1806, London filed a suit against Scott under Virginia law claiming that his year of unregistered residence in Alexandria entitled him to his freedom. The jury in the District of Columbia determined that London ought to, indeed, be free. Chief Justice Marshall appealed the federal court's case, completely disregarded the 1792 law, and denied London his liberation. Marshall returned London to bondage.

² *Telfair v. Stead's Executors*, 6 U.S. 407 (1805)

Scott v. Negro Ben (1810)

Similar to *Scott v. Negro London* in 1806, in *Scott v. Negro Ben*, Marshall once again reversed a jury's decision to free an enslaved man. Ben's enslaver brought him to Washington County, which adhered to Maryland law. As in London's case, Scott failed to register Ben as an enslaved person with the proper authorities as per Maryland law within the appropriate time frame. Ben sued for his freedom and the lower court jury acquiesced. Chief Justice Marshall then picked up the case and interpreted his "construction" of the Maryland statute granting Ben his freedom--which boiled down to an administrative task which Scott clearly failed to fulfil--and Marshall reversed the jury's decision on grounds that the Maryland law was "certainly ambiguous."³

Hezekiah Wood v. John Davis & Others (1812)

Hezekiah Wood v. John Davis & Others of 1812 pertained to the laws and precedents of matrilineal slavery which governed every slave state in the country. Matrilineal slavery stated that an enslaved person's status traveled through the mother; i.e. any children an enslaved woman produced were also enslaved. Davis sued the Maryland courts for freedom, claiming that his mother Susan had not been enslaved, and therefore he ought not be either. Here, Davis addressed the laws of matrilineal slavery: free women do not produce enslaved children. The Maryland circuit court over which Justice Gabriel Duvall presided, granted John Davis and his siblings their freedom. However, the Davis's enslaver, Hezekiah Wood, filed an appeal to the judgement, claiming that he obtained the Davis's before their mother Susan could prove her status as a free woman in court, and thus, her children were enslaved. Issue remained, however, that Wood was "not a party, nor privy to any party, to the suit of Susan Davis."⁴ Moreover, a D.C. court also determined Susan Davis's status as a free woman. Instead of accepting the D.C. court's decision confirming Susan's freedom, which subsequently ought to have informed that her children were also free, as "considered under the laws of every state in the nation," Chief Justice Marshall "introduced an irrelevant contract theory" to the case.⁵ Here, Marshall rejected the Maryland jury's decision to grant the Davis children their freedom by finding the judgement of Susan Davis's status inconclusive because Hezekiah Wood possessed "no privity" with whomever claimed to enslave Susan.⁶ As such, Marshall considered Susan Davis's freedom as hearsay.

As Marshall's fourth case pertaining to slavery and freedom, we can observe a trend and jurisprudence developing: Marshall favors an enslaver's right to property over enslaved people suing for freedom that not only state legislation, but also national legal precedent substantiated

³ *Scott v. Negro Ben*, 10 U.S. (6 Cr.) 7, (1810), ; Finkelman, *Supreme Injustice*, 59-60.

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⁵ Finkelman, *Supreme Injustice*,

⁶ *Hezekiah Wood v. John Davis & Others*, 11 U.S. (7 Cr.), 271, (1812).

(as in John Davis's case). As such, Marshall ignored the legal basis for the Davis's to sue, instead advocated a superfluous property and contract law, and as a result, the Davis siblings remained enslaved.⁷ About *Hezekiah Wood v. John Davis & Others*, Paul Finkelman argues that John Marshall "abused his power to deny liberty to a family of African Americans who were considered free under the laws of every state in the nation."⁸ Marshall's decision demonstrates a preference to bend over backwards to protect the institution of slavery in American courts.

Mima Queen and Child v. Hepburn (1813)

Mima Queen tried to sue for freedom in the District of Columbia on grounds that her great-grandmother, Mary Queen, was a free woman. However, the only evidence that Mima Queen possessed was hearsay about her great-grandmother's status. The DC court rejected Queen's testimony. When Chief Justice John Marshall took up the case, he reified the District of Columbia court's opinion that hearsay did not constitute legitimate evidence, even though various cases and jurisprudence exist of other courts accepting hearsay evidence. In Marshall's estimation, if courts of law accepted hearsay evidence in cases involving slavery and manumission, than any number of enslaved people could sue for freedom on a similar basis as Mima Queen. In Marshall's decision, he wrote that "no man could feel safe in any property" if the only proof given to take that property away was hearsay testimony.⁹ Thus, Marshall refused to allow the court to hear from Mima Queen. Fundamentally, in *Mima Queen and Child v. Hepburn*, Marshall refused to allow an enslaved woman the opportunity to prove her freedom by denying her the ability to share her hearsay testimony. Paul Finkelman concludes that regardless of whether Mima Queen's hearsay evidence would have proved successful in a court of law, Marshall robbed her of her opportunity to try.¹⁰ As such, Mima Queen remained in bondage.

The Antelope (1825)

Considered by many as Chief Justice John Marshall's most famous slavery case, *The Antelope* of 1825 regarded the attempted smuggling of captive Africans into the United States decades after the passage of the transatlantic slave trade ban in 1808. In 1819, Portuguese and Spanish privateers commandeered the American ship, *The Antelope*, filled it with approximately 300 captive Africans and sailed to the coast of Spanish Florida intending to sell the individuals. American federal authorities seized *The Antelope* as it sailed through American waters, discovered its illegal cargo, and escorted the vessel to Savannah, Georgia where the United States took custody of the Africans. Violating American federal law, the slave traders from *The Antelope* and the now-212 captive Africans (some succumbed to disease and others stolen once

⁷ Peighton Young, M.A., John Marshall House Staff Training Lecture Notes, February 10, 2021.

⁸ Finkelman, *Supreme Injustice*, 62.

⁹ *Mima Queen and Child v. Hepburn*, 11 U.S. (7 Cr.) 293, 296 (1813).

¹⁰ Finkelman, *Supreme Injustice*, 64-66.

they reached land in Savannah) endured six years of legal proceedings. Eventually reaching the Marshall Court in 1825, the Chief Justice heard from Spanish and Portuguese claimants about legal ownership of the captives. The question before Marshall: are these captives enslaved or free? If the former, they belong to their captors; if the latter, Marshall felt the Africans should be returned to Africa. Ultimately, Marshall honored the ownership claims of some of the captives as being legally enslaved to the Spanish, and he returned those individuals to their enslavers. Paul Finkelman writes: “Marshall ruled that the remaining Africans...were to be handed over to the U.S. government as fruit of the illegal trade.” Finkelman continues, “Marshall admitted that the African trade was ‘contrary to the law of nature,’ but asserted it was ‘consistent with the law of nations’ and ‘cannot itself be piracy.’” To reach his verdict, Marshall ignored the federal law banning the transatlantic slave trade and participation in it as piracy. Marshall felt compelled to respect other countries’ participation in the slave trade, even if it was illegal in the United States. In *The Antelope*, Marshall once again prioritized the right to property over the right to liberty, as he essentially condoned the illegal act of attempting to smuggle captured Africans into the United States by focusing his arguments on property claims. Throughout the years of proceedings, the 200-some captured Africans lived and labored in Georgia and continued to do so until the United States returned them to Africa. More precise fates or survival numbers remain unknown.¹¹

LaGrange v. Chouteau (1830)

In 1817, LaGrange’s enslaver brought him into Illinois territory, in which slavery was illegal based on the Northwest Ordinance of 1787. Upon entering the territory and following his sale to another enslaver--Chouteau--LaGrange sought his freedom in the Missouri courts. The courts, however, determined that LaGrange had not spent enough time in Illinois to be considered free. LaGrange appealed the Missouri court’s decision and advanced his case to the Supreme Court, claiming that the Northwest Ordinance granted him freedom the moment he stepped into the Ordinance’s jurisdiction and that the Missouri court had incorrectly interpreted the statute. Marshall sided with the Missouri Supreme Court, stating that LaGrange and his attorney failed to “show that any act of congress was drawn into question,” meaning that the United Supreme Court had no jurisdiction over the case. Strikingly, “the Northwest Ordinance was a federal statute. If he had chosen to do so, Marshall had the opportunity to invoke the ‘Supremacy Clause’ of the Constitution. This clause mandated that federal laws were to be considered the ‘supreme law of the land’ – and therefore take precedence over state laws and state constitutions. Therefore, the Northwest Ordinance should have taken precedence over the ruling of the Missouri Court. Instead, Marshall declined to give LaGrange his freedom on the

¹¹ Finkelman, *Supreme Injustice*, 90-101.

grounds that the United States Supreme Court had no authority to rule in LaGrange's favor – which was not actually true.”¹²

¹² Peighton Young, M.A., John Marshall House Staff Training Lecture Notes, February 10, 2021.