Founding Families: Digital Editions of the Papers of the Winthrops and the Adamses, ed.C. James Taylor. Boston: Massachusetts Historical Society, 2017.

https://www.masshist.org/publications/adams-papers/index.php/view/LJA02p48

Editorial Note

"I was concerned in several Causes in which Negroes sued for their Freedom before the Revolution," Adams wrote in 1795. "The Arguments in Favour of their Liberty were much the same as have been urged since in Pamphlets and Newspapers, in Debates in Parliament &c. arising from the Rights of Mankind. . . . I never knew a Jury by a Verdict, to determine a Negro to be a Slave. They always found them free."[1]

The documentation of Adams' "slave cases" bears out his recollection, but not entirely. His minutes suggest that counsel for the slaves argued as much from precedent as from Enlightenment; and the court records show that in at least one case, Newport v. Billing,No. 39, the jury found the plaintiff to be a slave. It is curious that Adams should have forgotten that cause, because he was there, as in at least three other cases, of counsel for the putative master.

All the cases date from 1766 or later.2 In that year, Adams witnessed the trial of Slew v. Whipple, No. 38, the first he had actually seen, although {49}he had "heard there have been many."3 Did the accelerated tensions of the Revolutionary movement encourage such suits? Would abolitionist pressure have developed anyway? These questions must be answered elsewhere.4

The cases do provide some basis for generalization. That such problems were taken to court for disposition in civil suits emphasizes the settled state of Massachusetts society at the time. A suit for trespass to the person is an exceptionally sophisticated way of testing an issue which could have been determined either by force or by flight.

It is significant that each plaintiff sought to justify his or her freedom as much on evidentiary grounds as on grounds of policy or the rights of man. As Putnam put it in *Newport v. Billing,* "Point in issue, Slave or not?" That point arose differently in different cases, depending on the twists the pleadings took and on the facts of each Negro's condition. With the exception of *Margaret v. Muzzy,* No. 40, the declarations sounded in trespass and the relief sought was damages for false

imprisonment. “Freedom” was thus determined only as an incident of the right to maintain the action, much as title was tried in trespass to chattels. The form of action set the procedural frame of the case, but the facts determined counsel's pleading strategy.

In *Slew v. Whipple,* the initial skirmish centered on an attempt to abate the writ because the plaintiff had styled herself therein as a spinster. Adams' notes are cryptic, but it appears that counsel for the master argued that plaintiff's previous marriages, apparently to Negroes, had been valid, that “Jenny Slew, spinster,” did not exist, and that her writ must accordingly fail. A divided court rejected that effort. The trial on the merits went forward. Here the plaintiff's case was that, although her father had been a Negro, her mother had been white; the plaintiff, therefore, ought to be a free woman. The defense was only that the plaintiff had never proved her possession of her liberty; the defendant did not or could not introduce affirmative evidence of plaintiff's slave status. The jury thereupon awarded £4 damages and costs to Jenny.5

In *Newport v. Billing*, apparently the first slave case in which Adams actually participated, the defendant's position was stronger. To the declaration in trespass he responded that he had purchased the plaintiff and that the plaintiff was “his own proper Negro slave.” The plaintiff replied that he was “a freeman,” and the burden shifted to the defendant, who put in { 50 } evidence a bill of sale. He also argued that a Negro should be presumed to be a slave. The plain tiff urged the insufficiency of the documentary and the racial proof. Nonetheless, the jury found that Newport “was not a freeman as he alledged but the proper slave of” the defendant, and so denied him damages.6

Margaret v. Muzzy offered a procedural variation. Because Adams did not enter the case until late, on behalf of defendants, and because his papers contain no notes or minutes, we cannot tell why plaintiff chose to replevy herself out of defendant's possession on a writ *de homine replegiando,* or personal replevin. Once the action commenced, it proceeded as though the form were trespass; defendant pleaded not guilty and the matter went to the jury, which found for plaintiff.7 The result was the same on the appeal and upon a writ of review.8 The judgment in this case actually resulted in Margaret's freedom, since the plaintiff sought “possession” of her own person rather than damages.

There are no Adams minutes of *Watson v. Caesar* (May 1771) (not included here), another trespass action, but the Suffolk Files contain enough depositions and documents to disclose the story. Caesar had been a slave of Elkanah Watson of

Plymouth and somehow came into the possession of the Chevalier de Drucour, a Captain in the French Navy. At Louisbourg on 1 July 1758 the Chevalier gave him his freedom and a certificate to prove it. Caesar returned to Plymouth on the sloop *Sally,* some of whose people were later to give conflicting depositions about his representations of this status, and then re-entered Watson's service.

Twelve and a half years afterward, Caesar demanded his freedom. “I am very willing he should have it,” Watson wrote to Benjamin Kent, Caesar's attorney, “and should have been as willing 10 years ago or when he first came home had he ever asked me for it, or if I had ever known he had a paper.” Whether Watson changed his mind, or whether they could not agree on the amount that Caesar was to be allowed for his services, Caesar commenced his action against Watson in the Plymouth Inferior Court. In April 1771, on a plea of not guilty, the jury found for Caesar. At Plymouth Superior Court in May, where Adams appeared for Watson, the jury affirmed the lower court's verdict, awarding Caesar nominal damages of 6d.9

{ 51 } Adams' last known slave case, *Caesar v. Taylor,* No. 41,10 involved another Caesar. It appears from the documents that Taylor, Adams' client, had sold Caesar to a third party, despite an agreement that he was to be permitted to buy his freedom from Taylor. After the jury at the Newburyport Inferior Court in September 1771 had found for Caesar (Document I), Taylor appealed. Adams, participating in the litigation for the first time, sought at the November 1771 Salem Superior Court to introduce in evidence a bill of sale from one Edward Hircom to Taylor (Document II). Plaintiff's counsel (John Lowell and Nathaniel Sargeant) objected, on the ground that defendant's plea of the general issue (“non culpabilis,” or “not guilty”) precluded his introducing special evidence. This was the common law rule, but the court took the matter under advisement.11

Other minutes of the argument (Documents III and IV) indicate that plaintiff also raised evidentiary points at this time. First, he put in evidence of Taylor's agreement to sell Caesar his freedom. Second, he prevailed on his offer of evidence that Taylor's vendees had beaten Caesar, the court agreeing that the beating was what today we would call the proximate result of the initial tort, the illegal sale. Finally, plaintiff tried to convince the judges that the woman known as his wife was competent to testify; the common law rule went the other way, however, and so did the court, despite plaintiff's argument that Negroes could not legally marry and that therefore the woman was not really his wife.

At the Ipswich Superior Court in June 1772 (Document V), the court decided that a plea of the general issue barred special evidence, the new judges, Ropes and Cushing, who had been appointed since the argument, giving no opinion. Adams moved for leave to replead, which motion the court denied and brought the case on for trial. Here once again plaintiff tried unsuccessfully to have his wife testify, and Adams sought (apparently with equal lack of success) to mitigate damages by putting in evidence of Caesar's reputation as a slave. The case then went to the jury, which found in Caesar's favor in the amount of £5 13s. 4d. damages and £24 7s. 2d. costs.12

The final case in this collection, *Caesar v. Greenleaf,* No. 42, does not appear to be an Adams case, although the document here printed appears in the Wetmore Notes in the Adams Papers, and dates from the October 1773 Inferior Court at Newburyport. The declaration alleged trespass to which defendant pleaded not guilty, the general issue. However, to avoid the procedural cul-de-sac (or "non cul"-de-sac) which had bound Adams in *Caesar v. Taylor,* defendant's counsel here (Daniel Farnham) induced the other side (John Lowell) to stipulate that evidence of special matter would be admissible. Notwithstanding, the report does not indicate what { 52 } if any other evidence was introduced. It seems that the jury found for the plaintiff £18 damages and costs, and that there was no appeal.13

These cases represent only some of the "suits for liberty" which were being brought by Negroes in the years just preceding the Revolution.14 They suggest substantial acceptance of the institution of slavery by all except perhaps its victims. It was not until the Massachusetts Constitution of 1780 and Judge William Cushing's construction of its "free and equal" clause as a prohibition of slavery in *Quock Walker's Case* (1783) that there was even a firm legal basis for manumission when on the facts the plaintiff was clearly a slave. The subsequent history of slavery indicates that it was many years after this before any substantial portion of the people of Massachusetts were ready to mount either legal or moral attacks on the institution.15 Adams seems to have seen in recollection rather more in his early slavery cases than the records disclose.

1. JA to Dr. Jeremy Belknap, 21 March 1795. MHi:Belknap Papers.
2. JA had considered the problem tangentially some years earlier. In Feb. 1760, Jonathan Sewall wrote him:
"A Man by Will gives his Negro his Liberty, and leave's him a Legacy. The Executor consents that the Negro shall be free, but refuseth to give Bond to the Selectmen to indemnify the Town against any Charge for his Support, in case he should become poor

(without which, by the Province Law [see No. 39, note 5] he is not manumitted) or to pay him the Legacy. *Query.* Can he recover the Legacy, and how?"
JA replied:
"The Testator intended plainly that his Negro should have his Liberty, and a Legacy. Therefore the Law will presume that he intended his Executor should do all that, without which he could have neither. That this Indemnification was not in the Testator's mind, cannot be proved from the Will. . . . I take it therefore, that the Executor of this Will, is by implication obliged to give Bonds to the Town Treasurer, and in his Refusal is a Wrongdoer and I cant think he ought to be allowed to take Advantage of his own Wrong so much as to alledge this Want of an Indemnification, to evade an Action of the Case brot for the Legacy, by the Negro himself. But why may not the Negro bring a Special Action of the Case against Executor, setting forth the Will, the Devise of Freedom, and a Legacy, and then the Necessity of Indemnification by the Province Law, and then a Refusal to indemnify and of Consequence to set free, and to pay the Legacy? Perhaps the Negro is free at common Law by the Devise. Now the Province Law seems to have been made, only to oblige the Master to maintain his manumitted ~~<*slave*>~~ servant, not to declare a Manumission, in the Master's Lifetime or at his Death, void. Should a Master give his Negro his freedom, under his Hand and seal, without giving Bond to the Town, and should afterwards repent and endeavor to recall the Negro into servitude, would not that instrument be a sufficient discharge against the Master?" Sewall to JA, 13 Feb. 1760; JA to Sewall, Dft, Feb. 1760; both in Adams Papers.
3. 1 JA, *Diary and Autobiography* 321. No earlier suits for liberty have yet been identified, although Benjamin Kent and Judge Cushing in No. 38, referred to previous actions, as did Adams in No. 41, Doc. IV. In 1764, a Middlesex grand jury had indicted Joseph Collins and two others for forcibly taking and selling for a slave one William Benson, a free Negro, almost two years after Benson was sold to Collins. The defendants pleaded *nolo contendere;* because they had bought Benson back and freed him, the court merely imposed nominal fines. SF 147284; Min. Bk. 78; SCJ Rec.1764–1765, fol. 155.
4. Belknap attributed the succession of actions to publication of a "pamphlet containing the case of a negro who had accompanied his master from the West Indies to England, and had there sued for and obtained his freedom." 4 MHS, *Colls.* (1st ser.) 201 (1795–1835).
5. SCJ Rec. 1766–1767, fol. 175; SF 131426.
6. SCJ Rec. 1767–1768, fol. 284; SF 157509; 3 JA, *Diary and Autobiography* 289.
7.
"In a *Homine replegiando* the Defendant claims the Plaintiff for his Villain, and the Plaintiff pleads that he is free, and saith that the Defendant hath taken his Goods, and prays that he may gage [give] Deliverance, &c. for which the Defendant doth gage Deliverance. . . . But in a *Homine replegiando,* if the Defendant claim the Plaintiff as his Villain, the Plaintiff ought to find Sureties to deliver his Body to the Defendant, if he be found his Villain." Fitzherbert, *New Natura Brevium* 154 (1755).

Compare the return on the writ in No. 40, SCJ Rec. 1768, fol. 311; SCJ Rec. 1770, fol. 216; SF 147651, 147830.

8. See Lynde, *Diary* 200 (1 Nov. 1770): “Tryal of Manumission of Margaret, a mulatto woman”; see also Quincy, *Reports* 30–31.

9. SCJ Rec. 1771, fol. 51; SF 142381.

10. SF 132190.

11. See 1 Chitty, *Pleading* 491–493. On the continuance, see Min. Bk. 93, SCJ Essex, Nov. 1771, N–3. A note in the Adams Papers in JA's hand shows that he received “13s: 4d” for his services “at Salem Court 1771.” Adams Papers, Microfilms, Reel No. 185.

12. Min. Bk. 93, SCJ Essex, June 1772, C–15; SCJ Rec. 1772, fol. 91.

13. See George H. Moore, *Notes on the History of Slavery in Massachusetts* 118 (N.Y., 1866); 2 Dane, *Abridgment*426; Joshua Coffin, *A Sketch of the History of Newbury, Newburyport, and West Newbury* 241, 339 (Boston, 1845).

14. See Moore, *Slavery in Massachusetts* 112–121; 2 Dane, *Abridgment* 426–427; Lorenzo J. Greene, *The Negro in Colonial New England* 1620–1776 182 (N.Y., 1942).

15. See Cushing, “The Cushing Court and the Abolition of Slavery in Massachusetts: More Notes on the 'Quock Walker Case.'” 5 *Am. Jour. Legal Hist.* 118, 131–139 (1961). The judge was the same Cushing who had sat silent in Caesar v. Taylor. Text at note 12 above.