

Minutes of General Court of Virginia, July 9, 1640¹

These are the official minutes from the General Court of Virginia when it heard this case.

Whereas Hugh Gwyn hath by order from this Board Brought back from *Maryland* three servants formerly run away from the said Gwyn, the court doth therefore order that the said three servants shall receive the punishment of whipping and to have thirty stripes apiece one called *Victor*, a *Dutchman*, the other a *Scotchman* called *James Gregory*, shall first serve out their times with their master according to their Indentures,² and one whole year apiece after the time of their service is Expired. By their said Indentures in recompense of his Loss sustained by their absence and after that service to their said master is Expired to serve the colony for three whole years apiece, and that the third being a negro named *John Punch* shall serve his said master or his assigns for the time of his natural Life here or elsewhere.³

¹ Source: McIlwaine, ed., *Minutes of the Council and General Court of Colonial Virginia*, p. 466., accessed via <http://www.virtualjamestown.org/pralink.html>

² Indentured servants agreed to work for their masters for a set number of years, usually to repay them for paying for their passage to the New World.

³ John Punch became the first African to be a slave for life by law in Virginia.

Laws of Virginia⁴

These laws were enacted by the Virginia House of Burgesses, the earliest elected legislature in North America. Virginia Courts were based on English common law and upheld principles such as the right to trial by jury. These laws are selected from a period of more than 60 years to reflect the changing nature of servanthood and slavery in Virginia.

March 1642-3

Whereas there are divers loytering runaways in the collony who very often absent themselves from their masters service, And sometimes in two or three monthes cannot be found, whereby their said masters are at great charge in finding them, And many times even to the loss of their year's labour before they be had, Be it therefore enacted and confirmed that all runaways that shall absent themselves from their said masters service shall be lyable to make satisfaction by service at the end of their tymes by indenture double the tyme of service soe neglected, And in some cases more if the comissioners for the place appointed shall find it requisite and convenient. And if such runaways shall be found to transgresse the second time or oftener (if it shall be duely proved against them) that then they shall be branded in the cheek with the letter R. and passe under the statute of incorrigible rogues.

⁴ William Waller Hening, *Statutes at Large; Being a Collection of all the Laws of Virginia* (Richmond, Va, 1809-23); excerpted at <http://www.virtualjamestown.org/laws.html>

March 1661/2-ACT CII. Run-aways

WHEREAS there are diverse loytering runaways in this country who very often absent themselves from their masters service and sometimes in a long time cannot be found, that losse of the time and the charge in the seeking them often exceeding the value of their labor: Bee it therefore enacted that all runaways that shall absent themselves from their said masters service shall be lyable to make satisfaction by service after the times by custome or indenture is expired; that is, double their times of service soe neglected, and if the time of their running away was in the crop or the charge of recovering them extraordinary the court shall lymitt a longer time of service proportionable to the damage the master shall make appeare he hath susteyned

...and in case any English servant shall run away in company of any negroes who are incapable of making satisfaction by addition of a time, it is enacted that the English soe running away in the company with them shall at the time of service to their owne masters expired, serve the masters of the said negroes for their absence soe long as they should have done by this act if they had not beene slaves, every christian in company serving his proportion; and if the negroes be lost or dye in such time of their being run away, the christian servants in company with them shall by proportion among them, either pay fower thousand five hundred

pounds of tobacco and caske or fower yeares service for every negroe soe lost or dead.

December 1662-ACT XII. Negro womens children to serve according to the condition of the mother.

WHEREAS some doubts have arrisen whether children got by any Englishman upon a negro woman should be slave or ffree, Be it therefore enacted and declared by this present grand assembly, that all children borne in this country shall be held bond or free only according to the condition of the mother,⁵ And that if any christian shall committ ffornication with a negro man or woman, hee or shee soe offending shall pay double the ffines imposed by the former act.⁶

September 1667-ACT III. An act declaring that baptisme of slaves doth not exempt them from bondage.

WHEREAS some doubts have risen whether children that are slaves by birth, and by the charity and piety of their owners made pertakers of the blessed sacrament of baptisme, should by vertue of their baptisme be made ffree; It is enacted and declared by this grand assembly, and the authority thereof, that the conferring of

⁵ The statute was a dramatic departure from the English legal tradition in which a child received his or her status from his or her father.

⁶ The earlier fine was 500 pounds of tobacco, according to a March 1661 statute: Hening, *Statutes at Large*, 3:86-7.

baptisme doth not alter the condition of the person as to his bondage or ffredome; that diverse masters, ffreed from this doubt, may more carefully endeavour the propagation of christianity by permitting children, though slaves, or those of greater growth if capable to be admitted to that sacrament.

October 1669-ACT I. An act about the casuall killing of slaves.

WHEREAS the only law in force for the punishment of refractory servants resisting their master, mistris or overseer cannot be inflicted upon negroes [that is, extending their time of service], nor the obstinacy of many of them by other then violent meanes supprest, Be it enacted and declared by this grand assembly, if any slave resist his master (or other by his masters order correcting him) and by the extremity of the correction should chance to die, that his death shall not be accounted ffelony, but the master (or that other person appointed by the master to punish him) be acquit from molestation, since it cannot be presumed that prepensed malice (which alone makes murther ffelony) should induce any man to destroy his owne estate.

October 1670-ACT IV. Noe Negroes nor Indians to buy christian servants.

WHEREAS it hath beene questioned whither Indians or negroes manumited, or otherwise free, could be capable of purchasing christian servants, It is enacted that noe negroe or Indian though baptised and enjoyed their owne ffredome shall be capable of any such purchase of christians, but yet not debarred from buying any of their owne nation.

April 1691-ACT XVI. An act for suppressing outlying slaves.

WHEREAS many times negroes, mulattoes, and other slaves unlawfully absent themselves from their masters and mistresses service, and lie hid and lurk in obscure places killing hoggs and committing other injuries to the inhabitants of this dominion, for remedy whereof for the future, ... it is hereby enacted, that in all such cases upon intelligence of any such negroes, mulattoes, or other slaves lying out...the sherrife of the same county [will be given a warrant] to apprehend such negroes, mulattoes, and other slaves, which said sherriffe is hereby likewise required upon all such occasions to raise such and soe many forces from time to time as he shall think convenient and necessary...and in case any negroes, mulattoes or other slaves or slaves lying out as aforesaid shall resist, runaway, or refuse to deliver and surrender him or themselves ... it shall and may be lawfull for such person and persons to kill and

distroy such negroes, mulattoes, and other slave or slaves by gunn or any otherwise whatsoever.

Provided that where any negroe or mulattoe slave or slaves shall be killed in pursuance of this act, the owner or owners of such negro or mulatto slave shall be paid for such negro or mulatto slave four thousand pounds of tobacco by the publique.

And for prevention of that abominable mixture and spurious issue which hereafter may encrease in this dominion, as well by negroes, mulattoes, and Indians intermarrying with English, or other white⁷ women, as by their unlawfull accompanying with one another...it is hereby enacted, that for the time to come, whatsoever English or other white man or woman being free shall intermarry with a negroe, mulatto, or Indian man or woman bond or free shall within three months after such marriage be banished and removed from this dominion forever...

And be it further enacted ...That if any English woman being free shall have a bastard child by any negro or mulatto, she pay the sum of fifteen pounds sterling, within one moneth after such bastard child be born, to the Church wardens of the parish⁸ where she shall be delivered of such child, and in default of such payment she shall be taken into the possession of the said Church wardens and

⁷ This is the first use of “white” in this sense by the Virginia General Assembly.

⁸ parish: The royal government delegated to church parishes the responsibility for administering welfare programs for the poor.

disposed of for five yeares, and the said fine of fifteen pounds, or whatever the woman shall be disposed of for, shall be paid, one third part to their majesties...and one other third part to the use of the parish where the offence is committed, and the other third part to the informer, and that such bastard child be bound out as a servant by the said Church wardens untill he or she shall attaine the age of 30 yeares,⁹ and in case such English woman that shall have such bastard child be a servant, she shall be sold by the said church wardens, (after her time is expired that she ought by law to serve her master) for five yeares, and the money she shall be sold for divided as is before appointed, and the child to serve as aforesaid.

And forasmuch as great inconveniences may happen to this country by the setting of negroes and mulattoes free (by their either entertaining negro slaves from their masters’ service, or receiveing stolen goods, or being grown old bringing a charge upon the country) for prevention thereof...it is hereby enacted, That no negro or mulatto be after the end of this present session of assembly set free by any person or persons whatsoever, unless such person or persons, their heires, executors or administrators pay for the transportation of such negro or negroes out of the countrey within six moneths after such setting them free,¹⁰ upon penalty of paying

⁹ All illegitimate children were “bound as a servant” during childhood as a way of arranging for their custody. Illegitimate white boys were kept as servants until the age of 21 and white girls until the age of 18.

¹⁰ This is the first legal restriction on manumitting (freeing) slaves in Virginia.

of tenn pounds sterling to the Church wardens of the parish where such person shall dwell with, which money, or so much thereof as shall be necessary, the said Church wardens are to cause the said negro or mulatto to be transported out of the countrey, and the remainder of the said money to imploy to the use of the poor of the parish.

April 1692-ACT III. An act for the more speedy prosecution of slaves committing Capitall Crimes.

WHEREAS a speedy prosecution of negroes and other slaves for capital offences is absolutely necessarie, that others being deterred by the condign punishment inflicted on such offenders, may vigorously proceed in their labours and be affrighted to commit the like crimes and offences... it is hereby enacted, That every negro or other slave which shall after this present session of Assembly [be accused of committing] any cappitall offence which the law of England requires to be satisfyed with the death of the offender or loss of member, after his [alleged] committing of the said offence, shall be forthwith committed to the common gaol of the county within which such offence shall be committed, there to be safely continued, well laden with irons, and that the sheriff of the said county doe forthwith signifie the same to the governour for the time being, who is desired and impowered to issue out a commission of

oyer and terminer¹¹ directed to such persons of the said county as he shall think fitt, which persons forthwith after the receipt of the said commission are required and commanded publicly at the courthouse of the said county to cause the offender to be arraigned and indicted, and to take for evidence the confession of the part or the oathes of two witnesses or of one with pregnant circumstances, without the sollemnitie of jury, and [if] the offender being found guilty as aforesaid, to pass judgment as the law of England provides in the like case, and on such judgment to award execution.

October 1705-CHAP. XLIX. An act concerning Servants and Slaves.

XI. And for a further christian care and usage of all christian servants...it is hereby enacted, That no negros, mulattos, or Indians, although christians, or Jews, Moors, Mahometans, or other infidels, shall, at any time, purchase any christian servant, nor any other, except of their own complexion, or such as are declared slaves by this act: And if any negro, mulatto, or Indian, Jew, Moor, Mahometan, or other infidel, or such as are declared slaves by this act, shall, notwithstanding, purchase any christian white servant, the

¹¹ “Oyer and terminer” is an English legal term meaning “to hear and determine.” Four of a county’s justices of the peace heard the trial and decided the fate of the person charged with a crime.

said servant shall, ipso facto,¹² become free and acquit from any service then due, and shall be so held, deemed, and taken: And if any person, having such christian servant, shall intermarry with any such negro, mulatto, or Indian, Jew, Moor, Mahometan, or other infidel, every christian white servant of every such person so intermarrying, shall, ipso facto, become free and acquit from any service then due to such master or mistress so intermarrying, as aforesaid.

XIX. [The law repeats the previous penalties for white women who had illegitimate children with black or mulatto men from the April 1691 law] And for a further prevention of that abominable mixture and spurious issue, which hereafter may increase in this her majesty's colony and dominion, as well by English, and other white men and women intermarrying with negroes or mulattos, as by their unlawful coition with them...it is hereby enacted, That whatsoever English, or other white man or woman, being free, shall intermarry with a negro or mulatto man or woman, bond or free, shall, by judgment of the county court, be committed to prison, and there remain, during the space of six months, without bail or mainprize¹³; and shall forfeit and pay ten pounds current money of Virginia, to the use of the parish, as aforesaid.

¹² *ipso facto*: by that very fact; that is, automatically, without needing to appeal to a court, etc.

¹³ mainprize: released based on another person's guarantee.

XX. And be it further enacted, That no minister of the church of England, or other minister, or person whatsoever, within this colony and dominion, shall hereafter wittingly presume to marry a white man with a negro or mulatto woman; or to marry a white woman with a negro or mulatto man, upon pain of forfeiting and paying, for every such marriage the sum of ten thousand pounds of tobacco; one half to our sovereign lady the Queen, her heirs and successors...and the other half to the informer.

Stevens Thompson, Legal opinion on the definition of mulatto, September 1705¹⁴

On August 16, 1705 the Council heard the petition of John Bunch and Sarah Slaydon who wanted to marry. The minister of Blissland Parish in New Kent County refused to marry them because Bunch had one black grandparent. The Councillors decided to refer the petition to Stevens Thompson, the Attorney General of Virginia, "to report his opinion whether the Petitioners case be within the intent of the Law to prevent Negroes & White Persons intermarrying." This is his reply as copied into the official record of the Council.

I am of opinion & do conceive that the sd Act being Penal is Coercive or restrictive no further then the very letter thereof, and

¹⁴ Source: McIlwaine, et al., eds., *Executive Journals of the Council of Colonial Virginia*, 3:28, 31. Accessed via <http://www.virtualjamestown.org/pralink.html>

being wholly unacquainted with the Appellations given to the issue of such mixtures, cannot resolve whether the issue begotton on a White woman by a Mulatto man can properly be called a Mulatto, that name as I conceive being only appropriated to the Child of a Negro man begotten upon a white woman, or by a white man upon a negro woman, and as I am told the issue of a Mulatto by or upon a white Person has another name viz that of, Mustee; wch if so, I conceive it wholly out of the the Letter (tho it may be conjectured to be within the intent) of the sd act, The which (as abovesd being Penal) is, as I conceive not to be construed beyond the letter thereof.

S. Thomson, A G

Upon consideration of which Report, and that the Petitionrs Case is matter of Law, It is therefore ordered that the Petition of the said Bunch and Slayden be referred till next General Court for Mr Attorney to argue the reasons of his opinion before his Excellcy and the Council.

[In October 1705 the Virginia statute entitled “An act declaring who shall not bear office in this country” included a definition of who was considered a mulatto in Virginia. It reads: it is hereby enacted and declared, That the child of an Indian and the child, grand child, or great grand child, of a negro shall be deemed, accounted, held and taken to be a mulatto.]