



## Why words don't count

It's not what was said but what others thought was said... **Malcolm Bishop KC** reflects on the abolition of slavery & the extraordinary legacy of *Somerset*

The air of England is too pure for a slave to breathe; let the black go free! These words of Lord Mansfield in the celebrated case of *Somerset v Stuart* have echoed down the ages as a landmark judgment in the history of the abolition of slavery. But there's a slight difficulty. He never said it. In fact, it is not easy to discover what he did say, because in 1772 when the judgment was given the law reports had not yet attained the accuracy of later years. There was no court recordings and Mr Pitman's shorthand had not yet been invented. Reporters took down what the judges said as best they could, as did newspapers who in those days would report *in extenso* the judgments of topical cases, and Mansfield's famous words appear to have been taken from a letter to the *Evening Post*. The most reliable version of what he did say is the less than memorable, 'the black must be discharged'.

But whichever way he said it, Lord Mansfield's words were revolutionary, although he counselled caution. He urged that the case should settle but he added that if not 'justice would be done though the heavens fall', although he said it in Latin.

### Fact & argument

The facts of this celebrated case are well-known. James Somerset, an enslaved African man, was purchased by Charles Stewart (or Stuart), a customs officer, while stationed at Boston, in North America. He was brought to England in 1769 and was to be sold to a plantation for labour. Importantly, Somerset had been baptised a Christian in England, at the Church of St Andrew, Holborn, and could therefore

claim that, as a baptised Christian, he was as entitled as if a native born and so his imprisonment was unlawful. The rationale of slavery then was that persons were not entitled to the rights and privileges of freeborn Englishmen unless baptised.

Although enslaved, Somerset had secured rather luxurious representation—no fewer than five advocates, including two Serjeants at law and a future star of the Irish Bar. Although not nominally a claimant, the real backer was Granville Sharp, a prominent Quaker and leader of the abolitionist cause who was always on the look-out for a case which might advance his cause.

The arguments on either side were fairly conventional for the day, those acting for Somerset argued that while colonial laws might permit slavery, neither the common law of England nor any statutory law made by Parliament recognised the existence of such a state and so it was unlawful. The law of contract was also relied on, no one could enslave himself, and a contract could not be binding without the other party's consent, which an enslaved person could not give.

For the slaveowner, the lawyers argued that property was paramount and it would be dangerous to free all the enslaved people in England (approximately 15,000)—the usual floodgate argument to support an unmeritorious principle. But the case did not settle and, after the ruling, the heavens did not fall though perhaps they quivered a little. On a narrow reading of the judgment all that was decided was that to remove an enslaved person from England against his or her will was unlawful. It did not decide that slavery itself within England was unlawful. Indeed, in *R v Inhabitants of Thames Ditton*, Mansfield makes clear that *Somerset* did

not make slavery illegal but only that an enslaved person could not be forcibly removed from England against their will.

### A remarkable legacy

The importance of *Somerset* was not what it actually said, but what others claimed it said. It gave a tremendous impetus to the growing abolitionist movement, although contrary to popular myth it did not end the holding of enslaved persons in England, nor did it outlaw the participation of slavery in other parts of the British Empire including the North American colonies. Despite the ruling, runaway slaves continued to be recaptured. In the British newspapers, particularly those circulating in the slave ports of Liverpool and Bristol, advertisements featuring the sale and purchase of enslaved persons were common. In 1792 a Bristol newspaper reported the sale of an enslaved African woman in the port, and 'a black boy' was offered for sale in 1779 in a Liverpool newspaper. Indeed, keen abolitionists dreamt up a novel way of proving that slavery still existed in the country: Thomas Clarkson and James Ramsey went out and purchased an enslaved person.

By the 1800s the abolitionist flame was burning brightly, largely through the campaigns of a group of Quakers and other evangelicals of whom Lord Wilberforce was the chief parliamentary advocate. On 22 July 1833, a week before Wilberforce died, an Act was passed abolishing slavery throughout the British Empire (the Act specifically excluded 'the Territories in the Possession of the East India Company, or the Island of Ceylon, or the Island of Saint Helena'). These exceptions were eliminated in 1843 and the might of the Royal Navy was enlisted to impound not only British slave ships but those of foreigners as well. A remarkable exception to national sovereignty.

*Somerset* was closely followed in the North American colonies, where some northern states began to hold that slavery was unlawful; while the southern states argued it was vital to the health of their cotton-based economy. This disagreement encouraged the independence movement and eventually led to the founding of the United States, and, three score and seven years later, to the civil war. So, what Lord Mansfield may or may not have said had repercussions far beyond the case he was deciding. Its ripples extended across the Atlantic before washing up on the shores of the most powerful country on earth. Quite a legacy.

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