The Somerset Case and the Abolition of Slavery in England

WILLIAM R. COTTER
Colby College

Somerset v. Stewart, decided by Lord Chief Justice Mansfield four years before the American Declaration of Independence, was long interpreted as outlawing slavery in England. Not only did Somerset have a profound impact in Britain where, many believe, it led to the subsequent abolition of the slave trade (1807) and the eventual emancipation of all slaves in the British colonies (1834), but it also "became part of a newly developing American common law [and] . . . was widely discussed in America both before and after the revolution'.

The American courts, following the revolution, adopted the great bulk of English common law and most interpreted Somerset to stand for the proposition that, in the absence of specific legislation or constitutional provisions authorizing it, slavery was contrary to natural law, 'odious' and thus prohibited under common law tradition. Consequently, northern courts, particularly, interpreted the 1772 English decision as outlawing slavery in the absence of any specific legislative mandate to the contrary. If, as some now suggest, Somerset did not abolish slavery, then American courts erroneously incorporated it into common law following the revolution. If the common law at the time of the American revolution sanctioned slavery, then the courts in Massachusetts and other northern states should have held that slavery was permitted in their states unless specifically outlawed by state

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2 Paul Finkelman, Slavery in the Courtroom (Washington DC, 1985) [hereafter Finkelman, Slavery], pp. 6, 21.

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constitution or legislation. In fact, relying upon the *Somerset* precedent, they generally held the opposite: there could be no slavery *unless* specific legislation authorized it.3

Some American legal scholars rank the *Somerset* decision as co-equal with the Declaration of Independence and the founding documents of the American states as 'the documentary basis' for the legal attack on slavery. Madison argued that the *Somerset* decision made necessary the fugitive slave clause in the US constitution, because without that clause common law would require that escaped slaves be freed. *Somerset* was also cited by Chief Justice Salmon Chase when, as a young lawyer, he represented the slave in the *Matilda* case; by the Garrisonians; by the radicals who tried to invalidate the fugitive slave law; and as late as 1857 when it was invoked in an Ohio case that freed sojourner slaves in that state.4

Despite this pervasive influence, in the more than two centuries since *Somerset* was decided there has been substantial controversy over whether the court, in fact, freed the 10,000–15,000 slaves who were then believed to reside in England.5 Many contemporary scholars argue that American courts erroneously relied upon *Somerset* to help abolish slavery in the north. If these critics are correct, the entire Anglo-American movement to end the slave trade and abolish slavery may have been based on a false interpretation of *Somerset* and the common law. While many scholars continue to assert that *Somerset* abolished slavery

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4 William Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760–1848* (Ithaca, 1977) [hereafter Wiecek, *Sources*], pp. 20, 39, 191–2, 243, 273, 286. See also Robert Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven, 1975), who traces the extensive influence of *Somerset* in American cases at pp. 17, 29, 87, 88, 89, 92, 94, 95, 98, 113, 115, 167. Cover states that Justice Story's starting point for analysis of slavery in his treatise was *Somerset's Case* at p. 87. See also Don Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York, 1978), who notes that the lawyers invoked *Somerset* in the *Dred Scott* decision, at p. 397, and that Judah Benjamin was obliged to attack *Somerset* when arguing for the adoption of the Lecompton Constitution from Kansas in March 1858, at p. 475; and Patricia Bradley, 'Slavery in Colonial Newspapers: The *Somerset Case*', *Journalism History*, xii (1985), 2–7, who notes that of the twenty-four newspapers regularly publishing in the American colonies in 1772 (for which there are the full year's surviving editions), twenty-two had some coverage of the *Somerset* trial (ranging from four insertions totalling 2,711 words to one insertion of thirty-nine words).

5 The actual number of slaves in eighteenth-century England is not known. Estimates ranged from 20,000 in London alone to 10,000 in the country as a whole. The estimate of 14,000 or 15,000 for England and Wales has come to be accepted by historians. Peter Fryer, *Staying Power: The History of Black People in Britain* (1984) [hereafter Fryer, *Staying Power*], p. 68.

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in England in 1772, others argue this did not occur until general emancipation in 1834. A third group believes that English slavery ended in the 1790s. But even that would be too late to incorporate Somerset into American common law since it was after the revolution.

The controversy has grown because it is not entirely clear what Mansfield said in Somerset, nor what he intended to be the scope of his

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decision. In addition to the official report of the *Somerset* opinion by
Capel Lofft, there are four other principal versions and many others
that have slight variations. Moreover, Mansfield himself made subse-
quent comments in which he appeared to try to limit the importance of
*Somerset*.

My own own conclusions are that Lofft's official report is essentially
consistent with the other contemporaneous texts of Mansfield's decision
and can be relied upon; that Mansfield's subsequent comments and
actions do not undermine the sweep of the *Somerset* decision which by
its outcome (Somerset was freed) and announced principles (slavery is
'odious' and requires specific statutory authority to be enforceable) left
no legal basis to support slavery in England; that after *Somerset*
English judges (including Mansfield) consistently upheld the rights of former
slaves and never, thereafter, held for the masters; that there were, in
fact, very few cases of attempts to treat blacks as slaves in England after
1772, virtually all of which were unsuccessful, usually because of the
intervention of well-organized abolitionists and the courts; and that
contemporary observers - those closest to the case (both abolitionists
and their opponents) - recognized that *Somerset* ended *de jure* slavery
in England.

In 1769 Charles Stewart, a Massachusetts customs official, left
Boston with his slave, James Somerset, for England for a limited period
to transact business after which he intended to return to America. In
1771 Somerset ran away without his master's consent, but was captured
and put on board ship to be sent to Jamaica to be sold there as a slave.
News of Somerset's kidnapping reached three abolitionists who success-
fully applied to Lord Mansfield for a writ of *habeas corpus*. Mansfield
was not especially sympathetic to Somerset and in fact required him,
even though he was the plaintiff, to produce sureties for his appearances
in court; he also 'advised the poor widow who had been at the expense
of the Writ to purchase the plaintiff of the defendant' in order to end
the case. Word reached Granville Sharp - 'England's first abolitionist
and the founder of Sierra Leone' - and Sharp induced leading barristers
to appear for Somerset, without compensation.

The *Somerset* case had eight separate hearings over the next five
months, in part because Mansfield repeatedly tried to get the parties to
settle so that he could avoid a definitive decision. However, the West
Indian planters (who had taken over defence of the case from Stewart)
on the one side, and Granville Sharp and other abolitionists on
the other, all desired an unequivocal ruling. Mansfield, reluctantly,
delivered that judgment on 22 June 1772. All agree that Somerset won

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10 Folerin Shyllon, *Black People in Britain 1555–1833* (Oxford, 1977) [hereafter Shyllon,
*Black People*], p. 28.

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and was 'discharged'. But just what Mansfield said and the scope of his decision is not as clear.

On 22 June 1772, when Mansfield announced his decision, the court room was filled with black spectators. Mansfield spoke from the bench, but probably read from a written text. That text, however, has never been found and may have been destroyed when Mansfield's house and rich library in Bloomsbury Square were burned to the ground during the Gordon Riots of 1780.12 Judges in the eighteenth century delivered their opinions orally and these were 'recorded by lawyers, whose names were given to the volumes of reports'.13 The accepted version of Somerset was written by Capel Lofft, a young solicitor who had not yet been called to the bar. Nevertheless, he was the only law recorder present in court that day and his report has become the 'official' – but much contested – version of Mansfield's oral decision. Lofft's report was first published in 1776,14 four years after the case. The relevant portion of Lofft's report of Mansfield's decision states:

The state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political; but only positive[15] law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory: It's so odious, that nothing can be suffered to support it, but positive law. Whatever inconveniences, therefore, may follow from a decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged.

Some contemporary scholars claim that Mansfield never uttered these words, but that Lofft erroneously attributed to Mansfield an argument that had been made by Hargrave, one of Somerset's lawyers.16 It is certainly true that Lofft has frequently been criticized as a court reporter. William Holdsworth said he was 'not of any great authority' and Richard Bridgman wrote that Lofft's 'collection is said to contain some important cases, but which from a hasty mode of publication is reported to be very inaccurate, and has accordingly not met with that favourable reception which the labours of those who engage in works of this kind are usually entitled to from the profession'. John Wallace calls Lofft's

13 Horowitz and Karst, Law, Lawyers, p. 11.
14 The version by Lofft, 1 Lofft 1, was reprinted in 20 Howard State Trials 1 and subsequently in Eng. Rep. 98 (KB, 1772), 499. Holdsworth, English Law, xii. 139–40.
15 'Positive law' means a statute of parliament rather than, for example, an opinion of the Attorney General or a court decision.
16 Walvin, Black and White, p. 127; Nadelhaft, 'Somersett Case', 201.

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reports ‘confessedly a book of bad reputation’. These various criticisms of Lofft appear to relate mostly to his age and inexperience at the time. He never became one of the famous reporters because he served for only two years. We do not know why Lofft stopped after that period, but there is no suggestion that it had anything to do with his reputation for accuracy, since his first reports appeared two years after he ceased being a reporter. None of the critics gives any examples of inaccurate reporting by Lofft, and Lofft was particularly sensitive about the need to report the opinions of the judges verbatim. Lofft knew that his reports would be widely read and that ‘If in any respect I have [made an error] the cases are too recent to pass unobserved or uncondemned’. Neither Lord Mansfield nor anyone else connected with the trial ever disputed the essential accuracy of Lofft’s report of the Somerset decision.

Equally important is the fact that Lofft’s version of Somerset agrees, in its essentials, with other separately published versions in the London newspapers and in Scots Magazine, and by Granville Sharp’s anonymous reporter. It is unlikely that both of these independent sources made the same mistake of putting the words of Hargrave, Somerset’s counsel, into the mouth of Judge Mansfield. A full text of the Mansfield decision appeared almost immediately in three British newspapers: the London Evening Post, the Morning Chronicle and the Public Advertiser. The Morning Chronicle ran the first report on 23 June 1772 which reads, in pertinent part:

The state of slavery is of such a nature, that it is incapable of being now introduced by Courts of Justice upon mere reasoning or inferences from any principles, natural or political; it must take its life from positive law; the origin of it can in no country or age be traced back to any other source: immemorial usage preserves the memory of positive law long after all traces of the occasion, reason, authority and time of its introduction are lost; and in a case so odious as the condition of slaves must be taken strictly, the power claimed by the return was never in use here; no master was ever allowed to take a slave by force to be sold abroad because he had deserted from his service, or for any other reason whatever; We cannot say the cause set forth by the return is allowed or approved by the laws of this Kingdom, therefore the man must be discharged.

17 Holdsworth, English Law, xii. 139–40; Richard Bridgman, A Short View of Legal Bibliography (1807), p. 205; John Wallace, The Reporters Arranged and Characterized with Incidental Remarks (4th edn., Boston, 1882), p. 452. But, Wallace goes on to say, ‘In the great case of Smith v. Earl of Jersey . . . Park J. said in the House of Lords, when Lofft was cited, that, without forming any judgment of his own as to the merits of the book, he had never heard it cited three times, and this notwithstanding the fact that the volume embraced a portion of Lord Mansfield’s judicial life not covered by any other reporter. Lofft’s term was, however a short one – two years. He is the only reporter who reports the case of the Negro Somerset, where it was decided that slaves cannot exist in England. Dr. Allibone therefore justly remarks that his work “is not without value”.

18 Capel Lofft, Report of Cases Adjudged in the Court of Kings Bench from Easter Term 12 George 3 to Michaelmas 14 George 3 (both inclusive) (1776), pp. xii–xiii, xvi.
The next day, 24 June, the London Evening Post and the Public Advertiser ran versions of the opinion which are nearly identical to that of the Morning Chronicle. The slightly later publication of Mansfield's opinion in the Scots Magazine of June 1772 is identical to the reports in the Public Advertiser and the Morning Chronicle and was probably copied from them.19

We might wonder why the newspapers did not trumpet the Somerset decision as the abolition of slavery in England, if it had that all-encompassing impact. English newspapers in 1772 used no headlines to capture the gist of a story, nor were there editorials as we know them today. Thus, even if the editors recognized the sweep of the decision, there was no standard way for them to express it. The fact that the case received so much coverage, in Britain and the colonies, however, suggests that its significance was understood.

A third full version of the judgment was produced by a shorthand reporter hired by Granville Sharp. Here the language varies considerably from Lofft's report and from the newspapers and Scots Magazine. However, the reasoning is not substantially different, although the reference to slavery being 'odious' is missing. But that is replaced by the following phrase which conveys much of the same meaning: 'Tracing the subject to natural principles, the claim of slavery never can be supported.'20 And while the text differs substantially from the versions in Lofft and the newspapers, the legal analysis and the conclusion are essentially the same, namely, that the common law – or 'natural principles' – do not support slavery; that only English positive law could support the forcible repatriation of a slave because 'so high an act of dominion must derive its force from the law of [England]; and that in the absence of applicable 'positive law' the man 'must be discharged'.

Thus, each of the three full versions – Lofft's, that of the newspapers and Scots Magazine, and that of Granville Sharp's anonymous reporter21 – produced texts of Mansfield's opinion which, while they vary in detail and language, make it clear that slavery is 'odious' or against 'natural principles' and that in the absence of any specific positive law there could be no slavery in England. Nevertheless, a

19 Scots Magazine, xxxiv (1772), 298–9.
20 Hoare, Memoirs, p. 90. Wieck argues, in 'Somerset', p. 144, that there is no documentation for the 'implication that a shorthand reporter actually did take down Mansfield's judgment'. However, both Hoare, Memoirs, p. 76, and Shyllon, Black Slaves, p. 110 assert that Sharp had his own shorthand writer in court on 22 June 1772. Sharp describes his reporter as 'a very ingenious and able counsellor who was present when the judgment was given'. See Granville Sharp, The Just Limitation of Slavery and the Laws of God, Compared with the Unbounded Claims of the African Traders and British-American Slaveholders (1776) [hereafter Sharp, Just Limitation], p. 65.
21 James Oldham has found two other, unpublished, full versions at Lincoln's Inn Library: one by Serjeant Hill and the other by Judge Ashhurst, who sat on the case with Mansfield. Oldham, 'New Light', p. 55. Hill's text is virtually identical to the newspapers/Scots Magazine and Oldham speculates that Hill may be the source of those reports (p. 58). The Ashhurst notes appear on the back of his set of the pleadings and are not as complete as the others, but do not differ in substance from the three principal versions (pp. 56–8).
shorter, fourth version, which first appeared in the June 1772 issue of the *Gentleman's Magazine* and was subsequently reprinted verbatim in the *Annual Register for the Year 1772*, is the version that some contemporary critics prefer. The *Gentleman's Magazine/Annual Register* reports state:

The Court of Kings Bench gave judgment in the case of Somerset the Slave, viz. that Mr. Stewart, his master, had no power to compel him on board a ship, or to send him back to the plantations. Lord Mansfield stated the matter thus. The *only* question before us is, is the cause returned sufficient for remanding the slave? If not, he must be discharged. The *cause returned* is, the slave absented himself, and departed from his master's service, and refused to return and serve him during his stay in England; whereupon, by his master's orders, he was put on board the ship by force, and there detained in secure custody, to be carried out of the Kingdom and sold. So high an act of dominion was never in use here; no master ever was allowed here to take a slave by force to be sold abroad, because he had deserted from his service or for any other reason whatever. We cannot say the cause set forth by this return is allowed or approved by the laws of this Kingdom; therefore the man must be discharged.

This version omits any reference to slavery being 'odious' or against 'natural principles' and would appear to limit Mansfield's decision to whether a master can force a slave to be 'carried out of the Kingdom and sold'. This narrow reading of Mansfield's opinion is at the heart of the argument of those scholars who assert that the *Somerset* decision did not end slavery in England in 1772, but was limited to the sole question of whether owners could force their slaves to return to the colonies. This short version, however, differs so substantially from the Lofft version, from that of Sharp's reporter and from the widely reprinted newspaper and *Scots Magazine* versions which appeared immediately after the trial, that it appears to be only a partial report of what Mansfield said. The fact that the *Annual Register* adopted the short *Gentleman's Magazine* text to reprint rather than the longer newspaper accounts might be because the *Annual Register* attempted to sum up all of the important events of 1772 in its 'Chronicle' section of 100 pages (pp. 65-164).

A fifth, and final, version of Mansfield's decision appears in Lord Campbell's *Lives of the Chief Justices*. However, I must agree with William Wiecek who notes that Campbell's version 'is so widely variant from all other versions, and so much at variance with Mansfield's...

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22 *Gentleman's Magazine*, xliii June 1772, 293–4; Walvin, *Black and White*, p. 127; Nadelhaft, 'Somersett Case', 195. Edward Fiddes, however, who started the current debate, accepts the Lofft text and does not discuss this shorter, more limited version: Fiddes, 'Lord Mansfield', 505.
ascertainable sentiments on the subject of slavery, that it must be viewed as spurious.\textsuperscript{23}

In summary, the Lofft 'official' version of Mansfield's decision in \textit{Somerset} appears to be reliable. Mansfield must have read the long newspaper reports which appeared immediately after his decision, as well as the later reprint of those reports in the \textit{Scots Magazine} (Mansfield was himself a Scot) and there is no record that he ever disputed the accuracy of that text. He was clearly at the full height of his powers in 1776 when the Lofft report was published (he remained Chief Justice until 1788) and it is unlikely that Mansfield would have remained silent concerning such a material misquotation. Mansfield may still have had his written text in 1776, and could have compared this with Lofft's report. As noted, the text was probably destroyed in the Gordon Riot fire in 1780.\textsuperscript{24}

Even assuming that the Lofft text accurately reflects Mansfield's decision in \textit{Somerset}, numerous contemporary scholars assert that subsequent events, including comments from Mansfield himself, prove that he never intended to free slaves in England. They argue that Mansfield simply held that slaves could not be taken forcibly \textit{out} of the kingdom, against their will, while leaving in force slavery \textit{within} England. The actual holding of the \textit{Somerset} case is, of course, thus limited, but I believe that the underlying rationale of the decision – as well as subsequent English court actions – confirm that \textit{de jure} slavery in England was abolished by the 1772 \textit{Somerset} decision.

One of the principal reasons for doubting the broad sweep of \textit{Somerset} are comments made by Mansfield in the case of the \textit{R. v. The Inhabitants of Thames Ditton} in 1785 – thirteen years after \textit{Somerset} and three years before he retired as Chief Justice. In \textit{Thames Ditton}, Charlotte Howe was a slave purchased in America by Captain Howe and brought to England in 1781. In November 1781 Howe went to live in the parish of Thames Ditton and Charlotte 'continued with him there in his service, till the 7th of June, 1783, when he died'. Charlotte was then baptized in Thames Ditton and lived with Captain Howe's widow who, however, soon moved to a new parish, St Luke's in Chelsea. Charlotte continued to live with Captain Howe's widow 'for five or six months, when she left her'.\textsuperscript{25} Under the English poor law, a pauper had to qualify for relief within a particular parish, and Charlotte applied to Thames Ditton for relief. Two justices in Thames Ditton, however, ordered that she be 'removed' to St Luke's, in Middlesex, because she 'had served the last forty days' in that parish. This order, holding St Luke's responsible for Charlotte's relief, was overturned by an appellate

\textsuperscript{23} John Campbell, \textit{The Lives of the Chief Justices of England} (6 vols., Boston, 1873), iii. 316–18; Wieczek, 'Somerset', 143.
\textsuperscript{24} \textit{Dictionary of National Biography} (1894), xxxix. 413.
\textsuperscript{25} 4 \textit{Douglas} 300, 301; 99 \textit{Eng. Rep.} 891, 892 (1785); Catterall, \textit{Cases}, p. 20.
court and the parish of Thames Ditton appealed that decision to Lord Mansfield who ruled:

The poor law is a subsisting positive law, enforced by statutes which began to be made about the time of Queen Elizabeth . . . The present case is very plain. For the pauper [Charlotte] to bring herself under a positive law she must answer to the description it requires. Now the statute says there must be a hiring, and here there was no hiring at all. She does not therefore come within the description.

Earlier, Mansfield had engaged in colloquy with counsel for Thames Ditton, and emphasized that the Somerset case had not resolved all of the legal relationships between a master and a servant when the latter is brought to England. Thames Ditton counsel argued: 'The Court has never decided that a negro brought to England is there under an obligation to serve.' Mansfield interjected: 'The determinations go no further than that a master cannot by force compel him to go out of the kingdom . . . The Case of Somerset is the only one on this subject. Where slaves have been brought here, and commenced actions for their wages, I have always nonsuited the plaintiff.'

James Walvin, Paul Edwards, Folarin Shyllon and other scholars are correct that the decision in Somerset went 'no further than that a master cannot by force compel him to go out of the Kingdom', but it does not follow that Mansfield believed that all other aspects of the master/slave relationship remained in force in England. His holding that slavery is 'odious' to the common law and requires specific 'positive law' to authorize it would mean that no aspect of slavery was authorized in England since no positive law ever provided for any form of slavery at home. Most likely, Mansfield in Thames Ditton was simply pointing out that the legal relationship between a master and former slave would, following the Somerset decision, have to be decided on a case-by-case basis. Indeed, in Somerset itself, Mansfield had anticipated that many subsidiary legal issues would have to be settled if English slaves were freed. At the hearing on 14 May 1772, Mansfield urged the parties to settle the case and warned: 'The setting 14,000 or 15,000 men at once free loose by a solemn opinion, is much disagreeable in the effects it threatens . . . How would the law stand with respect to their settlement; their wages? How many actions for any slight coercion by the master?'

In Thames Ditton, by implication, Mansfield answered two of the questions he had posed in Somerset. First, freed slaves would not automatically be entitled to wages. And second, they would not necessarily be entitled to a 'settlement' under the poor law. The fact that Charlotte was not awarded relief under the poor law, in Thames Ditton, is not

surprising. Parishes almost constantly challenged claims for ‘settlements’ in order to avoid paying relief. Edmond Bott, the authority on poor law litigation, reports more than 3,000 cases where responsibility of the parishes for poor relief was disputed. In this litigious thicket Mansfield was probably right, in Thames Ditton, to tread carefully lest he open a whole new set of potential claimants under the poor law. This statute was very strictly construed against those who could not fit precisely within its terms and many groups were categorically excluded. The Scots and the Irish, for example, were not entitled to settlements.

In a later case, R. v. The Inhabitants of Harberton, Mansfield emphasized: ‘As I have often said, it is of more consequence in most cases that the law should be certain, than what the law is. It is particularly so in questions relative to settlements.’ Harberton concerned the rights of an apprentice to claim a hiring where a previous indenture still existed. (The apprentice here was clearly white; not a former ‘slave’.) Mansfield was unwilling to extend new relief under the poor law in the Harberton case because it would increase the litigation of the poor laws, which are already a disgrace to the country; and would leave every case so much on its own circumstances that it must necessarily travel through every stage which the law allows, before the parties can know what they are to expect. However, Mansfield also stated in Thames Ditton that: ‘Where slaves have been brought here and have commenced actions for their wages, I have always nonsuited the plaintiff.’ Forcing former slaves to work without wages, some scholars argue, shows that ‘a slave was still a slave’ even after the Somerset decision. But Mansfield had not singled out former slaves for such treatment. In eighteenth-century England, the law was clear that no one could recover wages unless there was an actual agreement between the labourer and the person receiving the benefits of the labour that wages would be paid.

The current doctrine of quantum meruit, under which a quasi-contract would be implied where an individual did work for another, was not the law in England in Mansfield’s time. Apprentices, indentured servants and others normally laboured without any expectation of wages, but rather for room and board, clothing, medical assistance and,

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28 Edmond Bott, Decisions of the Court of Kings Bench upon the Laws Relating to the Poor (3rd edn., 1793). This is a two-volume work totalling 1,580 pages. The Bott text of Thames Ditton, decision ii. 331, differs substantially from the official Douglas version. His version can be used for both a broad and a narrow reading of Somerset. The broad reading is reinforced by Mansfield’s phrase: ‘for the moment a man lands in this country he becomes a subject of it, and every subject of this country is entitled to the freedom of personal liberty’. However, Mansfield’s phrase ‘her being Black or a slave’ can be used to support the argument that Mansfield recognized that there were still slaves in England in 1785.


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sometimes, for the training or experience. Thus, unless the former slaves could prove an actual promise to pay wages, they were not entitled to them. Such a promise was alleged in *Alfred v. Marquis of Fitzjames*, and the court held that the former slave could receive wages if he could prove the offer; otherwise not.32

Walvin reports at least one instance of a ‘slave’ serving without wages after 1772: 'If anyone needed further proof of the reality, as opposed to the mythology of Mansfield’s judgment, they had only to glance at the large number of slaves in England long after 1772. In 1774, John Wilkes, sitting as a London magistrate, heard the case of a poor woman who “was married to a black, who was a slave to a merchant in Lothbury”. However, when the woman testified that her husband, who had been born in Guadeloupe, had been a servant for fourteen years without wages, the London magistrate, relying on the *Somerset* decision, ‘discharged him from his master telling him that he was not a slave, according to the laws of this free country’ and recommended that he and his wife hire an attorney and bring an action against the master for fourteen years of back wages.33

After 1772 it became common for slave-owners in the West Indies and the colonies to oblige slaves to sign an indenture prior to going to England.34 Walvin and Paul Edwards argue that following *Somerset* the slave-owners ‘devised the plans to circumvent the law and deprive the slaves of what little advantage they had gained . . . rendering them liable to prosecution under English law if they tried to escape or refused repatriation’. They cite *Keane v. Boycott*, but that case does not support their assertion. In *Keane*, Tony, a slave aged sixteen or seventeen, executed an indenture in St Vincent to serve Keane (who was going to England) for five years, in return for which Keane promised food, lodging, clothing and medical assistance (but not wages). When Tony arrived in England, in 1794, he was approached by Boycott, who was a military recruiter. Tony told Boycott that he was ‘an indented servant’, but Boycott nevertheless induced Tony to abandon his service and join the army. Keane sued Boycott to have Tony returned to complete his five-year agreement. The jury found for Keane and the decision was confirmed by the High Court.35

Tony was not at risk of prosecution for ‘refusing repatriation’, which would clearly violate the narrowest reading of *Somerset*. He was, rather, returned to Keane to complete his contract of indenture. This had nothing to do with his colour or his previous condition of slavery. A young, white, native-born, English, indentured servant would have received the same treatment from the courts. It was then the law in

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32 3 Espinasse 3 (1799); Catterall, Cases, pp. 22, 23.
33 Walvin, *Black and White*, p. 128; *Scots Magazine*, xxxvi (1774), 53; *Gentleman’s Magazine*, xlv, January 1774, 89.
35 Edwards and Walvin, ‘Africans’, 182; 2 HBI 511 (1795); Catterall, Cases, p. 21.

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Britain that a fourteen-year-old could legally bind himself as an apprentice and that if he absconded he could be forcibly returned to complete the term of the apprenticeship. If the apprentice refused, he could be sent to gaol. Similarly, a master could sue someone who, like Boycott, enticed an apprentice away from his service. In short, the fact that a former slave could be forced to complete an agreed period as an apprentice, or indentured servant, had nothing to do with the person's colour or previous state of servitude. It was simply the harsh law of England in the late eighteenth century, which was applied equally to all apprentices and indentured servants.

William Blackstone, author of the influential *Commentaries on the Laws of England*, despite his contact with both Granville Sharp and Mansfield, makes no mention of *Somerset* even though his editions span the period from 1765 to Blackstone's death in 1780. In the seventh edition, published in 1775 (after *Somerset*), Blackstone states that:

> The spirit of liberty is so deeply implanted in our Constitution, and rooted even in our very soil, that a slave or a Negro, the moment he lands in England, falls under the protection of the laws and so far becomes a freeman though the master's right to his service may possibly still continue.

The last phrase did not appear in the first edition (1765) and read 'may probably still continue' in the second (1766) and third editions (1768). 'Probably' was changed to 'possibly' in the fourth edition (1770) and remained 'possibly' throughout the subsequent editions. Fryer believes that Blackstone made the change from 'probably' to 'possibly' at Lord Mansfield's suggestion.

Walvin and Shyllon cite Blackstone's qualifier in arguing that the *Somerset* decision did not end slavery in England. But Blackstone's qualifier was, in fact, added before the *Somerset* case, and cannot help us to understand the scope of *Somerset* itself. Blackstone never commented on *Somerset* and he died before *Thames Ditton* was decided. Blackstone did not need to comment on *Somerset*, since his basic statement of the law that 'the moment [a slave] lands in England . . . [he] becomes a freeman' was simply confirmed in *Somerset*. His qualifier, 'though the master's right to his service may possibly continue' reflected the open question of whether a former slave might owe some period of indentured servitude even though he could not be held as a slave in England. No English court ever upheld even such a limited claim by a former master (except for those who entered into contracts of indenture after *Somerset* and outside of England). Mansfield noted in *Somerset*.

38 Fryer, *Staying Power*, p. 121.
that 'Mr. Stewart advances no claim on contract' and only when a contract claim was asserted would the court have to face Blackstone's qualifier that 'the master's right to his service may possibly continue'. No English court ever confronted that claim.

There is evidence - although, remarkably, very little - of slave sales and forced deportations in England subsequent to 1772, but in no case did an English court ever uphold a master's claim to a slave's service as slave after 1772. My review of the index to the Gentleman's Magazine from 1764 to 1791 found very few entries relating to blacks, and whenever they are involved in a matter, the magazine's editorial position seems quite sympathetic to their case. The fact that there are so few entries (until 1788, when there are a number concerning the possible abolition of the slave trade) indicates that this widely respected, conscientious advocate uncovered very few incidents concerning blacks during the two decades following the Somerset decision. I selected the quarter-century of this magazine to determine the extent to which de facto slavery existed in England up to the 18th century and found virtually no evidence to support the argument that blacks continued to be treated as slaves in England during the 1770s and 1780s - the time when such treatment would be most likely to persist. I used the index to the Gentlemen's Magazine because there are no indices of British newspapers for this period except for the Daily Universal Register, the predecessor of The Times of London, that begins only in 1785.

The same examples of continued slavery in England in the last quarter of the eighteenth century and the early nineteenth century are not only used by Shyllon and Walvin, but are frequently cited in other standard works by Seymour Drescher, Fryer, David Brion Davis and Douglas Lorimer. These are the leading chroniclers of the history of black people, slaves and the slave trade in England, the United States and Canada. And while they do not all agree on the date of the de jure end of slavery, they do - to varying degrees - agree that de facto slavery continued in England in the late eighteenth or even the early nineteenth century. Shyllon asserts that 'these are random examples, and further example after example could be given of the impurity of English air for black slaves in Britain, decades after Lord Mansfield was supposed to have liberated them'. But I have not been able to find any additional examples beyond those regularly cited and discussed below.

Even Seymour Drescher appears to suggest that blacks were sold and treated as property after Somerset. 'There is no dearth of evidence that blacks were being bought and sold in the metropolis. Advertisements for runaways insisted on their status as the property of their masters . . . They were collared like dogs. Couples were separated by indifferent or

41 Drescher, Capitalism; Fryer, Staying Power; Davis, Problem of Slavery; Lorimer, 'Black Slaves'.
42 Shyllon, Black Slaves, p. 170.
petulant masters. But his footnote to this passage clarifies that virtually all of these incidents occurred before 1770. Indeed, Drescher relies principally upon Fryer 'for the most extensive survey of the variety of sales in 18th century English ports'. However, all of the examples cited by Fryer precede the Somerset case. The latest in the referenced pages is 1769. Drescher himself notes: 'I have discovered no offers to purchase blacks in London after 1772.'

In fact, the only reported advertisement for a sale of a slave anywhere in England after Somerset occurred in Liverpool in 1779. It was supposedly sent to Granville Sharp in 1782 and was noted in Prince Hoare's biography published in 1820. The 1779 advertisement was not, apparently, brought to the attention of the British public until 1788. Although I have reviewed all of the Granville Sharp papers in both the York Minster Library and the Record Office in Gloucester, I was not able to locate the clipping described in Hoare's biography as 'from a Liverpool newspaper'. Nor was I able to find the 15 October 1779 advertisement in any Liverpool paper in the British Library collection. Indeed, Hoare indicates that the advertisement 'was sent to Mr. Sharp in 1782, copied from a Liverpool newspaper' [emphasis added]. It is possible, therefore, that this 'advertisement' was a fabrication. No scholar, to my knowledge, has identified which Liverpool newspaper published this alleged advertisement.

Gomer Williams, in his History of the Liverpool Privateers, does an extensive canvas of slavery advertisements in Liverpool papers (and to some extent in newspapers elsewhere in England), but the last of these appears in 1771. Indeed, even before 1771, slavery advertisements were quite rare. There were two each in 1756, 1757, 1758 and 1771 and one each in 1709, 1720, 1728, 1761, 1763, 1765, 1766 and 1767. The famous advertisement for the 'manufacture of slave collars' appeared in 1756 and the runaway slave advertisements were in 1685 and 1728. Williams does note one runaway slave advertisement after 1772, which appeared in Williams' Advertiser of 4 May 1780: 'Runaway, on the 18th of April last from Prescot, a Black slave, named George Germain Foney, age 20 years... he is not only the slave, but the apprentice of Captain Ralph'. This advertisement, therefore, may refer to the return not of a 'slave', but of an 'apprentice' or indentured servant. Under English law, as noted, runaway indentured servants, apprentices or even children could be forcibly returned to the 'master'.

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43 Drescher, Capitalism, p. 25.
44 Fryer, Staying Power, p. 61; Drescher, Capitalism, p. 196 n. 61.
45 Hoare, Memoirs, p. 93. See also Shyllon, Black Slaves, p. 168; Drescher, Capitalism, pp. 195-6; Bauer, 'Law, Slavery', p. 139.
46 Williams, Privateers, pp. 475-9, 554; see also Shyllon, Black Slaves, p. 160; Drescher, Capitalism, p. 45.
47 See Bird, Laws, p. 31. Also, in Barnaby Rudge, Dickens recounts the advertisement placed about 1775 by John Willett for the return of his son, Joseph, age 20, who had run away. John Willett asked that the boy be put in gaol until his father could come to claim him. Charles Dickens, Barnaby Rudge (Oxford, 1987), p. 249.
Shyllon is correct to note that forced repatriation was sometimes used by West Indian planters to thwart the impact of the *Somerset* case: 'they ignored the Mansfield decree and continued to remove their slaves from the country by force'. There are four generally reported attempts at forcible repatriation after 1772, but two of them were unsuccessful. The first, in April 1774, involved John Annis. Annis was a former slave in St Kitts of William Kirkpatrick and, serving as a cook on a ship in England, was kidnapped by Kirkpatrick from this ship to be put aboard a different vessel headed for St Kitts. Granville Sharp was alerted and a writ of *habeas corpus* was obtained but too late. The ship had already sailed and Annis was returned to St Kitts, where he was brutally tortured and died. The second case, in 1786, also involved Granville Sharp, who this time succeeded in freeing Henry Demane.

The third incident took place in 1790, and is recorded in correspondence between Hannah More and Horace Walpole. Several scholars report only the first part of this incident. For example, Walvin reports: 'As late as 1790, Hannah More told Horace Walpole of a harrowing incident at Bristol. A "poor Negro girl was dragged out from a hole in the top of the house where she had hid herself, forced on board ship".' However, as Edwards and Walvin point out: 'Two months later however, Hannah More was able to report a happy ending.' In fact, the girl escaped from the ship and found her way to the Quakers, 'who got a warrant of protection' and saved her.

The last recorded incident apparently took place in 1792. A brief item appeared in the December *Bristol Journal*, reporting that a citizen had recently sold his black servant girl who had been many years in his service, for £80 Jamaica currency, and that she had been shipped for that island. 'A bystander who saw her put on board the boat at Lamplighter's Hall says, "her tears flowed down her face like a shower of rain".' Drescher says, 'this is the very last incident of deportation.'

Thus, of the four cited incidences of deportation, blacks were rescued in two and in the third the court intervened on the side of John Annis to try to prevent the deportation – but the writ came too late. There is no record whether there was ever an attempt to get the assistance of the court in the last case because we have no information other than the brief article from the *Bristol Journal*. There surely could have been some instances of forced repatriation that went unreported, despite the

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vigilance of the abolitionists and the press. But we do not know whether or to what extent this occurred. The case of *Slave Grace*, where a slave returned 'voluntarily' with a master to the colonies was probably more common.

In addition to reports of slave sales and forced abductions, six other examples of continued abuse of blacks in England between 1794 and 1828 are repeatedly cited to support the argument that slavery continued beyond 1772. Some of these incidents are based upon short newspaper or magazine reports without details.

The first, in chronological order, was a marital dispute where a white wife had eloped with a 'black servant' who may be 'Mungo', although the newspaper report is not absolutely clear. The husband pursued the wife and 'Blackie' – we assume the black servant, perhaps Mungo – who 'shot at his pursuers, for which he was taken and committed [we assume to gaol]'. The next day *The Times* reported, 'The husband took her three children, and all the property he found on the coach [which they were probably using to elope], desired his wife to go where she pleased (after she said she'd live with no man but the Black) and Mungo was taken by a press gang, and put on board the tender.' At most this report shows that a black, who fired a shot at a pursuing husband, was put in gaol and subsequently was impressed into the Royal Navy. Neither the gaoling nor the impressment was a penalty reserved for blacks.

Fryer's assertion that there were 'Black children sold as house boys in Westmorland early in the 19th century' relies on a 1967 article in *Country Life Annual* by Bernard Wood entitled 'A Negro Trail in the North of England'. That article is based totally upon a 'Notice in the vestibule of the current Storrs Hall', which does not cite any source. Indeed, Wood characterizes the report of the sale of house boys as 'a story' which alleged that Bolton, who owned Storrs Hall, would pick out 'young boys among the slaves on his ships at Liverpool and smuggle them in the early nineteenth century, up to Windermere and to Storrs' and 'later the little Black boys would be sold as house-boys to some of the surrounding gentry'. This report may be apocryphal. There are no other reports at any time (let alone in the early 1800s) of groups of 'young boys on slave ships in Liverpool' who might have been picked out by Bolton. Moreover, given the extensive publicity surrounding other incidents involving abuse of blacks in the early nineteenth century, it is unlikely that a regular trade in 'little Black boys' in the Lake District of England would have gone unreported.

The third report, which concerned nine blacks who were slaves on a Portuguese ship in 1809, is, in fact, evidence that slavery had ended in England by that time. Drescher reports that the nine blacks

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were rescued from a Liverpool prison where they had been incarcerated 'for debt' pending the departure of their ship. Especially remarkable was the attitude of their fellow white prisoners in what had only two years before been the world's slave-trading capital. In a show of solidarity the white prisoners prevented the Portuguese ship's captain from taking possession of the blacks until the abolitionists arrived.\textsuperscript{57}

This report also makes even less likely the story told by Ward in \textit{Country Life} that there were still slaves being 'picked out' by English masters from ships in Liverpool in the early nineteenth century.

The case of the 'Hottentot Venus' also shows how alert and conscientious were the abolitionist forces in early nineteenth-century England. In September 1810 advertisements announced that the 'Hottentot Venus' – a black woman from South Africa – was going to be exhibited at Piccadilly in London. The first performance brought an outraged letter to the \textit{Morning Chronicle} which accused the exhibitor of treating the woman – Sartjie Baartman – as a slave and like a 'beast'. Immediately, the Attorney General, the court and the African Institution became involved. As Drescher reports: 'It turned out the performer was in fact the nurse of her exhibitor. She had come to England of her own accord, had two servants, and received half the profits by contract.' In any event, Sartjie stayed in England, married a black man and had two children.\textsuperscript{58}

The fifth incident concerned a black boy 'chained to his master's table like a dog' in London in 1814, and was the subject of a report of the African Institution. The Institution's report emphasizes how effectively the voluntary liberation societies worked with the local courts to intercede on behalf of any blacks reported to be ill treated:

A police officer was immediately dispatched and the boy and the master brought to the court. The master claimed the boy as an apprentice whom he said he had brought two months ago from the West Indies and that he had put the boy in chains because the boy had robbed him and that the master had decided to send him back to the West Indies by the next ship and that he had chained him up to prevent his escape in the meantime. The Magistrate observed that . . . as soon as the boy landed on English ground he was no longer a slave; to which the master assented. Upon it being explained to the boy that he might, if he chose, remain in England, instead of being sent back to the West Indies, he replied that he would remain in England – the master was then asked, whether he had ever paid the boy any wages: he admitted that he had not; and as he had claimed him as his apprentice, he was required to produce . . . his indentures, which he declined. The magistrate then allowed the boy to depart with the secretary of the [African] Institution . . . he has since been placed in the school in the borough road where he still remains.\textsuperscript{59}

\textsuperscript{57} Drescher, \textit{Capitalism}, p. 45; Shyllon, \textit{Black People}, p. 32.
The African Institution was founded in 1807 to increase information about Africa in the United Kingdom and to promote friendly relations and trade with that continent. A review of the annual reports of the African Institution from the first in 1807 to the fifteenth in 1821 recalls only three other vaguely similar incidents in that fifteen-year period. The first was the incident of the Portuguese sailors. The second involved two children who were rescued from a French frigate in Plymouth, when they were about to be taken to Lisbon by a Portuguese captain who claimed them. A magistrate directed that the African Institution be notified and noted that the two children, plus another rescued in Plymouth, 'have been comfortably provided for'. The third involved William Simmons, a boy who was kidnapped in Africa in 1807, sold in Jamaica, and brought to England as an apprentice, where he ran away. A constable protected the boy until the African Institution placed him in a school.\(^{60}\)

The last incident involved Mary Prince and is cited by Shyllon and Walvin to support their statement that 'chattel slavery continued in Britain until the abolition of colonial slavery in 1834'.\(^{61}\) But Drescher replies convincingly:

Brought to England from Antigua by her owners in 1828, she suffered abuse and was threatened with expulsion from the house. The case however seems to demonstrate the opposite of Shyllon's contention. Mary Prince was threatened with discharge, not compulsory retention or transportation. She knew she was free in England but lacked choices and therefore feared to leave. She did leave as soon as she found employment through the intervention of the Secretary of the Anti-Slavery Society. She was not only free to leave her mistress but had a network unavailable to other immigrants to England.\(^{62}\)

In addition to these six examples, there are two recorded offers (one in 1785 and one in 1788) of abolitionists who contemplated redeeming black runaways or servants in England. In the first, Granville Sharp wrote to his brother, Dr John Sharp, who was harbouring a 'Black boy' who had recently been brought into England, probably as an apprentice or indentured servant. Apparently, Sharp's brother contemplated purchasing the boy's freedom. Sharp wrote to his brother that the person harbouring the boy 'need not be at the expense of purchasing him to save him from the cruelty of his Master... nay, it would be wrong to purchase him; for that would tend to revive the pretension of slaveholders in England, which our courts of law have lately so happily extinguished by their decisions'. He assured his brother that the boy could not be taken by force by the 'master' because that would

\(^{61}\) Shyllon, Black People, p. 27; Walvin, Black and White, p. 138.
\(^{62}\) Drescher, Capitalism, p. 197 n. 70.

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be a breach of the peace, and the boy and his family might charge a constable with him and compel to give security for his future good behaviour: because of the late determination [the Somerset case] in the Kings Bench as well as in the admiralty and prerogative courts clearly prove that no claims of slavery can exist in this Kingdom; so that the boy by coming to England, is rendered perfectly free.63

The second instance is summarized by Shyllon:

In 1788, Carl Bernhard Wadström, an ardent abolitionist, purchased a young black prince from his mulatto owner on English soil. The young prince had been kidnapped from his father in Africa, conveyed to the West Indies, where he was purchased by one Johnson, a mulatto dealer at Grenada who brought him to England. Wadström became aware of the black prince's situation and decided to restore him to his father. "I, therefore, redeemed him: this was done in the presence of The Rev. Mr. Ramsey, Mr. T. Clarkson, and Mr. R. Phillips on 6 May 1788 for £20."64

The Wadström purchase may have been, as Drescher states, 'a precautionary measure'.65 Was the prince being held as a slave? Perhaps, but more likely Wadström decided to purchase the boy to quiet any claims of someone to the labour of the young African prince either as an apprentice or an indentured servant. Wadström's purchase of the prince and, we assume, his manumission, would guarantee safe conduct back through slave-trading countries to Africa and would likely protect the prince even if he were to return to the West Indies or some other place where slavery was still enforced. Thus, there may have been two distinct reasons for Wadström 'as a precautionary measure' to pay £20: no one could claim the right to the prince as an apprentice or an indentured servant in England; and no one could legally claim him as a slave in the West Indies or in Africa. However, this does not mean that Wadström feared that the prince could be claimed as a slave while in England.

A similar 'precautionary measure' may describe Mansfield's holographic testamentary provision for his mulatto niece, Dido. But Shyllon notes: 'Precisely because blacks were not free, Lord Mansfield in his will, dated 17 April 1782 and written in his own hand, confirmed the freedom of his niece of the blood Dido Elizabeth Lindsay ("I confirm to Dido Elizabeth her freedom").'66 A recent biographer of Mansfield, Edmund Heward, records that Dido Elizabeth Bell was the natural

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64 Shyllon, Black Slaves, p. 174.
65 Drescher, Capitalism, p. 41. See also Walvin, Black and White, p. 128; Shyllon, Black Slaves, p. 174; Bauer, 'Law, Slavery' p. 139.
66 Shyllon, Black Slaves, p. 169. See also The History of the Black Presence in London (1986), p. 22: 'It was precisely because the Somerset judgment did not set black slaves in England free that Lord Mansfield "confirmed" Dido's freedom in his will dated 17 April 1788' [sic].

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daughter of Sir John Lindsay, Lord Mansfield's nephew. Sir John had taken Dido's mother a prisoner in a Spanish vessel and brought her to England where Dido was born. Dido was raised by Lord and Lady Mansfield from the time of her birth (probably in 1763) until Mansfield's death in 1793. Dido received regular allowances during her life from Lord Mansfield and when her natural father, John Lindsay, died in 1788, he left her £500. Lord Mansfield left her £500 plus a £100 annuity. Dido moved from Mansfield's home, Kenwood, after his death in 1793. She subsequently married a Mr Davinier and there is no further information about her.67

We can only speculate what Mansfield meant in his will of April 1782, when he said: 'Reaffirmed to Dido Elizabeth Bell, her freedom and after the death of my dear wife, £100 a year during her life.' His will is short, a one and a half page handwritten document. There are nineteen subsequent codicils in the Public Record Office, Chancery Lane, the last of which is dated October 1791. The codicils from September 1789 to October 1791 are dictated and initialled by Mansfield, but thereafter his health failed and he could no longer write himself. In these codicils, Dido is mentioned only twice: in codicil five, dated 5 May 1786, where she is given a £200 bequest; and in codicil seven, on 17 May 1786, where Mansfield wants to make 'a better provision for Dido' and increased her share to £500. There is great affection for Dido demonstrated in Mansfield's will and in other acts, but neither the will, the codicils nor any other writings or utterances explain why Mansfield felt he should 'reaffirm' Dido's freedom. His provision for Dido could reflect his concern that the various legal relationships between a former master and slave in England had not been fully articulated in cases subsequent to Somerset, so that a formal manumission (reconfirmed in the will) was 'a precautionary measure' similar to the purchase by Wadström of the African prince. This would make it absolutely clear that she was not an indentured servant. Moreover, while Mansfield could not have anticipated the result of the Slave Grace case, he clearly knew that slavery continued to exist outside of England and that a formal, recorded manumission would protect Dido if she were ever to travel to territories where slavery was still recognized.

In Slave Grace, Grace, who had been born a slave in Antigua, spent one year as a servant for Mrs Allan in England and in 1823 'accompanied her voluntarily on her return to Antigua'.68 At issue was whether Grace's year in England had confirmed a permanent freedom - which would protect her in courts throughout the world (as a manumission would) - or whether she was only a free person while she remained in England. Lord Stowell held the latter. This result should not be

68 166 Eng. Rep. 179 (1827); Catterall, Cases, p. 34. This was Stowell's last decision. He retired from the bench in 1828 at age 83. See Newman, Anglo-Saxon Abolition, p. 23.
shocking to American lawyers since it is no different from the decision in the *Dred Scott* case in the United States. There the US Supreme Court held, in 1857,\(^69\) that no permanent change of status was conferred on a slave who had returned to Missouri, a slave state, after a period of residence in Illinois and the Upper Louisiana Territory (now Minnesota). That conclusion, however, did not negate the full freedom that slaves enjoyed while in those free areas. Stowell clearly recognized *Somerset*'s all-inclusive impact on blacks so long as they were in England: ‘*Somerset* established] that the owners of slaves had no authority or control over them in England, nor any power of sending them back to the colonies . . .\(^70\) The fact that Grace, after returning ‘voluntarily’ with her mistress to Antigua, was re-enslaved under the laws of that colony does not mean she could have been treated as a slave in England.

The 1783 *Zong* case, where sick slaves were thrown overboard to collect insurance, is also cited to illustrate the continued support for slavery by the English courts after *Somerset*. But as Drescher notes, *Zong* simply underlines ‘the legal strength of overseas slavery after *Somerset*.\(^71\) It did not speak to the effects on blacks in England, and Mansfield, who presided over the *Zong* trial, called it ‘a very shocking case’.\(^72\)

While the *Zong* and *Slave Grace* cases dealt with slavery outside England, there are other instances where English courts did apply the *Somerset* principle to protect blacks or former slaves in England. Three of those were noted above, where the courts intervened on the side of blacks who were about to be sent, illegally, out of the country or were otherwise being mistreated. *Cay v. Crichton* (1773) was apparently the first English case to give a broad interpretation to Mansfield's decision, and this occurred almost immediately after *Somerset*. The court refused to enforce a will purporting to transfer a black even though the testator had died in 1769, before the *Somerset* judgment. According to Drescher: ‘Both sides accepted the premise that there were no slaves in England.’\(^73\) Other English cases followed this same principle. Mansfield himself in March 1779 enforced *Somerset* by awarding £500 in damages to Amissa, a free black, when a captain of a Liverpool slave ship tried to sell him back into slavery in Jamaica. The captain was ordered by Mansfield to bring Amissa back to London and to pay him £500 in damages.\(^74\)

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\(^{69}\) Dred Scott v. Sandford, 60 US 393 (1857).
\(^{71}\) Drescher, *Capitalism*, p. 60.
\(^{73}\) Drescher, *Capitalism*, p. 194 n. 52. Drescher there quotes a second case in 1776, which recognized that the practice of buying and selling slaves had been outlawed by *Somerset*. See also Bauer, 'Law, Slavery', p. 156. Walvin, *Black and White*, p. 50 claims that ‘As late as 1822, Thomas Armstrong of Dalston in Cumberland, bequeathed a slave in his will’. See also Davis, *The Problem of Slavery*, p. 472. However, there is no evidence that this bequest had any legal or practical impact.

\(^{74}\) Williams, *Privateers*, p. 563.
Mansfield also told Thomas Hutchinson (governor general of Massachusetts during the revolution) in 1779 that he had released 'two blacks from slavery'. Two slaves from Virginia stowed away on a ship to Bristol and upon arrival in England applied to Mansfield for habeas corpus. The owner of the ship agreed to send the two back to their homes in Africa, and Hutchinson notes in his diary: 'How the Virginia planter was satisfied his lordship did not say, but he [Mansfield] seemed much pleased at having obtained their release.'

The Scottish courts followed the Somerset precedent and declared that slavery was illegal in Scotland. Shyllon and Carol Bauer argue that Knight v. Wedderburn in 1778 'went further than the decision of the Court of Kings Bench in the Somerset case'. The language of Knight v. Wedderburn surely is broader than Somerset: '[Slavery] being unjust, could not be supported in this country to any extent: That, therefore, the defender had no right to the Negro's service for any space of time, nor to send him out of the country against his consent...'. While the language is broader, the legal impact seems identical. There is no English case where a court upheld the right of a master to the service of a former slave who was in England at the time of the Somerset decision 'for any space of time'. All of the English cases enforcing an apprenticeship or indenture concerned blacks who were brought to England from the slave colonies after 1772, and in all those cases they had entered into agreements of service for a period of years. Somerset himself was unconditionally released and was not returned to Stewart to serve as an indentured servant or apprentice 'for any space of time'. Thus, I doubt that there was any difference between the legal status of former black slaves in England or in Scotland after 1772 and 1778, respectively.

In 1786 Granville Sharp recorded in his diary that he successfully intervened in court and received damages on behalf of two blacks. The facts surrounding the cases of 'John Cambridge' and 'Daniel Simon' are not clear. But Thomas Clarkson reports the similar case of John Dean, where a free black man was tortured on board the ship Brothers in 1787. He noted that an attorney representing Dean 'informed me that he had made the captain of the Brothers pay for his barbarity'. Had Dean, in fact, been a slave rather than a free man – which he undoubtedly became because of the Somerset decision – no damages would have been due.

75 Peter Hutchinson, Diary and Letters of Thomas Hutchinson (1886) [hereafter Hutchinson Diary and Letters], pp. 274–5.
76 Catterall, Cases, p. 18; Shyllon, Black People, p. 26; Bauer, 'Law, Slavery', p. 144. See Walvin, Black and White, p. 133; Shyllon, Black Slaves, p. 183; and Fryer, Staying Power, p. 206.
77 Catterall, Cases, p. 18.
78 Hoare, Memoirs, p. 463.
79 Clarkson, History of the Rise, p. 103.
By 1796 the English courts had reversed the implicit holding in *Zong* that 'slaves outside of England could be treated simply as merchandise'. As Fryer reports:

This ruling came in a case where a Liverpool slave-merchant tried to recover from the underwriters the value of 128 Africans who had starved to death on an abnormally long voyage. At one point, Lord Chief Justice Kenyon pointedly asked whether the captain of the ship had starved to death, and was told that he had not. The merchant lost his case.80

In *Williams v. Brown*, in 1802, the court held that a contract made for life service 'could not be considered as valid in England . . . the Plaintiff [a free Negro in Britain who had previously been a runaway slave in Grenada, and who returned to Grenada where he entered into a manumission contract] being as free as any one of us while in England'.81

And finally, in *Forbes v. Cochrane* in 1824 – still ten years before general emancipation – a unanimous King’s Bench freed fugitive slaves who had escaped from Florida (then a Spanish colony that practised slavery) and made their way to a British naval ship in international waters. The court held that, ‘the moment they put their feet on board of a British man of war, not lying within the waters of East Florida, . . . those persons who before had been slaves, were free.’ Justice Best stated:

There is no statute recognizing slavery [on board British naval ships] . . . [slavery] is a relation which has always in British courts been held inconsistent with the constitution of the country. It is matter of pride to me to recollect that, whilst economists and politicians were recommending to the Legislature the protection of this traffic . . . the Judges of the land, above the age in which they lived, standing upon the high ground of natural right, and disdaining to bend to the lower doctrine of expediency, declared that slavery was inconsistent with the genius of the English constitution, and that human beings could not be the subject matter of property.82

Thus, there are at least fifteen instances between 1772 and 1834 when English courts intervened on behalf of a black party. Therefore, I cannot agree with Walvin that 'between the Somerset case and emancipation [1834] the legal status of the imported Black was more complicated and, if anything, worse than it had been in the eighteenth century'.83 While there were a few attempts by masters to assert their ownership rights over blacks after 1772, none of those was supported by the English

80 Fryer, *Staying Power*, p. 130.
81 3 *Bos. and Pul.* 69 (1802); Catterall, *Cases*, p. 23.
82 Catterall, *Cases*, p. 33.
83 Walvin, *Black and White*, p. 139. Drescher also disagrees (Capitalism, p. 46). However, while Drescher believes that slavery continued until the 1790s (forty years before the Emancipation Act), I think the evidence is stronger that at least *de jure* slavery was ended in England by the *Somerset* decision in 1772.

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courts and, in virtually every case, the court awarded relief to the black. A strong argument can be made that *de facto* as well as *de jure* slavery ended in 1772. The abolitionist groups were well organized and were prepared to initiate legal actions on behalf of blacks whenever they were contacted. This was obviously true for Somerset himself in 1771, for the black in *Cay v. Creighton* in 1773, for John Annis in 1774, for Henry Demane in 1786 and for the three blacks freed by Mansfield before 1779.

We know of no case where a black sought the assistance of the abolitionists and/or the courts but was denied help. The paucity of cases and reported incidents involving mistreatment of blacks after 1772 strongly suggests that *de facto* as well as *de jure* slavery ended in England that year.

It is true that indentured servant agreements continued to be enforced, but never against a black who had been in England at the time of the *Somerset* decision. They all concerned slaves in the colonies who, after 1772, entered into agreements to serve under a fixed-term indenture prior to coming to England. These agreements, while we may view them with horror as a clever ploy to avoid the results of *Somerset*, in fact were generally to the advantage of the slave who eventually gained legally enforceable freedom in England after a fixed term of years instead of perpetual slavery in the colonies.

Mansfield's various comments and actions did not mean that he rejected the sweeping principle that he had enunciated in *Somerset*—namely that slavery was 'odious' and contrary to the common law and needed to rest on statutory authority (which parliament never gave, despite the attempt by the West Indian planters to pass authorizing legislation to overturn the *Somerset* decision). Rather, Mansfield was a careful judge who recognized that there were many difficult issues regarding masters and their former slaves that would have to be decided on a case-by-case basis. There was certainly no automatic right to back wages or to a settlement under the poor law, but this did not mean that blacks remained slaves, since it was extremely difficult for anyone to receive relief or back wages except under very strictly construed legal principles which were usually interpreted, in the late eighteenth century, to the disadvantage of the worker.

Finally, it is important to remember that Granville Sharp, who helped to bring the *Somerset* test case (as well as several related cases before and after *Somerset*), was clear that the *Somerset* case had ended slavery in England:

> His Lordship declared, as the opinion of all the Judges present, that the power claimed by the master 'never was in use here, nor acknowledged by the law; and therefore, the man, James Somerset, must be discharged'.

Thus ended G. Sharp's long contest with Lord Mansfield, on 22 June 1772.85 Sharp, after the Somerset decision, remained vigilant in assisting blacks and at no time in his life (he died on 6 July 1813) did he ever express anything contrary to his conviction that Mansfield's decision in Somerset had ended slavery in England. Nor, apparently, did Somerset himself.86 The West Indian planters and their spokesmen, such as Samuel Estwick, accepted the Lofft text and consequent sweep of the decision even while they campaigned against it.87 Similarly, governor general Thomas Hutchinson of Massachusetts told Mansfield when they dined at Mansfield's house in 1779 that 'all the Americans who have brought blacks [to England after Somerset] had ... relinquished their property in them and rather agreed to give them wages or suffered them to go free'.88 Even Lord Stowell, while refusing in Slave Grace to extend the Somerset rule outside England, recognized that the case established 'that owners of slaves had no authority or control over them in England'.

The overwhelming weight of the evidence seems to be with Sharp, Somerset, Stowell and the numerous nineteenth- and twentieth-century commentators who all viewed the 1772 Somerset decision as, at least, the de jure end of slavery in England.

85 Hoare, Memoirs, p. 91. See also letterbook of Granville Sharp, York Minster Library Archives, letter to Dr Findlay, 14 August 1772, p. 97: 'The late decision of the Court of Kings Bench operates just as I could wish, being for the most part agreeable to the doctrine I laid down in my Tract.' See also appendix 9 to Sharp's Just Limitation where, in his 'Remarks on the Judgment of Kings Bench in the case of Stewart and Somerset' he says: 'There is nothing doubtful or inexplicit in this judgment delivered by Lord Mansfield.'
86 John Riddle wrote to Charles Stewart (the defendant in Somerset v. Stewart) on 10 July 1772: 'But I am disappointed by Mr. Dublin who has run away. He told the servants that he had rec'd a letter from his Uncle Sommerset acquainting him that Lord Mansfield had given them their freedom & he was determined to leave me as soon as I returned from London which he did without even speaking to me.' Oldham, 'New Light', pp. 65–6.
87 Wieck, 'Somerset', 144–5.