

SEVILLE v. CHRETIEN.

Under the territorial government, the nonsuit of an appellee, who was plaintiff below, did not revive his judgment.

Under the French government in Louisiana, some Indians were held in slavery, and the freedom of such was not acquired by the establishment of the Spanish government.

APPEAL from the court of the fifth district.

MATHEWS, J. delivered the opinion of the court.* The plaintiff and appellant sues, *in forma pauperis*, to recover his liberty, and judgment having been given against him, he appealed.

The evidence, which is all written in the form of depositions, and other documents, comes up with the record, and a statement of the case is made by the counsel.

Several exceptions to the admission of testimony appear to have been taken, during the course of the trial, in the district court, by each of the parties, and although not regularly reduced [276] to writing, and signed by the judge, might be noticed, under the circumstances of the case and the agreement of the counsel, were it necessary for the purpose of obtaining a knowledge of any fact, important to a correct decision of the suit. The district judge having admitted all the testimony offered, we deem it useless to enter into a formal investigation and decision of each exception: but will proceed to state the facts as drawn from the evidence, which was properly received. A summary of such of them as are necessary, to arrive at proper legal conclusions, may be laid down as follows:

In the year 1765 or 1766, Duchene, an Indian trader, brought an Indian woman to Opelousas, whom he sold to Chretien, the father of the defendant and appellee: she died not long after, leaving a female child, who remained peaceably with Chretien, as his slave, until some time during the period in which the Baron de Carondelet was governor of the province of Louisiana; when she went to New-Orleans, with her master, for the purpose of claiming her freedom before the proper tribunal. It appears from a certificate of Peter Pedesclaux, a notary, that a suit was commenced, but no record remains, or can be found, of the manner [277] in which it terminated. She returned with Chretien, and remained with him as his slave, until his death, which happened after the United States took possession of the country, under the treaty made with the French government, in the year 1803: she was called Agnes, and brought several children, while held in a

state of slavery by Chretien, of whom the plaintiff and appellant is heir. After the death of the ancestor of the defendant, and the distribution of his estate, Agnes and some of her children, all descended from the Indian woman sold by Duchene, as above stated, brought suit in the parish court of St. Landry against their owners, among whom was the present defendant, to recover their freedom. From a judgment by default, which afterwards became final, an appeal was taken to the superior court of the late territory of Orleans, where the cause was tried by a jury, and a verdict rendered in favor of the then plaintiffs and appellees, which was set aside by the court, on account of some misconduct in the jury, and a new trial ordered. The case remained in this situation, until the change in the country from a territorial to a state government, and was then transferred with others to the fifth district, under the new system. As the person who became judge of that [278] district, had been engaged as counsel in the cause, it was transferred for trial to the second district; and the then appellee, who was the original plaintiff, not appearing to prosecute his suit, was declared by the court to be nonsuited, and judgment was accordingly entered.

It appears from the depositions of a number of witnesses (admitted by the parties to have been correctly taken, and to be proper evidence in the cause), that at the time the Spanish government took possession of the country, viz. in 1769, under the secret treaty of cession, made between France and Spain in 1763, many of the inhabitants of the colony, which had been established and settled under the authority of the French government, held and possessed Indians as slaves, and it seems to have been a belief pretty general among them, that the practice of holding Indians in slavery was tolerated and authorized by that government. The fact that a considerable number of Indians and their descendants were held in slavery, at the period alluded to, is clearly proven.

Upon the whole, we are of opinion, that neither from a view of the political changes in the country, nor a fair examination of the subject, is the plaintiff and appellant entitled to his freedom.

It is, therefore, ordered, adjudged and decreed, that the judgment of the district court be affirmed.