

Coston v. Coston, 25 Md. 500 (Md. 1866)

The Plight of One Family Out of Many Fighting Apprenticeship in Reconstruction
Maryland



Figure 1 - This poster was created by Artist A.R. Waud in 1866

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Legal History Seminar: Baltimore in the Civil War

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I. Introduction

Following the emancipation of slaves in the State of Maryland, pursuant to the 1864 Maryland Constitution, many black families sought to attain the promise of freedom and self-autonomy. Intrinsic to the goal of liberty was the understanding that until black families possessed the absolute legal right to their children, then complete liberation from the “badges and incidents of slavery”¹ could not occur. However, in an attempt to maintain control of their former slaves, slave owners would assign themselves their formers slaves as apprentices, all under the guise of a legal indenture contract. As a result, many Maryland black parents petitioned the various county orphans’ courts and the Baltimore City Criminal Court to have their children released from the labor contracts and returned to their families. One such parent was Leah Coston (hereinafter “LC”)², whose children, Simon and Washington Coston, were bound to their former master, Samuel S. Costen (hereinafter “SSC”), as apprentices.

Contextually, the case of *Coston v. Coston* represents an opportunity to reconstruct the legal history surrounding the common practice of binding former slave children as apprentices in Reconstruction Maryland. Moreover, this form of apprenticeship was particularly unique to the State of Maryland because of the strong tradition of slavery in the state, despite remaining loyal to the Union during the Civil War. Ultimately, the practice of forced apprenticeship would come to a sudden halt when Chief Justice Salmon P. Chase of the Supreme Court of the United States

¹ Civil Rights Cases, 100 U.S. 1, 20 (1883).

² It was traditional for many slaves to take the last names of their former masters. However, it was also commonplace for variations of spelling due to the fact that many times names were relayed orally, and as a result, various spellings of a common last name emerged. For purposes of this paper, I intend to use the last name “Coston” for Leah, Simon, and Washington, and the last name “Costen” to refer to Samuel S. Costen and the Costen family. Whether intentional or not, Leah Coston adopted the last name Coston, perhaps as a means of separating herself from her slave past, or perhaps through a clerical misspelling. The caption of the central case-study which I will examine *infra* reads “*Coston v. Coston*,” which I infer was the result of Leah Coston and her lawyers filing the petition. This distinction should be noted to honor the history of both Leah Coston and the Costen family. I thank Dr. Edward C. Papenfuse and Professor Garrett Power for bringing this point to my attention.

decided a case that turned post-emancipation apprenticeship on its head. Thus, the chance to examine the specific case of *Coston v. Coston* present a unique legal history opportunity. The case of *Coston v. Coston* ultimately embodies common apprenticeship practices in Maryland at the time, as the last vestiges of slavery were targeted and removed through the close working relationship and carefully crafted litigation strategy of Leah Coston’s radical lawyers.

II. HISTORICAL CONTEXT

A. The Lead up to *Coston v. Coston*

Ratification for the Maryland Constitution of 1864 was solidified on November 1, 1864, thereby freeing all those still enslaved in the state of Maryland. However, despite the guarantees of freedom contained in the new constitution, thousands of newly freed children were quickly apprenticed to their former masters.³ Shortly after ratification, a Boston newspaper ran an article characterizing Maryland as “Free State!” but warned that “some of the slaveholders mean to hold on to their ‘people,’ in order to test the legality of emancipation before the courts.”⁴ Indeed, unwilling to simply turn over free labor, slave owners sought shelter under Maryland’s apprenticeship laws in order to maintain control over newly freed black minors.

³ Art. 24 Md. Const.. Because Maryland was a border state that remained loyal to the Union during the Civil War, President Lincoln’s Emancipation Proclamation in 1862 did not affect the state of Maryland. Accordingly, it required state law to outlaw slavery. Interestingly, when first tallied, the Maryland Constitution failed ratification. However, after counting absentee Union soldier votes, Article 24 was ratified by a mere 375 votes. *See infra* note 5.

⁴ This citation is from a Boston newspaper following ratification of the Maryland Constitution of 1864. This newspaper clipping was distributed in class, but I have been unable to find the full citation myself.

APPENDIX

Vote on the Constitution, October 12-13, 1864:

	For	Against
Allegany county	1,839	964
Anne Arundel county	281	1,360
Baltimore city	9,779	2,053
Baltimore county	2,001	1,869
Carroll county	1,587	1,690
Caroline county	471	423
Calvert county	57	634
Cecil county	1,611	1,611
Charles county	13	998
Dorchester county	449	1,486
Frederick county	2,908	1,916
Harford county	1,083	1,671
Howard county	462	583
Kent county	289	1,246
Montgomery county	422	1,367
Prince George's county	149	1,293
Queen Anne's county	220	1,577
Somerset county	464	2,066
St. Mary's county	99	1,078
Talbot county	430	1,020
Washington county	2,441	985
Worcester county	486	1,666
	27,541	29,536
Soldiers' vote	2,633	263
	30,174	29,799
Majority	375	

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The resulting apprenticeship of newly freed black children was almost immediate. According to Richard Paul Fuke (hereinafter “Fuke”), “[w]ithin days of emancipation, Maryland planters and farmers seized the labor of some three thousand black minors under the provisions of an unrepealed section of the state’s black code.”⁶ Fields highlights the “rush to apprentice the freedmen’s children” the adoption of the new constitution.⁷ Estimates suggest that between 3,000 and 4,000 black children were forced into labor contracts as apprentices,⁸ although Barbara Fields suggests that 2,519 children were apprenticed.⁹ In the case of *In re Turner*,

⁵ MARYLAND STATE ARCHIVES, <http://www.msa.md.gov/msa/speccol/sc5600/sc5604/2004/november/html/appendix.html> (last visited Oct. 17, 2011).

⁶ RICHARD PAUL FUKU, *IMPERFECT EQUALITY: AFRICAN AMERICANS AND THE CONFINES OF WHITE RACIAL ATTITUDES IN POST-EMANCIPATION MARYLAND*, 70 (1999); *see also* JOSEPH A. RANNEY, *IN THE WAKE OF SLAVERY: CIVIL WAR, CIVIL RIGHTS, AND THE RECONSTRUCTION OF SOUTHERN LAW*, 48 (2006).

⁷ BARBARA JEANNE FIELDS, *SLAVERY AND FREEDOM ON THE MIDDLE GROUND: MARYLAND DURING THE NINETEENTH CENTURY*, 148 (1985).

⁸ FUKU, *supra* note 6, at 83, n. 12.

⁹ FIELDS, *supra* note 7, at 153.

which I will discuss *infra*,¹⁰ Chief Justice Chase observed that “[a]lmost immediately . . . many of the freed people of Talbot county were collected together under some authority . . . and the younger persons were bound as apprentices, usually, if not always, to their late masters.”¹¹ Indeed, it appears that Elizabeth Turner, the apprenticed child in *In re Turner*, was apprenticed just “two days after the new constitution went into operation.”¹²

The “Black Codes” mentioned above refer to the 1860 Maryland Code of Public General Laws.¹³ Fields argues that the “Black Codes” helped former masters “cope with the reality of emancipation” and notes that the use of the Codes for Reconstruction apprenticing was meant to be “transitional.”¹⁴ The Code directed local sheriffs and constables to “bring the child of any free negro before” the county orphans’ court where the orphans’ court would determine whether the “parent or parents have the means and are willing to support [the] child.”¹⁵ Thus, the “Black Codes” were the principle instrument by which slave owners maintained custody of their free child labor.

Unfortunately for many freed black families, many orphans’ courts construed the term “means” rather narrowly, and thus typically limited this threshold determination of “means” to the parents’ “pecuniary ability.”¹⁶ Accordingly, the judges of the orphans’ court would often award apprentices to their former masters notwithstanding the more intangible “means” that natural parents possess. Generally, where the parents were present and were able to demonstrate

¹⁰ See *infra* Part IV.

¹¹ *In re Turner*, 24 F.Cas. 337, 339 (C.C. Md. 1867).

¹² *Id.*

¹³ Volume 175 *Maryland Code of Public General Laws*, Art. 6, §§ 31-39 pp. 38-39, available at Maryland State Archives, <http://www.aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000145/html/index.html> (last visited Oct. 27, 2011).

¹⁴ FIELDS, *supra* note 7, at 153.

¹⁵ Volume 175 *Maryland Code of Public General Laws*, Art. 6, §§ 32-33, p. 38, available at Maryland State Archives, <http://www.aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000145/html/index.html> (last visited Oct. 27, 2011).

¹⁶ FUKU, *supra* note 6, at 78. (Citing BALTIMORE AMERICAN, Jan. 18, 1865)

the “means” with which to care for their children, the orphans’ court would grant custody to the parent. However, where the parents were absent during the orphan proceedings, or where parents were unable to demonstrate the “means” to parent, the minors would often be apprenticed to their former slave owners.¹⁷

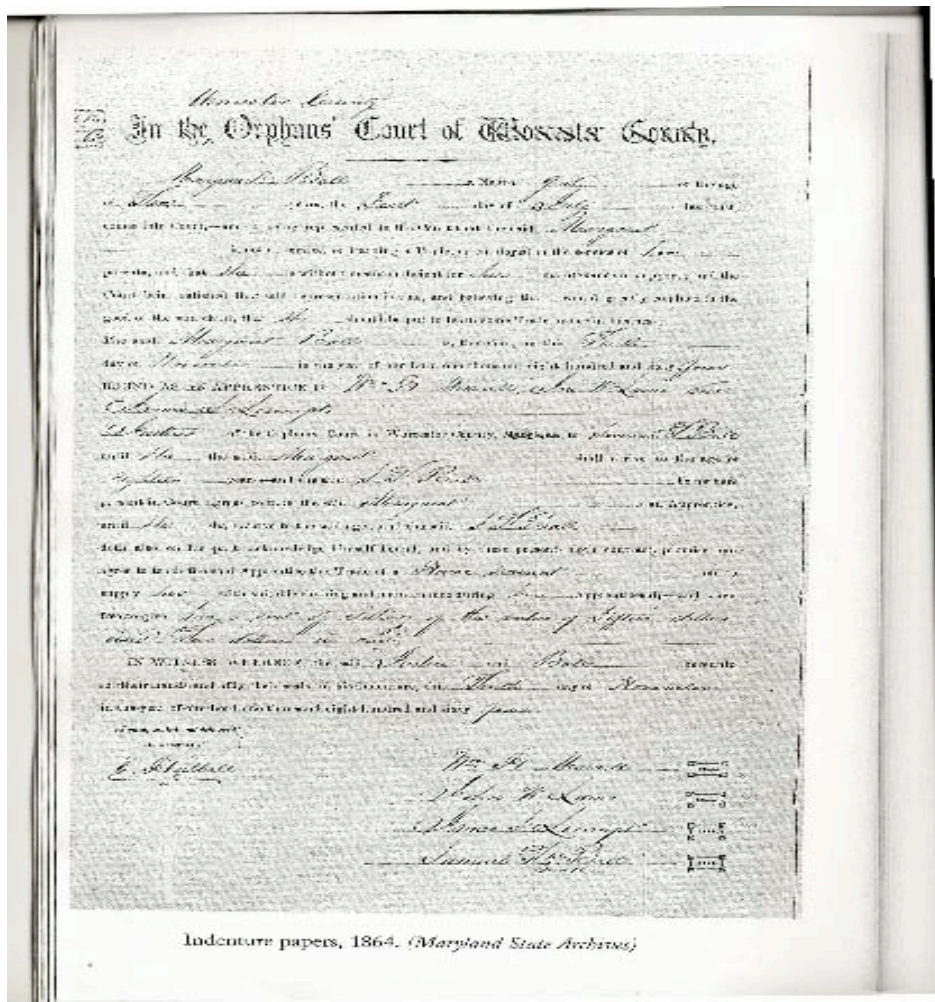
Frequently, these freed black children would enter into labor contracts.¹⁸ These contracts legally bound the minors to their former slaveholders for a fixed period of time. The indenture contracts could not be annulled, however, absent “evidence of cruel and inhuman treatment.”¹⁹ Another factor going into the consideration of the apprenticeship contracts was that some parents willfully consented to their children being apprenticed.²⁰ However, given the necessities of labor for a productive rural life, it is unlikely that many of these parents did willfully consent to the bindings.

¹⁷ RANNEY, *supra* note 6, at 48.

¹⁸ *See infra* note 21.

¹⁹ FIELDS, *supra* note 7, at 154.

²⁰ Margaret A. Burnham, *Property, Parenthood, and Peonage: Reflections on the Return to Status Quo Antebellum*, 18 CARDOZO L. REV. 433, 441 (1996).



Indenture papers, 1864. (Maryland State Archives)

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In many instances, the orphans' courts failed to recognize (and it appears did not consider) that freed children were critical for former slaves to escape “the badges and incidents of slavery.” Human capital in the form of child labor was crucial for freed blacks.²² Both in terms of legal self-autonomy, and in terms of needing human capital to produce a livelihood in the mid-nineteenth century, children of freed slaves were intrinsic to families wishing to create a new life outside the bondage of slavery. With the help of both the federal government and the help of local politicians and lawyers, parents were increasingly able to secure the release of their children.

²¹ FUKU, *supra* note 6, *Indenture Papers, 1864*.

²² See FUKU, *supra* note 6, at 70.

B. Efforts to Dispose of Apprenticeship

There were two primary driving forces behind the efforts to secure the release of apprentices from their former masters. First, the creation of the federal Freedmen’s Bureau established a top-down federal effort to abolish the vestiges of slavery and provide on-the-ground enforcement of the newly enacted constitutional provisions. Additionally, local lawyers and politicians provided the institutional and legal framework with which to free apprentices.

With regards to the Freedmen’s Bureau, Fuke explains that “[t]he anti-apprenticeship campaign received a major boost in 1866, when the Freedmen’s Bureau lent its full weight to the cause.”²³ The Freedmen’s Bureau was created by Congress in March 1865 and was assigned to fall under the purview of the War Department and “[b]y September 1865 all of Maryland had been placed under the jurisdiction of the federal bureau.”²⁴ As soon as its agents were deployed to Maryland, the Freedmen’s Bureau “took as one of its first and most important tasks mounting a legal challenge to the system of apprenticeship.”²⁵ According to Fields, black families relied heavily on federal agents and federal authority. Specifically, the Freedmen’s Bureau quickly descended upon the Eastern Shore of Maryland because of its large number of apprenticed children to former slave owners and as a result “made apprenticeship one of its chief concerns.”²⁶ On the Eastern Shore “Bureau agents identified offending planters, demanded that they release apprenticed children, and if that failed brought the former to trial before the Baltimore Criminal Court.”²⁷ This piece of evidence suggests that it may have been the Freedmen’s Bureau who initially thought to bring the claims of LC before the Baltimore Criminal Court and the radical lawyers in Baltimore.

²³ *Id.* at 79.

²⁴ FIELDS, *supra* note 7, at 148.

²⁵ *Id.* at 149.

²⁶ FUKU, *supra* note 6, at 79.

²⁷ *Id.* at 80.

The lawyers and politicians engaged in ending apprenticeship in Maryland certainly encountered significant obstacles.²⁸ Because the 1860 “Black Codes” were still on the books, a difficult argument was presented for abolitionist lawyers in that white children, like black children, could be apprenticed. Despite the disparate treatment amongst white and black apprentices, the radical lawyers were nonetheless forced to craft an alternative argument to counter the state statute’s open discrimination. Among the most prominent abolitionist/radical lawyers were Henry Stockbridge,²⁹ Archibald Stirling, Jr.,³⁰ William Daniel,³¹ and Henry Winter Davis.³² In addition, these lawyers found a sympathetic ear in Baltimore Criminal Court Judge Hugh Lennox Bond. The legal strategy adopted by these men likely started as early as April 1865, when it appears that Stockbridge, Stirling, Davis, and Bond had dinner with Chief Justice Salmon P. Chase.³³ The Chief Justice describes the men as “the radicals”³⁴ and it can only be assumed that during the course of this dinner that Maryland apprenticeship was a central topic of discussion. Ultimately, Judge Bond accepted the argument “that the Maryland apprenticeship law was contrary to the spirit of the state emancipation proclamation,” embodied in the Maryland Constitution of 1864.³⁵

Over time, the abolitionist/radical lawyers began to craft a legal strategy that targeted apprenticeship as a whole rather than particularized cases. Fuke details the tactics used by the lawyers and members of the Bureau, who were “delighted and eager” to attack Maryland’s

²⁸ *Id.* at 79-80.

²⁹ *See supra* Part VI.F.

³⁰ *See supra* Part VI.G.

³¹ *See supra* Part VI.H.

³² Although not a central figure in this case, it should be noted that Henry Winter Davis was often considered in the same abolitionist group as the other mentioned lawyers. These men represented the central force of lawyers dedicated to the abolition of the apprenticeship practices in Maryland. For more information on Davis, *see* JOHN THOMAS SCHARF, HISTORY OF BALTIMORE CITY AND COUNTY FROM THE EARLIEST DAY: INCLUDING BIOGRAPHICAL SKETCHES OF THEIR REPRESENTATIVE MEN, 719 (1881). *See also* FUKU, *supra* note 6, at 86, n. 73.

³³ THE SALMON P. CHASE PAPERS, 527 (Apr. 11, 1865) (John Niven ed., 1993).

³⁴ *Id.* For clarity, it is important to note that the term “radical” was often used to describe those who harbored abolitionist and equality views.

³⁵ Richard Paul Fuke, *Hugh Lennox Bond and Radical Republican Ideology*, 45 J. SOUTHERN HIST. 569, 574 (1979).

apprenticeship laws.³⁶ Following the passage of the Civil Rights Act of 1866, where equal treatment of both races was demanded, LC's lawyers were presented with the congressional mandate they required to bring a case before the federal courts. In October 1867, the efforts of the radical Republicans to craft a winning legal strategy based upon the substantive issues of apprenticeship paid off.³⁷

III. THE CASE

A. LEAD UP TO THE CASE

The plight of LC and her children is illustrative of many similarly situated black Maryland families following the adoption of the 1864 constitution. Unable to accept that black children could be removed from their parents through the binding proceedings, federal agents, radical lawyers, and black families became actively engaged in filtering out the apprenticeship system in Maryland. According to Fuke, the “radical lawyers Henry Winter Davis, Henry Stockbridge, and Archibald Stirling, Jr., brought the cases of several black children before the Baltimore Criminal Court” in May 1865, to help secure the release of apprenticed children.³⁸ Although Judge Bond only managed to release a “few children”³⁹ at this time, it appears from the timeline that Washington and Simon Coston were among those released and those initially targeted by the abolitionist lawyers. As previously noted, Stockbridge, Stirling, and Judge Bond dined with Chief Justice Chase in April 1865, just one month before the described events, and

³⁶ FUKU, *supra* note 6, at 80.

³⁷ *See infra* Part IV.

³⁸ *Id.* at 78-79.

³⁹ *Id.* at 79.

likely began devising the litigation strategy needed to overcome Maryland's apprenticeship laws.⁴⁰



On May 6, 1865, with assistance from Stockbridge, Stirling, and Daniel, Judge Hugh Lennox Bond ordered that the writ of habeas corpus be directed upon Samuel S. Costen to produce Washington and Simon in front of the Baltimore City Criminal Court.⁴² In the *Coston v. Coston* opinion, Chief Judge Bowie notes that SSC returned with the children on May 17 and produced them in front of the court.⁴³ However, SSC refused to release the children and instead claimed that the children were legally apprenticed to him under the 1860 Maryland Code of

⁴⁰ See *supra* note 33.

⁴¹ Baltimore City Courthouse, circa 1860. Photo available at <http://www.msa.md.gov/megafile/msa/speccol/sc2200/sc2221/000024/000000/html/bccourt.html> (last visited Nov. 28, 2011).

⁴² *Coston v. Coston*, 25 Md. 500, 500 (Md. 1866).

⁴³ *Id.* at 501.

Public General Laws. When SSC returned with the children on May 17th, he brought “copies of the indentures by which he held [Washington and Simon].”⁴⁴

On July 16th, 1865, the New York Times ran an article detailing the *In re Coston* case.⁴⁵ The NY Times noted that SSC was denied his petition for the return of Simon and Washington by Judge Bond and that the decision was subsequently affirmed by the Court of Appeals of Maryland. The Times summed up the Court’s holding as recognizing “that the present constitution of the State does not permit former slaveowners to retain under the guise of apprenticeship the odious features of the discarded system of slavery.”⁴⁶ The NY Times article thus demonstrates the degree to which other states found the Maryland “Black Codes” to exemplify the remaining vestiges of slavery in Maryland.

Although the timeline is sketchy, according to *The Baltimore Sun*, the parties were involved in a separate proceeding in Anne Arundel County.⁴⁷ The *Sun* notes that Judge Tuck of Anne Arundel County ruled in favor of Costen, and *The Sun* noted the “conflicting decisions thereupon.”⁴⁸ That the case reached the Court of Appeals of Maryland is thus unsurprising, given the conflicting judgments by Judge Bond of Baltimore and Judge Tuck of Anne Arundel County. According to Fuke, the “Maryland constitution permitted any court in the state to hear applications for writs of habeas corpus, no matter what the county of . . . origin.”⁴⁹ This allowed Judge Bond (and like-minded Judges) to “consider pleas of parents who claimed they were capable of maintaining their children and that the children’s apprenticeships were illegal.”⁵⁰ Because judges were able to consider habeas corpus proceedings without regard to jurisdiction,

⁴⁴ *Id.*

⁴⁵ *General News*, NY TIMES, July 17, 1865, available at <http://www.nytimes.com/1865/07/16/news/general-news.html?pagewanted=1>.

⁴⁶ *Id.*

⁴⁷ *Local Matters*, BALTIMORE SUN, July 10, 1865.

⁴⁸ *Id.*

⁴⁹ Fuke, *supra* note 35, at 574.

⁵⁰ *Id.*

Stockbridge, Stirling, and Daniel were able to challenge Simon and Washington's apprenticeship in the more favorable Baltimore forum. The conflicting decisions most likely represent the split in ideologies between the big city of Baltimore and the more rural Anne Arundel County.

Subsequently, SSC demurred as to Judge Bond's order discharging the children.⁵¹ However, Judge Bond overruled the demurrer and held that no appeal may lie in a *Habeas corpus* proceeding,⁵² thus denying SSC's attempt to file a writ of error with the Court of Appeals. However, the Court of Appeals of Maryland took issue with Judge Bond's declaration as to its jurisdiction, and as a result, granted jurisdiction to resolve the conflicting decisions.

B. *In re Coston*⁵³

The case of *In re Coston* was really just a procedural case that led up to the more substantive (albeit procedural in itself) case of *Coston v. Coston*. This preliminary opinion issued by the Court of Appeals of Maryland declined to discuss any of the substantive issues of the case. Instead, *In re Coston* affirmatively declared that the Court of Appeals of Maryland, not the criminal circuit courts of Baltimore, were to be the final decisionmakers as to whether jurisdiction is appropriate.⁵⁴ Chief Judge Richard Johns Bowie⁵⁵ noted that “[i]t is the exclusive right and province of this Court to determine the bounds of its jurisdiction, and decide in what cases an appeal does or does not lie from the judgments of inferior tribunals.”⁵⁶ Noting that a more thorough opinion would be forthcoming, Bowie was reluctant to delve into the substantive issues of the case.⁵⁷ The Court thereafter briefly discussed the nature of *habeas corpus* proceedings on the jurisdictional rights of the courts and found that “the writ of *habeas corpus*, is

⁵¹ *Coston v. Coston*, 25 Md. 500, 501 (Md. 1866).

⁵² *In re Coston*, 23 Md. 271, 271 (Md. 1865).

⁵³ 23 Md. 271 (Md. 1865).

⁵⁴ *In re Coston*, 23 Md. 271, 272 (Md. 1865).

⁵⁵ See *infra* Part VI.C.

⁵⁶ *In re Coston*, 23 Md. 271, 272 (Md. 1865).

⁵⁷ *Id.* at 271-72.

a proceeding summary in its character, addressed to the discretion of the Judge or tribunal, to whom the application is made.”⁵⁸ Simon and Washington likely remained free with their mother during the appeal process, as they awaited the forthcoming opinion promised by Chief Judge Bowie in *In re Coston*.

C. *Coston v. Coston*⁵⁹

The case of *Coston v. Coston* represents one of the earliest efforts by LC’s radical lawyers to secure the release of apprentices bound to their former masters. In fact, the case illustrates a clash of Maryland ideologies amongst the political and legal influences of the time. On the one hand, anti-slavery Unionists, such as Stockbridge, Stirling, Daniel, and Bond sought to eliminate the apprenticeship system, at least to the extent that black apprentices were treated unequally with white apprentices. On the other hand, Unionists with Southern heritage and sympathies sought to maintain their last grasp on forced labor. These competing factions ultimately found their way before Maryland’s high court in the April term of 1866.⁶⁰

1. Arguments and Procedural History

The preliminary portion of the opinion is devoted to providing the relevant facts and details underlying the decision. In addition to providing a brief timeline for the events, the Court explained that LC argued that the children were “illegally arrested” and “held in custody” by SSC. In response, SSC claimed that the children were legally apprenticed to him.⁶¹

Next, the opinion details the arguments produced by the parties. The first argument stated that “the parents of [Simon and Washington] were not summoned to be present at the

⁵⁸ *Id.* at 272.

⁵⁹ *Coston v. Coston*, 25 Md. 500, 501 (Md. 1866).

⁶⁰ *In re Coston*, 23 Md. 271, 272 (Md. 1865). The precedent *In re Coston* case mentions that the forthcoming decision in *Coston v. Coston* would be decided in the April term of 1866.

⁶¹ *Coston v. Coston*, 25 Md. 500, 500 (Md. 1866).

binding” of Simon and Washington to SSC.⁶² This first allegation on the part of LC is quite consistent with the situation depicted above,⁶³ where parents were often not notified as to binding proceedings involving their children. If LC’s allegations are taken to be true, this would suggest that SSC likely bound the children rather quickly in order to prevent LC from attending the orphans’ court proceeding. The Coston children were thus likely amongst the 765 children alleged to have been apprenticed in Somerset County immediately following ratification of the 1864 constitution⁶⁴

The third portion of LC’s argument claims that at the time of the binding, “the parents were able to support [Simon and Washington] and keep them employed so as to teach them habits of industry, and were still so willing and able.”⁶⁵ This claim once again illustrates the common characteristics running through apprenticeship cases in the summer of 1865. Even if LC had been present at the binding proceeding, it is disputable whether she would have possessed the necessary “means” to meet the orphans’ court binding burden. That the parents were not present and that they were “willing and able” to care for the children only further suggests that SSC intentionally deprived LC of the opportunity to present her case to the Orphans’ court.

Another notable part of the argument is that LC wished to teach Simon and Washington the “habits of industry.” The “habits of industry” argument is once again illustrative of the commonalities between *Coston* and other apprenticeship cases. Fuke explains that “[i]n the control of, provision for, and deployment of their children, freed parents sought to wrest this

⁶² *Id.* at 501.

⁶³ *See supra* Part II.

⁶⁴ FUKÉ, *supra* note 6, at 70. This figure is cited by Fuke to a letter sent from a W.H. Gales to E.C. Knower on February 22, 1867.

⁶⁵ *Coston v. Coston*, 25 Md. 500, 501 (Md. 1866).

important aspect of rural economic control from the hands of whites.”⁶⁶ The foundation of an autonomous and free family in the mid-nineteenth century necessitated families being able to “use their families as the organizing agencies of total family labor.”⁶⁷ Indeed, only “[w]ith possession of their children” would black parents be “assured . . . the autonomy that they so ardently sought.”⁶⁸

It is interesting to note that LC’s arguments contain only cursory reference to genuine constitutional arguments. The one constitutional point raised by LC was that “the detention of [her] children under the color of apprenticeship . . . was a detention in slavery or involuntary servitude contrary to [the] Constitution [of 1864].”⁶⁹ As previously discussed, this argument was an integral part of the early legal strategies used by Stockbridge, Stirling, and Daniel to bring about an end to post-emancipation apprenticeship. The argument was that these bindings were “contrary to the spirit of the state emancipation proclamation”⁷⁰ and instead were a vestige of involuntary servitude. By the time of *In re Turner*, however, these lawyers had the full power of the federal government and the constitution at their disposal.

Unlike the substantive and constitutional arguments advanced by Leah Coston, SSC’s arguments largely centered on procedure. SSC sought to overturn Judge Bond’s decision to release the children through a writ of error.⁷¹ It was conceded by both parties that a writ of error would only life after a “final judgment,”⁷² but the unique nature of *habeas corpus* decisions

⁶⁶ FUKÉ, *supra* note 6, at 69.

⁶⁷ *Id.*

⁶⁸ FUKÉ, *supra* note 6, at 82.

⁶⁹ *Coston v. Coston*, 25 Md. 500, 501 (Md. 1866).

⁷⁰ *See supra* note 35.

⁷¹ The writ of error, or *error coram nobis*, was a procedural tactic used in both civil and criminal to address an alleged wrong committed by the trial court. Edward N. Robinson, *The Writ of Error Coram Nobis and Coram Vobis*, 2 DUKE BAR J. 29, 30 (1951). According to Robinson, the writ of error was not used to “authorize a court to review its opinion, but only to vacate some adjudication made.” *Id.* The writ of error, however, could only lie after a final judgment.

⁷² *Coston v. Coston*, 25 Md. 500, 506 (Md. 1866).

complicated the question of whether a final judgment had been entered. Accordingly, a large part of the *Coston* litigation centered around resolving the dispute over the nature of Judge Bond's decision.

During arguments, LC's attorneys countered the procedural claims made by SSC. Stockbridge, Stirling, and Daniel argued that a "writ of error will not lie at common law upon a *habeas corpus*" because such a proceeding is not a "final judgment."⁷³ Moreover, LC argued that an appeal, in addition to the writ of error, "will not lie upon *habeas corpus*" because *habeas corpus* "is not final or conclusive."⁷⁴ Accordingly, LC argued that the writ of error should be dismissed on procedural grounds, despite her strong objections on the substantive issues of the case.

2. The Opinion

Chief Judge Richard Johns Bowie delivered the opinion of the Court on July 17, 1866. First, Chief Judge Bowie explained the nature of *habeas corpus* proceedings and how and where a writ of error may lie. Citing the earlier case of *In re Costen*, the Chief Judge explained that a *habeas corpus* decision was not subject to appeal or the writ of error because a *habeas corpus* matter is not a final judgment.⁷⁵

The Chief Judge continued by tracing the historical underpinnings of the common law understanding of the writ of error and its relationship to *habeas corpus*. Part of this portion of the opinion discusses the manner in which the courts at English common law dealt with the relationship between the writ of error and *habeas corpus*. Chief Judge Bowie references a decision issued by New York Chief Justice James Kent in which Kent traces this history in England. That a *habeas corpus* decision was not a final judgment and thus not entitled to a writ

⁷³ *Id.* at 503.

⁷⁴ *Id.* at 504.

⁷⁵ *Id.* at 504-05.

of error was considered “established law . . . [a] principle . . . of immemorial standing” and an “uncontroverted maxim of ages.”⁷⁶ Kent thus demonstrated that the arguments presented by the parties had been resolved by the English courts at common law.

Subsequently, the opinion traced the history of *habeas corpus*’ impact upon the writ of error in the United States. Chief Judge Bowie notes at least one case involving the Supreme Court of the United States, in which the high court remanded a decision issued by the Supreme Court of Vermont. The Supreme Court in *Holmes v. Jennison*⁷⁷ held that a writ of error will lie in federal court because the case involved a foreign fugitive, thus arising under the Constitution.⁷⁸ As Chief Judge Bowie later notes, however, the *Holmes* decision was not controlling on the Court of Appeals of Maryland.⁷⁹ It is interesting to see Federalism at work in the mid-nineteenth century, when state courts were weary of any federal intrusion into state jurisdiction and declined to follow Supreme Court precedent. The Federalism relationship would, however, ultimately be a decisive component of the apprenticeship laws, as it took federal intervention by Chief Justice Salmon P. Chase to finally end the practice of disparate apprenticeship laws in Maryland.⁸⁰

Ultimately, Chief Judge Bowie and the rest of the Court of Appeals of Maryland did not touch on the substantive issues and merits of the case. Because the Court found in favor of LC on the procedural and jurisdictional argument,⁸¹ the Court declined to wade into the controversial waters of the apprenticeship question. Chief Judge Bowie explained that because LC prevailed

⁷⁶ *Id.* at 506.

⁷⁷ 39 U.S. 540, 579 (1840).

⁷⁸ *Id.*

⁷⁹ *Coston v. Coston*, 25 Md. 500, 508 (Md. 1866) (noting that “the authority of [Federal] cases cannot control the series of decisions to the contrary in State Courts.”).

⁸⁰ See *infra* Part IV.

⁸¹ *Coston*, 25 Md. at 508-09 (quoting a man named Hurd, Bowie writes that “[t]he current authority in the State Courts is, that a review of a decision on *habeas corpus*, independently of statutory provisions, cannot be had by writ of error or appeal, and that, on that ground that the decision is not a final judgment.”).

on procedural grounds, it was “unnecessary, as well as improper, to consider the other points raised by the briefs of the respective parties.”⁸² Thus, the Court was able to reach something of a compromise decision, as the Court secured the release of LC’s children, but nonetheless did not disturb other apprenticeship bindings elsewhere in the State.

IV. SUBSEQUENT HISTORY – *IN RE TURNER*



The underlying issues raised in *In re Coston* and *Coston v. Coston* were finally substantively addressed in the case of *In re Elizabeth Turner*.⁸³ The facts of *In re Turner* are strikingly similar to the facts alleged in *Coston*. *In re Turner* concerned the detention of a former child slave, Elizabeth Turner, by her former master, a Philemon T. Hambleton, in Talbot County, Maryland.⁸⁴ Turner, like Washington and Simon, had been bound to her former master at a Talbot County orphans’ court proceeding in which Turner’s mother “was not summoned to appear before the orphans’ court . . . on the day of making the alleged indentures of

⁸² *Id.* at 509.

⁸³ 24 F. Cas. 337 (C.C. Md. 1867).

⁸⁴ *Id.*

apprenticeship.”⁸⁵ Indeed, Turner was apprenticed just “two days after she became free,” a regular occurrence as described by Fuke, *supra*.

Moreover, the facts are similar to *Coston* in that Elizabeth Turner’s mother claimed that she was “able, ready, and willing to support [Turner].”⁸⁶ As previously noted, this situation exemplified the common practices of apprenticeship in Maryland following the ratification of the 1864 constitution. Parents of the apprenticed children were often not summoned to appear at the binding proceeding, and when they did, the ability to provide the “means” to support the children was often restricted solely to monetary means. The sequence of events depicted in *Turner* alone demonstrate the illustrative nature of *Coston* within this period of Maryland history.

However, there is at least one important distinction between the facts alleged in *Coston* and the facts alleged in *Turner*. In *Coston*, SSC claimed that Washington and Simon were legally indentured to him as his apprentices and there was no mention of LC’s involvement in the binding. In *Turner*, however, Hambleton argued that Turner’s mother had willfully consented to the binding and the apprenticeship was thus a legally enforceable contract. Margaret Burnham explains that “fundamental contract principles were perverted to serve neoslavery”⁸⁷ during this time. Moreover, “Turner’s plight illustrates how, in the aftermath of the war, contract law was quickly harnessed to the planters’ efforts to re-enslave blacks.”⁸⁸ Ultimately, however, the case was decided on loftier constitutional grounds rather than common law contract rationale.

In re Turner was decided while Chief Justice Salmon P. Chase of the Supreme Court of the United States was riding circuit in Baltimore. In the nineteenth century, it was commonplace

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Burnham, *supra* note 20, at 441.

⁸⁸ *Id.* Burnham also observes that “the symmetry that is so central to the rationale of the contract had to be abandoned when the contracting parties were an ex-slave and a former master.” *Id.* at 442.

for Federal judges to “ride circuit” on lower courts and sit as a visiting judge.⁸⁹ Professor G. Edward White notes that “Chase’s earliest construction of the Reconstruction amendments gave every indication that he was entirely willing to recognize the Thirteenth Amendment as having decisive sovereignty implications.”⁹⁰ *In re Turner* thus presented Chase the opportunity to consider and frame the relationship between the newly enacted Thirteenth and Fourteenth Amendments, as well as the corresponding Congressional Civil Rights Act of 1866, with the state and local laws that appeared to contravene the intentions of those laws.

According to Fuke, the “persistence” of Stockbridge, Stirling, and Daniel “paid off” when Chief Justice Chase agreed to hear the case of Elizabeth Turner.⁹¹ By this point, these abolitionist lawyers were “[a]rmed with briefs attacking every aspect of the system,”⁹² thus demonstrating the full evolution of their legal strategy. The early strategies used required attacking the contravention of the “spirit” of the constitution, but these lawyers were later able to utilize the full panoply of new weapons with which to attack apprenticeship.

Chief Justice Chase heard arguments in the United States District Court for the District of Maryland in Baltimore on October 15, 1867. The following day, October 16, 1867, Chase delivered his opinion releasing Turner from the custody of her former master. However, the Chief Justice regretted being “obliged to consider [*Turner*] without the benefit of any argument” by Hambleton.⁹³ Hambleton seemed disinclined to invest much into the case and said that although he wished to retain his apprenticeship over Turner, Hambleton nonetheless “did not feel

⁸⁹ *History of the Federal Judiciary*, FEDERAL JUDICIAL CENTER (Nov. 14, 2011, 3:30 PM), http://www.fjc.gov/history/home.nsf/page/courts_supreme.html.

⁹⁰ G. Edward White, *Reconstructing the Constitutional Jurisprudence of Salmon P. Chase*, 21 N. KY. L. REV 41, 74 (1993).

⁹¹ FUKU, *supra* note 6, at 81.

⁹² *Id.*

⁹³ *In re Turner*, 24 F. Cas. 337, 339 (C.C. Md. 1867).

sufficient interest in the case to spend any money on it.”⁹⁴ Indeed, according to court records, “[t]he chief justice said that the questions in the case were so grave and important that he should prefer to be advised by the argument of counsel on the part of [Hambleton].”⁹⁵ Chase’s characterization of *Turner* as “grave and important” thus contextualizes the issues confronting Chase. At the heart of this case was a maelstrom of competing issues like constitutional law, federalism, natural law, and notions of liberty, all against the backdrop of Reconstruction America in one of the most politically and ideologically divided States at the time.

However, unlike Judge Bond and the Court of Appeals of Maryland, Chase had valuable weapons to strike down the apprenticeship laws. Although the Thirteenth Amendment had been ratified by the time of the *Coston* case, it nonetheless went unconsidered by Chief Judge Bowie and the Court of Appeals majority. Chief Justice Chase, on the other hand, was able to use both the Thirteenth Amendment and the newly passed Civil Rights Act of 1866, which prohibited disparate treatment amongst blacks and whites, to craft his opinion.

During arguments, Henry Stockbridge represented Turner and Turner’s mother. According to *The Baltimore Sun*, Stockbridge claimed that “the sort of apprenticeship adopted in Maryland was an evasion of the constitutional amendment abolishing slavery and involuntary servitude.”⁹⁶ Thus, Stockbridge, Stirling, and Daniel were finally able to present the substantive arguments they long desired to abolish the disparate apprenticeship laws in Maryland. These heavy constitutional and natural law arguments were clearly the product of over two years of crafting their legal strategy. Stockbridge stressed the impact that the *Turner* decision would have on “the condition of thousands of colored minors” to illustrate the widespread apprenticeship

⁹⁴ *Id.* at 338-39.

⁹⁵ *Id.* at 339.

⁹⁶ *Local Matters*, BALTIMORE SUN, Oct. 16, 1867.

practices in Maryland.⁹⁷ The urgency of freeing thousands of black minors illegally bound seems to have weighed heavily on the Chief Justice, as Chase noted that “the time does not allow for more”⁹⁸ consideration of the issues.

The opinion itself began by detailing the relevant facts of the case, which I previously discussed above. The Chief Justice next confronted the disparate treatment between black and white apprentices under the Maryland apprenticeship laws.⁹⁹ Chase found that “the variance is manifest,” most notably because white apprentices were required to “be taught reading, writing, and arithmetic.”¹⁰⁰ Moreover, Chase argued that black apprentices are “described in the law as a ‘property and interest’” and that “no such description is applied to authority over a white apprentice.”¹⁰¹ Along the property interest line, Burnham explains that Chief Justice Chase declined to consider whether Turner’s binding was a valid contract “but instead, with prophetic appreciation of the minefields that lay ahead, sought to provide muscle to the Thirteenth Amendment.”¹⁰²

Ultimately, Chief Justice Chase’s decision represented a “victorious end [to] a campaign waged by Stockbridge and others” to root out unequal apprenticeship practices in Maryland.¹⁰³ The craftily planned litigation strategy devised by the radical lawyers bore substantial fruit with the *Turner* decision. Indeed, with a favorable federal outcome in hand, the end to unequal apprenticeship in Maryland would inevitably come to an end.

V. CONCLUSION

⁹⁷ *Id.*

⁹⁸ *Turner*, 24 F. Cas. at 339.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Burnham, *supra* note 20, at 441.

¹⁰³ *Id.* at 442.

The plight of Leah Coston and her children, embodied in the case of *Coston v. Coston*, is clearly representative of the plight of many black families following ratification of the Maryland Constitution of 1864. However, thanks to the efforts of federal agents, politicians, and radical lawyers, there was a swell of support for these families to aid in the eradication of the apprenticeship system as it existed in Maryland. By devising a carefully planned litigation strategy, these radical lawyers were able to secure the release of thousands of black minors illegally apprenticed to their former masters. After more than two years of attacking Maryland apprenticeship, these efforts paid huge dividends when Chief Justice Salmon P. Chase decided the case of *In re Turner*. Ultimately, *Coston v. Coston* represents just one story out of thousands afflicted by Maryland apprenticeship following the Civil War.

VI.

BIOGRAPHIE

S

In the following section, I identify the most relevant figures involved in the *Coston* case and attempt to detail their relevant biographies. The purpose of this section is thus to highlight the most influential players in this case and in so doing, theorize as to their positions, motivations, and rationale with respect to their roles in *Coston*. Accordingly, although the following sections contain significant biographical information, the sections are nonetheless intended to demonstrate how these figures' respective backgrounds, relationships, and ideologies influenced their participation in *Coston*.

A.

SAMUEL SMITH

COSTEN AND THE COSTEN FAMILY

Samuel Smith Costen, the appellant in the case of *Coston v. Coston*, was evidently from a prominent family in Somerset County, Maryland. Born in Somerset County, Maryland in

The location of Dublin, Maryland is supported by the reporting of a homicide on Samuel S. Costen's land on December 16, 1859.¹⁰⁷ Of particular interest is that the newspaper article adds "esq." to the end of Costen's name, indicating that Costen was likely a lawyer.¹⁰⁸ However, this is the sole piece of evidence I have been able to uncover that suggests that SSC was indeed a lawyer. However, if Costen were indeed a lawyer, it would explain his access to the revered lawyers of William Schley,¹⁰⁹ Ezekiel F. Chambers,¹¹⁰ and William S. Waters.¹¹¹ As noted by Arthur Downey, lawyers during this time were among the most well-connected and most notable figures in mid-nineteenth century Maryland.¹¹² The already well-connected network described below would be all the more interesting if SSC were indeed a lawyer himself. Ultimately, however, the report of the homicide committed by a "negro man" was clearly news enough to find its way all the way to Baltimore.¹¹³

As can be seen in the map above, the Costen's owned several miles worth of land, belonging to multiple Costen family members. Costen's Station appears to have been located directly on the Newtown Branch Railroad. This is particularly interesting, as a *Baltimore Sun* Article in 1859 reported news out of Somerset County that Samuel S. Costen had been elected as one of the directors of the new Eastern Shore Railroad.¹¹⁴ Later, another *Baltimore Sun* article noted that an "S.S. Costen" was re-elected as a director of the Eastern Shore Railroad in Somerset County in July, 1866 (coincidentally, the same time that the Court of Appeals handed

¹⁰⁶ Obtained from a search for "Samuel S. Coston" using <http://www.ancestry.com>.

¹⁰⁷ *Homicide in Somerset County*, BALTIMORE SUN, Dec. 16, 1859.

¹⁰⁸ *Id.*

¹⁰⁹ *See infra* Part VI.E.

¹¹⁰ *See infra* Part VI.D.

¹¹¹ William S. Waters was the most illusive of the biographies that I selected for review. I was unable to recover any substantial information other than some newspaper clippings describing some of his work. Accordingly, I do not devote significant attention to Mr. Waters.

¹¹² *See generally* ARTHUR T. DOWNEY, CIVIL WAR LAWYERS: CONSTITUTIONAL QUESTIONS, COURTROOM DRAMAS, AND THE MEN BEHIND THEM (2010).

¹¹³ *See supra* note 107.

¹¹⁴ *Organization of the Eastern Shore Railroad Co.*, BALTIMORE SUN, Feb. 26, 1859.

down its decision in *Coston*.)¹¹⁵ In another interesting twist, it appears that the newly elected directors of the Eastern Shore Railroad Co. in 1859 thereafter elected John W. Crisfield as the president.¹¹⁶ Costen later testified before the Maryland House and claimed to have voted for Crisfield for United States Representative in 1861.¹¹⁷

Crisfield and SSC's positions were likely representative of many Marylanders during the Civil War, who were caught in the crossroads of being a southern slave-holding Union state. Like Crisfield, SSC admitted to being a Unionist in the Maryland House of Delegates testimony.¹¹⁸ Crisfield was a staunch supporter of the Union, but nonetheless felt that abolition was too extreme. Instead, Crisfield argued that "slavery was actually better for the slaves than the conditions they would face on their own."¹¹⁹ Crisfield's prominence indirectly illustrates SSC's power and influence in the region, especially given that President Lincoln met privately with Crisfield in 1862 to discuss possible compensation for slave owners for freed slaves.¹²⁰ The connection between Costen, Crisfield, and Schley particularly illustrates a common ideology at the time of this case, that of having Union sympathies, but nonetheless exhibiting strong slaveholding preferences.

Other details of SSC's life similarly contextualize his background and beliefs. Marriage records of Somerset County indicate that Samuel S. Costen married Mary H. Miles in 1829.¹²¹ As mentioned above, SSC was questioned over disputed elections in January 1866.¹²² Without

¹¹⁵ *Affairs in Somerset County*, BALTIMORE SUN, July 13, 1866.

¹¹⁶ *See supra* note 114.

¹¹⁷ TESTIMONY IN THE CONTESTED ELECTION CASES, BEFORE THE HOUSE OF DELEGATES OF MARYLAND (1866), <http://www.archive.org/details/testimonyincontel866mary>, 192 (last visited Nov. 29, 2011).

¹¹⁸ *Id.*

¹¹⁹ JASON RHODES, SOMERSET COUNTY, MARYLAND: A BRIEF HISTORY, 59 (2007).

¹²⁰ *Id.*

¹²¹ SOMERSET CO., MD MARRIAGE LICENSES 1796 - 1832, <http://files.usgwarchives.org/md/somerset/vitals/marriages/bride.txt> (last visited Nov. 29, 2011).

¹²² TESTIMONY IN THE CONTESTED ELECTION CASES, BEFORE THE HOUSE OF DELEGATES OF MARYLAND (1866), <http://www.archive.org/details/testimonyincontel866mary>, 192 (last visited Nov. 29, 2011).

the interrogatories in, it is difficult to determine exactly what Samuel Costen was answering. However, the first interrogatory appears to have been a question as to Costen's age and years voting.¹²³ Thereafter, Costen discusses briefly that he considered himself a "Union man," but interestingly enough, SSC seems to be answering question to rebut his alleged "disloyalty."¹²⁴ The veracity of SSC's statements that day may never be known, but it is likely that the truth lie somewhere in the middle.

The picture presented about SSC is that he was likely a man of considerable influence the Eastern Shore. Despite considering himself a Unionist, SSC was nonetheless unwilling to part with his apprentice, which likely represents many Eastern Shore slaveowners at the time. Indeed, the reconstruction of SSC's history fits perfectly within the context I described above.

B.

JUDGE HUGH

LENNOX BOND - BALTIMORE CITY CRIMINAL COURT



¹²³ *Id.*

¹²⁴ *Id.*

Judge Hugh Lennox Bond was born in Baltimore, Maryland on December 16, 1828¹²⁵ and died in his hometown of Baltimore on October 24, 1893. Although born in Baltimore, Judge Bond spent much of his youth and educational years in New York City.¹²⁶ Bond matriculated to the University of the City of New York before returning to Baltimore and was admitted to the Maryland bar in 1851.¹²⁷ Bond's northern education very well may have had an impact on his political and ideological leanings during his formative years.

Bond's decision releasing Simon and Washington from SSC seems quite consistent with his views, politics, ideology, and societal prejudices that were common during the time period. According to Fuke, "Bond declared his opposition to slavery early," and aligned himself to Know-Nothing and Union party politics.¹²⁸ Bond was a "staunch supporter of Lincoln and the Union cause" and as a result "became intensely unpopular" during the Civil War.¹²⁹ Bond's leanings were manifest in his legal accomplishments as he "defended those in impoverished circumstances without thought or desire for pecuniary gain" with the same degree of fortitude as those "which brought him his largest fees."¹³⁰ During the tumultuous years following the Maryland constitution of 1864, Bond served as "spokesman for the Unionists' Radical faction and helped shape its growing commitment to further elevation of blacks."¹³¹ Indeed, Bond's views on blacks were "well known" and many knew Bond was "clearly a proponent of black elevation."¹³²

¹²⁵ Fuke, *supra* note 35, at 571.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ CLAYTON COLEMAN HALL, *BALTIMORE: ITS HISTORY AND ITS PEOPLE*, 897 (1912), available at <http://www.archive.org/details/baltimoreitshis02compgoog> (last visited Nov. 28, 2011).

¹³⁰ *Id.* at 898.

¹³¹ Fuke, *supra* note 35, at 571.

¹³² *Id.* at 575.

Bond was elected to the Criminal Court of Baltimore in 1861 and served in that position throughout the Civil War. During that time, Bond heard a myriad of different kinds of cases. However, and notably for this paper, Judge Bond presided over many cases much like the one in *Coston*.

Despite Bond's clear goal of advancing black rights in Reconstruction Maryland, Bond, like many other Marylanders, harbored societal prejudices against blacks that were born out of years of societal norms. Indeed, Bond believed that "blacks could be elevated *without changing* their relative status; that society could retain its racial distinctions."¹³³ For instance, Bond "often spoke in terms of paternalistic and moral obligation" when discussing the rights of freedmen and their children.¹³⁴

In this vein, Bond also seems to have devoted a significant amount of time to philanthropy. Specifically, Judge Bond actively supported a local organization known as the Baltimore Association for the Moral and Educational Improvement of the Colored People.¹³⁵ The goal of the organization was to help secure greater educational opportunities for freed black children and Bond served as a member of the Board of managers throughout the duration of his commitment to the program.¹³⁶ His philanthropic endeavors pertaining to black education stems from his belief that it was the responsibility of white Marylanders to assist in the education of blacks.¹³⁷ Thus, Bond's private and public life equally suggest his strong opposition to the unequal treatment of black children within Maryland's apprenticeship laws. Judge Bond's

¹³³ *Id.* at 571 (emphasis in original).

¹³⁴ *Id.* at 575. See also Robert J. Kaczorowski, *Revolutionary Constitutionalism in the Era of the Civil War and Reconstruction*, 61 N.Y.U. L. REV. 863, 878 (1986).

¹³⁵ Fuke, *supra* note 35, at 572.

¹³⁶ *Id.* at 573. Fuke also notes that Bond was the association's "most tireless public spokesman" and was actually praised by William Lloyd Garrison's *Liberator* (citing *Liberator*, XXXIV (Dec. 30, 1864)).

¹³⁷ Fuke, *supra* note 34, at 575. Fuke notes that these opinions stemmed from "patriotism and Christian duty." *Id.*

dedication to ending the plight of newly freed black families clearly left an impression on Chief Justice Salmon P. Chase, who described Bond as a “thorough able and earnest man.”¹³⁸

Subsequently, Bond worked his way up from the Baltimore City Court all the way to the United States Court of Appeals for the Fourth Circuit. Judge Bond was nominated by President Ulysses S. Grant to the Fourth Circuit in 1870 and confirmed by the Senate late that year.¹³⁹

Judge Bond’s legacy is certainly shaped by his decisions to release black apprentices. Indeed, Judge Bond secured the release of (likely) hundreds of black apprentices between 1865 and 1867. Having a sympathetic Judge like Judge Bond at the circuit court likely allowed Stockbridge, Stirling, and Daniel to devote significant time in preparation for the appellate process, as they knew favorable judgments were likely under Judge Bond. Ultimately, however, Bond’s contributions in this period exemplify that of radical republican ideology.

C.

CHIEF JUDGE

RICHARD JOHNS BOWIE – COURT OF APPEALS OF MARYLAND



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¹³⁸ See *supra* note 33.

¹³⁹ FEDERAL JUDICIAL CENTER: HISTORY OF THE FEDERAL JUDICIARY: JUDGE HUGH LENNOX BOND, <http://www.fjc.gov/servlet/nGetInfo?jid=206&cid=999&ctype=na&inststate=na> (last visited Nov. 15, 2011).

Richard Johns Bowie was born in 1807 in Georgetown, D.C., to a “wealthy Georgetown family.”¹⁴¹ In his early years, Bowie attended public schools followed by Brookeville Academy in Montgomery County, MD.¹⁴² Subsequently, Bowie matriculated to Georgetown University Law School where he graduated in 1826 at age nineteen.¹⁴³ After practicing law for several years (where he was admitted to the bar in Washington, D.C. and admitted to the United States Supreme Court bar), Bowie was elected as a member of the Maryland House of Delegates from 1935-1937 and .¹⁴⁴ After his years of service in the Maryland State legislature, Bowie returned home to Montgomery County, where he served as the County prosecutor from 1844-1849.

Bowie’s distinguished public service life continued in 1849, when he was elected to the United States House of Representatives. Bowie was twice elected to the United States House of Representatives as a Whig representing Maryland’s (then) First Congressional District.¹⁴⁵ As a Congressman, Bowie was remembered as an “eloquent, forcible, and convincing speaker and always actively interested in any important measure brought before Congress.”¹⁴⁶ Bowie considered himself a disciple and “ardent admirer of Henry Clay” and his first public speech as a Congressman was allegedly made in support of the Missouri Compromise of 1850.¹⁴⁷ Bowie’s support of Clay and his politics as a Whig demonstrate a more moderate and tempered approach

¹⁴⁰ Photo available at <http://www.msa.md.gov/msa/speccol/sc3500/sc3520/001600/001624/html/msa01624.html> (last visited Nov. 7, 2011).

¹⁴¹ ROCKVILLE, MD GOVERNMENT: HISTORY: THE BOWIE PERIOD 1836-1917, <http://www.rockvillemd.gov/tours/glenview/history/bowie.html#> (last visited Nov. 11, 2011).

¹⁴² GERSON G. EISENBERG, MARYLANDERS WHO SERVED THE NATION, 18 (Maryland State Archives, 1992).

Retrieved from

<http://www.msa.md.gov/megafile/msa/speccol/sc3500/sc3520/001600/001624/html/1624sources.html> (last visited Nov. 14, 2011).

¹⁴³ *Id.*

¹⁴⁴ MARYLAND STATE ARCHIVES,

<http://www.msa.md.gov/msa/speccol/sc3500/sc3520/001600/001624/html/msa01624.html> (last visited Nov. 28, 2011).

¹⁴⁵ http://en.wikipedia.org/wiki/Richard_Bowie (last visited Nov. 29, 2011).

¹⁴⁶ DICTIONARY OF AMERICAN BIOGRAPHY, 511,

<http://www.msa.md.gov/megafile/msa/speccol/sc3500/sc3520/001600/001624/tif/bowiedab.tif> (last visited Nov. 28, 2011).

¹⁴⁷ *Id.*

to the contentious issues of the day. Clay, known as the “Great Compromiser,” was a moderate and Bowie’s decision in *Coston* certainly represents a more moderate approach because it reached the Republican/Unionist judgment by requiring the discharge of the Coston children without addressing the overarching substantive merits.

Thereafter, Bowie was nominated as the Whig candidate for Maryland Governor in 1854.¹⁴⁸ Effie Gwynne Bowie explains that because “[t]he slavery question was one of the burning questions of the day,” the Whig party became fractured and was unable to consolidate around a single Whig candidate.¹⁴⁹ As a result, Thomas Watkins Ligon defeated Bowie and the Whig party witnessed its sharp decline.

According to Effie Gwynne Bowie, Richard Johns Bowie was “[b]itterly opposed to [s]ecession and a firm supporter of the Union.”¹⁵⁰ Unable to coalesce sufficient support behind the banner of the Whig Party, it is reported that Bowie later affiliated with the “Union Democrats.”¹⁵¹ Along those lines, the Dictionary of American Biography notes that Bowie was a “staunch Unionist, and with the unanswering honesty and moral courage that marked the man, he opposed secession and tried to avert the war he felt was inevitable.”¹⁵²

McSherry describes Bowie as having been “an affable, distinguished, polished gentleman” and as Chief Judge “presided with grace and dignity and his opinions display learning and research.”¹⁵³ Another account noted that Bowie was “[a] man of brilliant intellect,

¹⁴⁸ JAMES MCSHERRY, *THE FORMER CHIEF JUDGES OF THE COURT OF APPEALS OF MARYLAND*, 124 (Maryland State Bar Association 1904).

¹⁴⁹ EFFIE GWYNNE BOWIE, *ACROSS THE YEARS IN PRINCE GEORGE’S COUNTY*, 739 (1947), <http://www.msa.md.gov/megafile/msa/speccol/sc3500/sc3520/001600/001624/tif/effiebowie.tif> (last visited Nov. 28, 2011).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *See supra* note 146, at 511.

¹⁵³ *See supra* note 148, at 124.

combined with much legal learning.”¹⁵⁴ These depictions of Bowie are consistent with the opinion issued in *Coston*, as he used his “intellect” and “legal learning” to craft a moderate opinion that still effectuated the result desired.

Ultimately, Chief Judge Bowie was an icon of nineteenth century Maryland legal and political community. His life was clearly dedicated to public service and by all accounts was considered a learned lawyer with a bright intellect and congenial disposition. Given the various descriptions available today, it is unsurprising that Chief Judge Bowie’s decision came out the way it did in *Coston v. Coston*. Being a Unionist and an abolitionist certainly set the stage for a showdown over questionable apprenticeship practices. Nonetheless, Bowie’s acute legal and political acumen comes into play during *Coston*, as Bowie and the other judges of the Court of Appeals decline to touch on the substantive merits of the case, and instead rule in favor of LC on procedural grounds.

D.

EZEKIEL F.

CHAMBERS – ATTORNEY FOR SAMUEL S. COSTEN



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¹⁵⁴ See *supra* note 146, at 511.

Ezekiel Forman Chambers was born in Kent County, Maryland in 1788.¹⁵⁶ In his early years, Chambers served in the War of 1812 as a Captain and later a Brigadier General in the local militia.¹⁵⁷ In 1822, Chambers was elected to the Maryland Senate. Subsequently, Chambers served as the United States Senator from Maryland from 1826-1834.¹⁵⁸

Following Chambers' tenure as Senator, he served on the Court of Appeals of Maryland from 1834-1851.¹⁵⁹ This fact is interesting given that Chambers was involved in the preliminary case of *In re Coston* and had Chambers still been a member of the Court, he very well may have had an impact on the proceedings. As is typical with the other lawyers and judges in this section, Chambers' ideology was likely a product of his background. Chambers seems to be the oldest amongst the group included in this section and thus likely was influenced by previous generations. Indeed, by the time of *In re Coston*, Chambers was already seventy-seven years old. Chambers likely harbored similar views as those of SSC and this assumption is also illustrated by the fact that Chambers ran for Governor as a Democrat in 1864. Once again, the strong connection of lawyers from the time seems to be manifest in SSC's ability to retain the likes of Ezekiel F. Chambers as counsel.

E.

WILLIAM

SCHLEY – ATTORNEY FOR SAMUEL S. COSTEN

William Schley was born to a prominent Fredericksburg family on October, 31, 1799.¹⁶⁰ Schley's father, Thomas Schley, was considered a "much respected and honored citizen."¹⁶¹

¹⁵⁵ BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=C000282> (last visited Nov. 28, 2011).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ BRANTZ MAYER, BALTIOMRE: PAST AND PRESENT, 445 (1871), available at <http://books.google.com/books/about/Baltimore.html?id=ZK0EDC68er0C> (last visited Nov. 20, 2011).

Thomas Schley, a legal man himself, served as Chief Judge of the Frederick County Orphans Court and continued his public service as a representative of Frederick County in the Maryland legislature.¹⁶² William Schley graduated from Princeton in 1821 and was thereafter admitted to the Maryland Bar in 1824.¹⁶³

In his politics, William Schley was a devoted Whig and even presided over the Whig ratification meeting in 1856, which occurred in Baltimore. Schley also served in the Maryland legislature as a Senator from Frederick County. During his time as State Senator, Schley served as Chairman of the Judiciary Committee and Chairman of the Constitution Committee in 1836.¹⁶⁴ In a rather interesting tale of the times, it appears that during the course of drafting a new constitution, Mr. Schley's relationships and motives in the drafting were called into question by a William Cost Johnson.¹⁶⁵ As a result, Schley challenged Johnson to a duel, which took place near Alexandria, Virginia on February 13, 1837.¹⁶⁶ During the duel, both Schley and Johnson were wounded after a single exchange of shots.¹⁶⁷

Following Schley's time in the State legislature, he more or less retired from politics in order to focus more intently on his legal practice.¹⁶⁸ Thereafter, Schley dedicated his "life and energies . . . almost exclusively . . . to the profession of the law."¹⁶⁹ Throughout his career, he was considered courteous, mannered, and even sought to help and instruct the younger lawyers

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ HISTORY OF FREDERICK COUNTY, MARYLAND, 306 (1910), available at http://books.google.com/books?id=h6w1YPiY0nYC&pg=PA309&lpg=PA309&dq=william+schley+maryland+lawyers+southern&source=bl&ots=OwqJ3P4itY&sig=XIDfd_6VN2LwzAmNIBLKPEb6-yg&hl=en&ei=spHVToncKeff0QGZ8dXYAQ&sa=X&oi=book_result&ct=result&resnum=1&ved=0CCgQ6AEwA DgK

¹⁶⁴ MAYER, *supra* note 160, at 446.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 447.

¹⁶⁹ *Id.*

of the day.¹⁷⁰ Schley’s legal reputation apparently spread beyond the city and state and was “frequently consulted by clients from abroad or in other States.”¹⁷¹

Schley was considered an “eminent lawyer of [his] time”¹⁷² and Scharf refers to Schley as an “intellectual giant” in the same breath as the famous Reverdy Johnson.¹⁷³ Others have referred to Schley as “one of the leaders of the Baltimore bar, and one of the most distinguished and successful advocates whom the state of Maryland has ever produced.”¹⁷⁴ It is unsurprising that Schley chose to represent SSC given Schley’s reconciliatory attitude towards the South. Schley’s reconciliatory approach is manifest in his support for General George McClellan in the 1864 election. Ultimately, Schley certainly had southern or more moderate sympathies such that he was willing to represent SSC in *Coston*.

F.

HENRY SMITH

STOCKBRIDGE – ATTORNEY FOR LEAH COSTON

Henry Stockbridge, one of the three lawyers representing Leah Coston in *Coston v. Coston*, rose to prominence during the Civil War as an abolitionist and strong advocate of equal rights. Born in 1822 in Massachusetts, Stockbridge attended Amherst College, where he graduated in 1845.¹⁷⁵ Subsequently, Stockbridge moved to Baltimore, where he was admitted to the Maryland bar in 1848.¹⁷⁶

¹⁷⁰ MAYER, *supra* note 160, at 447-48.

¹⁷¹ *Id.* at 448.

¹⁷² HALL, *supra* note 129, at 918.

¹⁷³ JOHN THOMAS SCHARF, HISTORY OF BALTIMORE CITY AND COUNTY FROM THE EARLIEST DAY: INCLUDING BIOGRAPHICAL SKETCHES OF THEIR REPRESENTATIVE MEN, 499 (1881), available at http://books.google.com/books?id=6tF4AAAAMAAJ&pg=PA499&lpg=PA499&dq=william+schley+lawyer+maryland+civil+war&source=bl&ots=tcMR1z5hF8&sig=dV3IPptGK_vG9CWHkAza40fPO4w&hl=en&ei=Oma4TsDEE4KH2AWi3-jMDQ&sa=X&oi=book_result&ct=result&resnum=6&ved=0CEcQ6AEwBQ#v=onepage&q=william%20schley%20lawyer%20maryland%20civil%20war&f=false (last visited Nov. 7, 2011).

¹⁷⁴ MAYER, *supra* note 160, at 445.

¹⁷⁵ FUKU, *supra* note 6, at 87, n. 83.

¹⁷⁶ *Id.*

Fields describes an interesting encounter involving Stockbridge following Chase's decision in *Turner*. Evidently, a black mother sought to obtain her children from their master and "armed with a letter from the Baltimore attorney and Union party notable Henry Stockbridge" demanded that the children be returned to her.¹⁷⁷ In response, the master, Steven Fuller of Calvert County, sent back a response that "Stockbridge is a liar and never told the truth."¹⁷⁸

The torch of Stockbridge's reputable legal career was carried forward by his son, Henry Stockbridge, Jr. Stockbridge, Jr. created an exemplary legal reputation of his own, having received his LL.B. from the University of Maryland School of Law in 1878. Subsequently, Stockbridge, Jr. was elected to the United States House of Representatives in 1888 and served in that capacity for one-term from 1889-1891. Thereafter, Stockbridge, Jr. served as a judge on the Supreme Bench of Baltimore City before being nominated to be an Associate Judge on the Court of Appeals of Maryland, where he served until his death. Stockbridge, Jr. was also a guest lecturer at the University of Maryland School of Law and served on the University of Maryland Board of Regents from 1907-1920.¹⁷⁹

In general, there seems to be little biographical information on Henry Stockbridge, Sr. The one thing that is apparent throughout much of my research, however, is the high esteem with which he was regarded by his contemporaries. Contextually, Stockbridge was clearly at the forefront of the apprenticeship battle and, in my opinion, was the lead attorney throughout much of the litigation in both *Coston* and *Turner*. While Stockbridge's overall role in the

¹⁷⁷ FIELDS, *supra* note 7, at 153-54.

¹⁷⁸ *Id.* at 154.

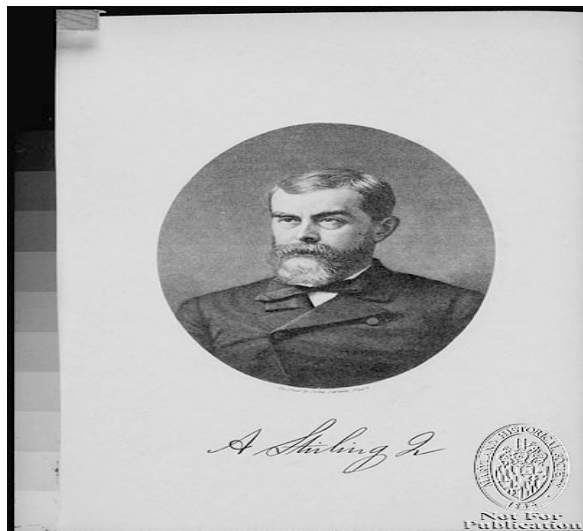
¹⁷⁹ *Maryland State Archives: Biographical Series*, MSA SC 3520-2139, <http://www.msa.md.gov/megafile/msa/speccol/sc3500/sc3520/002100/002139/html/02139bio.html> (last visited Nov. 14, 2011).

apprenticeship cases is notable, it is clear that Stockbridge made a lasting and substantial impact on at least two Maryland families.

G.

ARCHIBALD

STIRLING, JR. – ATTORNEY FOR LEAH COSTON



Archibald Stirling, Jr. was considered one of the most prominent attorneys of his time.¹⁸⁰ Educated at Baltimore private schools, Stirling subsequently matriculated to Princeton University, where he graduated in 1851.¹⁸¹ Admitted to the Maryland Bar in 1854, Stirling “[rose] to the first rank of lawyers at the Bar [of Baltimore].”¹⁸²

Stirling’s politics were very much aligned with those of Judge Bond and Stockbridge. A staunch Unionist, Stirling was originally a member of the American Party and Union Party before becoming “a recognized leader of the Republican party.”¹⁸³ In this political capacity, Stirling was elected to the Maryland House of Delegates in 1858, where he served as chairman

¹⁸⁰ SCHARF, *supra* note 173, at 718.

¹⁸¹ *Id.* at 719.

¹⁸² *Id.*

¹⁸³ *Id.*

of the House Committee on Ways and Means.¹⁸⁴ Scharf describes Stirling as “[f]irm and decided in his political opinions” and “always exhibited the courage of his convictions and maintained his principles without regard to their popularity in the community.”¹⁸⁵

These depictions are quite consistent with that of Stockbridge, as both were champions of black rights in Maryland. Indeed, Stockbridge and Stirling are frequently mentioned together and seem to have formed something of a partnership aimed at obtaining this equality.

H.

WILLIAM

DANIEL – ATTORNEY FOR LEAH COSTON



William Daniel, the third of Leah Coston’s “great triumvirate” of abolitionist lawyers, was born in 1821 in Deal Island, Somerset County, Maryland.¹⁸⁷ Subsequently, Daniel attended Dickinson College in Pennsylvania, where he graduated in 1848.¹⁸⁸ Daniel returned to Maryland following graduation and was admitted to the Maryland bar in 1851.¹⁸⁹ After beginning his law practice, Daniel was elected to the Maryland State Legislature as a member of the American

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Photo available at <http://hd.housedivided.dickinson.edu/node/5531> (last visited Nov. 7, 2011).

¹⁸⁷ HOUSE DIVIDED: THE CIVIL WAR RESEARCH ENGINE AT DICKINSON COLLEGE, <http://hd.housedivided.dickinson.edu/node/5531> (last visited Nov. 7, 2011).

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

Party in 1853, where he advocated a strong platform of temperance and abolitionism.¹⁹⁰ After moving up to the Maryland State Senate, Daniel became an “avid anti-slavery Republican.”¹⁹¹

Following Daniel’s life in public service, Daniel began to take up apprenticeship cases throughout Maryland. Daniel, who was a “radical lawyer” started using the recently passed federal Civil Rights Act of 1866 as a touchstone for many of the arguments he would use in successfully arguing against the Maryland apprenticeship laws.¹⁹² According to Fuke, Daniel stated that “[a]ll oppressive bindings are abrogated by the Civil Rights Bill.”¹⁹³ However, because the 1866 Civil Rights Act was not yet in place at the initiation of the Costen case, Daniel, Stockbridge, and Stirling were forced to rely on common law procedural ground to attack Costen’s dominion over Washing and Simon. Nonetheless, according to Fuke, “Daniel’s [arguments] began to shape Bond’s decisions.”¹⁹⁴

Later in life, William Daniel became a leading proponent of temperance and prohibition. After helping form the Maryland Temperance Alliance in 1872 (and becoming its President), Daniel became a leading figure in the prohibition movement. While serving as the chairman of the National Prohibition Party’s first convention in Pittsburgh, Pennsylvania, Daniel was nominated as the Vice-Presidential running mate to John P. St. John of Kansas in 1884.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² FUKÉ, *supra* note 6, at 80.

¹⁹³ *Id.*

¹⁹⁴ *Id.*



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As with the other biographies described above, Daniel's decision to represent LC in *Coston* is quite consistent with the depictions available. Daniel seemed resolute in attacking what he must have perceived to be immoral practices, whether abolitionism or consumption of alcohol. Ultimately, like the others, Daniel seems to fit perfectly within the historical framework described.

¹⁹⁵ KANSAS HISTORICAL SOCIETY, available at http://chronicles.dickinson.edu/encyclo/d/ed_danielW.html (last visited Nov. 7, 2011).