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After Somerset:

The Scottish Experience

JOHN W. CAIRNS

The Scottish evidence examined here demonstrates the power of the popular understanding that, in Somerset's Case (1772), Lord Mansfield had freed the slaves, and shows how the rapid spread of this view through newspapers, magazines, and more personal communications, encouraged those held as slaves in Scotland to believe that Lord Mansfield had freed them - at least if they reached England.

JOSEPH KNIGHT AND JAMES SOMERSET

On 20 April 1765 the slave-ship *Phoenix* arrived in Montego Bay in Jamaica. Captained by John Knight, the voyage of the *Phoenix* had started on 2 April 1764 in Bristol, where the ship was registered, and, after months of trading in Africa, it had departed for the Caribbean on 5 March 1765, with a cargo of slaves acquired on the Guinea Coast at Anomabu and Cape Coast Castle.¹ The cargo included a young African, aged about

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thirteen, who was to become known as Joseph Knight. He was not exhibited for public sale in the market; instead he was privately sold by Captain Knight to John Wedderburn.² It was indeed common for captains of slave ships to be allowed to take slaves to sell on their own account or to be allotted a number of slaves from the cargo as commission.³

John Wedderburn was a Jacobite whose father - an impoverished baronet - had been executed and forfeited for involvement in the Rebellion of 1745-46. After Wedderburn's own active military participation in the Rebellion, he had fled to Jamaica with some of his brothers; there he was waiting for times to change so he could safely go home to Scotland to try to re-establish the family among the Scottish landed classes. Knight became his personal servant. Wedderburn prospered in Jamaica, and in 1768 he eventually returned to Scotland, taking with him Knight, who was clearly a great

unparalleled collection of Session Papers. An earlier version of this was presented as a paper at the Conference of the Eighteenth-Century Scottish Studies Society at Princeton, NJ, 24-27 June, 2010.

¹ Voyage 17601, *Phoenix* (1765) in <<http://slavevoyages.org>> last accessed 16 Feb. 2012. See David Eltis, Stephen D. Behrendt, David Richardson and Herbert S. Klein, *The Transatlantic Slave Trade Database on CD-Rom*, Cambridge, 1999. On the important role of Cape Coast Castle and the fort at Anomabu in British slave-trading on the Guinea Coast, see William St Clair, *The Grand Slave Emporium: Cape Coast Castle and the British Slave Trade*, London, 2006. Knight had also sailed to Jamaica with slaves in 1760 (voyage 17465) and in 1766 sailed to Dominica with slaves (voyage 17657): see <<http://slavevoyages.org>> last accessed 16 Feb. 2012. The 1765 landing for Joseph Knight seems most likely to me.

² For this detail, see Deposition of Joseph Knight before the Justices in Perthshire, 15 Nov. 1773, recorded in (MS) Extract Process Joseph Knight against Sir John Wedderburn of Ballendean [sic], Bart. 1774, 8 in National Registers of Scotland [hereafter NRS], CS235/K/2/2.

³ See, e.g., Emma Christopher, *Slave Ship Sailors and Their Captive Cargoes, 1730-1807*, Cambridge, 2006, 34; Stephanie E. Smallwood, *Saltwater Slavery: A Middle Passage from Africa to American Diaspora*, Cambridge MA, 2007, 70-71.

favourite. The next year Wedderburn married Margaret Ogilvy, daughter of the Jacobite Earl of Airlie, in whose regiment he had fought at Culloden. He also acquired the house and estate of Ballindean in Perthshire, close to Dundee.⁴

It was at Ballindean, in July 1772, that Joseph Knight, now aged around twenty to twenty-one, read of Lord Mansfield's decision in *Somerset v Stewart*.⁵ Like so many, he apparently understood Mansfield as having freed the slaves.⁶ Over a year later, he prepared to desert his master Wedderburn. He was prevented from doing so by a warrant of the Justices of the Peace of Perthshire. On 15 November 1773, Knight, in a deposition before the Justices meeting at Ballindean, claimed that 'what made him resolve to go away was a paragraph that he read in Mr Donaldson's News Paper published the third day of July one thousand seven hundred and seventy two, and from that time he has had it in his head to leave his Service'.⁷ This was the report in the *Edinburgh Advertiser* of the judgment in *Somerset*. The newspaper report, however, was almost certainly not the primary motivation for Knight's decision to depart from his master's service; if it had been, he presumably would

⁴ John W. Cairns, 'Knight v Wedderburn', in David Dabydeen, John Gilmore and Cecily Jones, eds., *The Oxford Companion to Black British History*, Oxford, 2007, 244-246; John W. Cairns, 'Knight, Joseph (b. c. 1753)', in Lawrence Goldman, ed., *Oxford Dictionary of National Biography*, online ed., Oxford, May 2009, <<http://www.oxforddnb.com/view/article/93749>> accessed December 9, 2009.

⁵ *Somerset v Stewart* [R. v Knowles, ex parte Somerset] 1 Lofft 1.

⁶ See, e.g., James Oldham, *English Common Law in the Age of Mansfield*, Chapel Hill, 2004, 305-323. The meaning of Mansfield's judgment will be discussed further below.

⁷ See Deposition of Knight, 15 Nov. 1773, in (MS) Extract Process Knight against Wedderburn 1774, 9-10 in NRS, CS235/K/2/2.

not have chosen to wait for over a year before deserting. In fact, what drove him to decide to run away was his wish to live with the wife he had married and by whom he had fathered a child, which had, however, died.⁸ Here the problems arising from his status as held as enslaved can clearly be seen as at the root of his decision. But for the Justices of the Peace at Ballinmean - all with an interest in slavery in the West Indies in some way - it was probably easier and more comforting to attribute Knight's desire to depart to a misunderstanding of what they could choose to conceive of as an irresponsible report in a newspaper.⁹ James Boswell, no friend of the abolition of slavery, took a keen interest in *Knight*. He also chose to emphasise the newspaper report of *Somerset's Case* as what had motivated Knight to leave his master's service.¹⁰

The focus on the newspaper report is nonetheless important. It had suggested to Knight that Lord Mansfield's decision had made him free; and this understanding - even if mistaken - was one link in the chain of events by which Knight was later fated, in a bitterly contested case, to free himself

⁸ (MS) Memorial of Joseph Knight late Servant to Sir John Wedderburn of Ballandean Bart. (1775), 2 in NRS CS235/K/2/2.

⁹ Cairns, '*Knight v Wedderburn*', 245.

¹⁰ See L.F. Powell, ed., *Boswell's Life of Johnson*, Oxford, 1934, vol. 3, 214 n. 1. Boswell's signature survives on the (MS) Extract Process Knight against Wedderburn 1774, 28 in NRS, CS235/K/2/2, noting his return of it on behalf of John Maclaurin, one of Knight's counsel.

and all other individuals of African, Bengali, or other descent held as slaves in Scotland.¹¹

The influence - or suspected influence - of the extensive newspaper reports of the *Somerset* litigation has been noted before. Seymour Drescher has plausibly suggested that the very way the proceedings came to be drawn out magnified the impact of the litigation by extending the reporting over several months.¹² Certainly the news travelled around the British Atlantic world, and, by late 1773, had reached even an African-born slave, Bacchus, in the piedmont country of Virginia, who is reported as thinking he would be free if he reached England, 'a Notion now too prevalent among the Negroes'.¹³ A few months later, another Bacchus, this time a trusted and sophisticated Virginian slave, was thought to be likely to try to board a ship making for Great Britain 'from the Knowledge he has of the late Determination of Somerset's Case'.¹⁴ The influence in the colonies of the reports of *Somerset's Case* is clear.¹⁵

¹¹ *Knight v Wedderburn* Mor. 14545 (1778). The contribution of this to the abolition movement in Scotland is explored in Iain Whyte, *Scotland and the Abolition of Black Slavery, 1756-1838*, Edinburgh, 2006, 9-40.

¹² Seymour Drescher, *Capitalism and Antislavery: British Mobilization in Comparative Perspective*, New York, 1987, 40.

¹³ *Virginia Gazette*, 30 Sept. 1773, found quoted in part in Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake & Lowcountry*, Chapel Hill, 1998, 460-461. Bacchus was travelling with Amy, another runaway.

¹⁴ *Virginia Gazette*, 30 June 1774, found quoted in Emma L. Powers, 'The Newsworthy Somerset Case: Repercussions in Virginia', 23, 3 *Colonial Williamsburg Interpreter* (2002) found on Colonial Williamsburg Research Division Web Site, accessible at < http://research.history.org/Historical_Research/Research_Themes/ThemeEnslave/Somerset.cfm>; and quoted in part in Morgan, *Slave Counterpoint*, 246. It is difficult to assess how typical were the two Bacchuses. It may be significant that they regularly feature in the secondary literature about the North American

Knight v Wedderburn was only finally decided in 1778, six years after Mansfield's decision. This therefore allows us to assess the impact of Mansfield's ruling in a part of Britain not subject to English common law, and where the status of individuals such as Knight continued even more ambiguous than Mansfield's ruling may have left it in England. The Scottish evidence examined here demonstrates the power of Mansfield's opinion with the popular understanding that he had freed the slaves, and shows its rapid spread through newspapers, magazines, and more personal communications, encouraging those held as slaves in Scotland to believe that Lord Mansfield had indeed freed them - at least if they reached England. Further, drawing on the evidence provided by the continued open advertising in Scottish newspapers for runaways, as well as on some other sources, it becomes possible to approach some kind of understanding of the motivations, attitudes and emotions of these individuals held as enslaved in Scotland, who have otherwise left so little trace and account of themselves. The

colonies as the stock examples of slaves influenced by the decision in *Somerset*; this could suggest they were exceptional in being identified as influenced by the reports of the case. See, e.g., Gretchen Gerzina, *Black England: Life before Emancipation*, London, 1995, 133 (relying on Sidney and Emma Kaplan, *The Black Presence in the Era of the American Revolution*, rev. ed., Amherst, 1989, 72-73; Steven M. Wise, *Though the Heavens May Fall: The Landmark Trial that Led to the End of Human Slavery*, London, 2006, 200 (who thinks they are the same person).

¹⁵ See Patricia Bradley, *Slavery, Propaganda and the American Revolution*, pbk. ed., Jackson, 1999, 66-80; Patricia Bradley, 'Slavery in Colonial Newspapers: The Somerset Case', 12 *Journalism History* (Spring, 1985), 1; Seymour Drescher, *Abolition: A History of Slavery and Antislavery*, Cambridge, 2009, 100-104. T.K. Hunter, 'Publishing Freedom, Winning Arguments: *Somerset*, Natural Rights and Massachusetts Freedom Cases', thesis submitted for the degree of Doctor of Philosophy, Columbia University, New York, 2005, 108-135 discusses the reporting of *Somerset* in Massachusetts, while also exploring the longer-term impact.

evidence also indicates that, as in colonial America, information spread rapidly and easily, even to individuals who, unlike Knight, were probably illiterate.

SOMERSET'S CASE IN SCOTLAND

Scottish interest in *Somerset v Stewart* was at least on a par with that throughout the British Atlantic world. Not only would the presence of many enslaved Africans in Scotland have ensured that this was so, but Charles Steuart (or Stewart), Somerset's master, was a Scot who was well known in Scottish trading and professional communities, both at home and in North America. William Scott, a merchant in London, cannot have been the only interested person to write to a relative, in his case George Bogle, currently in Calcutta, naming both Somerset and Steuart, and referring to the latter as 'your old acquaintance' from Virginia, while noting the 'great Question about [the] Liberty' of black servants soon to be decided by Lord Mansfield.¹⁶

Steuart had been born in Orkney, where his father had been sheriff clerk, and, following studies at the University of Edinburgh, had pursued a career in the mainland colonies of British North America. In 1741 he had started as an apprentice factor on the Rappahannock river in a store owned by Robert

¹⁶ W. Scott to G. Bogle, 10 Mar. 1772, Glasgow City Archives, TD1681/20. I am grateful to Dr Anthony Lewis, Curator of Scottish History, Glasgow City Museums, for bringing this letter to my attention. On Bogle, see Kate Teltscher, *The High Road to China: George Bogle, The Panchen Lama and the First British Expedition to Tibet*, London, 2006.

Boyd, a Glasgow tobacco merchant. Other than a year in Boston in the counting house of a maternal uncle, Steuart worked in various trading and mercantile houses in Virginia, before establishing his own in Norfolk in the early 1750s. He imported and exported a wide variety of products, including slaves.¹⁷ He was evidently involved in a typical, complex nexus of Scots migrants, traders and settlers, all working within interlinking networks of patronage and family, trying to make money, usually with the aim of establishing themselves independently at home.¹⁸ In 1765 Steuart was appointed Receiver-General of the Eastern Middle District of the customs, rising to become Paymaster-General of the American Board of Customs.¹⁹ Dobson has summed him up as '[o]ne of the most successful Scots in Virginia during the eighteenth century'.²⁰

Steuart, whose colonial appointment to the customs meant he had recently been living largely in Boston, travelled to England in 1769, taking Somerset with him. Somerset was clearly valued, trusted, and given considerable licence, often travelling on business independently of Steuart.²¹ As a result,

¹⁷ Mark S. Weiner, 'New Biographical Evidence on *Somerset's Case*', 23, *Slavery and Abolition* (2002), 121, at 126-128. Boyd is briefly mentioned in T.M. Devine, *The Tobacco Lords: A Study of the Tobacco Merchants of Glasgow and their Trading Activities c. 1740-90*, Edinburgh, 1975, 57, 178.

¹⁸ See generally Alan L. Karras, *Sojourners in the Sun: Scottish Migrants in Jamaica and the Chesapeake, 1740-1800*, Ithaca NY, 1992, on the motivations, aims and careers of Scots like Steuart.

¹⁹ Weiner, 'New Biographical Evidence', 128.

²⁰ David Dobson, *Scottish Emigration to Colonial America, 1607-1785*, Athens GA, 1994, 102.

²¹ See, e.g., M. Murray to C. Steuart, 4 Aug. 1771, National Library of Scotland (NLS), MS 5027, fos. 20-21.

he was well known to all the members of Steuart's business and social circle, and is regularly referred to with affection in their correspondence, including that of Steuart's brother, James, a lawyer in Edinburgh.²² He indeed visited Edinburgh with Steuart in 1771.²³

Now aged about thirty years, Somerset was baptised in Holborn in August 1771; this was probably when he assumed the Christian name James, turning Somerset into a surname.²⁴

Perhaps influenced by this spiritual event, Somerset absconded on 1 October 1771.²⁵ He was soon apprehended by Steuart, who delivered him on 26 November to Captain Knowles on the ship *Anne and Mary* to be taken to Jamaica and sold. It was this that precipitated the litigation, when, on 28 November, Lord Mansfield granted a writ of habeas corpus against John Knowles for the production of Somerset before him.²⁶

Steuart himself never married and had no children; but he was very involved with his family and corresponded regularly with his relatives, including those in Scotland, notably his

²² J. Steuart to C. Steuart, 21 Jan. 1772, NLS, MS 5027, fo. 106.

²³ See Emma Rothschild, *The Inner Life of Empires: An Eighteenth-Century History*, Princeton, 2011, 223-224.

²⁴ Weiner, 'New Biographical Evidence', 122-124.

²⁵ Emma Rothschild plausibly speculates that he may also have been influenced by knowledge of the trial of Bell or Belinda before the Scottish Court of Justiciary: Rothschild, *Inner Life of Empires*, 292-293.

²⁶ See Knowles' return to the writ of habeas corpus, in *Somerset v Stewart*, T. B. Howell, *Cobbett's Complete Collection of State Trials and Proceedings for High Treason*, London, 1809-26, vol. 20, 20-21. For the date when Mansfield issued the writ, see George van Cleve, 'Somerset's Case and its Antecedents in Imperial Perspective', 24 *Law and History Review* (2006), 601, at 625.

brother James the Edinburgh lawyer.²⁷ His extensive Scottish connections were likely to ensure interest in the litigation north of the Tweed. It is worth noting, however, that, as late as 21 January 1772, his brother James was unaware that Somerset had absconded and that litigation had started.²⁸

The life histories of Somerset and Steuart may well explain why James had remained ignorant of these developments. Steuart had acquired Somerset - then about ten years of age - on 1 August 1749.²⁹ This meant that he had largely brought up Somerset and educated him. Somerset was regarded with considerable affection in Steuart's circle. After more than twenty years together, Somerset's departure must have seemed a shattering and humiliating betrayal to Steuart, particularly since he had reposed very considerable trust in his slave. His new sense of Somerset's hitherto unsuspected disloyalty and infidelity may well have made it difficult for him to communicate the loss to his brother, as Somerset had turned his world upside down. Indeed, his new understanding of Somerset's attitude to him explains the bitterness that underlay his decision to sell Somerset in Jamaica.

The first reports of the case appeared at the end of January in the Scottish newspapers. They were inaccurate,

²⁷ Weiner, 'New Biographical Evidence', 128-131. Steuart eventually retired to Edinburgh, where he was buried in the cemetery of Greyfriars Kirk: *ibid.*, 136 n. 58.

²⁸ J. Steuart to C. Steuart, 21 Jan. 1772, NLS, MS 5027, fo. 106.

²⁹ Weiner, 'New Biographical Evidence', 122, 127. Imported slaves aged ten to fourteen years were considered particularly desirable purchases. It is notable that Knight fitted this profile as a desirable purchase.

describing the (unnamed) litigants as being from Jamaica.³⁰ In mid-February, accounts of the arguments made by Somerset's counsel on 7 February were published in the Scottish papers, also noting the further postponement until next term of the hearing of arguments on behalf of Steuart (described as 'Capt. Stewart').³¹ In late May, the newspapers reported the arguments for Steuart.³² The *Edinburgh Advertiser* briefly reported Mansfield's decision on 26 June, misleadingly stating that Mansfield had said that 'every slave brought into this country ought to be free and that no master had a right to sell them here'. It gave, however, a much fuller version (discussed further below) of the entire speech on 3 July 1772, emphasising a narrower understanding of Mansfield's judgment to the effect that Steuart could not be allowed to take Somerset by force abroad to be sold. The *Caledonian Mercury* reported on 27 June that, 'in the case of Somerset, the Negro' the Court found 'that his master had no power to compel him on board a ship, or to send him back to the Plantations'. On the same date, however, the *Edinburgh Evening Courant* reported

³⁰ *Edinburgh Advertiser*, 31 Jan. 1772; *Edinburgh Evening Courant*, 1 Feb. 1772. As with all the reports in the Scottish papers, they have been copied from the English press. The progress of the litigation can be followed in some detail in James Walvin, *Black and White: The Negro and English Society, 1555-1945*, London, 1973, 117-129; F.O. Shyllon, *Black Slaves in Britain*, London, 1974, 77-124; Wise, *Though the Heavens May Fall*, 111-184. Mark S. Weiner, *Black Trials: Citizenship From the Beginnings of Slavery to the End of Caste*, New York, 2006, 70-88 provides a more sensitive - if less detailed - account. The literature on the case is, however, extensive, generally placing it as a significant event in a narrative of the progressive move to abolition of the slave trade and slavery in the British Empire and the United States.

³¹ *Caledonian Mercury*, 15 Feb. 1772; *Edinburgh Evening Courant*, 15 Feb. 1772.

³² *Edinburgh Advertiser*, 26 May 1772; *Caledonian Mercury*, 27 May 1772; *Edinburgh Evening Courant* 27 May 1772.

that Mansfield had ruled 'that every slave brought into the country ought to be free, and that no master had a right to sell them here'. The *Glasgow Journal* does not seem to have followed the case except, on 2 July 1772, to report Mansfield's speech in some detail, in an account largely identical to that in the *Edinburgh Advertiser* of 3 July.

The differing choices made by the Scottish newspapers in selecting the reports they gave of the case may reflect ideological or other considerations, or perhaps may be random; but their importance in ensuring widespread knowledge of the case is incontestable, particularly since it had a Scottish dimension. This would have been reinforced by the detailed account of the pleadings and of the speech of Lord Mansfield in the *Scots Magazine*, which generally commented unfavourably on slavery and the slave trade.³³ The *Gentleman's Magazine*, which circulated widely in Scotland, also reported the decision, if rather differently.³⁴ Many Scots no doubt would also have access to the pamphlets the litigation generated, both during its dependency and after the judgment had been rendered.

THE MEANING OF *SOMERSET'S CASE* IN SCOTLAND

³³ See 'Pleadings, and a Solemn Judgement, on the Question, Whether a Slave Continues to be a Slave After Coming into Britain?', 34 *Scots Magazine* (June 1772), 297-299.

³⁴ 42 *Gentleman's Magazine* (1772), 293-294. See also 41 *London Magazine or Gentleman's Intelligencer* (1772), 267-268.

To a considerable extent there was a common legal culture in Britain's Atlantic world, creating what Mary Sarah Bilder has recently dubbed the 'Transatlantic Constitution'.³⁵ English common law had come to the colonies with the people who had settled them, and was generally considered in force other than when local circumstances had required departure from it.³⁶ Observers certainly considered that this meant that *Somerset's Case* might have some impact in the colonies through the continuing influence of the English common law. Thus, the *Edinburgh Evening Courant*, following many other papers, repeated the following:

The late decision with regard to Somerset the Negro, a correspondent assures us, will occasion a greater ferment in America (particularly in the Islands) than the Stamp Act itself; for the slaves constituting the great value of (West India) property (especially) and appeals lying from America to in all cases of civil process to the mother-country, every pettifogger will have his neighbour entirely at his mercy, and, by applying to the King's

³⁵ Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire*, Cambridge MA, 2004). For a perceptive consideration of the British Atlantic legal world, particularly as it related to slavery, see Eliga H. Gould, 'Zones of Violence: The Legal Geography of the British Atlantic, circa 1772', 60 *William and Mary Quarterly* (2003), 471.

³⁶ Colonies typically had a governor, legislative council, and representative assembly. Such local legislatures enacted colonial legislation (potentially subject to royal review). Appeals from colonial courts lay to the monarch in Council. See, e.g., Ian K. Steele, 'The Anointed, the Appointed, and the Elected: Governance of the British Empire, 1689-1784', in P.J. Marshall, ed., *The Eighteenth Century (The Oxford History of the British Empire 2)*, Oxford, 1998, 105. Proprietary colonies raise other issues not mentioned here. It may be worth noting that Lord Mansfield, when counsel, had conducted litigation on behalf of colonies before the Board of Trade: Oldham, *English Common Law*, 5.

Bench at Westminster, leave the subject at Jamaica or Barbadoes wholly without a hand to cultivate his plantations.³⁷

Putting aside questions of jurisdiction in appeals, such an account was likely to alarm those many Scots who owned land in the colonies cultivated by enslaved labour. Indeed George van Cleve has recently argued persuasively that Mansfield's claim that slavery was founded on 'positive law' potentially destabilised any 'imperial' foundations of slavery or location of it in any source other than colonial legislation.³⁸ However this may be, it is clear that some thought *Somerset's Case* 'challenged slavery in the colonies as well'.³⁹ It is in this connection worth noting that colonial slavery had simply started as a social practice later recognised in local statutes, but had nowhere been comprehensively legislated into existence.⁴⁰

Scotland was in some respects an exception to this general, Imperial, 'common-law' culture. In the later middle ages and early-modern period, Scotland had received Roman law and Romano-canonical procedure. Though in 1707 England and Scotland had joined to form Great Britain, the Union had

³⁷ *Edinburgh Evening Courant*, 1 July 1772.

³⁸ Van Cleve, 'Somerset's Case', 638-645. See further below.

³⁹ William E. Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760-1848*, Ithaca NY, 1977, 21.

⁴⁰ See William M. Wiecek, 'The Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America', 34 *William and Mary Quarterly* (1977), 258; Jonathan A. Bush, 'The British Constitution and the Creation of American Slavery', in Paul Finkelman, ed., *Slavery and the Law*, Lanham, 2002, 379.

preserved Scots law and the Scottish law courts, so no decision of any English court in Westminster Hall would have any direct effect in Scotland.⁴¹ Whatever may have been the general import of Lord Mansfield's possible 'positive-law' foundation of slavery, if slavery was authorised by Scots law, then Knight was simply wrong in thinking Mansfield had freed him. A separate case would need to be brought in Scotland to determine the issue. It was also probably easier to argue in Scots law than it was in English law for the continued enslavement of individuals acquired as slaves in the colonies and then brought home. This was partly because of the quasi-servile status of Scottish colliers and salters and partly because of Scottish doctrinal writers' reliance on arguments drawn from secular natural law which could be viewed as supporting slavery.⁴² Of course, *Somerset's Case* might be regarded as representing the *ius gentium* or general law of nations and thus of authority in Scotland as a precedent. The authority of the decision would be reinforced by the recognition that the Imperial Parliament's extensive regulation of the slave trade applied in Scotland as much as in England.

Both the wording and meaning of Mansfield's decision were contested, and indeed were quickly to be given a variety of

⁴¹ John W. Cairns, 'Historical Introduction', in Kenneth Reid and Reinhard Zimmermann, eds., *A History of Private Law in Scotland, Vol. I: Introduction and Property*, Oxford, 2000, 62-64, 67-74, 99-101, 114-116.

⁴² See John W. Cairns, 'Slavery without a *Code Noir*: Scotland 1700-78', forthcoming in Norma Dawson and Felix Larkin, eds., next *Irish Legal History Society Collection of Discourses*, to be published Dublin, 2012.

slants by contemporaries.⁴³ For example, the polemical propagandist and noted anti-slavery campaigner Granville Sharp insisted that Lord Mansfield had freed all the slaves in England by his decision.⁴⁴ In self-congratulatory style Sharp privately characterised the various cases that culminated in *Somerset's Case* as his 'long contest with Lord Mansfield', which had now ended.⁴⁵ Even Edward Long, the talented apologist for slavery, writing under the pseudonym 'A Planter', considered that the effect of Lord Mansfield's judgment was to make 'a Negroe slave, coming from the colonies into Great Britain, ... *ipso facto*, Free'.⁴⁶ This appears also to have been Somerset's own understanding of the position: Mansfield had freed him and the other slaves.⁴⁷

Lord Mansfield's opinion was evidently carefully phrased; but it has continued to give rise to considerable controversy. Some authors have plausibly suggested that he delivered an opinion that was a deliberately ambiguous compromise.⁴⁸ In an important analysis of the impact of the decision in *Somerset's*

⁴³ On the differing newspaper reports, see Van Cleve, '*Somerset's Case*', 632 n. 164. On the way in which various propagandists shaped different understandings of the case see Ruth Paley, '*After Somerset: Mansfield, Slavery and the Law in England, 1772-1830*', in Norma Landau, ed., *Law, Crime and English Society, 1660-1830*, Cambridge, 2002), 165.

⁴⁴ See Granville Sharp, *The Just Limitation in the Laws of God, Compared with the Unbounded Claims of the African Traders and British Slaveholders*, London, 1776, 1, 2.

⁴⁵ See, e.g., Shyllon, *Black Slaves in Britain*, 136; Gerzina, *Black England*, 131.

⁴⁶ A Planter [Edward Long], *Candid Reflections upon the Judgement Lately Awarded by the Court of King's Bench, in Westminster-Hall, on What is Commonly Called the Negroe-Cause*, London, 1772, 56.

⁴⁷ See John Riddell to Charles Stuart, 10 July 1772, found quoted in Weiner, 'New Biographical Evidence', 125.

⁴⁸ See Van Cleve, '*Somerset's Case*', 637-638; Drescher, *Capitalism and Antislavery*, 40-41.

Case, Ruth Paley has described Mansfield's judgment as a 'a masterpiece of decisive insubstantiality' and concluded that he 'found the law on slavery in a state of confusion and that is precisely where he left it'.⁴⁹ Adding to this perhaps deliberate ambiguity was uncertainty over what Mansfield actually said. Capel Lofft only published his formal report of the decision in 1776.⁵⁰ A number of versions of the judgment accordingly circulated, were printed, made subject to varying criticisms, and endorsed by different controversialists as suited their purposes.⁵¹

Contemporary scholars still debate which is the most reliable report of Lord Mansfield's words and what exactly their import was.⁵² The most important recent studies of the text of the judgment are those of James Oldham and George van Cleve. Oldham attempted to deduce what Mansfield probably actually said through a comparative study of crucial passages

⁴⁹ Paley, 'After *Somerset*', 172, 184.

⁵⁰ The version in *State Trials*, though adding additional material, was based on this.

⁵¹ See Sharp, *Just Limitation*, Appendixes 8-9, 65-76; Samuel Estwick, *Considerations on the Negroe Cause Commonly so Called. Addressed to the Right Honourable Lord Mansfield, Lord Chief Justice of the Court of King's Bench*, 2nd ed., London, 1773), vii-xvi; An African Merchant, *Treatise upon the Trade from Great-Britain to Africa, Humbly Recommended to the Attention of Government*, London, 1772), Appendix B, 11-14.

⁵² The modern debate starts with Edward Fiddes, 'Lord Mansfield and the *Somerset* Case', 50 *Law Quarterly Review* (1934), 499. Further important contributions are Jerome Nadelhaft, 'The *Somerset* Case and Slavery: Myth, Reality, and Repercussions', 51 *Journal of Negro History* (1966), 193, at 199-201 (attacking Lofft favouring 42 *Gentleman's Magazine* (1772) 293-294); Shyllon, *Black Slaves*, 110 n. 1; David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770-1823*, Ithaca, NY, 1975, 476-477 n. 13 (Davis' arguments based on the 'Scottish' nature of the source he favoured (the *Scots Magazine*) are unconvincing); William M. Wiecek, 'Somerset: Lord Mansfield and the Legitimacy of Slavery in the Anglo-American World' 42 *University of Chicago Law Review* (1974), 86, at 141-146 (favouring Lofft's report).

in the accounts he judged most important. He concluded that the version in the *Scots Magazine* and an account preserved by Serjeant Hill were the closest to Mansfield's actual words, and he favoured the latter.⁵³ Van Cleve disagreed and argued that the detailed report in the *Scots Magazine* and the newspapers should be taken as the most accurate. He described the Hill report as 'considerably later' and copied from the notebooks of John Balguy, a junior barrister, no earlier than 1774.⁵⁴

The modern scholarly consensus is that Mansfield simply decided that masters could not forcibly send or take their slaves/servants abroad, and if they attempted to do so, the remedy of a writ of habeas corpus was available.⁵⁵ The majority of scholars accept the lengthier newspaper reports, as exemplified by that in the *Scots Magazine*, as a more accurate reflection of what Mansfield said. This version is substantially similar to the Hill report favoured by Oldham, though there are some crucial differences.⁵⁶ In particular, the newspaper reports and *Scots Magazine* stated:

[T]he power of a master over his servant is different in all countries, more or less limited or extensive; the exercise of it therefore must always be regulated by the

⁵³ James Oldham, 'New Light on Mansfield and Slavery', 27 *Journal of British Studies* (1988), 45, at 55.

⁵⁴ Van Cleve, '*Somerset's Case*', 631-633 and n. 162.

⁵⁵ There is an inconclusive and unsatisfactory discussion of the versions of the judgment in Wise, *Though the Heavens May Fall*, 185-191

⁵⁶ These are set out clearly by Oldham, 'Mansfield and Slavery', 55-58. Paley, '*After Somerset*', 165 n. 1 states that the Lofft report is that 'most commonly accepted'.

laws of the place where exercised. 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 rise 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 this return was never in use here; no master was ever allowed to take a slave by force to be sold abroad⁵⁷

If this is correct, as Davis has pointed out, it may mean that 'Mansfield was not saying, as commonly interpreted, that slavery is so odious that it can only be supported by statutory law'. Instead, it simply must be construed strictly.⁵⁸ The Hill (Balguy) report instead stated that slavery could never be introduced on reasoning from 'natural or political principles' and instead would need to be introduced by positive law, in the sense of statute law. (The report by Lofft is generally understood in the same way.) It

⁵⁷ 'Whether a Slave Continues to be a Slave after Coming into Britain?', 298-299.

⁵⁸ Davis, *Problem of Slavery*, 477 n. 13.

also stated that a master was never allowed to send a 'servant' abroad.⁵⁹

In the litigation between Knight and Wedderburn, the parties used the version of *Somerset's Case* reported in the newspapers and the *Scots Magazine*.⁶⁰ Knight's counsel initially did not rely on Mansfield's opinion as authority in favour of Knight's freedom, though noting that it was generally 'favourable to liberty' and 'that the consequence of the decision has been to render Somerset perfectly free'.⁶¹ His lawyers focused on the case only after Wedderburn, in the course of the litigation, had decided that he wanted to send Knight back to Jamaica to work in his sugar plantation.⁶² His counsel argued that 'the case of Somersett is a judgment in point, at least as to the question, Whether a negro, who has been brought into this country, can be carried back to the plantation against his will?'⁶³ Wedderburn's lawyers had argued that *Somerset* meant only that a master could not send a slave abroad against his will *to be sold*: he could otherwise send him forcibly abroad.⁶⁴ Knight's counsel was concerned to argue against this very restricted view of the case, concluding that

⁵⁹ See Oldham, 'Mansfield and Slavery', 59; Van Cleve, '*Somerset's Case*', 633 n. 167.

⁶⁰ See (MS) Memorial of John Wedderburn Esqr. Of Bandean [*sic*] Defender (1775), 54-57, in NRS CS235/K/2/2; Advocates Library, Edinburgh [hereafter AL], Printed Session Papers [hereafter SP], James Ferguson, *Information for John Wedderburn, Esq; of Ballandean [sic], Defender*, (July 4, 1775) 33-34.

⁶¹ AL, SP, Allan Maconochie, *Information for Joseph Knight, a Native of Africa, Pursuer in the Action* (April 25, 1775), 33-34. See *ibid.*, 33: 'the decision in the case of Somerset has not been founded on by the pursuer'.

⁶² AL, SP, John Maclaurin, *Additional Information for Joseph Knight, A Negro of Africa, Pursuer* (April 20, 1776), 4.

⁶³ *Ibid.*, 42.

⁶⁴ Ferguson, *Information for John Wedderburn*, 33-35.

in fact '[t]here was but one question before the Court, and that was, Whether Somerset should be remanded? or, in other words, Whether he should be sent out of the country?'⁶⁵ Thus, even the pursuer in *Knight v Wedderburn* saw Lord Mansfield's decision as a narrow one, even if with potentially broad implications in practice. The one judge in the Court of Session who is recorded as mentioning the case, Lord Covington, stated that 'in the case of *Somerset* ... the opportunity of determining the general question was purposely waved [*sic*]'.⁶⁶

John Millar, Regius Professor of Civil Law in Glasgow, provided an important and telling contemporary academic discussion of *Somerset's Case* in Scotland. In the academic year 1775-76, during the dependence of Knight's litigation, he gave his class an account of the English case that understood its scope as strictly limited. Millar argued that, under English law, 'a Negroe slave is a free man', but one who nonetheless owed 'a service to his master during life, and that without any wages, but necessaries'. He also claimed that the master can assign his servant's 'labour by means of a fiction ... that the assignment is made in America'. He added that while the servant's freedom could previously have been defeated by sending him back to a colony where slavery is

⁶⁵ Maclaurin, *Additional Information for Joseph Knight*, 43.

⁶⁶ M.P. Brown, ed., *Decisions of the Lords of Council and Session, from 1766 to 1791. Collected by Sir David Dalrymple of Hailes, Bart. Lord Hailes*, Edinburgh, 1826, vol. 2, 778. Lord Covington thought that Wedderburn had the authority under Scots law to carry Knight back to Jamaica.

allowed, the decision in *Somerset* prohibited this. He explained the case thus:

However by a late decision it was found that a slave cannot arbitrarily be sent abroad by his master. He must assign some sufficient cause. When a negroe slave is brought into the country, animo Remanendi his master has no right to send him abroad. By bringing him to this country where slavery is not allowed he gives up his absolute right over him; he merely emancipates his slave.

It is worth noting the phrase 'animo remanendi'. Millar was of the view that if a master brought slaves into the country, not intending they should remain, they remained slaves whom he could then send out of England at his will.⁶⁷ He considered the Scots law as unsettled, but thought that probably the same result would be reached.⁶⁸ It is notable that 'A.B.', writing from Glasgow on 20 October 1773 to the Printer of the *Edinburgh Advertiser*, although his main worry was the denial of baptism to slaves, expressed a view of *Somerset* similar to that of Millar. The master retained 'property in [the] service for life' of the slave, and all the case did was prohibit transportation to the colonies against the slave's will. The decision fixed 'his service to his master' and any wages he

⁶⁷ Glasgow University Library (GUL), MS Gen. 347, 59-60. If a cargo of slaves arrived in England they remained slaves and had to be sent on to the country for which they were destined. See John W. Cairns, 'John Millar and Slavery', in Neil Walker (ed.), *MacCormick's Scotland*, Edinburgh, 2012, 73 at 95.

⁶⁸ GUL, MS Gen. 347, 60-61.

earned from someone else 'must be paid to the proprietor of the slave'.⁶⁹

Most newspaper readers in Scotland would probably have understood the decision in *Somerset's Case* quite differently from how it was understood by Millar, 'A.B.', or the trained lawyers who litigated *Knight v Wedderburn*, who were, after all, arguing a case for a client. Even if the longer reports in the newspapers were eventually accurate, readers would have already encountered comments (not later qualified) such as that 'every slave brought into this country ought to be free and that no master had a right to sell them here'.⁷⁰ They would also have read that 'as blacks are free now in this country, gentlemen will not be so fond of bringing them here as they used to be'.⁷¹ They would have seen the case described as 'making that no property in England, which is universally allowed to be property in America'.⁷² Indeed, 'A.B.' admitted that the 'case of Somerset has generally been misunderstood here, and made slaves expect a general freedom'.⁷³ In January 1774, in its account of 'Affairs in England', the *Scots Magazine* reported a decision of the Lord Mayor of London telling a man held as enslaved in England for fourteen years that "he was not a slave, according to the laws of this free

⁶⁹ *Edinburgh Advertiser*, 5 Nov. 1773.

⁷⁰ *Edinburgh Advertiser*, 26 June 1772; *Edinburgh Evening Courant*, 27 June 1772.

⁷¹ *Edinburgh Advertiser*, 26 June 1772.

⁷² *Edinburgh Evening Courant*, 27 June 1772.

⁷³ *Edinburgh Evening Advertiser*, 5 Nov. 1773.

country", citing its report of *Somerset*.⁷⁴ In reporting the viva voce debate in *Knight v Wedderburn* in 1776, the *Caledonian Mercury* recorded Henry Dundas, Lord Advocate, one of Knight's counsel, as describing Lord Mansfield as having 'given a liberal decision in the famous case of Somerset'.⁷⁵

AFRICANS AND INDIANS IN SCOTLAND:

A STORY OF EMPIRE

It is impossible to provide a realistic estimate of the number of individuals of African or Indian descent in eighteenth-century Scotland.⁷⁶ Though just under one hundred people who were of African, Indian or (in one case) Native American origin can be documented between 1701 and 1780 as apprentices, servants, or journeymen, the actual number will have been considerably greater. Of these, fewer than one in ten was a woman. This was probably a relatively young, primarily male population, some of whom were certainly regarded as enslaved and a number of whom are indeed explicitly so described.⁷⁷

⁷⁴ "affairs in England", 36 *Scots Magazine* (Jan. 1774), 53.

⁷⁵ *Caledonian Mercury*, 21 Feb. 1776.

⁷⁶ For an attempt to introduce some rigour into discussions of this issue for England, see Kathy Chater, 'Black People in England, 1660-1807', in Stephen Farrell, Melanie Unwin, and James Walvin, eds., *The British Slave Trade: Abolition, Parliament and People*, Edinburgh, 2007, 66-83; Kathleen Chater, *Untold Histories: Black People in England and Wales During the Period of the British Slave Trade, c. 1660-1807*, Manchester, 2009, 21-34; Norma Myers, *Reconstructing the Black Past: Blacks in Britain 1780-1830*, London, 1996, 18-37. Imtiaz Habib, *Black Lives in the English Archives, 1500-1677*, Aldershot, 2008, includes some references to black men and women in the Scottish archives for his period.

⁷⁷ As part of a larger project, I am currently engaged in collecting information from diverse sources about such individuals, who can be documented from newspapers, church records, court records, family and business correspondence and the like. It can be difficult to recognise such men and women from records unless they are identified for some reason as

While the numbers do not make for reliable statistics, it is worth noting that, counting mentions of such men and women by decade, these double in the 1760s over the 1750s and increase again slightly in the 1770s. This suggests a pattern of growth for the black population in Scotland similar to that discerned in England by Cathy Chater.⁷⁸ Indeed, it is fair to suppose that, certainly by the 1760s and 1770s, the presence of such a person, perhaps held as enslaved, would not have been a matter of surprise in any part of Scotland.

How these individuals came to be in Scotland varied. There was the occasional military musician;⁷⁹ there were black sailors.⁸⁰ A few were sent as gifts or solicited from friends and relatives in the West Indies.⁸¹ Others had accompanied Scots home from the colonies as personal servants.⁸² After Culloden, the black servant of a Jamaican Jacobite was

African or Indian, or bear an obvious 'slave'-name such as Cato or Caesar. There are also problems related to the nature of the sources. For a short survey of such men and women, see Eric J. Graham and Mark Duffil, 'Black People in Scotland during the Slavery Era', 71 *Scottish Local History* (Winter, 2007), 11. Chater, 'Black People', 72 states it is rare to find anyone described as a slave in the sources she examined. Does this suggest a difference between Scotland and England?

⁷⁸ Chater, 'Black People', 69, fig. 1.

⁷⁹ See John Burt, 'negro drummer' advertised for as runaway from Haddington: *Edinburgh Evening Courant*, 17 Oct. 1721. I am grateful to Rab Houston for bringing this to my attention.

⁸⁰ Bristol and John Gilles, runaways in the Orkney Islands: *Edinburgh Evening Courant*, 23 July 1760.

⁸¹ See, e.g., Lt Gen. Hamilton to Duke of Hamilton, 30 Aug. 1711, NRS, GD406/5/5860; William Cathcart to Robert Cathcart of Genoch, 12 May 1760, NRS, GD180/625/1. Cathcart was active in North Carolina: Frances Wilkins, *Dumfries and Galloway and the Transatlantic Slave Trade*, Kidderminster, 2007, 54-58.

⁸² See NRS, CS236/D/4/3 (Black Tom, later baptised as David Spens).

imprisoned in Edinburgh Castle, later released because of his ill health.⁸³

However they arrived, the presence of these individuals of African and Indian descent was directly related to Scottish participation in the British Empire. Scottish involvement in the East India Company in the eighteenth century has recently been described as on a 'startling scale'.⁸⁴ Scots invested heavily in plantations and slaves in the Caribbean islands and also sought other opportunities there as merchants, physicians, book keepers, or artisans.⁸⁵ Individual Scots and Scottish companies were heavily involved in the tobacco trade, eventually coming to dominate it in the Chesapeake from the 1740s onwards. Many Scots, such as Somerset's master, Charles

⁸³ Sir Bruce Seaton and Jean Gordon Arnot, eds., *The Prisoners of the '45*, (Scottish History Society, 3rd ser. 13-15), Edinburgh, 1928-29, vol. 3, 414, no. 3470. I owe this reference to the kindness of the Hon. Lord Stewart.

⁸⁴ George McGilvary, *East India Patronage and the British State: The Scottish Elite and Politics in the Eighteenth Century*, London, 205. See also T.M. Devine, *Scotland's Empire, 1600-1815* (London: Allen Lane, 2003), 250-70; T.M. Devine, 'Scottish Elites and the Indian Empire, 1700-1815', in T.C. Smout, ed., *Anglo-Scottish Relations from 1603 to 1900 (Proceedings of the British Academy 127)*, Oxford, 2005, 213; Michael Fry, *The Scottish Empire*, Phantassie, 2001, 83-95.

⁸⁵ See Karras, *Sojourners in the Sun*, 46-80; Devine, *Scotland's Empire*, 221-249; Douglas J. Hamilton, *Scotland, the Caribbean and the Atlantic World, 1750-1820*, Manchester, 2005, 55-139; Whyte, *Scotland and the Abolition of Black Slavery*, 41-69. Scots were also active in British East Florida: see Daniel L. Schafer, 'A Swamp of an Investment? Richard Oswald's East Florida Plantation Experiment', in Jane G. Landers, ed., *Colonial Plantations and Economy in Florida*, Gainesville, 2000, 11; Patricia C. Griffin, 'Blue Gold: Andrew Turnbull's New Smyrna Plantation', in Landers, ed., *Colonial Plantations*, 39. There are a growing number of useful individual studies of Scots families in the Caribbean. See, e.g., Bill Inglis, 'The Stirlings of Keir in the 18th Century: Restoring the Family Fortunes in the British Empire', 24 *Forth Naturalist and Historian* (2001), 85-103; James Glass, 'Sugar for the Brose: Sir Archibald Grant, Jamaica and Agricultural Improvements at Monymusk c. 1720-1760', 6,2 *History Scotland*, (2006), 40 (Part 1) and 6,3 *History Scotland* (2006), 35 (Part 2).

Steuart, kept stores and factories in the region.⁸⁶ There were Scottish merchant communities elsewhere in the colonies, such as at Charleston, with many Scots at home also involved in this trade.⁸⁷ Scots were also heavily occupied in the slave trade, both from ports in England and the colonies, as well as Scotland.⁸⁸ Many men also served in the colonies in the army or in government service in a variety of ways (often combining such work with trading or planting).⁸⁹

Confirming this, where information is available, men and women in Scotland of African or Indian descent can almost invariably be shown to have come to Scotland through the

⁸⁶ Devine, *Tobacco Lords*, passim, 55-59 (on the store system); Karras, *Sojourners in the Sun*, 81-117.

⁸⁷ Dobson, *Scottish Trade with Colonial Charleston, 1683-1783*, Glasgow, 2009, 165-195; J.H. Soltow, 'Scottish Traders in Virginia, 1750-1775', 12 *Economic History Review* (1959), 83-98; Douglas Hamilton, 'Scottish Trading in the Caribbean: The Rise and Fall of Alexander Houston and Co.', in N.C. Landsman, ed., *Nation and Province in the First British Empire: Scotland and the Americas, 1600-1800*, Lewisburg, 2001, 94-126.

⁸⁸ I.A. Akinjogbin, 'Archibald Dalziel: Slave Trader and Historian of Dahomey', 7 *Journal of African History* (1966), 67; David Hancock, 'Scots in the Slave Trade', in Landsman, ed., *Nation and Province*, 60; Mark Duffill, 'The Africa Trade from Ports of Scotland, 1706-66', 25,3 *Slavery and Abolition* (2004), 102; Wilkins, *Dumfries and Galloway and the Slave Trade*, 1-33, 92-117; Mark Duffill and Eric Graham, 'Scots in the Liverpool Slave Trade, 1789-1805', 8,2 *History Scotland* (2008), 31. David Hancock, *Citizens of the World: London Merchants and the Integration of the British Atlantic Community, 1735-1785*, Cambridge, 1995 is a major study of a London firm, dominated by Scots, much involved in slave trading.

⁸⁹ Hamilton, *Scotland, the Caribbean and the Atlantic World*, 140-168. There is a growing number of important studies of individuals: e.g., Paul David Nelson, *General James Grant: Scottish Soldier and Royal Governor of East Florida*, Gainesville, 1993; W. Stitt Robinson, *James Glen: From Scottish Provost to Royal Governor of South Carolina*, Westport, 1996; Tim Hanson, 'Gabriel Johnston and the Portability of Patronage in the Eighteenth-Century North Atlantic World', in A. Mackillop and Steve Murdoch, eds., *Military Governors and Imperial Frontiers c. 1600-1800*, Leiden, 2003, 119; Alex Murdoch, 'James Glen and the Indians', in Mackillop and Murdoch, eds., *Military Governors*, 141; Robert Cain, 'Governor Robert Dinwiddie and the Virginia Frontier, 1751-57', in Mackillop and Murdoch, eds., *Military Governors*, 161; Douglas Hamilton, 'Robert Melville and the Frontiers of Empire in the British West Indies', in Mackillop and Murdoch, eds., *Military Governors*, 181; Andrew Mackillop, 'Fashioning a 'British Empire': Sir Archibald Campbell of Inverneil and Madras, 1785-9', in Mackillop and Murdoch, eds., *Military Governors*, 205.

connection families and individuals had with the Caribbean or mainland North American colonies, or with the East India Company and the growing British settlements in India, either as settlers, planters, traders, soldiers, colonial officers or the like. The famous Highland nabob, Sir Hector Munro of Novar, brought home from India an enslaved cook called Caesar.⁹⁰ Colonel McDowell of Castle Semple, who owned plantations in the West Indies, and was a member of a great Glasgow trading family, had a 'negro lad' named Cato who ran away in 1748.⁹¹ Charles Murray, 'Native of Africa', who had been servant to the Murrays of Murraythwaite, was buried at Repentance Tower near Hoddum in Dumfriesshire in 1776.⁹² In the 1750s and 1760s the Murrays had owned a plantation in South Carolina, and they can be traced importing slaves from the Caribbean to work it.⁹³ Charles Murray was presumably thus

⁹⁰ See the advertisement for Caesar, described as a 'black slave', as a runaway, *Edinburgh Evening Courant*, 22 June 1771. On Munro, see Andrew Mackillop, 'The Highlands and the returning Nabob: Sir Hector Munro of Novar, 1760-1807', in Marjory Harper, ed., *Emigrant Homecomings: The Return Movement of Emigrants, 1600-2000*, Manchester, 2005, 233.

⁹¹ *Caledonian Mercury*, 2 Feb. 1748. On McDowell, see, e.g., Stuart J. Nisbet, 'The Sugar Adventurers of Glasgow 1640-1740', 9,3 *History Scotland* (2009), 29; Stuart Nisbet, 'That Nefarious Commerce': St Kitts, Slavery and the West of Scotland', in Sandra Courtman, ed., *The Society for Caribbean Studies Annual Conference Papers*, vol. 9, (2008), available at <<http://caribbeanstudies.org.uk/papers/2008/ov019p3.PDF>>, last accessed 16 Feb. 2012; Eric J. Graham, *Burns and the Sugar Plantocracy of Ayrshire* (Ayrshire Monographs 36), Ayr, 2009, 78-83.

⁹² Listed in John Gifford, *Dumfries and Galloway* (The Buildings of Scotland), London, 1996, 499.

⁹³ Allan I. Macinnes, Marjory-Ann D. Harper & Linda G. Fryer, eds., *Scotland and the Americas, c. 1650-c. 1939: A Documentary Source Book* (Scottish History Society, 5th Ser. 13), Edinburgh, 2002, 136-138; Wilkins, *Dumfries and Galloway and the Slave Trade*, 60-61; David Dobson, *Colonial Charleston*, 162.

acquired. There was also a small market in slaves in Scotland.⁹⁴

THE IMPACT OF *SOMERSET'S CASE* ON ENSLAVED
INDIVIDUALS IN SCOTLAND

Between 1701 and the final decision in *Knight v Wedderburn* in 1778, thirty-eight runaways - African, Indian, Native American - can be traced in advertisements in Scottish newspapers and other sources.⁹⁵ They may be grouped thus: between 1701 and 1720, there are two runaways; between 1721 and 1740, again two runaways (one of whom is a military drummer); between 1741 and 1760, there are twelve runaways (nine in 1751-60, of whom two are absconding sailors, and one is described as an 'an East Indian Black or Mulatto Boy'); between 1761 and 1778, there are twenty-one (including Knight as a potential runaway makes twenty-two), of whom one is a Native American and five are 'East Indian'.⁹⁶

At some level the increase in the number of runaways will reflect the growing number of black servants and slaves in Scotland; but it is nonetheless notable that nine (ten if one includes Knight) absconded after the decision in *Somerset's*

⁹⁴ See John Kincaid to James Watson, 28 Aug. 1744, NRS, GD150/3526/25 (offer of private sale). Eight newspaper advertisements have been traced offering 9 individuals for sale.

⁹⁵ This includes a 'strolling negro' who had been found - presumably another runaway: *Edinburgh Evening Courant*, 2 May 1720.

⁹⁶ This excludes first, an escapee from prison described as 'a young black fellow', who was probably simply dark-complexioned (*Edinburgh Evening Courant* 7 Nov. 1761), and a runaway Ebo slave who lived near Lancaster (*Edinburgh Evening Courant*, 5 Oct. 1765).

Case was published in June/July 1772, with no less than six (again including Knight) departing in 1773, more than in any other single year. This suggests it is worthwhile to examine more closely those who ran away after the decision in *Somerset* to check for any possible influence from that decision.

The first of these was a 'negro lad called CAESAR, belonging to Murdoch Campbell of Rosend', near Burntisland in Fife. He was aged eighteen.⁹⁷ John Loudon, also known as Quashy, absconded from the home of Lord Oliphant (whose 'property' he was) at Pitheavlis in Perthshire in 1773.⁹⁸ Sylvester, an eighteen-year old 'mulatto' training as a joiner in Greenock, was advertised as a runaway in January 1773.⁹⁹ William Northumberland, described as 'a black negro man', who had been 'bred a sailor', the 'property of a gentleman lately from South Carolina' was the next to abscond.¹⁰⁰ He was followed by an 'East-India Negro Lad', aged sixteen or seventeen, described as of the 'Mulatto colour', the property of 'a family of distinction' residing in the Canongate in Edinburgh, who eloped in March 1773.¹⁰¹ Next was an older 'negro man' called Tom, aged about thirty-five, described as 'somewhat yellowish complexioned', who had deserted his master's house in Glasgow on 3 March 1773. He apparently

⁹⁷ *Edinburgh Evening Courant*, 25 Nov. 1772.

⁹⁸ Willie Orr, 'Slave Labours', *The Scotsman*, 30 June 1990.

⁹⁹ *Edinburgh Evening Courant*, 9 Jan. 1773.

¹⁰⁰ *Edinburgh Evening Courant*, 6 Feb. 1773.

¹⁰¹ *Edinburgh Evening Courant*, 5 Mar. 1773.

sometimes assumed the name of Thomas Diddy.¹⁰² Early in 1774, Marshall 'a black boy, to appearance of about fifteen or sixteen years of age' ran away from the service of Mr Naesmith in Stranraer. He was described as a 'good looking lad, tall and well made' who spoke 'broad Scotch'.¹⁰³ Two months later Roderick Random, an 'Asiatic bond servant', absconded.¹⁰⁴ The last was 'an East Indian boy' called Campbell of 'dark complexion' and 'very black long hair', who ran away in June 1775, taking some banknotes with him.¹⁰⁵

The advertisements for the runaways vary in detail.¹⁰⁶ A reward - with expenses - is generally offered for the apprehension of the runaway, and the amount is sometimes specified. The highest reward mentioned for any of these was seven guineas for Sylvester, training as a joiner. The reward for Tom or Tom Diddy was five guineas; two guineas were promised for Marshall and William Northumberland.

William Northumberland was 'bred a sailor', and the advertisements often express anxiety lest shipmasters carry off the runaways, though whether for sale in the colonies or

¹⁰² *Edinburgh Evening Courant*, 5 Apr. 1773.

¹⁰³ *Edinburgh Evening Courant*, 14 Feb. 1774.

¹⁰⁴ *Glasgow Courant*, 1 Apr. 1774. I owe this reference to the kindness of Dr Eric J. Graham. He had presumably been named by a fan of the work of Tobias Smollet.

¹⁰⁵ *Edinburgh Advertiser*, 26 June 1775.

¹⁰⁶ They are comparable in style to those for runaway free servants: see, e.g., that for James Bisset, in *Edinburgh Advertiser*, 12 Feb. 1773 or James Flight, in *Edinburgh Advertiser*, 7 Oct. 1774. There are also parallels with colonial advertisements: Patricia Bradley, *Slavery, Propaganda, and the American Revolution*, Jackson, MI, 1998, 32-42

as crew on board is unspecified.¹⁰⁷ Warnings not to harbour the runaways or give them employment were also inserted.¹⁰⁸ That some of the runaways had stolen property was also emphasised, presumably to reassure those who came across them that it was indeed appropriate to apprehend them.¹⁰⁹

To take a runaway 'off the country', would also be to take him out of the reach of the Scottish courts. If the slaves had been freed in England by Lord Mansfield, as popularly thought, then to reach England, whether by ship or on foot, would be to reach what was viewed as 'free soil' and to become emancipated. If the two Bacchuses in Virginia had reached this conclusion, it is fair to assume that Knight was not the only person held as a slave in Scotland to have reached a similar view. Here it is notable that Sylvester was described as making for Bo'ness, Carron, or Leith 'to ship for London'.¹¹⁰ William Northumberland was supposed 'to have gone to Leith in order to secure a passage for London'.¹¹¹ The East-India Negro lad from the Canongate was thought 'to have gone towards Newcastle'.¹¹² It was believed that Tom Diddy 'intended to go to London, and to take his road by Dumfries or

¹⁰⁷ See *Edinburgh Evening Courant*, 25 Nov. 1772 (Caesar); Orr, 'Slave Labours' (John Loudon or Quashy); *Edinburgh Evening Courant*, 6 Feb. 1773 (William Northumberland); *Edinburgh Evening Courant*, 5 Apr. 1773 (Tom Diddy);

¹⁰⁸ See *Edinburgh Evening Courant*, 25 Nov. 1772 (Caesar); *Edinburgh Evening Courant*, 6 Feb. 1773 (William Northumberland); *Edinburgh Evening Courant*, 5 Apr. 1773 (Tom Diddy).

¹⁰⁹ See *Edinburgh Evening Courant*, 25 Nov. 1772 (Caesar); *Edinburgh Evening Courant*, 5 Mar. 1773 (East India Negro Lad); *Edinburgh Advertiser*, 26 June 1775 (Campbell).

¹¹⁰ *Edinburgh Evening Courant*, 9 Jan. 1773.

¹¹¹ *Edinburgh Evening Courant*, 6 Feb. 1773.

¹¹² *Edinburgh Evening Courant*, 15 Mar. 1773.

Edinburgh'.¹¹³ Marshall was 'suspected to have taken the Carlisle road'.¹¹⁴ These assertions must derive from information obtained from other servants and neighbours about these individuals' intentions after absconding or from information obtained about their departure.

This type of specific, detailed information about the intended destinations and routes of the runaways was novel. Prior to these advertisements for runaways, there were only two instances, neither exactly comparable, where the advertisement placed emphasis on the supposed location or direction of the absconding slave. These were those of Peter, a 'mulatto boy', who was thought 'to be lurking about Leith or Edinburgh' in 1757, and another 'mulatto boy' named Sam or Donald who had run away from Balnagard in Atholl, who was seen making his way to Perth in 1765.¹¹⁵ Thus, the reporting of an ambition to reach England (or indeed anywhere), as distinct from simply absconding, is new.

The notably marked increase of advertisements for runaways after June 1772 makes it plausible that the novel type of reference to some of them making for England reflects the wider impact of *Somerset's Case*, especially since many of them are explicitly described using the language of ownership. This understanding is reinforced by the evidence of the impact on Joseph Knight of the newspapers' reports of *Somerset's*

¹¹³ *Edinburgh Evening Courant*, 5 Apr. 1773.

¹¹⁴ *Edinburgh Evening Courant*, 14 Feb. 1774.

¹¹⁵ *Edinburgh Evening Courant*, 28 May 1757, 14 Sept. 1765.

Case. Of course, it is always possible that the runaways were thought to be making for the border in order to make it more difficult for their masters to apprehend them in the different jurisdiction; but this in itself would suggest a sophisticated level of understanding of the differing legal systems compatible with possession of knowledge of Mansfield's decision. It could have been the masters' knowledge of Mansfield's ruling that led to an attribution to the slaves of an intention to abscond to England; but the detail of the advertised intentions and routes suggests that what was reported were these slaves' known or inferred intentions.

If this is correct, it reinforces current scholarly emphasis on the popular perception that something significant had indeed happened in 1772. The Scottish newspapers and other press had disseminated the view that Mansfield had freed the slaves. If they ultimately reported his opinion accurately, the understanding had already been created.

Knight was literate; but the other runaways need not have been to have discovered the judge's supposed emancipation of the slaves in England. Gossip among the servants and with neighbourhood acquaintances and discussions heard while serving at their masters' tables could easily have informed them of what was thought to have happened in England. Furthermore, there is every reason to believe they would have been connected to a network of people in the wider world, in

the same way that Somerset had had a set of acquaintances with whom he kept in touch.¹¹⁶

It is likely that black men and women were able to meet with others outside their household, particularly since many seem to have been given considerable licence. For example, a black servant, who was almost certainly understood to be enslaved, called Latchemo lived at Springkell in Dumfriesshire in the 1770s. He was probably born in Africa, since his name is most likely a version of the Yoruba name Olajumo.¹¹⁷ Springkell was a short distance from Murraythwaite where lived Charles Murray, 'Native of Africa'.¹¹⁸ Given he died in 1776, Murray was probably rather senior to Latchemo, but it seems improbable that they should never have met and shared information. Indeed, not so far away from both of them at much the same time was James Johnston, 'Negroe Servant to Sir James Johnstone of Westerhall', an estate just over the hills in Eskdale.¹¹⁹ They may all have known one another. As early as the 1740s, John Kincaid's 'Negro Boy' Cato had the freedom to meet and get up to mischief in Edinburgh with Lady Stair's black pageboy.¹²⁰ The growth in the numbers of black men and women in Scotland in the 1760s and 1770s must have made such

¹¹⁶ Weiner, 'New Biographical Evidence', 125.

¹¹⁷ See John W. Cairns, 'Slavery and the Roman Law of Evidence in Eighteenth-Century Scotland', in Andrew Burrows and Lord Rodger of Earlsferry, eds., *Mapping the Law: Essays in memory of Peter Birks*, Oxford, 2006, 599, at 609-612.

¹¹⁸ Gifford, *Dumfries and Galloway*, 499.

¹¹⁹ See the Kirk Session Records, Westerkirk, NRS, CH2/368/2/171. I am indebted to Professor Emma Rothschild for this reference.

¹²⁰ John Kincaid to James Watson, 28 Aug. 1744, NRS, GD150/3526/25.

association relatively easy, providing a good source of information about all manner of topics.

IMPACT OF *SOMERSET'S CASE* ON SLAVE-OWNERS
IN SCOTLAND

If the decision in *Somerset* stimulated some slaves to desert, it will have encouraged some Scottish slave owners to return their slaves from Scotland to the colonies. George Parker, who had come home from North Carolina to Burntisland in 1771, forcibly returned his slave Ovid across the Atlantic on 25 October 1774.¹²¹ It is plausible that other black men and even women, not recorded, suffered the same fate at this time, as their owners sought to protect their investments. This will explain the report on 16 February 1774 in the *Caledonian Mercury* that 'A Gentleman at Glasgow ... intended to send his negroe servant abroad', and that 'the negroe has brought an Action against his master for his liberty, and also damages for ill-treatment'.

The issue of slavery was kept in the news in the mid-1770s. Newspapers and magazines reported slave insurrections in the colonies;¹²² but they also published sentimental and even rather gothic stories about the nobility and sensibility

¹²¹ Janet Schaw, *Journal of a Lady of Quality: Being the Narrative of a Journey from Scotland to the West Indies, North Carolina and Portugal, in the Years 1774 to 1776*, ed. by Evangeline Walker Andrews in collaboration Charles McLean Andrews, Lincoln NA, 2005, 22-23.

¹²² *Edinburgh Advertiser*, 1, 19 Nov. 1776.

of black men and women mistreated by masters.¹²³ They contained debates on the morality of slavery.¹²⁴ Again the *Caledonian Mercury* stated, on 16 February 1774, that the 'important question, Whether or not negroes are slaves in this free country, is soon to be tried before the Court of Session'. The report also noted that some 'Gentlemen at Glasgow' had subscribed £500 'for the support of the negroe'.¹²⁵ At first sight, this might seem to be a muddled report of *Knight*; but this is unlikely. Given that this was three months before the interlocutor of the Sheriff Depute in *Knight*, and the facts given in circumstantial detail are quite different from those of *Knight*, this is probably an independent case, further details of which are now lost. The facts are close to those of *Somerset's Case* and the proposed suit surely reflects the English litigation.

Knight v Wedderburn was itself first reported in the press in 1775, when it was being argued before the Court of Session;¹²⁶ but the Justices of the Peace had met in November 1773, the Sheriff Substitute had dismissed the process on 5 January, 1774, while the Sheriff Depute had recalled that interlocutor on 20 May 1774, with letters advocating the cause

¹²³ See, e.g., the highly-coloured extracts from the writings of the Abbé Raynal in *Edinburgh Advertiser*, 5 Dec. 1775, 14 Oct. 1777.

¹²⁴ See, e.g., 'Wesley on Slavery', 36 *Scots Magazine* (Sept. 1774), 486-487; 'Remarks on Mr Wesley's Thoughts on Slavery', 36 *Scots Magazine* (Appendix 1774), 705-706.

¹²⁵ See also *Edinburgh Advertiser*, 15 Feb. 1774.

¹²⁶ *Caledonian Mercury*, 8 July 1775; *Edinburgh Advertiser*, 11 July 1775.

to the Court of Session issued on 30 May 1774.¹²⁷ Lord Kennet first heard it as Lord Ordinary in February 1775.¹²⁸ In the small, closely interlinked world of the Scottish merchants, bankers, and landowners, the case must have become well known very quickly; its progress was also reported in the papers.¹²⁹ Indeed the newspaper reported in 1776, after argument *viva voce* before the Inner House by counsel, that the 'pleadings in this case, have been all along attended by a female audience', and that the 'galleries ... were quite crouded [*sic*] with Ladies of fashion'.¹³⁰ The issue of the status of Knight and the other slaves in Scotland was thus to the fore through the 1770s.

From the owners' point of view, sending such enslaved men and women back to the colonies would have proved sensible. On 20 May 1774, the Sheriff Depute of Perthshire, John Swinton of Swinton, issued in favour of Knight an interlocutor in these words:

That the State of Slavery is not recognised by the Laws of this Kingdom and is inconsistent with the principles

¹²⁷ See (MS) Extract Process Knight against Wedderburn 1774, 9-10 in NRS, CS235/K/2/2; Diet Book, Sheriff Court of Perthshire, 5 Jan. 1774, 20 May 1774, in NRS, SC49/1/64; Letters of Advocation, in NRS CS235/K/2/2.

¹²⁸ Interlocutor, 7 Feb. 1775, in CS235/K/2/2.

¹²⁹ *Edinburgh Advertiser*, 16, 20, 23 Feb. 1776.

¹³⁰ *Caledonian Mercury*, 21 Feb. 1776. See also *Edinburgh Advertiser*, 23 Feb. 1776: 'A great number of ladies were present during the pleadings, and the court was very much crowded.'

thereof and Found that the Regulations in Jamaica concerning slaves do not extend to this Kingdom.¹³¹

When the Court of Session finally decided *Knight v Wedderburn* in 1778, despite the ambivalence of some of the judges, the decision was unequivocal in effect. The Lords' interlocutor stated that 'having advised the Memorials and Additional Informations They Remitt the Cause Simpliciter in Common form'.¹³² In principle, the Court had simply decided not to advocate the cause from the Sheriff; the effect was to affirm Swinton's interlocutor. Recognising the limited nature of *Somerset's* case, the *Caledonian Mercury* triumphantly noted that 'it must give a very high satisfaction to the inhabitants of this part of the united kingdom, that the freedom of negroes has obtained its first *general determination* in the Supreme Civil Court of Scotland'.¹³³

Of course, there are advertisements after 1778 for black servants who have run away. They are described as 'bound' or as an 'indented apprentice'.¹³⁴ Whatever may be the reality behind these terms, it is notable that they are very definitely not described as slaves.

CONCLUSIONS

¹³¹ (MS) Extract Process Joseph Knight against Sir John Wedderburn of Ballendean, Bart. 1774, 27-28, in NRS, CS235/K/2/2; see also Diet Book, Sheriff Court of Perthshire, 20 May 1774, NRS, SC49/1/64.

¹³² See the interlocutor, dated 16 Jan. 1778 written on (MS) Memorial for John Wedderburn, Esqr of Bandean Defender, 62, in NRS, CS 235/K/2/2.

¹³³ *Caledonian Mercury*, 17 Jan. 1778.

¹³⁴ *Edinburgh Evening Courant*, 13 Nov. 1784 (Caesar); *Caledonian Mercury*, 18 Mar. 1786 ('Asiatic BLACK BOY').

The cases of Knight and *Somerset* provide valuable insights into the relations between masters and enslaved servants. Both Knight and, to a much greater extent, *Somerset*, were trusted and valued. The reactions of Wedderburn and Steuart to the desertion or stated desire to desert of their slaves were strong. As masters they had suddenly acquired the unwelcome and clearly unsuspected insight that their slaves, whom they had brought up and educated, with whom they inevitably lived in an intimate way and from whom they obviously expected gratitude, had resented their position. Those in whom they had reposed trust and treated - as they thought - benevolently had viewed the relationship quite differently. Though privileged servants, *Somerset* and Knight had chafed against their status and position. The deference and support they had shown to their paternalistic masters could now be understood as insincere. Behind the decisions of the other runaways may lie similar stories of favoured slaves or servants disguising their long-term resentments. Marshall was sufficiently well-integrated into the local community in Stranraer that he spoke 'broad Scotch'; yet he still preferred to depart.¹³⁵ Colonel Munro's cook Caesar was presumably highly valued - otherwise why go to the expense to take home a cook all the way from India? - why promise to forgive him if he returned willingly?

¹³⁵ *Edinburgh Evening Courant*, 14 Feb. 1774.

Yet, Caesar still preferred to take his chance as a runaway in a strange country.¹³⁶

The relationship between master and servant - much less master and slave - was obviously a complex one in the eighteenth century, full of potential tensions. Somerset and Knight were enslaved servants who lived closely with their masters in a dependent and quasi-familial relationship. That there were emotional complexities and potential conflicts is hardly surprising. Based on an examination of the lives of two slaves who had a relationship with their owners akin to that Knight and Somerset had with theirs, Philip Morgan pointed out that the 'psychic toll' exerted on enslaved body servants by intimacy with their white masters could be 'enormous'.¹³⁷ In a similar way, the conflicting emotions in the relationship between Michael Henry Pascal and Olaudah Equiano (Gustavus Vassa) seem to have led the former ultimately to sell Equiano, when the latter transgressed his master's expectations: both master and slave felt a powerful sense of betrayal.¹³⁸ But it was Pascal who had the power to sell Equiano and the ability to prevent his running away.

Both Steuart and Wedderburn decided to sell their slaves in the West Indies. This cruel decision reflects their perspectives of betrayal, their sense of entitlement, and the

¹³⁶ *Edinburgh Evening Courant*, 22 June 1771.

¹³⁷ Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake & Lowcountry*, Chapel Hill, 1998, 358.

¹³⁸ See, e.g., Vincent Carretta, *Equiano the African: Biography of a Self-Made Man*, Athens GA, 2005, 84-91.

force on which their claims of ownership ultimately rested. But the paternalistic nature of the relationship they claimed with Somerset and Knight required denial that it was the fact and consequences of enslavement that led the men to want to leave. This explains the emphasis on the newspaper reports in Knight's case. If observers could persuade themselves that Knight's impulse to depart was the result of an irresponsible newspaper report, they avoided the awkward questions of his resentment of his enslavement and of the difficult position his enslavement had created for him in Scotland. To emphasise the newspaper report avoided any challenge to the legitimacy of slavery: Knight would have been happy, except for the newspaper report.

Given the uncertainty over the exact words spoken by Mansfield in his judgement and the varying contexts within which they can be understood, the debate over the meaning of *Somerset's Case* is likely to continue. In the lectures Millar delivered on English law in 1800-01, he maintained his view that, after *Somerset*, 'Negroes' in England 'owe their masters perpetual service, and their service can be assigned from one person to another; but they cannot be sent abroad at their masters [*sic*] pleasure.'¹³⁹ The importance of the decision is, however, incontestable. The instantaneous development of the popular view that Mansfield had freed the slaves in England is also clear. The power of the accounts of Lord Mansfield's

¹³⁹ GUL, MS Gen. 243, 62. See Cairns, 'John Millar and Slavery', 102-3.

decision is also testified to by the way in which it played a part in setting in train the events that led to the strong decision against slavery in Scotland. Knight's counsel expressed the hope that, though 'the decree of this Court cannot ... operate beyond its territory ... the determination of every Supreme Court, in such a case as the present, must have some influence on the opinions of men all the world over'.¹⁴⁰ On the coattails of *Somerset's Case*, *Knight v Wedderburn* achieved a limited fame, footnoted in *Howell's State Trials* and even alluded to by Thomas Cobb.¹⁴¹ Nonetheless, its decision that Scotland was 'free soil' contributed to the development of anti-slavery discourse from the 1770s onwards.

¹⁴⁰ Maclaurin, *Additional Information for Joseph Knight*, 44.

¹⁴¹ Howell, *State Trials*, vol. 20, 2-11; Thomas R. R. Cobb, *An Inquiry into the Law of Negro Slavery in the United States of America*, ed. by Paul Finkelman, Athens GA, 1999, 171, § 185.