

Granville Sharp's Cases on Slavery

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INTRODUCTION

Granville Sharp (1735–1813)

The collection of manuscripts (MSS) presented here were in most cases commissioned by Granville Sharp who pursued a number of legal cases as part of his anti-slavery work. Sharp was the first English person to devote his life to the fight against slavery and the slave trade.

He was a civil servant at the Ordnance office. When the American Revolution broke out, Sharp sympathised with the colonists and was opposed to the use of force against them. He resigned his post which also had the effect of freeing him to pursue the campaign against slavery. He has been called “the force behind Wilberforce”.¹ He was a devout Anglican, on the evangelical wing of the church. He was a younger son in a large family and had to leave Grammar school before completing his studies. After getting the worse of a discussion on religious doctrine he taught himself Greek and Hebrew. He later published numerous works on religious doctrine and on Greek grammar and Hebrew. He was also an accomplished musician.²

It was chance encounter one morning in 1765 with a young black man, Jonathan Strong, which set Sharp off on his campaign to challenge slavery in the courts and which culminated in the *Somerset* case. He wrote an account of this incident which started him on his life’s work and it is to be found today in the Gloucestershire Archives.³ An account of the incident and the legal proceedings which followed is given below in the section entitled “The Cases”.⁴

Sharp’s activism led to the formation of the Society for the Abolition of the Slave Trade in 1797. He initially resisted being associated with the Society on the ground that it should have been devoted to the abolition of slavery itself, but was persuaded to join it. He lived to see the abolition of the slave trade in 1807, but not of the abolition of slavery itself throughout the British Empire in 1834.

¹ [<http://what-when-how.com/social-sciences/sharp-granville-social-science/>], accessed 7 May 2016; [http://www.encyclopedia.com/topic/Granville_Sharp.aspx], accessed 7 May 2016.

² Prince Hoare, *Memoirs of Granville Sharp, Esq., Composed from his own Manuscripts and Other Authentic Documents in the Possession of his Family and of the African Institution*, London, 2 vols 1820, 2nd edn, 1828; E C P Lascelles, *Granville Sharp and the Freedom of Slaves in England*, Oxford, 1928; G M Ditchfield, ‘Sharp, Granville (1735–1813)’, ODNB, 2004; online edn, September 2012 [<http://www.oxforddnb.com/view/article/25208>], accessed 23 April 2016.

³ D 3549/13/3/28; D 3549 13/3/38; D 3549 13/4/2 book G. Below, page 91.

⁴ Page 42.

Sharp never married and died childless in 1813. His papers passed to the family of his niece Mary, who in 1800 had married Thomas Lloyd Baker of Uley in Gloucestershire. In 1977, Sharp's papers were deposited, along with other papers of the Sharp family, at the Gloucestershire Archives.

Sharp was one of the founders of the colony of Sierra Leone as a refuge for freed slaves. The Americans later followed this example in the founding of Liberia.

Sharp used the witty abbreviation of his own name "G#" ("G Sharp" in musical notation) which has been used in this book to indicate those footnotes which Sharp inserted into the MSS.

The Manuscripts

There are at least four repositories of Granville Sharp's MSS. The largest one is in the Gloucestershire Archives.⁵

The New York Historical Society (NYHS) acquired a number of his MSS and has digitised them and made them available on its website.

The third source is the volume devoted to the case of *Gregson v Gilbert* (the slave ship *Zong*) in the National Maritime Museum, Greenwich, London.

The fourth source is a small deposit of MSS in York Minster Library of minor cases.

The MSS transcribed in this volume were produced by Granville Sharp who employed shorthand writers to take verbatim notes of proceedings in court. One such writer is identified. The transcript of *The King (Lewis) v Stapylton* was the work of William Isaac Blanchard, who practised in Westminster Hall from 1767 until his death in 1796.⁶

Given the importance at least of the *Somerset* and *Zong* cases and the academic discussion of their significance, it is remarkable that these MSS have not been published to date.

Jonathan Strong

The MS is an account written by Granville Sharp himself, some years after the events, of the incident which was to set the course of his life.

⁵ Clarence Row, Alvin Street, Gloucester, GL1 3DW, [www.gloucestershire.gov.uk/archives].

⁶ Page Life, 'Blanchard, William Isaac (bap 1741?, d 1796)', ODNB, 2004 [http://www.oxforddnb.com/view/article/2605], accessed 1 February 2012. According to Page Life, his offices were at 4 Dean Street, Fetter Lane, and 10 Clifford's Inn, although according to the note at the end of the transcript, his office was at 69 Fetter Lane in February 1771. It was estimated that Blanchard could take down about 150 words a minute.

The manuscript is in the Gloucestershire Archives and the catalogue entry is entitled “A draft written by Granville Sharp and a fair [contemporary] copy [in another hand]”. The original has many crossings-out and amendments. The transcript presented here is from a typed transcript prepared by the staff of the Gloucestershire Archives from the fair copy, with the addition of some footnotes.

The King (Lewis) v Stapylton

To date this case is unreported, although Thomas Clarkson wrote a brief account of it in his book on the history and abolition of the slave trade.⁷ The source of the MSS presented here is the New York Historical Society (NYHS) Granville Sharp Collection.

The main MS is a verbatim account of proceedings in the King’s Bench in 1771, with the examination and cross-examination of witnesses, including Lewis himself and the captain of the ship on which Lewis had been incarcerated, interspersed with comments and interventions by Lord Mansfield. Verbatim records of trials in the eighteenth century are very rare.

A further MS consists of an argument prepared by Sharp “in haste at a Coffeehouse near the [Westminster] Hall just before the Trial came on”. Sharp was not a trained lawyer although he studied law from books. He relies on general principles and maxims, citing Coke and St Germain’s *Doctor and Student*, etc, but his argument appears naïve. The MS shows his indignation that human beings could be regarded as property. He castigates Mansfield’s reluctance and equivocation. Sharp never developed any appreciation for the barrister’s taxi-rank principle, at least in cases involving slavery. At one point, where Dunning is insisting that there is no such thing as property in slaves in England (MS p 63), Sharp adds an amusing and rather charming footnote:⁸

NB. When Mr Dunning spoke these Words, he held in his hand G. Sharp’s Book on *the illegality of Tolerating Slavery in England* (printed in 1769) having one Finger in the Book to hold open a particular part: and yet after so solemn a Declaration he appeared on the opposite side of the Question against James Somerset, the very next year. This is an

⁷ Thomas Clarkson, *History of the Rise, Progress and Accomplishment of the Abolition of the African Slave Trade*, 2 vols, London, 1808, vol 1, chapter III.

⁸ Below, page 129.

abominable and insufferable practice of Lawyers to undertake causes diametrically opposite to their own declared opinions of Law and Common Justice!!!

Somerset v Stuart

The MS is in the NYHS Granville Sharp Collection and is a digitised copy available online.

The report is undated but is of the earlier first hearing rather than that reported by Lofft.⁹ Shyllon from newspaper reports gives the date of first hearing as 7 February 1772.¹⁰ Lofft himself says his report was of the “second hearing”, on 14 May 1772 and consists of the arguments of Hargrave, which Hargrave later published himself, and then Alleyne and Wallace. Shyllon, on the other hand, mentions a brief hearing on Saturday, 9 May 1772.¹¹ Mansfield (counsel for Somerset) “went very spiritedly into the natural rights and privileges of mankind” but counsel on the same side “not being well enough to attend” further hearing was postponed to 14 May. Lofft’s report should therefore really be counted as the third hearing. The case was then adjourned to seven days later, ie 21 May 1772 and Lofft reports (on the fourth day) the arguments of Dunning and Serjeant Davy on that day. Mansfield’s judgment of 22 June 1772 appears from Lofft to be the only event in the case on that day. Since it was a habeas corpus proceeding, more correctly the case should be known as *R v Knowles, ex parte Somerset*, Knowles being the commander of the ship to whom the writ was addressed, but it is generally referred to as *Somerset v Stewart*. The Sharp MS spells the alleged slave owner’s name as Stuart. To summarise, the hearings in *Somerset* are as follows:

First Day, Friday, 7 February 1772.

Arguments of Serjeants Davy and Glynn.

Source: Sharp MS NYHS, from shorthand. Below.

Second Day, Saturday 9 May 1772.

Mansfield (counsel).

Source: Shyllon, *Black Slaves*, pp 94–95, from newspaper reports.

⁹ *Somerset v Stewart* (1772) Lofft 1, 98 ER 499. Lofft’s report is reproduced in (1772) 20 St Tr 1 with added notes.

¹⁰ Shyllon, *Black Slaves*, p 90. Clarkson, *History of the Rise, Progress and Accomplishment of the Abolition of the African Slave Trade*, i.55 gives the date as “January 1772”, but that may have been from memory.

¹¹ Shyllon, *Black Slaves*, p 94; *The Gazetteer and New Daily Adviser*, Wednesday, 13 May 1772.

Third Day (Lofft, “Second hearing”) Thursday, 14 May 1772.

Francis Hargrave (first appearance in court since call to bar); Alleyne.

Source: (1772) Lofft 1, 98 ER 499; Howell (1772) 20 St Tr 1 at 70. Shyllon, *Black Slaves*, pp 95–103.

Fourth Day, Thursday, 21 May 1772.

Mr Dunning (for Stewart), Serjeant Davy (for Somerset).

Source: Shyllon, *Black Slaves*, pp 103–108, from newspaper reports.

Fifth Day, Monday, 22 June 1772.

Judgment. Lord Mansfield. Source: various, five versions reproduced below. The NYHS MSS contains a separate MS of a version of Mansfield’s judgment.

The second and fourth day arguments have not been reproduced in this volume as an account of the newspaper reports are available in Professor Shyllon’s book. Lofft mentions Serjeant Glynn’s argument at the start of his report: “Upon the second argument [third in fact], (Serjeant Glynn was in the first and, I think, Mr. Mansfield) the pleading on behalf of the negro was opened by Mr. Hargrave.” He seems to have forgotten that it was Davy and not Mansfield (who had changed his name from Manfield)¹² in the “first argument” and Lofft describes his own report as a “summary note”.

Gregson v Gilbert (The Zong)

Sharp was first told about the the *Zong* case by Olaudah Equiano.¹³ The MSS concerning proceedings in the King’s Bench on a motion for a new trial and the bill in the proposed action in the Court of Exchequer are contained in a vellum-bound volume which also contains other MSS concerning the same case.

The report in Douglas¹⁴ is an abbreviated version of the arguments and the judgment on the motion for a new trial and differs in a number of respects from the National Maritime Museum MS reproduced in this volume, which was commissioned by Granville Sharp, and taken down in shorthand.

¹² Sir James Mansfield, formerly Manfield, bap 1734, d 1821, appointed Solicitor General on 1 September 1780. Michael T. Davis, ‘Mansfield, Sir James (bap 1734, d 1821)’, ODNB, 2004; online edn, January 2008 [http://www.oxforddnb.com/view/article/17995], accessed 16 July 2016.

¹³ Below, page 9.

¹⁴ *Gregson v Gilbert* (1783) 3 Doug 232, 99 ER 629.

The late Professor Martin Dockray, who was possibly the first legal historian to examine the volume, produced a transcript of the arguments in the King's Bench on the motion for a new trial. His widow, Mrs Alison Dockray, handed his papers to Professor Andrew Lewis of University College London (UCL). He then retired from UCL and handed over Professor Dockray's papers to the present author with Mrs Dockray's approval. The papers have now been deposited with the Squire Law Library at the University of Cambridge in accordance with Mrs Dockray's wishes, so that other scholars may have access to them.

Among those papers are some draft chapters of a book devoted to the *Zong* case, which Professor Dockray was working on when he died. The extract in this volume at the end of the other *Zong* transcripts is a draft chapter from the MS, on the "Captives and Captors" on the *Zong*, with a discussion of the Africans, the crew members and in particular the captain, Luke Collingwood, and Robert Stubbs, an extremely dubious former slave ship captain and employee of the African Company who was in command of the ship when the notorious incident took place. It is clear from the transcript that Professor Dockray was a very tenacious and accomplished researcher and had unearthed a great deal of information, in many cases from sources that might not have occurred to others. He discovered that Wentworth in his *A Complete System of Pleading*, published in ten volumes between 1797 and 1799, had used pleadings in actual cases. As an example of a declaration in the King's Bench he had used the pleading in *Gregson v Gilbert*, so that is also transcribed in this volume.

Professor Lewis gave a copy of the *Zong* King's Bench transcript to Professor James Oldham who checked the MS against the original and made some changes. I expressed an interest in the transcript, which was the inspiration for this volume, and Professor Oldham has generously made it available to me. I examined the MS book in the National Maritime Museum at Greenwich (NMM) and digitally photographed the whole volume. I checked the transcript against the original and found that some corrections needed to be made. I have also added footnotes to explain certain references in the text.

I then transcribed the MS of the bill in the Exchequer. The answers to the bill are to be found in the National Archives (TNA) at Kew and those have been transcribed and are also included in this volume.

King (Lewis) v Stapylton

Proceedings in the Court of King's Bench

20 February 1771

MS in New York Historical Society,
Manuscript Collections Relating to Slavery:
Granville Sharp collection, 1768–1803.

[1]

No 1

The Proceedings in the Cause of The King on the prosecution of Thomas Lewis a Negro against Stapylton and others	Plaintiff Defendants
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by Indictment for Assault and Imprisonment of the said Thomas Lewis with Intent to transport and sell him as a Slave. upon which Indictment the several Defendants were found Guilty.

— tried —

In the Court of King's Bench before Lord Mansfield on Wednesday February 20th. 1771 [2]

Jurors – by whom the Cause was tried

1. Richard Glover
2. Charles Grooby
3. Peter Taylor
4. Daniel Bower
5. Wm Stainbank
6. John Coates

7. Job. Bearley
8. Samuel Foxlove
9. Willm Evans
10. Daniel Jennings
11. Wm Barlow
12. Christopher Golding

Council for the Crown

Mr Dunning⁵

Mr Davenport

Mr Lucas

For the Defendants

Mr Walker

[3]

Mr Davenport. Please your Lordship and you Gentlemen of the Jury[:] This is an Indictment upon the prosecution of Thomas Lewis against Robert Stapleton John Maloney and Aaron Armstrong. The indictment states that they seized and intended to Transport Lewis the Prosecutor abroad to the Island of Jamaica and to sell & dispose of him there; It likewise states that upon the 2d day of July in [the] 10th year of the Reign &c in the year of our Lord 1769 at the Parish of St Luke Chelsea in the County of Middlesex with force & arms & upon the Prosecutor then & there did make as assault and there seize him, & drag him, & put him into a Boat then floating in the river Thames & then & there Gagged his Mouth & against his Will & consent put him in prison for 2 or 3 days – to which charge the Defendants have pleaded not Guilty whereupon the Issue is joined – [4]

Mr Dunning. Please your Lordship and you Gentlemen of the Jury I am likewise of Council [*sic*] for the prosecution of the several Defendants Robert Stapylton, John Maloney and, Aaron Armstrong who are brought before you to answer to a Charge of a very Gross and outra-

⁵ Ed. John Cannon, 'Dunning, John, first Baron Ashburton (1731–1783)', ODNB, 2004; online edn, May 2006 [<http://www.oxforddnb.com/view/article/8284>], accessed 27 February 2015.

gious [*sic*] assault upon the person of the Plaintiff accompanied with the Actual Imprisonment of his person for the space of 76 hours, and with a Great deal of Malice and Outrage and the Indictment likewise charges it to be with a purpose which is still Worse than the Action complained of Namely with a purpose of Conveying the person of the Unhappy Prosecutor where only such persons as the Defendants ought to live, into such a country where from the right one [5] man has over the person of another and by the Laws of that Country they are to be engaged to what ever purpose they think proper to employ them.

Gentlemen[,] Thomas Lewis the prosecutor has the Misfortune as he finds it to be in point of Colour a Black and upon the Ground of that Discovery made by them, his having a Darker Complexion than the now defendants[,] they have taken it into their heads to say he was not under the protection of the Law of this Country and that they have a right to treat him as their property or whether or not their property they had a right to treat him as a Horse or a Dog to carry him where they pleased and do what they pleased with him. But I trust by your Verdict they will find themselves mistaken. For by the Laws of this Country they have no such right.

Gentlemen[,] the Prosecutor so far as he gives [6] the Account of himself is the Son of what is called a Free Negroe born on the Gold Coast[,] his Father was Free[,] after his Father[']s death he lived with an Uncle[,] after he left his Uncle he was sent to Santa Cruz and divers other places and he will give you an account of his being brought to England and from his Infancy it appears he was friendless and fatherless and has been in the service of different persons at different places and has also been in the public Employment of a Sailor in the Course of which Employments he became acquainted with the Defendant Robert Stapylton. I think he sailed with him two or three Voyages and lived with him in England and at present the Defendant was at an Ale house at Chelsea[,] the other two Defendants are sailors or Boatmen or Watermen of his acquaintance.

Gentlemen[,] the Prosecutor when he came to [7] England knowing nobody in it but this Stapylton renewed his Acquaintance and lived with him some part of his time and was [a] waiter I believe or Drawer at this public house[,] he had likewise lived in England with other persons but when he was in no other place he looked upon this man as his Friend and went to him. In '69 the Transaction happened which is now

intelligible enough though not so at the time it happened[.] this young man accompanied with Stapylton found himself to be inveigled and put on board a Ship and from thence intended to be conveyed away to some of our plantations but he escaped at that time by the Vessel in which he was being lost and he was among the few survivors who escaped to shore.

Gentlemen[,]⁶ I was stating to you that some time before this transaction which is the immediate subject of the present Indictment the present [8] prosecutor found himself on board a ship inveigled for the same purpose (which I shall more particularly state to you presently) of making a pecuniary advantage of but he was as I observed before saved by the ship being lost and so he Escaped for that time and either not suspecting this Stapylton[']s intention or though suspecting him not knowing where better to goe he returned to his House and there remained till the latter end of June or the beginning of July last, when Stapylton formed a Design of Getting this Lad into a Boat for the purpose of carrying him to a ship in which he was put on Board for the purpose of selling him and thence conveying him to a certain place where these things are thought innocent.

The Boy was brought to a place some where [9] near the Water[.] he was conveyed into a Boat for the purposes I before mentioned and The Boy knowing or suspecting what was to happen tryed to Alarm the neighbourhood with his Cries and so far he succeeded in it that he was very distinctly heard by some persons on the shore but however they tyed him neck and Heels in the Boat and they found a method to silence him by cutting some sticks and forcing them into his mouth to make it impossible for him to make any resistance either by his mouth or Limbs and in a Dark night they rowed him down to the place where the ship was to sail from[.] when they got him there they delivered him to the Captain of the Vessell for the purpose that was particularly stated by me at the outset[.] the Defendant thought fit as he called it to sell the Boy and for that purpose delivered him to the Captain[.] you will hear more particularly from the Witness's [10] how much he was to get for him:

Gentlemen[,] the Captain who had or was to pay this money was ex-

⁶ Ed. An interval of time seems to have elapsed before the following passage, since counsel repeats what he said.

ceedingly unwilling to part with his pretended property and application was made to a Magistrate from whom a Warrant or Summons was brought[.] this the Captain disregarded and refused obeying by not delivering up the Boy[.] But the humanity of some person whose residence was near the Water and near the place where the poor Boy was put in the Boat hearing his Outcries induced somebody to apply to this Court for a Habeas Corpus in consequence of which the Captain not thinking fit to expose himself to the Chance or hazard of disobeying thought proper to bring him up again by which means the prosecutor once more recovered his Liberty:

Gentlemen[,] this Indictment is brought for a Violent Outrage done to the Laws of your [11] Country in the person of this Unfortunate prosecutor Thomas Lewis, and I am give to understand that it is insisted the prosecutor is the property of some or one of the Defendants or somebody or other belonging to them[.] In the first place it does not exist in my Idea as applicable to this cause how it can be supported, but if so, I shall have leisure and opportunity to insist before you, or in any Court wherever they think proper to support it that the Laws of this Country admit of no such property; I know nothing where this Idea exists; I apprehend it only exists in the minds of those who have lived in those Countrys where it is suffered; and where the nature and situation of the place may require such Laws. Gentlemen[,] upon the Habeas Corpus being issued the Boy was delivered from his confinement and since that time there has been frequent attempts by [12] Defendants to remove the Prosecutor that he might not give evidence against them and no longer ago than Yesterday some of the party had him seized on and impressed.⁷

Lord Chief Justice[:] you cant go into that[.] if you could bring it home to them you cannot go into it[.] I will not try any thing but this indictment[.] we have business enough –

Mr Dunning[:] My Lord I trust with regard to the punishment for this offence it would be of Material influence for the Jury to consider of the transaction I was going to state.

Lord Chief Justice[.] that will make no difference now[.] it may come in another shape[.]

⁷ Ed. See below, note 28 on page 117, and note 72 on page 150.

Mr Dunning[:] My Lord So far it may make a Difference that these people should understand and I hope will be made to understand that whatever Idea they may have the prosecutor would be [13] Safe in coming into this Court to give testimony for no longer ago than Yesterday fresh experiments were made to prevent his coming here to give evidence[.]

Lord Chief Justice[:] The Court will be open to any sort of Complaint[.] if they do any thing of that sort they will take it at their peril and take the Consequences the same as if it was done to any body else. the Court will not suffer any body coming here to give evidence to be impeded[.]

Mr Dunning[:] My Lord it is certain it is not the subject of the present complaint.

Gentlemen[:] I have in General stated the Outlines of this case[.] I shall prove it by the Boy himself and by others that conveyed him down to the Ship and by other Witnesses to that part of the Transactions and when they have proved it I make no doubt of your finding the several Defendants Guilty and though I have intimated that difference of right and property [14] which I have talked to you about, I believe I shall not hear about that sort of Defence which if I do I shall have an opportunity [*sic*] to reply to it.

Thomas Lewis sworn. Examined by Mr Lucas

Q. Where was⁸ you born?

A. Upon the Gold Coast Sir.

Q. What is the name of the place?

A. The name of the place I can't remember Sir.

Q. Do you remember any relations of yours?

A. I remember a little of them.

Q. Do you remember your uncle?

A. Yes Sir.

Q. Who brought you up?

A. When my fader [*sic*] died my Uncle brought me up.

⁸ Ed. It is noticeable that both counsel and Lord Mansfield use "was" for the second person past tense of the verb, rather than the modern "were".

Q. Who was your Uncle?

A. He is a Gentleman in our Country.

Q. That is he was a Freeman?

A. Yes Sir. So was my Fader.

Q. Now what time did you leave your Uncle?

A. I leave him when I was between 6 or 7 years of age. [15]

Lord Chief Justice: You don't prove his being free by himself.

Mr Dunning: My Lord I have nobody that was by that can give any other accounts.

Lord Chief Justice: you can't prove by himself. You will see how they prove the Contrary.

Mr Dunning: This Boy has always understood himself to be free.

Lord Chief Justice: I shall presume him to be free unless they prove the Contrary⁹ –

Mr Dunning: My Lord you will hear from his evidence how he came into this Country and how they deluded him away.

Mr Lucas

Q. to Lewis: Who did you go to live with upon the death of your Uncle?

A. My Uncle was not dead when I came over[.] I lived with my uncle when my fader died.

Q. When your Father died you lived with your Uncle[?]

A. I did not live with him long, but about 12 months[.] [16]

Q. Who did you go to live with when you left your Uncle?

A. I have been with the General and Governor of the place[.]

Q. You was a servant of the General?

A. Yes. when the General came away after my father died he come to receive my fader[']s Estate[.] when he come I went to him[.] He could speak English and he ask me if [I] should like to go abroad. if I did I should learn the Language[.] I said I should like it very well because he understand and I did not understand it. So far he gave me leave to

⁹ Ed. Note that this is the first occasion that Lord Mansfield clearly states that a person is presumed free until proven otherwise, although implied by his previous comment.