And the seventh exception affords the court an opportunity to remark, how much more conducive to the purposes of justice it would be, to substitute special verdicts, and demurrers to evidence, for the tedious and embarrassing practice of the court from which this case comes up. It is a fact, that this bill of exceptions claims a right of recovery, without stating any loss or damage whatever. The opinion prayed for was, that if the jury believed the various facts therein detailed, then it is incumbent on the defendant to make out a just, reasonable and sufficient excuse for omitting to forward the letter described. But, unless an individual has sustained some loss or damage by an omission of that kind, why should the postmaster be held to make out a defence? Each bill of exceptions must be considered as presenting a distinct, substantive case; and it is on the evidence stated in itself alone, that the court is to decide. We cannot go beyond it, and collect other facts which must have been in the mind of the party, and the insertion of which in this bill of exceptions could alone have sanctioned the opinion as prayed for. Upon the whole, the judgment below must be affirmed.

Judgment affirmed.

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*Hezekiah Wood *v.* John Davis and others. (*a*) [*271

Conclusiveness of judgment.

A verdict and judgment that a mother was born free, is not conclusive evidence of the freedom of her children; unless between the same parties or privies.[1]

Error to the Circuit Court for the district of Columbia, sitting at Washington.

The defendants in error, John Davis and others, were children of Susan Davis, a mulatto woman, who had obtained a judgment for her freedom, in a suit which she had brought against Caleb Swann, to whom she had been sold by Wood, the plaintiff in error. The petition of the children stated that their mother, Susan Davis, had obtained a judgment for her freedom, upon the ground, that she was born free. The issue was joined upon the question, whether the petitioners were entitled to their freedom.

Upon the trial of this issue, in the court below, the plaintiff in error, Wood, tendered a bill of exceptions, which stated, that it was admitted, that the petitioners were the children of Susan Davis; and they produced the record of the judgment in favor of their mother, Susan Davis, against Caleb Swann (in which case her petition stated that she was born free, being descended from a white woman; and the issue joined was upon the question whether she was free or a slave); and it was admitted, that Susan Davis had been sold by Wood to Swann, before the judgment; whereupon, the petitioners, by their counsel, prayed the court to direct the jury, that the record aforesaid and the matters so admitted were conclusive evidence for the petitioners in this cause; and the court directed the jury as prayed: to which direction, the defendant, Wood, excepted.

(*a*) March 9th, 1812. Present, all the judges.

[1] This overrules Davis *v.* Forrest, 2 Cr. C. C. 23. But a judgment in favor of the freedom of the mother, is conclusive in favor of her subsequent issue, as against the same claimant. Alexander *v.* Stokely, 7 S. & R. 299.

F. S. Key, for the plaintiff in error, contended, 1. That Wood was not a *272] party, nor privy to any party, to the suit of Susan Davis against Swann, and *is, therefore, not concluded by the judgment in that case: and—

2. That the judgment was only proof, that Susan Davis was free, at the time of the judgment; not that she was born free, and therefore, it did not appear, that she was free at the time of the birth of the petitioners. She might have been manumitted, after the birth of her children, and so entitled to her freedom, at the time of the judgment, and yet the petitioners might remain slaves. The only issue ever joined in Maryland (under the laws of which state this case was tried), upon a petition for freedom, is, whether the petitioner be free, at the time of issue joined; not whether she were born free. 2 Harris's Entries 530. It is immaterial, what title is set out in the petition. The petitioner is not confined to it, but may, on the trial, show any other title to freedom; the practice in Maryland is merely to state in the petition, that the petititioner is entitled to freedom and is holden as a slave. The act of assembly of Maryland, of 1796, directs that the jury shall be charged to determine those allegations in the petition which may be controverted. The only allegation controverted is that the petitioner is free.

Duvall, J., stated, that in all the petitions which he filed in Maryland, in the cases of the *Shorters*, the *Thomases*, the *Bostons*, and many others, he always stated their title at large, tracing it up to a free white woman; and after judgment in those cases, the courts always held, that the subsequent petitioners, who claimed under the same title, were only bound to prove their descent.

C. Lee, contrà.—The issue in Susan Davis's case is, in fact, whether she was born free. And the case of *Shelton* v. *Barbour*, 2 Wash. 64, shows that the verdict is conclusive as to all claiming under the same title. Wood's title was the same as Swann's; and that of the petitioners, the same as that of Susan Davis.

F. S. Key, in reply.—Wood did not claim under Swann, but Swann *273] claimed under Wood. There was no privity between them, *as to the children. Swann could do nothing to injure Wood's title to them.

March 10th, 1812. All the judges being present, Marshall, Ch. J., stated the opinion of the court to be, that the verdict and judgment in the case of *Susan Davis* against *Swann*, were not conclusive evidence in the present case. There was no privity between Swann and Wood; they were to be considered as perfectly distinct persons. Wood had a right to defend his own title, which he did not derive from Swann.

Judgment reversed.