

Amending Article 1 of Chapter I of the Vermont Constitution: A Primer on Indentured Servant Practice in Vermont in the 18th and 19th Centuries

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I. Introduction

Some of the confusion over whether, in adopting Article 1 of Chapter I of the Vermont Constitution of 1777, the Vermont framers intended to prohibit all slavery in Vermont, or just adult slavery, stems from lack of understanding of the accepted practice in the state during this time of using “indentured servants.” If the purpose of Article 1 in its entirety was to make clear that slavery was banned in Vermont, the primary purpose of the second part of the Article was to curb abuses of the institution of “indentured servants” by setting a maximum age at which servants could be bound by law to continue in that capacity without their own consent. In order to keep these two related but distinct goals straight, one needs to appreciate the similarities and differences between “slavery” (bought and sold like chattel; bound to serve for life; prohibited by the Vermont constitution; bills of sale not recognized by state courts) and “indentured servants” (also “bought” at auction; bound to serve for a term of years; permitted by the Vermont constitution, but with maximum age established; contracts recognized by state courts).

In states where there were no maximum age limits, indentured servants could be bound until reaching their late 20s or even early 30s under conditions similar to those that existed under slavery. It was that abuse that the second part of Article 1 was intended to curb by setting a maximum age at which one could be bound without one’s own consent. I have explained elsewhere why the Vermont framers likely felt it important to include “*de facto* slaves” (that is, slaves purchased elsewhere and brought into the state) within the protections for maximum age established for indentured servants and apprentices under the second part of Article 1.

In order to understand the broader purpose and effect of Article 1, in short, one has to appreciate not just the Vermont framers’ attitudes toward slavery but also “the indentured servant problem” as the framers understood it and how they attempted to deal with it.

The purpose of this memo accordingly is to provide a brief primer on the institution of “indentured servants” and “indentured apprentices” as it existed, with legal and constitutional sanction, in Vermont in the 18th and 19th centuries.¹

¹ To the extent the second part of Article 1 purports to authorize and gives constitutional sanction to “indentured servant” contracts, even if of limited duration, it has been superseded by adoption

II. Benefits of Indentured Servant Contracts: Difference Between “Indentured Servants” and “Apprentices”

Given the labor shortage in the colonies during the pre-Revolutionary period and for a substantial period following the Revolution, the institution of “indentured servants” made good economic sense. Young, healthy, and often skilled workers in England and Europe could arrange for passage to America by agreeing to pay off the costs of that passage by committing to serve as a servant or in some other laboring capacity without monetary compensation for a period of years. At the end of that period, the indentured servant would be set free to pursue his or her own fortunes and, in some cases, even granted a parcel of land. Sometimes parents or legal guardians of minors entered the same arrangement as a way of paying off their own debts. In other cases, those convicted of crimes were given the option of “doing time” by agreeing to serve as indentured servants in America in return for free passage. So the institution of indentured servants offered mutual benefits: it offered a way for young, healthy, often skilled workers from Europe to make a fresh start in America while at the same providing a source of cheap labor for the American market.

“Indentured servants” were generally those who had already acquired basic skills; “apprentices” were those who were willing to commit to a period of uncompensated labor in return for being trained in a particular trade. The “indenture” contract took the same basic form for both.

III. “Buying and Selling” Indentured Servants

In many cases, a ship’s master undertook to underwrite the passage to America in return for assignable “indenture” contracts which he could then “sell” to the highest bidder upon arriving in America. The purchase of these contracts would cover the costs of passage plus provide for an added measure of profit. In Appendix A, I attach an example of the advertisement of an auction of indentured servants upon a ship’s arrival in America. Note the advertisement talks about “selling” the indentured servants (in much the same way that slaves were sold), but the “selling” in this context actually took the form of assigning the “indenture” for a period of years. Normally that period was from three to seven years, but the period of time was left blank on standard indenture contracts to allow for flexibility in this respect. Note also the range of skills in which the indentured servants being put up for auction were purportedly proficient.

of the 13th Amendment to the U.S. Constitution in 1865 which prohibits both “slavery” and “involuntary servitude” nationwide.

IV. Terms of the Indenture Relationship; Limitations on Freedom

Restrictions on the freedom of the indentured servant were not unlike restrictions on the freedom of a slave. The chief difference was that the indentured servant was legally bound to serve for only a term of years, while the slave was bound for life. In Appendix B, I attach a copy of a typical contract for an indentured servant and, in Appendix C, a typical contract for an apprentice. These conditions might vary from contract to contract, and were at least theoretically subject to negotiation, but in many cases left the indentured servant during the term of indenture in a position not unlike that of a slave.

V. Accepted Practice in 19th Century Vermont

In Vermont, subject to the limitations in Article 1 of Chapter I, the institution of indentured servitude was well established in legal practice throughout the 18th century and for at least the first half of the 19th century. In Appendix D, I attach copies of indentured servant standard forms from a 1847 manual on Vermont legal practice, indicating that, 60 years after adoption of the first state constitution, it was still accepted legal practice in Vermont to bind minors to a period of indentured servitude as servants or in other employment capacity subject only to the constitutional limitations on maximum age. If the individual was under 14, the minor's parents or legal guardian - or, if those were unavailable, the town's board of selectmen - had to certify the contract. If over 14, apparently the individual could contract to enter into an indentured relationship on his or her own. In any event, the contract of indenture had to provide for termination when the individual reached the age of 21 for males and 18 for females.

HANOVER TOWN, *May 12, 1774.*

JUST arrived in *York River, the Brilliant,*

Captain *Miller*, from *London*, with a Cargo of choice healthy INDENTED SERVANTS, the Sale of which will begin at *Richmond Town* on *Wednesday* the 25th of *May*, among whom are the following Tradesmen, *viz.* Blacksmiths, Brassiers, Edgetool Makers, Bricklayers and Plasterers, Shoemakers, Stone Masons, Carpenters, Joiners and Cabinet Makers, Cloth Weavers, Stocking Weavers, Barbers and Peruke makers, Gardeners, Farmers, Labourers and Husbandmen, Book-keepers and Schoolmasters, Tailors, Silk Dyers, Bakers, Painters, Leather Dressers, Sawyers, Butchers, a Steward, Groom, Surgeon, &c. I will sell them very cheap, for ready Money, or Tobacco; and for those on Credit, Bond and Security will be required.

(1).

THOMAS SMITH.

Appendix B - "Indentured Servants"



This Indenture Made the 19th Day of August in the Year of our LORD GOD One Thousand Seven Hundred & Sixty Six

BETWEEN Patrick Larkin of the one Party, and Thomas Blood of the other Party, WITNESSETH, That the said (being ordered to be transported, pursuant to the Statute) doth hereby Covenant, Promise and Grant to and with the said his Executors, Administrators and Assigns, from the Day of the Date hereof until the first and next Arrival at Assize and after, for and during the Term of 7 Years, to serve in such Service and Employment as the said or his Assigns shall there employ according to the Custom of that Country in the like kind. IN CONSIDERATION whereof the said

doth hereby Covenant and Grant to and with the said Patrick Larkin to pay for his Passage, and to find and allow Meat, Drink, Apparel and Lodging, with other Necessaries during the said Term. And at the End of the said Term, to pay unto the usual Allowance according to the Custom of the Country in the like kind. IN WITNESS whereof the Parties abovementioned to these INDENTURES have interchangeably set their Hands and Seals, the Day and Year first above written.

Signed, Sealed and Delivered, Patrick Larkin in the Presence of J Taylor Lord Mayor of the City of Dublin 10 40

Appendix C - "Apprentice"

This Indenture

Witnesseth, That *James Smith* of *London* in *England* and *Benjamin Franklin* of *Philadelphia* in *Pennsylvania* Hath put himself, and by these Presents,

doth voluntarily, and of his own free Will and Accord, put himself Apprentice to *Benjamin Franklin* of the City of *Philadelphia*, *Pennsylvania*

to learn his Art, Trade, and Mystery, and after the Manner of an Apprentice to serve *the said Benjamin Franklin* from the Day of the Date hereof, for, and during, and unto the full End and Term of *Six Years* next ensuing. During all which Term, the said Apprentice his said Master faithfully shall serve, his Secrets keep, his lawful Commands everywhere readily obey. He shall do no Damage to his said Master, nor see it to be done by others without leaving or giving Notice thereof to his said Master. He shall not waste his said Master's Goods, nor lend them unlawfully to any. He shall not commit Fornication, nor contract Matrimony within the said Term. At Cards, Dice, or any other unlawful Game, he shall not play, whereby his said Master may have Damage. With his own Goods, nor the Goods of others, without Licence from his said Master, he shall neither buy nor sell. He shall not absent himself Day nor Night from his said Master's Service, without his Leave: Nor haunt Ale-houses, Taverns, or Play-houses; but in all Things behave himself as a faithful Apprentice ought to do, during the said Term. And the said Master shall use the utmost of his Endeavour to teach or cause to be taught or instructed the said Apprentice in the Trade or Mystery of *Printing* and procure and provide for him sufficient Meat, Drink, *Clothes* Lodging and Washing fitting for an Apprentice, during the said Term of *Six Years* and at the *Expiration thereof shall give him one good new Suit of Cloaths, besides his common Apparel.*

AND for the true Performance of all and singular the Covenants and Agreements aforesaid, the said Parties bind themselves each unto the other firmly by these Presents. IN WITNESS whereof, the said Parties have interchangeably set their Hands and Seals hereunto. Dated the *Fifth* Day of *November* in the *Thirtieth* Year of the Reign of our Sovereign Lord *George the second* King of Great-Britain, etc. *Annus Domini One Thousand Seven Hundred and Twenty.*

Sealed and delivered in the Presence of:

Christopher Thompson
Richard Ferguson

Appendix D

A
SUPPLEMENT

TO

AIKENS' PRACTICAL FORMS,

ADAPTING THAT WORK

TO THE PRESENT STATE OF THE STATUTES
OF VERMONT.

BY PETER T. WASHBURN,
Counsellor at Law.

—829—

CLAREMONT
MANUFACTURING COMPANY.

Simon Ide, Agent.

1847.

SUPPLEMENT
TO
PRACTICAL FORMS.

AGREEMENTS.

H } *An Indenture by a minor, under the age of fourteen years, who has no parent, or guardian, to bind himself as a servant.* Rev. St., chap. 33, § 2.

This Indenture witnesseth, that A. B. of _____, a minor, under the age of fourteen years, and who has no parent, competent to act, and no guardian, hath put and placed, and by these presents doth put and place himself as a servant to C. D. of _____, the said A. B., after the manner of a servant, to dwell with and serve the said C. D. from the day of the date hereof until the _____ day of _____ 18____, at which time the said A. B., if he shall be living, will be fourteen years of age. During which time the said A. B. his master well and faithfully will serve: he will do no damage in his said master, nor willfully suffer any to be done by others; he will not waste his master's goods, nor lend them unlawfully to any: from the service of his said master he will not absent himself, but will in all things behave himself as a good and faithful servant ought, during the whole time, or term, aforesaid.

And the said C. D., on his part, doth hereby promise, covenant and agree, &c. [insert such covenants as are agreed to on the part of the master.]

In testimony whereof the said parties have hereunto interchangeably set their hands and seals, this _____ day of _____, in the year _____

A. B. [Seal.]
C. D. [Seal.]
in presence of
E. F.
G. H.

AGREEMENT.

(*Approbation by the Selectmen, to be annexed to the foregoing.*)

It appearing to us, L. M., N. O. and T. R., the selectmen of the town of _____, that the above named A. B. is a resident of said town, and is under the age of fourteen years, and has no parent competent to act, and no guardian, and that the terms of the foregoing Indenture are suitable and proper, and for the advantage of the said A. B.; we do therefore approve of the same, and of the execution of the said Indenture, as above written.

Given under our hands, at said _____ this _____ day of _____ 18____
L. M. } Selectmen.
N. O. }
T. R. }

NOTE. This approbation is rendered essential to the validity of the above Indenture by Sec. 2, chap. 33, of the Revised Statutes. If the Indenture is to be one of apprenticeship, such changes may be made as are necessary, conformable to Form 11 of Pract. Forms, p. 21.

§ 2. *An Indenture to bind, as apprentice, a minor, over the age of fourteen years.* Rev. St. c. 33, § 3.

[As in Form 11 of Pract. Forms, p. 21, to the end of the clause commencing "In testimony," and then continue as follows:] And the said B. B. (the minor) doth hereby consent to be bound as an apprentice to the said C. D. for the purpose, and during the period of time, and upon the terms and conditions, herein before expressed.

In testimony whereof the said B. B. hath hereunto subscribed his hand the day and year first above written.

A. B. [Seal.]
C. D. [Seal.]
B. D.
in presence of
J. G.
L. M.

NOTE. By Rev. St. c. 33, § 3, it is essential to the validity of an indenture of apprenticeship of a minor over fourteen years of age, when he is bound by his parent, or guardian, that the consent of the minor be expressed in the Indenture, and testified by his signing the name.

§ 3. *Agreement by the overseer of the poor for the labor of an idle person, who is in need of relief.* Rev. St. c. 10, § 21, 22.

An Agreement, made between A. B. overseer of the