NEGRO JAMES vs. GAITHER.

[NO NUMBER IN ORIGINAL]

COURT OF APPEALS OF MARYLAND

2 H. & J. 176; 1807 Md. LEXIS 18

December, 1807, Decided

PRIOR HISTORY: [**1] APPEAL from the General Court. The petitioner, (now appellant,) filed his petition for freedom in Anne-Arundel county court. The case was this--A deed of manumission, dated the 13th of September 1784, was executed by B. Gaither, deceased, then of Prince-George's county, giving freedom, after his death, to sundry of his negro slaves, among whom was the petitioner, Negro James. The deed was signed and sealed by him in the presence of, and acknowledged before T. Boyd, one of the justices of the peace for Prince-George's county, on the 13th of September 1784, and recorded in the records of that county on the 27th of November 1784. Gaither by his will, dated the 20th of June 1791, devised and bequeathed as follow: "Item, I give and devise to B. Ijams all my land whereon I now dwell, and my several tracts or parcels of land adjoining thereto; also all my personal estate, except my negroes, and to his heirs and assigns for ever." "Item. My will and desire is, that all my young negroes, born since my negroes were recorded, shall be absolutely free at my death." The inventory, returned on Gaither's estate, does not include any of his slaves. Ignatius Allen, a witness sworn in the cause, deposed [**2] that he lived with Gaither at the time he sent for T. Boyd to take the acknowledgment of a deed to set his negroes free; that Boyd came and drew the deed; that after it was drawn, Gaither did sign, seal, and acknowledge the same as his act and deed, and did deliver the same to Boyd, requesting him to have it recorded. That when Gaither executed and signed the deed he was confined to his bed; that he called upon the witness to assist him in getting up in his bed to sign the deed; that the witness accordingly did assist to raise Gaither in his bed, and that he stood by and was present, and did see Gaither sign the deed, and acknowledge it as his act and deed; and also saw Boyd sign the same as a witness thereto. That Gaither asked Boyd if it was necessary that any one else should sign it, and Boyd replied it was not. That Gaither and Boyd both observed then, that there were several who also saw him sign; that Gaither requested the persons who were present, to wit, Benjamin Ijams, (who has left the state,) and Sarah Ijams, (who is since dead,) and also the witness in particular, all to take notice that he had signed an instrument of writing to set all his negroes free. The witness lived [**3] with Gaither eight or nine years after the deed was executed, and frequently heard him declare that all his negroes would be free at his death, as he had them recorded in court. That the witness cannot write his name, and did not sign the deed as a witness. That Robert Waters, another witness also sworn in the cause, deposed, that at the request of Gaither he went to draw his will, it was late in the evening, and the witness objected doing it that evening, because he alleged it was too late; but on Gaither's saying it would be short, he agreed to draw it. That Gaither told him he had deeded his negroes to be free at his death, and that the deed had been recorded several years. That after the witness had drawn the clause in the will in favour of B. Ijams, he told the witness to draw a clause in favour of some young negroes, and when the witness began, he told him to stop, and said it

was hardly worth while, the old ones he had deeded free at his death, and the deed had been recorded for several years, and the young ones will be free, if not named in the will. But after some pause he said, however, you may do it, and do it in this way, all my young negroes, born since my negroes were [**4] recorded, to be free at my death. The clause was then wrote as stated in the will, dated the 20th of June 1791. That Gaither died about the year 1793, and the negroes mentioned in the deed have been at large ever since. That he never heard that any one entitled to Gaither's estate ever set up any claim to the negroes, until about two years ago. The County Court, [H. Ridgely, Ch. J.] at April term 1802, gave judgment for the petitioner. The defendant appealed to the General Court; and at May term 1804, the General Court [Chase, Ch. J. Done and Sprigg, J.] Reversed the judgment of the county court, and gave judgment that the appellee, the petitioner, was a slave.

DISPOSITION: AFFIRMED.

HEADNOTES

Parol evidence is not admissible to prove that a deed of manumission was attested in the presence of two witnesses, only one having signed the same.

A deed of manumission under the act of 1752, *ch* 1, *s* 5, executed in the presence of only one witness, will not operate to give freedom to the slaves mentioned therein.

COUNSEL: Key, and Johnson (Attorney General,) for the Appellant, contended that the judgment of the general court, reversing that of the county court, must be reversed, unless this court think they are bound by a rigid construction of the act of assembly of 1752, ch. 1, s. 5, by which it is enacted, "that where any person or persons, possessed of any slave or slaves within this province, who are or shall be of healthy constitutions, and sound in mind and body, capable by labour to procure to him or them sufficient [**5] food and raiment, with other requisite necessaries of life, and not exceeding fifty years of age, and such person or persons, possessing such slave or slaves as aforesaid, and being willing and desirous to set free or manumit such slave or slaves, may, by writing under his, her, or their hand and seal, evidenced by two good and sufficient witnesses at least, grant to such slave or slaves his, her, or their freedom," &c. They insisted that the act does not indispensably require that two witnesses should subscribe their names to the deed. That an enlarged construction ought to be given to the word evidenced, they referred to the Stat. of Frauds, 29 Car. II, ch. 3, s. 5. Co. Litt. 283, a. Jacob's L. D. tit. Evidence. Windham vs. Chetwynd, 1 Burr. 414. 2 Eq Ca. Ab. 345, case 15. Gitting's Lessee vs. Hall, 1 Harr. & Johns. 14.

Shaaff and T. Buchanan, for the Appellee, also referred to the act of 1752, ch. 1. Shaffer's Lessee vs. Corbett, 3 Harr & H'Hen. 513. Ridgely vs. Howard, et al. Ibid 321; and the act of 1796, ch. 67.

Curia adv. vult.

JUDGES: The case was argued at the last term before TILGHMAN, NICHOLSON and GANTT, J.

OPINION

[*178] At this term

JUDGMENT AFFIRMED.