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**NEGRO CATO VS. HOWARD.**

**[NO NUMBER IN ORIGINAL]**

**COURT OF APPEALS OF MARYLAND**

**2 H. & J. 323; 1808 Md. LEXIS 16**

**June, 1808, Decided**

**PRIOR HISTORY:**        [\*\*1] APPEAL from Montgomery county court. This was a petition for freedom, preferred by the appellant. At the trial he offered evidence to the jury to prove, that in January 1793, Nathan Harris was the owner of the petitioner; that by parol he sold him to Jesse Harris in that year, for seven years, for £ 65, and that at the end of that time the petitioner was to be free. Jesse and Nathan Harris, at the time of the sale of the petitioner, did agree by parol, and it was part of the bargain, that Jesse should at the end of seven years, from the time of the sale, or sooner if he pleased to do so, manumit and set the petitioner free. The petitioner was delivered by Nathan to Jesse, and served Jesse until about the month of January 1799. In February 1799, Nathan, without the consent of Jesse, sold the petitioner as a slave to Howard, who soon after took the petitioner into his custody as a slave, and still holds him as such. On the 2d of March 1799, Jesse executed a deed of manumission of the petitioner, which was duly acknowledged and recorded. Nathan, after his sale to Jesse, several times declared that he had no right to the petitioner, and that Jesse was the person who was to set him free. [\*\*2] On these facts the petitioner prayed the opinion of the court, and their instruction to the jury, that if they were of opinion from the evidence, that Jesse Harris purchased the petitioner from Nathan Harris in the year 1793, for seven years, and that it was part of the terms of sale and purchase, that Jesse should, at the end of seven years or sooner, if he chose to do so, set free and manumit the petitioner, that the petitioner was entitled to

his freedom for life by the aforesaid deed of manumission, if the petitioner was, at the time of the execution of that deed, of healthy constitution and sound in mind and body, and capable by labour to procure sufficient food and raiment, with other requisite necessaries of life, and was not more than forty-five years of age. But the court, (Clagett, Ch. J.) was of opinion, and so instructed the jury, that if they should find that the sale and purchase between Nathan and Jesse Harris, was as above stated, that the petitioner is not entitled to freedom under the deed of manumission. The petitioner excepted; and the verdict and judgment being against him, he appealed to this court.

**DISPOSITION:**        JUDGMENT REVERSED, AND PROCEDENDO AWARDED.

**HEADNOTES**

A slave sold by parol for a term of seven years with an agreement between the vendor and vendee that at the end of the seven years he was to be manumitted, by the vendee At the end of that time the vendee executed a deed of manumission. *Held*, that the slave was free.

**COUNSEL:** Martin, for [\*\*3] the Appellant, and by Mason, for the Appellee.

**JUDGES:** The cause was argued before TILGHMAN, POLK, and BUCHANAN, J.

**OPINION**

PROCEDENDO AWARDED.

[\*324] JUDGMENT REVERSED, AND