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QUEEN vs. NEALE.

[NO NUMBER IN ORIGINAL]

COURT OF APPEALS OF MARYLAND

3 H. & J. 158; 1810 Md. LEXIS 32

December, 1810, Decided

PRIOR HISTORY: [**1] APPEAL from Charles County Court. This was a petition for freedom; and under the act of 1804, ch. 55, s. 2, the petitioner, (now appellant,) exhibited her affidavit, stating that she believed she could not have a fair and impartial trial in that court, and by her counsel moved the court to direct that the record and proceedings should be removed as directed by the above mentioned act; but the court, [Clarke, A. J.] overruled the motion. The petitioner excepted. The case was afterwards tried, and the verdict and judgment being for the defendant, the petitioner appealed to this court.

DISPOSITION: JUDGMENT AFFIRMED.

COUNSEL: F. S. Key, for the Appellant; and by Chapman, for the Appellee.

JUDGES: The cause was argued before CHASE, Ch. J. BUCHANAN, NICHOLSON, and EARLE, J.

OPINION BY: NICHOLSON

OPINION

[*158] NICHOLSON, J. delivered the opinion of the court. A petition for freedom is comprehended within the general terms of suits or actions in the *second* section of the act of 1804, *ch. 55*, and the county court, in which the suit is instituted, are bound to transmit the proceedings to the judges of any county court within the district, upon the affidavit of either of the parties competent to make [**2] an affidavit, or upon such other proper and competent evidence as may be offered in support of the suggestion that an impartial trial cannot be had in the county in which the petition for freedom is depending.

A negro, petitioning for his freedom, is not competent to make such an affidavit--his slavery or freedom being then *sub judice*, and if a slave, he is excluded by the act of 1717, *ch. 13*.

JUDGMENT AFFIRMED.