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SPRIGG vs. NEGRO MARY.

[NO NUMBER IN ORIGINAL]

COURT OF APPEALS OF MARYLAND

3 H. & J. 491; 1814 Md. LEXIS 9

December, 1814, Decided

PRIOR HISTORY: [**1] APPEAL from Frederick County Court. The present was a petition for freedom. Plea, the general issue.

1. At the trial the petitioner, (now appellee,) gave in evidence, that she was the slave of T. Sprigg, of Frederick county, in this state. That Sprigg, during all his life, was a citizen of this state, and died in the state in July 1810. That Esther, the mother of the petitioner, was born in the state the slave of Sprigg, and was held by him in slavery in the state until 1804, in the fall of which year he suffered her to be carried to Washington county, in the District of Columbia, by one C. Herstons, and that she continued there, employed by and residing with Herstons, for two years, when she was sent back to Frederick county by Herstons to Sprigg, and continued to reside and be employed in Frederick county by Sprigg until his death. That Esther never was hired or otherwise employed in the District of Columbia, until the year 1804. That Mary, the petitioner, was the child of Esther, and was born in the District of Columbia,, while her mother was there as is herein before stated, and returned with her mother, and continued with her ever since in Frederick county. On these facts [**2] the defendant prayed the opinion of the court to the jury, that the petitioner was not entitled to her freedom. The Court [Shrive and Nelson, A. J.] refused to give this opinion; but were of opinion, that if the jury found the said facts to be true, the petitioner was entitled to her freedom. The defendant excepted.

2. The petitioner then produced a mulatto man named R. Shorter as a witness, whose mother was a black woman. To the swearing of this witness, the defendant objected. It was then proved to the court by the evidence of R. Brooke, esquire, (an attorney of the court,) that Shorter was sworn as a witness in Frederick county court, in a cause of Nelly Shorter against Jason Phillips, a white christian man. The record of that cause was also produced, by which it appeared that Shorter was sworn in the said cause on the part of the said N. Shorter. Brooke also proved, that the mother of R. Shorter was a black woman, but that she was free, having been one of the Shorter family who had claimed their freedom, and obtained it, on the ground of their being descended from a white woman. He also proved, that R. Shorter was at liberty and free, and that it was generally reputed that [**3] he was descended from the said Shorter family, and from a free white ancestor on the female side. The petitioner also produced to the court a certificate given by the clerk of Frederick county court to the said R. Shorter, certifying that he had recovered his freedom, in that court, of T. Sprigg. She also produced the docket entries of that court, showing that a petition for freedom was filed by R. Shorter against T. Sprigg, and that on the trial thereof, a verdict that he was free, was given for the petitioner, on which a judgment was entered on the 2d of December 1795. The original petition of the said R. Shorter was then searched for by the clerk of the court, but could not be found, being either lost or mislaid, and no record made of it. The defendant still objected to the

competency, as a witness, of R. Shorter. The defendant was a free white christian man. But the court overruled the objection, and R. Shorter was examined as a witness. The defendant excepted.

3. The defendant then offered in evidence, that in the year 1804, and before the mother of the petitioner was carried to the district of Columbia, T. Sprigg came to the house of C. Herstons in Frederick town, and said [**4] to him, I have given Esther, and her children, to M. Herstons, who was then an infant of about five years of age. That Esther, and her children, were then at the house of the said C. Herstons, the father and natural guardian of the said M. Herstons, and were then left in his possession by the said Sprigg as the property of M. Herstons. That C. Herstons held and possessed the said negro woman, and her children, for M. Herstons, as her guardian, from the time of the said gift, and as her guardian carried the said Esther, and her children, to George town, in the district of Columbia, and continued to hold her there for M. Herstons, for about two years, when he returned her, and her child, the petitioner, to the said Sprigg, in Frederick county in this state, where Esther and her child have continued ever since. That the petitioner was born after the aforesaid gift, and while her mother was so possessed for M. Herstons. That M. Herstons is still an infant under the age of 16 years. The petitioner then prayed the court to direct the jury, that if they were of opinion from the evidence, that the petitioner was born out of this state, and brought into the state subsequent to the passage of

[**5] the act of 1796, ch. 67, that she was entitled to her freedom, even if they found the facts last above stated to be true. This opinion and direction the Court, [Nelson, A. J.] gave to the jury. The defendant excepted; and the verdict and judgment being for the petitioner, he appealed to this court.

DISPOSITION: JUDGMENT REVERSED, AND PROCEDENDO AWARDED.

COUNSEL: Shaaff, for the Appellant, referred to the acts of 1802, ch. 68; 1813. ch. 56; and 1796, ch. 67, s. 7; and De Kergeland vs. Negro Hector, S Harr. & M'Hen. 185.

Magruder, for the Appellee.

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

OPINION

[*493] THE COURT concurred in the opinions of the County Court in the *first* and *second* bills of exceptions, but dissented from that in the *third* bill of exceptions.

JUDGMENT REVERSED, AND PROCEDENDO AWARDED.