



110 of 142 DOCUMENTS

SPRIGG vs. NEGRO PRESLY.

[NO NUMBER IN ORIGINAL]

COURT OF APPEALS OF MARYLAND

3 H. & J. 493; 1814 Md. LEXIS 10

December, 1814, Decided

PRIOR HISTORY: [**1] APPEAL from Frederick County Court from a judgment on a petition for freedom. The general issue was pleaded.

1. At the trial the petitioner, (now appellee,) offered in evidence, that he was the child of a mulatto woman named Esther, who was the slave of T. Sprigg of Frederick county, who during all his life-time was a citizen of this state, where Esther was born his slave, and continued to be held by him in slavery until 1804, when the said Sprigg suffered her and her child, the petitioner, to be carried to the county of Washington, in the district of Columbia, by one C. Herstons, and that she and the petitioner continued there, employed by and residing with Herstons for two years, when they were sent back to Frederick county by Herstons, to the said Sprigg, with whom they continued to reside, and to be employed by him until his death in 1810. That when the petitioner was carried to the district of Columbia he was about three years old. The defendant then prayed the court to direct the jury, that if they found these facts to be true, they were not sufficient to entitle the petitioner to his freedom. The Court, [Shriver and Nelson, A. J.] refused to give this direction; but [**2] were of opinion, and so directed the jury, that if they found the facts to be true, the petitioner was entitled to his freedom. The defendant excepted.

2. The petitioner then offered to read in evidence the deposition of Mrs. E. Hall, (admitted by the parties to be read in evidence so far as it contains matters that can properly be offered in evidence,) who deposed, that she

hired Esther from T. Sprigg in 1810, and that she was with her about one year. That after the death of T. Sprigg she paid the wages due for said hire to C. Herstons, who brought an order from the defendant, (which order was expressed to be for the use of M. Herstons.) That T. Sprigg told the deponent, about the time aforesaid, that he intended Esther for M. Herstons, and on her advising him to hire her to her husband, who was a free man, Sprigg said no, he would not, for that she was good for nothing enough already, and if he hired her to her husband she would make all her family as worthless as herself. He further observed, that he had no thought of hiring her to any body, but he would talk with Mrs. Sprigg, and if on consulting her she thought it advisable, the deponent might have Esther; and that a few [**3] days after the defendant came up and let the deponent know she could have Esther for \$ 24 per year. The defendant then objected to the reading of this deposition. But the court were of opinion that the same was legally admissible in evidence, and permitted it to be read to the jury. The defendant excepted.

3. The defendant then offered in evidence, by the testimony of C. Herstons, a competent witness, that Esther, the mother of the petitioner, was sent by her master T. Sprigg to the house of the witness, a few days after the witness had married the daughter of the said Sprigg in 1797. That Esther continued with the witness until the death of his wife in 1803, before which time the petitioner was born, being now about 13 or 14 years old.

A few days after the death of the wife of the witness, the said Sprigg came to the house of the witness in Frederick town, in Frederick county, and said to him, I have given Esther and her children, (of whom the petitioner was one,) to M. Herstons, she being then an infant about four years old, and was then at the house of the said Sprigg in Frederick county, about 7 miles from Frederick town, and continued with him until 1807, when she went to [**4] reside with her father, the witness, in George town. At the time of this declaration of Sprigg to the witness, Esther and her children, of whom the petitioner was one, were at the house of the witness, the father and guardian by nature of M. Herstons, and were then and there left in his possession by the said Sprigg, and from thenceforth were held by the witness as the property of M. Herstons, and for her. That the witness held and possessed in Frederick town, the said Esther and her children, of whom the petitioner was one, for M. Herstons, and as her natural guardian, from the time of the said declaration of the said Sprigg to him, until he removed to George town, in the district of Columbia, in 1804. When he so removed he carried Esther, and her children, of whom the petitioner was one, with him, and held and possessed them in George town aforesaid, as the natural guardian of M Herstons, and for her, until 1807, when finding Esther troublesome and disagreeable to him, he sent her and her children, of whom the petitioner was one, to the said Sprigg in Frederick county. That Sprigg kept her and her children at his house until 1810, when he hired her out, and the witness in 1811, after [**5] the death of Sprigg, received her hire for the use of M. Herstons. The petitioner then offered in evidence the inventory taken in July 1810, of the personal estate of Sprigg, and which includes the petitioner. The defendant then offered in evidence, by the said Herstons, that he was in New York at the time of the death of the said Sprigg, and when the said inventory was returned. He came to this state before the day appointed for the sale of the personal estate of the said Sprigg, and on making known to the administrator

that the petitioner was so given to M. Herstons, the petitioner was not sold with the property of the deceased. That M. Herstons is the daughter of the witness, and the granddaughter of the said Sprigg. The defendant then prayed the opinion of the court to the jury, that if they found from the evidence that the petitioner was in possession of C. Herstons, and that whilst he was so in possession, T. Sprigg, the master of the petitioner, verbally (as proved by Herstons,) gave the petitioner to M. Herstons, the daughter of C. Herstons, then an infant of four years old, and then left the petitioner in the possession of C. Herstons, for the use of M. Herstons, and that [**6] C. Herstons kept possession of the petitioner for the benefit of M. Herstons, that then the said verbal gift was sufficient to transfer the property in the petitioner to M. Herstons, without any other delivery. This opinion the court refused to give. The defendant excepted; and the verdict and judgment being against him, he appealed to this court, where the cause was argued before CHASE, Ch. J. and BUCHANAN, NICHOLSON, EARLE, and JOHNSON, J. by

DISPOSITION: JUDGMENT REVERSED, AND PROCEDENDO AWARDED.

COUNSEL: Shaaff, for the Appellant; and by

Magruder, for the Appellee.

OPINION

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

JUDGMENT REVERSED, AND PROCEDENDO AWARDED.