



97 of 142 DOCUMENTS

WALLS VS. HEMSLEY, et al.

[NO NUMBER IN ORIGINAL]

COURT OF APPEALS OF MARYLAND, EASTERN SHORE

4 H. & J. 243; 1817 Md. LEXIS 7

June, 1817, Decided

PRIOR HISTORY: [**1] APPEAL from Queen Anne's County Court. This was a petition for freedom, preferred by the appellees against the appellant. The general issue was pleaded.

1. At the trial the petitioners proved by G. Griffin, that some time before the surrender of York Town to the American army, the witness had gone to James River, with one captain J. Sweat; that he was afterwards transferred to the Baltimore Galley, and after the surrender of the British he again went on board captain Sweat's vessel and went into York River. That about two or three weeks after the said surrender, he left York Town; that before he left there he had been on shore at Gosport, where he had seen negro Suck, the mother of Henny, one of the petitioners, selling cakes and beer without control; and that he saw her repeatedly afterwards selling cakes and beer at the shore of the river at York Town, until the day before captain Sweat sailed, when Suck was brought on board his vessel by five or six men at about 9 o'clock at night, and purchased by Sweat. That another black woman was brought on board captain Sweat's vessel by the same persons, who was released and set on shore in consequence of her cries and screams. That [**2] Sweat had informed Suck that he would make her his wife. That Suck had said, during her passage to Maryland, that she was sorry she had come away, as she was free in Virginia, and had a white husband there. On cross examination, the witness was asked if he had heard the story of kidnapping mentioned at any period since he

came to Maryland, or whether at any time since he had mentioned it? To which he answered, he did not recollect to have mentioned it, but had heard it talked of. The witness also proved, that one B. Sweat returned to Maryland with captain Sweat and himself, and that both captain Sweat and B. Sweat are dead. The petitioners then proved by J. Denny, that he had heretofore resided in the immediate neighborhood of W. Sweat, (who is now dead,) the brother of captain Sweat, and with whom negro Suck then lived; that he heard a conversation between Suck and the mother of the witness, in which Suck stated herself to have been free in Virginia, and to have been stolen from thence by captain Sweat. The witness was then asked by the counsel for the petitioners, if it was the reputation of the neighborhood that Suck was a free woman? To this question the defendant, by his counsel, [**3] objected. But the Court, [Earle, Ch. J. and Worrell, A. J.] overruled the objection, and permitted the witness to answer the question, and to testify as to the reputation of the neighborhood in relation to Suck's freedom. The defendant excepted.

2. The petitioners then proved by the above mentioned witnesses, the declarations of captain Sweat as to the freedom of Suck. The defendant then proved, that captain Sweat had sold Suck to J. Gibson, deceased; and then proposed to prove. by the declarations of Gibson, that Suck was a slave. But the petitioners, by their counsel, objected to the testimony; and the court would not permit it to be given. The defendant excepted; and the

verdict and judgment being against him, he appealed to this court.

DISPOSITION: JUDGMENT REVERSED, AND PROCEDENDO AWARDED.

HEADNOTES

The reputation of the neighborhood, that the mother of a petitioner for freedom was a free woman, is not admissible in evidence.

The declarations of a person since dead, but then holding the mother of a petitioner for freedom in slavery that she was a slave, are not admissible in evidence.

COUNSEL: Chambers and Harrison, for the Appellant,

cited 1 Phill. Evid. 174, 177, 178 Peake's Evid. 12; and The King vs. The Inhabitants of Erith, 8 East, 539.

Carmichael, for the Appellee, cited Peake's Evid. 10, 14.

JUDGES: The cause was argued before CHASE, Ch. J. and BUCHANAN, JOHNSON, MARTIN, and DORSEY, J.

OPINION

[*244] THE COURT dissented from the opinion of the county court in the *first* [**4] bill of exceptions, but concurred in that in the *second*.

JUDGMENT REVERSED, AND PROCEDENDO AWARDED.