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NEGRO HANNAH and CHILDREN vs SPARKES.

[NO NUMBER IN ORIGINAL]

COURT OF APPEALS OF MARYLAND, EASTERN SHORE

4 H. & J. 310; 1818 Md. LEXIS 2

June, 1818, Decided

PRIOR HISTORY: [**1] APPEAL from Queen Anne's County Court. This was a petition for freedom, filed by the appellants. At the trial the petitioners read in evidence the will of Charles Barniclow, dated the 26th of December 1811, containing amongst other devises and bequests, the following, viz. "Seventhly. My will is, that my negro woman Hannah, and her child Elijah, shall be free after my death." They then proved that the testator had been in possession of negro Hannah for upwards of 20 years before his death, and that after his death Hannah, and Elijah her son, who was then born, acted as free people, until they were taken possession of by the defendant, (now appellee;) and that the other petitioners, her children, were born whilst Hannah was so at large. The defendant then proved by N. Ireland, a competent witness, that in the year 1786 the said testator, Barniclow, intermarried with his (the witness's) sister Eleonora; that in January 1787 they had a child named Anna, now the wife of the defendant; that Barniclow and his wife lived in the family of J. Ireland, the father of the witness, where he the witness also resided; that in March 1787 the child of Barniclow and wife being in the cradle, and the [**2] witness, one E. Downing, and Barniclow and wife, being in the room, then and usually occupied by Barniclow and wife, his father J. Ireland, and his mother, and one P. Trew, came into the room; that Hannah, then a girl, was rocking the cradle, and that J. Ireland called her up and put his hand on her, and requested the witness, Trew and Downing, to take notice that he then gave Hannah to Anna the child of Barniclow and wife; that he declared at

the time that Hannah, and her posterity, should be the property of Anna, except the first child which she might have, which child, if it lived, should be the property of his daughter A Ireland. That Hannah was then about seven years of age. That immediately after this ceremony, Hannah returned to rocking the cradle. That from that time Hannah continued to sleep in the room of Barniclow and wife, and to attend to the child, which was also done by another girl about the house. That Hannah, when called on, performed services for any of the family, when not engaged in the service of Barniclow and wife, and nursing the child. That Barniclow and wife, together with their daughter Anna, removed from J. Ireland's about August or September of the same [**3] year, and took Hannah with them, who continued in their use and possession for many years thereafter, and that Anna lived with her parents until she was two years of age, and then went to live with her grand mother, Hannah continuing to live with Barniclow and wife. That after the death of Mrs. Barniclow, the grand-mother and child went to live with Barniclow, and continued to reside with him for one year, when they removed, leaving Hannah still in the possession of Barniclow. The defendant then proved by W. Holding, that in the year 1792. J. Ireland was at Barniclow's house on a visit, that the witness and one Allen, were called into the house, and that Ireland then said he had given Hannah to his grand daughter Anna before, and to make the thing firm, as they were young, said, now take notice Holding, if any claim should come against Barniclow, that Hannah is not Barniclow's

property, but the property of his daughter, striking the witness on the back with a whip, and saying, now take notice you remember this in a coming day. The petitioners then proved by Mary Chairs, that about 26 years ago her husband, J. Starl, now dead, called on J. Ireland for payment of a debt, that Ireland [**4] said he had not the money, and did not know that he ever should have it; that Starl told him he had no right to give away his property to Barniclow, when he owed money to his creditors; that Ireland replied he had not done so; that he had let Barniclow have Hannah for a debt he owed him. The defendant then proved by N. Ireland, that Barniclow in 1809 came to his house on his way to a camp meeting, and told him he intended to manumit Hannah and her children, to which the witness replied she is none of yours, and you cannot do it; that Barniclow then flew in a violent passion, and said he would do as he pleased for he had raised the negroes. The witness said, that he the witness never did claim those negroes as his own. The defendant proved by another witness that Barniclow, some years ago, on being asked why he did not sell one of his negroes, to raise money to pay the sheriff who was then present, and who had a demand against him, replied that the negroes were none of his, but belonged to his daughter. He also proved by another witness, that Barniclow, before the marriage of his daughter, said that Hannah was not his property, but the property of his daughter. The petitioners then [**5] proved, that the petitioner Hannah remained in the possession of Barniclow until his death, and that his daughter Anna had not lived with him for 15 years before his death. That she intermarried with P. Potts in 1807, who died in 1811, when she intermarried with the defendant in 1813. That the petitioners were at large acting as free persons from the death of Barniclow until March 1816, when they were taken possession of by the defendant. The parties, in the

examination of the witnesses, did not enter generally into the declarations of J. Ireland and Barniclow, but confined them to the particular periods mentioned by the witnesses. The petitioners then prayed the court to direct the jury, that if they believed N. Ireland's testimony to be true, that the gift as proved by him, was not sufficient in law to transfer the property to the defendant's wife. This direction the Court, [Earle, Ch. J.] refused to give. The petitioners excepted; and the verdict and judgment being against them, they appealed to this court.

DISPOSITION: AFFIRMED.

HEADNOTES

J J, being the owner of a female slave named H, and his daughter and her husband then living in his family, and having an infant daughter named *Anna*, then in the cradle, which *H*, then a girl of seven years of age, was rocking, calling *H* to him, and putting his hand on her, said that he requested the persons then present to take notice that he then gave *H* to *Anna*, and declared that *H*, and her posterity, should be the property of *Anna--Held*, that this parol gift was sufficient in law to transfer the property in *H* to *Anna*.

COUNSEL: Carmichael, for the Appellants, and by Chambers and Harrison, for the Appellee.

JUDGES: The cause was argued before BUCHANAN, JOHNSON, MARTIN and DORSEY, [**6] J.

OPINION

[*312] JUDGMENT AFFIRMED.