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HUGHES vs. NEGRO MILLY, et. al.

[NO NUMBER IN ORIGINAL]

COURT OF APPEALS OF MARYLAND

5 H. & J. 310; 1821 Md. LEXIS 18

June Term, 1821, Decided

PRIOR HISTORY: [**1] APPEAL from Harford county court, on a petition for freedom filed by the appellees. At the trial the petitioners offered evidence, that Margaret Coale being possessed of a negro girl called Prina, aged fifteen years, made, on the 23d of May 1776, her last will and testament in writing, wherein among other bequests she bequeathed as follows, viz. 1st. "I give and bequeath unto my son, Philip Coale, my negro girl named Prina, until she arrives to the age of twenty-one years, being at this time about fifteen years of age, and I do order him, that immediately after my decease he manumit her, and her posterity, so that their freedom may be secured to them at the age of twenty-one years." 3d. "I give and bequeath unto my son, Samuel Coale, all the remainder part of my estate after my son Philip, and my daughter Sarah, hath received their legacies as above," &c. That Margaret Coale, died in the year 1786, and that Samuel Coale, her son, one of the legatees mentioned in the said will, took out letters of administration, with the will annexed, on the estate of the said Margaret Coale, his mother. And on the 3d of March 1819, executed a deed of manumission to the petitioners, as follows, viz. [**2] "Whereas my mother, Margaret Coale, in her last will and testament, commanded my brother, Philip Coale, to secure by manumission the freedom of her slave Prina, and her offspring, which command the said Philip neglected to execute; and whereas by a subsequent clause of the same will, (through the said Philip's omitting to execute the said manumission,) the said Prina, and her offspring, became

my property, being a part of the residue of my mother's estate bequeathed to me by the said will; therefore, in conformity to my mother's wish towards her slaves, as well as to my own feelings of justice towards members of the human family, I hereby manumit, and for ever set free, Milly, (daughter of Prina,) and her children, Washington and Hannah; Hannah (daughter of Prina,) and her children Henry, Joe and Susan; Susan, (daughter of Prina,) and her daughter Betsey, and Fanny daughter of Sally, and grand-daughter of Prina." &c. That the petitioners Milly, Hannah and Susan, stated in the petition to be mothers, are the daughters of Prina, and were born after the death of Margaret Coale, and that the petitioners, Hannah and Washington, are the children of Milly, and that the petitioners, Henry, [**3] Joseph and Susan, are the children of Hannah, the daughter of Prina, and that the petitioner Betty, is the child of Susan, daughter of Prina, and that the petitioner Fanny is the daughter of Sarah, who was the daughter of Prina, which said Sarah was born after the death of Margaret Coale. The petitioners then moved the court to direct the jury, that if they believed the foregoing testimony, they must find a verdict for the petitioners; which opinion and direction the court, [Dorsey, Ch. J.] gave to the jury. The defendant excepted; and the verdict and judgment being for the petitioners, the defendant appealed to this court.

DISPOSITION: Affirmed.

HEADNOTES

M. by her will in 1776, bequeathed to P a negro girl, named A, (the ancestor of the petitioners, then 15 years of age.) until she should arrive to the age of 21, and that he should manumit her immediately after the death of M, so that her freedom might be secured to her at the age of 21. M devised the residue of her estate to S, and died in 1786 S administered on her estate, and in 1819, by deed, he manumitted the petitioners, the descendants of A, born after the death of the testatrix, stating in his deed that P had neglected to do so--*Held* that they were entitled to freedom

Under the act of 1772 ch 1, manumission by last will, was effectual to give freedom to slaves, if not made during the last sickness of the testator

COUNSEL: Taney, for the appellant, contended--1. That under the bequest to Philip Coale the petitioner's ancestor was bequeathed absolutely to him, and no right to her could pass to Samuel Coale under the bequest to him. He cited *Goodtitle vs. Otway*, 2 Wils 6. 2. That under the act of 1752, ch. 1, no will could be made to give freedom to slaves.

Raymond and R. Johnson, for the appellees, stated that the claim of the petitioners to freedom was on two grounds. 1. Under the will of Mrs. Coale; and 2. Under the deed of manumission executed by Samuel Coale. [**4] They contended, 1. That an administrator might manumit the slaves of the intestate. 2. That when the testatrix died, the time had elapsed when Philip could take under the bequest to him, that it was a lapsed bequest, and the slaves passed to Samuel under the bequest to him. 3. That manumission by will was not prohibited by the act of 1752, ch. 1, unless made during the last sickness of the testatrix. 4. That as Philip could not take the slaves, they passed to Samuel, who in due form manumitted them. That the bequest to Philip was in trust, which trust devolved upon Samuel to execute.

JUDGES: The cause was argued before BUCHANAN, EARLE, JOHNSON, and MARTIN, J.

OPINION

[*312] THE COURT OF APPEALS *affirmed* the judgment of the county court.