

Williams Vs. Ash

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Court : US Supreme Court

Decided On : 1843

Appeal No. : 42 U.S. 1

Appellant : Williams

Respondent : Ash

Judgement :

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Williams v. Ash

2 U.S. (1 How.) 1

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF COLUMBIA

SYLLABUS

Mrs. T. Greenfield, of Prince George's County, Maryland, bequeathed to her nephew, Gerard T. Greenfield, certain slaves, with a proviso in her will

"that he shall not carry them out of the State of Maryland, or sell them to anyone, in either of which events, I will and desire the said negroes shall be free for life."

After the decease of the testator, in 1839, G. T. Greenfield sold one of the slaves, and a petition for freedom was thereupon filed in the Circuit Court of Washington County. The legatee continued to reside in Prince George's County, for two years after the decease of the testatrix, during which time the appellee was sold by him, and he afterwards removed to the State of Tennessee, where he had resided before the death of the testatrix. The circuit court instructed the jury, that by the sale, the petitioner became free. *Held*, that the instructions of the circuit court were correct.

A bequest of freedom to a slave, under the laws of Maryland, stands on the same principles with a bequest over to a third person. A bequest of freedom to a slave is a specific legacy.

The bequest of the testatrix of the slave to her nephew, under the restrictions imposed by the will, was not a restraint or alienation inconsistent with the right to the property bequeathed to the legatee. It was a conditional limitation of freedom, and took effect the moment the negro was sold.

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In the Circuit Court of the County of Washington, James Ash, a negro, presented a petition, stating that he was entitled to his freedom and that he is held in custody and confined in the private jail of William H. Williams. He prayed a subpoena to James H. Williams, and that he may have a fair trial on his petition.

Mr. Williams appeared to the subpoena and denied the title of the petitioner to his freedom.

Issue was joined on the pleadings, and the jury found a verdict for the petitioner, and that he was free and discharged from the service of Williams.

To the opinion of the court on the trial a bill of exceptions was tendered by the counsel for Mr. Williams. The bill of exceptions stated that on the trial the defendant produced, and gave in evidence to the jury, the last will and testament of Maria Ann T. Greenfield, and it was admitted that the said testatrix died at the County of Prince George's, in the State of Maryland, soon after the date of said will, in the year 1824; that upon her death, Gerard T. Greenfield, the executor named in the will, duly proved the same in the orphans' court of said county, where the slaves and property left by the testatrix were, and took letters testamentary as such executor.

The petitioner is one of the slaves named and demised in that clause of the will, which is in the words following, to-wit:

"I also give and bequeath to my nephew, Gerard T. Greenfield, all my negro slaves, namely Ben, Mason James Ash, Henry, George, Lewis, Rebecca, Kitty, Sophia, Mary Elizabeth, Nathaniel and Maria; also, Tony, Billy, Betty, and Anne, provided he shall not carry them out of the State of Maryland, or sell them to anyone, in either of which events I will and desire the said negroes to be free for life."

The petitioner was a slave born, and the property of the testatrix at the time of her death; that the said G. T. Greenfield, upon the death of said testatrix, took possession of the petitioner and the other slaves devised to him, and held the same as his slaves so devised to him from that time till 18 December last, when, before the institution of this suit, he sold the petitioner to the defendant; that G. T. Greenfield at the time of the date of said will and ever since resided in the State of Tennessee,

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with an interval of between two and three years, that he sojourned after the death of the testatrix, in Prince George's County for the purpose of settling his business. Thereupon the court was of opinion, and instructed the jury, that by the fact of such sale of the petitioner, the estate or property in the petitioner so devised to

said G. T. Greenfield ceased and determined, and the petitioner thereupon became entitled to freedom as claimed in his said petition, to which opinion and instruction of the court the defendant by his counsel excepted.

Judgment was rendered for the plaintiff, and the defendant prosecuted this writ of error.

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

It appeared on the trial that the petitioner was the property of Mary Ann T. Greenfield, of Prince George's County, in the State of Maryland, who died in 1824, having first duly made her

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last will and testament whereby, among other things, she bequeathed the petitioner, with sundry other slaves, to her nephew, Gerard T. Greenfield, with a proviso in the following words:

"Provided he shall not carry them out of the State of Maryland or sell them to anyone, in either of which events I will and devise the said negroes to be free for life,"

and she appointed her said nephew her executor.

Upon the death of the testatrix, Gerard T. Greenfield took possession of the petitioner and the other slaves bequeathed to him and held them from that time until December, 1839, when he sold the petitioner to the defendant, and the petition for freedom was filed shortly after the sale. At the time of the making of the will and ever since, Gerard T. Greenfield resided in the State of Tennessee, with an interval of between two and three years during which he sojourned in Prince George's County after the death of the testatrix for the purpose of settling his business.

Upon this evidence, the circuit court instructed the jury that by the fact of such sale of the petitioner, the estate or property in the petitioner so bequeathed to Greenfield ceased and determined, and he therefore became entitled to his freedom.

Under this direction of the court, the verdict was in favor of the petitioner.

By the laws of Maryland as they stood at the date of this will and at the time of the death of the testatrix, any person might, by deed or last will and testament declare his slave to be free after any given period of service, or at any particular age, or upon the performance of any condition, or on the event of any contingency.

This right is recognized in the Act of Assembly of 1809, ch. 171.

The contingency upon which the petitioner was to become free must, by the terms of the will, have happened in the lifetime of Gerard T. Greenfield, and if he had died without selling him or conveying him out of the State of Maryland, the petitioner would have continued a slave for life. The event, therefore, upon which he was to become free was not too remote.

It is said, however, that this was a restraint on alienation inconsistent with the right of property bequeathed by the will. But if, instead of giving freedom to the slave, he had been bequeathed to some third person, in the event of his being sold or

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removed out of the estate by the first taker, it is evident upon common law principles that the limitation over would have been good. 2 East 481. Now a bequest of freedom to the slave stands upon the same principles with a bequest over to a third person. It is said by the chancellor of Maryland, 2 Bland's Chancery 314, that the bequest of freedom to a slave is a specific legacy, and undoubtedly this is its true legal character.

And if a bequest over to a third person would not be regarded as an unlawful restraint upon alienation, there can be no reason for applying a different rule where the bequest over is freedom to the slave. In the one case, the restriction on

alienation ceases as soon as the devise over takes effect, and in the other the right of property ceases upon the happening of the contingency, and there is nothing to alien.

We think that the bequest in the will was a conditional limitation of freedom to the petitioner, and that it took effect the moment he was sold. The judgment of the circuit court must therefore be

Affirmed.

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