

Case No. 4,754.

FIDELIO v. DERMOTT.

[1 Cranch, C. C. 405.]¹

Circuit Court, District of Columbia.

June Term, 1807.

SLAVERY—MANUMISSION BY WILL—CONDITIONAL SALE—FREEDOM AFTER TERM OF YEARS.

1. The sale of a slave upon the express condition that he should be free at the end of six years, is not a manumission under the Maryland act of 1796 (chapter 67). A manumission by will is not in prejudice of creditors if the real and personal estate are sufficient without the value of the manumitted slave, to pay all the debts of the testator.
2. A manumission by will after a term of years is not revoked by a codicil, directing all the negroes to be sold, if at the time of making the codicil their term of service had not expired.

Petition, for freedom. The petitioner proved by Lund Washington that he was sold by him to James R. Dermott, in April, 1800, upon the express condition that he should be free at the expiration of the term of six years from the sale; and the price paid (£80) was much less than if the sale had been for life.

F. S. Key, prayed the court to instruct the jury that such evidence is not evidence of a manumission, and is not of itself, without a writing, sufficient to establish the freedom of the petitioner. See Laws Md. 1796, c. 67, § 29.

Mr. Caldwell, for petitioner, contended that the act of assembly was not negative of any other mode of manumission. The words are, “may manumit.” The law was intended to prevent old and infirm negroes becoming a burden to the public.

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THE COURT (FITZHUGH, Circuit Judge, absent,) gave the direction as prayed.

CRANCH, Chief Judge, wishing the question of law might be reargued on a motion for a new trial in case the verdict should be against the petitioner,—

The petitioner's counsel then gave in evidence the will of James R. Dermott, by which he bequeathed the petitioner his freedom after a service of four years.

To repel this, Mr. Key, for defendant, produced the inventory and settlement of the personal estate in the orphans' court, by which it appeared that the defendant had paid eight or nine hundred dollars more than the inventory and debts collected, to show that the manumission by will was in prejudice of creditors.

Mr. Caldwell and Mr. Law, for petitioner, objected, that it was only evidence as to part of the estate, namely, the personal.

THE COURT admitted the inventory and settlement to be given in evidence, but said it was not conclusive; it only threw the burden on the other side, to show that there was estate enough, besides the value of the petitioner, to pay all the debts.

THE COURT also, after argument, instructed the jury, that if they should be satisfied, by the evidence, that the real and personal estate of the intestate, exclusive of the value of the petitioner, was more than sufficient to pay his debts, the bequest of his freedom was good. See Act Assem. 1796, c. 67, § 13.

Mr. Key, for defendant, then contended that a codicil, by which the testator ordered his "negroes," (generally), to be sold, revoked the bequest of freedom.

But THE COURT said clearly it does not, because, at the time of making the codicil, there were three years unexpired of the time of his service; which might be sold, and so make the codicil consistent with the will, and give operation to both.

Verdict for the petitioner.

¹ [Reported by Hon. William Cranch, Chief Judge.]