

Case No. 5,415.

GILBERT v. WARD.

[4 Cranch, C. C. 171.]<sup>1</sup>

Circuit Court, District of Columbia.

May Term, 1831.

SLAVERY—PETITION FOR FREEDOM.

On a petition for freedom under a will, the burden of proof is on the respondent to show that the petitioner was more than forty-five years of age, or that the manumission was in prejudice of creditors.

Petition for freedom [by Emanuel Gilbert, a negro], under the will of Peter Dejean.

Mr. Tabbs, for defendant [Horatio Ward], objected, at the trial, that there was no evidence that the petitioner was “under the age of forty-five years,” when his title to freedom accrued. If he was over forty-five, he is not entitled to his freedom. It is a necessary part of his title, and he must prove it See Act Md. 1796, c. 67, § 13, by which it is enacted, “that no manumission, hereafter to be made by will, shall be effectual to give freedom to any slave or slaves, if the same shall be in prejudice of creditors, nor unless the said slave or slaves shall be under the age of forty-five years, and able to work and gain a sufficient livelihood at the time the freedom given shall commence.”

Mr. Wallach, contra. In the case of creditors, this court has decided that the burden of proof is on them to show that the circumstances of the estate of the deceased are such as that the manumission would be to their prejudice.

Mr. Tabbs, in reply. The cases are different. Here the age is part of the plaintiff's title.

THE COURT (THRUSTON, Circuit Judge, absent) was of opinion, that under the 13th section of the act of Maryland of 1796, c. 67, the manumission is prima facie valid; and that the defect of age, which by the proviso is to render the manumission ineffectual, must be shown by the party who claims the petitioner as a slave.

Verdict for the petitioner.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]