

THOMAS v. MACKALL.

[5 Cranch, C. C. 536.]¹

Circuit Court, District of Columbia.

March Term, 1839.

WITNESS—COMPETENCY—INTEREST—SLAVES.

Neither the complainant nor his wife can be examined as a witness against the defendant in a bill for injunction to restrain the defendant from removing from the District of Columbia the plaintiff's slave who had been sold by the plaintiff to the defendant for a term of years only, at the expiration of which term the slave is to be free.

Bill in equity to restrain the defendant [Brooke Mackall] from removing the plaintiffs female slave from the District of Columbia; the slave having been sold by the plaintiff [James Thomas] to the defendant for a term of years only, after which she was to be free, although riot yet manumitted, and having two or three years yet to serve the defendant; the complainant having the reversionary right to the slave in himself, for the purpose of manumitting her.

Mr. Bradley, for complainant, asked leave to take the deposition of the complainant and his wife, to be read at the hearing, contending that the complainant was merely acting as the prochein ami of the slave.

R. J. Brent, contra, objected that the complainant was interested, having the reversionary right to the services of the slave, and also liable for costs and damages upon the injunction bond, in case the decree should be against him, and cited *Medley v. Jones*, 5 Munf. 98.

Mr. Bradley, in reply, contended that a prochein ami is a competent witness, although liable for costs, or new security for costs may be given, and he will be called to swear against his interest, for he will prove

that the slave will be entitled to her freedom at the expiration of the present term of service. He cited Wheeler, Law Slav. 184; Lupton v. Lupton, 2 Johns. Ch. 626; Starkie, Ev. pt. 4, p. 785, note; Goss v. Tracy, 1 P. Wms. 287; Mulvany v. Dillon, 1 Ball & B. 413; Dixon v. Parker, 2 Ves. Sr. 222; Murray v. Shadwell, 2 Ves. & B. 401; Lee v. Atkinson, 2 Cox, 413; Rogerson v. Whittington, 1 Swanst. 39.

But THE COURT (THRUSTON, Circuit Judge, absent) refused to permit the complainant or his wife to be examined as a witness.

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

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