

Scott Vs. Negro Ben

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Court : US Supreme Court

Decided On : 1810

Appeal No. : 10 U.S. 3

Appellant : Scott

Respondent : Negro Ben

Judgement :

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ERROR TO THE CIRCUIT COURT FOR THE

DISTRICT OF COLUMBIA, SITTING AT WASHINGTON

SYLLABUS

The right to freedom under the act of Maryland which prohibits the bringing of slaves into that state is not acquired by the neglect of the master to prove to the satisfaction of the naval officer or collector of the tax that such slave had resided

three years in the United States, although such proof be required by the act.

Error to the judgment of the Circuit Court for the District of Columbia in the County of Washington upon the petition for freedom filed by Negro Ben, against Sabret Scott, who claimed the petitioner as his slave.

The ground upon which the petitioner claimed his freedom was that he had been imported into the State of Maryland contrary to the act of assembly of that state, passed in the year 1783, entitled, "An act to prohibit the bringing of slaves into this state," by which it is enacted,

"That it shall not be lawful, after the passing this act, to import or bring into this state, by land or water, any negro, mulatto, or other slave for sale or to reside within this state, and any person brought into this state as a slave contrary to this act, if a slave before, shall thereupon immediately cease to be a slave and shall be free, provided that this act shall not prohibit any person, being a citizen of someone of the United States, coming into this state with a *bona fide* intention of settling therein, and who shall actually reside within this state for one year at least, to be computed from

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and next succeeding his coming into the state, to import or bring in any slave or slaves which before belonged to such person, and which slave or slaves had been an inhabitant of someone of the United States for the space of three whole years next preceding such importation, and the residence of such slave in some one of the United States, for three years as aforesaid antecedent to his coming into this state, shall be fully proved to the satisfaction of the naval officer or collector of the tax, by the oath of the owner, or someone or more credible witness or witnesses."

Upon the trial, the defendant below took two bills of exceptions.

The first was to the opinion of the court that it was incumbent on the defendant (Scott), in order to bring himself within the proviso contained in the first section of the act of 1783, to show to the jury that it has been fully proved to the satisfaction

of the naval officer, or collector of the tax, by the oath of the owner, or some one or more credible witness or witnesses, that the petitioner was a resident of some one of the United States for three years antecedent to his coming into the State of Maryland, and that it was not sufficient for the defendant to prove, on the trial, to the satisfaction of the jury, that the defendant, being a citizen of someone of the United States, and coming into the State of Maryland with a *bona fide* intention of settling therein, and who actually resided within the said state for one year at least, computed from and next succeeding his coming into the state, imported the petitioner, who then belonged to the defendant, and that the petitioner had been an inhabitant of someone of the United States for the space of three whole years next preceding such importation.

The second bill of exceptions was to the refusal of the court to admit as evidence two certificates made during the trial, the one by the collector of the customs and naval office of the United States,

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for the district and port of Georgetown in the District of Columbia, and the other by a collector of taxes, appointed by the levy court for the County of Washington, in that district; the purport of which certificates was that Scott had, on that day, (16 June, 1807), by his own oath, proved, to the satisfaction of each of those officers respectively, that Ben

"was a resident of the State of Virginia, one of the United States, three whole years next preceding the time when the said mulatto Ben was brought into the State of Maryland."

The cause was argued by C. Lee and Jones, for the plaintiff in error, and by Swann and F. S. Key, for the defendant.

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court as follows:

In this case, three opinions were given by the circuit court, to each of which the defendant in that court excepted. These opinions were, in substance

1. That the master of a slave imported into the State of Maryland while the act, passed in the year 1783, entitled "An act to prohibit the bringing slaves into this state," was in force, could not be admitted to prove the fact that such slave had resided three years, previous to his importation into Maryland, in some one of the United States unless he could show that this fact had been proved to the satisfaction of the naval officer, or collector of the tax.

2. That a certificate made by the naval officer and collector of the port of Georgetown, dated on 16 June, 1807, certifying that this fact was proved to his satisfaction on that day, did not satisfy the law.

3. That a similar certificate given by the collector

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of the tax for the County of Washington did not satisfy the law.

The correctness of these opinions is to be tested by comparing them with the act under which the plaintiff in the court below claimed his freedom.

The enacting clause of that law prohibits the importation of slaves into the State of Maryland, and gives freedom to such as shall be imported contrary to that act. A proviso excepts from the operation of the enacting clause those slaves which, having resided for three years within some one of the United States, and being the property of the importer, should be imported into the State of Maryland by a person intending to become a resident thereof, and who should actually reside therein for the space of twelve months thereafter. The act then adds

"and the residence of such slave in some one of the United States for three years as aforesaid, antecedent to his coming into this state, shall be fully proved to the satisfaction of the naval officer or collector of the tax by the oath of the owner or some one or more credible witness or witnesses."

By the plaintiff in error it is contended that this part of the law is directory; that it prescribes a duty to the importer of a slave within the description of the proviso, but does not make his title to that slave dependent on the performance of this

duty.

By the defendant it is contended that this clause forms a part of the proviso, and that the fact of previous residence within some one of the United States can be proved by no other testimony, if that which is here prescribed be wanting.

The act, in its expression, is certainly ambiguous, and the one construction or the other may be admitted, without great violence to the words which are employed.

The great object of the proviso certainly was to

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permit persons, actually migrating into the State of Maryland to bring with them property of this description which had been within the United States a sufficient time to exclude the danger of its being imported into America for the particular purpose. The great object of the provision was that the fact itself should accord with this intention. The manner in which that fact should be proved was a very subordinate consideration. Certainly the provisions of the law ought not to be so construed as to defect its object, unless the language be such as absolutely to require this construction.

It would be a singular and a very extraordinary provision that a naval officer, or the collector of a tax, should be made the sole judge of the right of one individual to liberty and of another to property. It would be equally extraordinary that the oath of one of the parties, probably in the absence of the other, should be conclusive on such a question. It would be not less strange that the manner in which this *quasi*-judge should execute his duty should not be prescribed, and that not even the attempt should be made to preserve any evidence of his judgment.

These considerations appear to the Court to have great weight, and the language of the law ought to be very positive to deprive them of their influence.

Upon an attentive consideration of that language, the majority of the Court is of opinion that the property of the master is not lost by omitting to make the proof which was directed before the naval officer or the collector of the tax, and that the

fact on which his right really depends may be proved, notwithstanding this omission.

The words of this part of the section do not appear to the Court to be connected, either in their sense or in their mode of expression, with the proviso. It is a distinct and a substantive regulation. In legislation, the conjunction "and" is very often used when a provision is made in no degree dependent

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on that which precedes it, and in this case no terms are employed which indicate the intention of the legislature prescribing this particular duty to make the right to the property dependent on the performance of that duty.

It is then the opinion of the majority of the Court that the fact of the residence of the plaintiff below within the United States was open for examination, even had his master omitted entirely to make the proof of that residence before the naval officer or collector of the tax, and consequently that the circuit court erred in refusing to admit testimony respecting that fact.

The opinion of the Court on this point renders a decision on the other exceptions unnecessary.