

Case No. 1,253.

BELL v. HOGAN.

{2 Cranch, C. C. 21.}¹

Circuit Court, District of Columbia.

June Term, 1811.

SLAVERY—PRESUMPTION AS TO FREEDOM.

1. If a colored man was born a slave, his being permitted to go at large without restraint, and to act as a free man, is no evidence of his being free.
2. If the plaintiff's freedom was not so notorious that the defendant might be presumed to know it, the defendant is not liable to damages for taking up the plaintiff as a runaway, he being a colored man and, prima facie, a slave.

At law, Trespass [by Hogan against Bell for] assault, battery and false imprisonment.

The case was, that the defendant took up the plaintiff as a runaway, and carried him before a justice of the peace. [The court instructed the jury that the defendant was not liable.]

THE COURT, (CRANCH, Chief Judge, absent,) on the prayer of the defendant, instructed the jury, that if they believed from the evidence that the plaintiff was born a slave, his being permitted to go at large without restraint, and to act as a free man, was no evidence of his being free. And that if the plaintiff had recently come into this county, and was not known to the defendant to be free, and his freedom was not so notorious that the defendant might be presumed to know it, then the defendant is not liable in this action, if he used no unnecessary violence, and took up the plaintiff with a bona fide intention of ascertaining whether he was a slave or not.

FITZHUGH, Circuit Judge, in a note to this case, says: "The ground of those instructions was, that the plaintiff's color was prima facie evidence of his being a slave, and justified his being taken up under a suspicion of his being a runaway. In any question respecting a negro's freedom, it is incumbent upon the negro to show that he is free; and this must be by producing the record of his emancipation. If he had been proved to have been born a slave, he is presumed to be always a slave, and the burden of proving his emancipation devolves on him."

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