

Case No. 5,251.

GARRETSON v. LINGAN.

[2 Cranch, C. C. 236.]¹

Circuit Court, District of Columbia.

April Term, 1821.

SLAVERY—REMOVAL—LAPSE OF TIME.

Length of time does not raise a presumption against a slave, that his owner took the oath required by law.

GARRETSON v. LINGAN.

Petition for freedom. The petitioner [Jack Garretson, a negro] was carried, by his owner, from Maryland to Virginia, in the year 1784, and kept there several years, and then brought back to Maryland. By the law of Virginia of 17th of December, 1792 (page 186), the slave was entitled to his freedom, unless the owner took a certain oath within sixty days after his removal to Virginia.

Mr. Key and Mr. Caldwell, for defendant, moved the court to instruct the jury, that after such a lapse of time they have a right to presume that the oath was duly taken agreeably to law. The law did not require that there should be any record of the taking of the oath. It is a fact which may be proved by parol. Judge White in Virginia has decided in favor of the presumption.

Mr. Taney and Mr. Jones, contra, stated that there is a contrary decision in 5 Munf. 542, and that Judge Dade had decided in the same way. The presumption could arise only from the acquiescence of the petitioner; but that presumption is rebutted by the state of slavery in which he has been held, which disabled him from asserting his rights.

THE COURT (CRANCH, Chief Judge, doubting) refused to give the instruction.

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