

ROSE v. KENNEDY.

[1 Cranch, C. C. 29.]¹

Circuit Court, District of Columbia. July Term, 1801.

SLAVERY—BRINGING INTO
STATE—OATH—CERTIFICATE OF JUSTICE OF
PEACE.

The certificate of a justice of the peace of an oath taken by the owner of a slave may be read to the jury as evidence in itself that the oath required by the statute was taken, although the oath so certified varies from that prescribed.

Action of assault and battery to try the plaintiff's right to freedom. She was brought into Virginia in the year 1792, and she claimed to be free because her owner had not taken the oath prescribed by the act of Virginia of December 17, 1792, § 4 (Rev. Code, p. 196; Ed. 1803, p. 187).

The defendant [James Kennedy] produced a certificate, by T. Hooe, a justice of the peace, of an oath taken by the owner on the 28th of December, 1792, but varying in some respects from the oath prescribed.

The plaintiff objected to the paper being read to the jury, to prove that the owner took the oath prescribed by law, on account of the variance; and prayed the court to instruct the jury that the paper, in itself, is not evidence of that fact.

But THE COURT refused to give that instruction, and directed it to be read to the jury, and instructed them that they might judge from that, and the testimony produced, whether the oath was taken or not.

CRANCH, Circuit Judge, contra. The paper is not in itself evidence that the oath, as prescribed, was taken. For when a magistrate undertakes to certify how he has administered an oath, the jury cannot, without

proof, presume any thing not certified. They cannot say that he administered the oath in any other form than he has certified.

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

This volume of American Law was transcribed for use
on the Internet

through a contribution from [Google](#). 