

Court of appeals June Term 1817

George Henderson } Appeal

v. Deports

Stegis Tom

June 19. Pres<sup>d</sup> Chase, Ch. J.  
Buchanan, Eadie, Johnson &  
Martin, J. - Dorsey, J. withd.

Hell for app<sup>t</sup>. (being require<sup>d</sup> by the C. to confine himself to the question of law) -

City of Cranch l. as a cap in point, decided on our act of 1783 Ch 23, §1.

The cap before <sup>the C.</sup> turns upon the omission to prove to the collector the residence required by the act of 1783. - The Sup. C. say the fact may be proved at any time.

Minder for appellee: Question whether this C. can satisfie the cap - The fact of residence proved - It is a fact - and the act of 1796 Ch says there shall be no appeal in caps like this except from matters of law - Now fact & law blended & this court cannot act upon the law distinct from the fact.

contends that the decision of the Sup. C. applic<sup>ble</sup> to the Leg<sup>is</sup>lature -

The act of 1783 directs that the residence shall be fully proved & a prerequisite. goods imported unless something stipulated to be done if not done goods forfeited

Where the act directs a prerequisite it must be performed.  
The decision of the Sup. Ct. under an edict it was the policy  
of the law - whereas the Legsl. intended to throw difficulties  
in the way of importation of slaves - That the policy of the  
law ~~which~~ has been mistaken by the Sup. Ct. & they  
have given a wrong construction to the law. -

This a case wholly depending upon proof -

Kell in reply - no controversy about fact in the case  
all the facts admitted & the court asked, if the facts being  
true, what the law thereon - It is Law arising upon  
facts - same as if the jury had found the facts  
& call on the court to say what the law upon  
those facts are -

The court sh<sup>d</sup>? have decided that from the  
evid. it was taken for granted & to be presumed the  
fact was done w<sup>th</sup> c<sup>t</sup>? not be proved. From length  
of time & the collector being dead -

Chap, Ch. J. does it appear by the statement how long the put<sup>o</sup>  
resided in N. York - whether the put<sup>o</sup> had resided 3y<sup>s</sup> before  
Kell, It does not appear - but it appears the put<sup>o</sup> born in N. Y.  
and not material that he sh<sup>d</sup>? have resided 3y<sup>s</sup> before -

can it be that the law prohibits an importation unless  
there had been 3y<sup>s</sup> resident of an<sup>o</sup> state - Judge affirmed 27 June