Dred Scott v. Sandford (1857)

Dred Scott was a Missouri slave whose master, Dr. John Emerson, an army surgeon, brought him to Fort Armstrong in Illinois and then to Fort Snelling, in the Wisconsin Territory, which later became Minnesota. Illinois was a free state and Fort Snelling was located in federal territory that had been made free by the Missouri Compromise. Thus, under both Illinois law and federal law Scott had a strong claim to freedom. Furthering his claim was the fact that while at Fort Snelling he had been married in a civil ceremony. Since slaves could not legally marry, it was reasonable to argue that by allowing him to participate in the ceremony, his master had acquiesced in his freedom.

After Dr. Emerson died, Dred Scott sued his widow for his freedom, and in 1850, a jury of twelve white men in St. Louis declared him free. This decision was based on more than two decades of Missouri precedents, as well as similar cases in Louisiana, Kentucky, Mississippi, as well as *Somerset v. Stewart* (G.B., 1772) (Document 18) and *Commonwealth v. Aver* (Mass., 1836) (Document 77). However in 1852, the Missouri Supreme Court rejected this history, and its own precedents, declaring, “Times are not now as they were when the former decisions on this subject were made. Since then not only individuals but States have been possessed with a dark and fell spirit in relation to slavery, whose gratification is sought in the pursuit of measures, whose inevitable consequences must be the overthrow and destruction of our government.”

Two years later, Scott renewed his quest for freedom in federal court. Scott’s new master was a citizen of New York, and Scott sued in “diversity,” arguing that as a “citizen” of Missouri he was entitled to sue a citizen of another state in federal court because Article III of the Constitution gave the federal courts jurisdiction over cases “between citizens of different states.” The U.S. District Judge in Missouri agreed that if Scott was free, then he could sue in federal court. However, after hearing all the arguments, the judge told the jury that Missouri law should prevail in this case, and thus Scott remained a slave. He now took his case to the U.S. Supreme Court, which twice heard arguments.

In his decision, Chief Justice Roger B. Taney ruled on three separate issues. First, he reopened the question of whether a free black could sue in federal court under diversity jurisdiction. In striking language, which many Northerners, white and black, found offensive, Taney ruled that blacks could never be citizens of the United States. Second, Taney presented a tortured and thoroughly unconvincing analysis of the constitutional power of Congress to “make all needful rules and regulations respecting the territory or other property belonging to the United States.” Here he concluded that this clause only applied to the territory the United States owned in 1787. Thus he argued that Congress had only minimal power to regulate the western territories. Finally, he considered the constitutionality of the ban on slavery in the Missouri Compromise. In the first use of the theory of substantive due process by the Supreme Court, he held that the Fifth Amendment to the Constitution prohibited the national government from freeing slaves in federal territories.

Dred Scott’s case is a landmark in constitutional history as an example of the Supreme Court trying to impose a judicial solution on a political problem. Some Americans, particularly Southerners and Northern Democrats who were indifferent to slavery, praised the decision as a salutary effort to end the politically explosive debate over slavery in the territories. Taney doubtless thought the decision consistent with the trend of the era. In the Compromise of 1850, Congress had allowed slavery in most of the new territories acquired from Mexico. In the Kansas–Nebraska Act of 1854, Congress had repealed the ban on slavery in most of the remaining territory governed by the Missouri Compromise. And in the 1856 election, the Republicans had run against the Kansas–Nebraska Act, and had been defeated. Thus, Taney may have been caught off guard by the firestorm of hostility toward the decision.

But a firestorm there was. Across the North, people denounced the decision and Chief Justice Taney, and both drew enormous criticism to the Court. Horace Greeley, editor of the *New York Tribune*, spoke for millions in the North when he called Taney’s opinion, “wicked,” “atrocious,” “abominable,” and a “collusion of false statements and shallow sophistries.” Even Northerners who were opposed to racial equality endorsed Greeley’s comment that Taney’s statements about blacks were “inhuman dicta.” The Northern response to the decision quickly made the Republican party the most powerful political institution in that section of the nation, and it set the stage for the election of Lincoln as president in 1860. It was the first time all nine justices issued an opinion in a case. Two justices dissented, but the other six joined Taney in what a later chief justice, Charles Evans Hughes, described as a great “self-inflicted wound.”


Chief Justice Taney delivered the opinion of the Court:

The question is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and
embraced the negro African race, at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put it in the power of a single State to make him a citizen of the United States, and endue him with the full rights of citizenship in every other State without their consent? Does the constitution of the United States act upon him whenever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately clothe him with all the privileges of a citizen in every other State, and in its own courts?

The Court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the constitution of the United States, and, consequently, was not entitled to sue in its courts.

It is true, every person, and every class and description of persons, who were at the time of the adoption of the constitution recognized as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges guaranteed to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political body, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each citizen rights and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to rights of person and rights of property; it made him a citizen of the United States.

In the opinion of the Court, the legislation and histories of the times, and the language used in the declaration of independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

It is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration; for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the declaration of independence would have been utterly and flagrantly inconsistent with the principles they asserted; and instead of the sympathy of mankind, to which they so confidently appealed, they would have deserved and received universal reprobation.

But there are two clauses in the constitution which point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the government then formed.

One of these clauses reserves to each of the thirteen States the right to import slaves until the year 1808, if it thinks proper. And by the other provision the States pledge themselves to each other to maintain the right of property of the master, by delivering up to him any slave who may have escaped from his service, and be found within their respective territories.

The only two provisions which point to them and include them, treat them as prop-
ert and make it the duty of the government to protect it; no other power, in relation
to this race, is to be found in the constitution; and as it is a government of special, de-
gnated, powers, no authority beyond these two provisions can be constitutionally exer-
cised. The government of the United States had no right to interfere for any other pur-
pose but that of protecting the rights of the owner, leaving it altogether with the several
States to deal with this race, whether emancipated or not, as each State may think jus-
tice, humanity, and the interests and safety of society, require. The States evidently
intended to reserve this power exclusively to themselves.

Upon a full and careful consideration of the subject, the court is of the opinion, that,
upon the facts stated..., Dred Scott was not a citizen of Missouri within the meaning
of the constitution of the United States, and not entitled to such to sue in its courts; and,
consequently, that the circuit court had no jurisdiction of the case, and that the judgment
on the plea in abatement is erroneous.

We proceed... to inquire whether the facts relied on by the plaintiff entitled him to
his freedom.

The act of Congress, upon which the plaintiff relies, declares that slavery and invol-
untary servitude, except as a punishment for crime, shall be forever prohibited in all that
part of the territory ceded by France, under the name of Louisiana, which lies north of
thirty-six degrees thirty minutes north latitude and not included within the limits of Mis-
souri. And the difficulty which meets us at the threshold of this part of the inquiry is
whether Congress was authorized to pass this law under any of the powers granted to it
by the Constitution; for, if the authority is not given by that instrument, it is the duty
of this Court to declare it void and inoperative and incapable of conferring freedom upon
anyone who is held as a slave under the laws of any one of the states.

The counsel for the plaintiff has laid much stress upon that article in the Constitu-
tion which confers on Congress the power ‘to dispose of and make all needful rules
and regulations respecting the territory or other property belonging to the United States’; but,
in the judgment of the Court, that provision has no bearing on the present contro-
versy, and the power there given, whatever it may be, is confined, and was intended to
be confined, to the territory which at that time belonged to, or was claimed by, the United
States and was within their boundaries as settled by the treaty with Great Britain and can
have no influence upon a territory afterward acquired from a foreign government. It was
a special provision for a known and particular territory, and to meet a present emergency,
and nothing more.

We do not mean, however, to question the power of Congress in this respect. The
power to expand the territory of the United States by the admission of new states is
plainly given; and in the construction of this power by all the departments of the gov-
ernment, it has been held to authorize the acquisition of territory, not fit for admission at
the time, but to be admitted as soon as its population and situation would entitle it to
admission. . .

. . . It may be safely assumed that citizens of the United States who migrate to a ter-
ritory belonging to the people of the United States cannot be ruled as mere colonists,
dependent upon the will of the general government, and to be governed by any laws it
may think proper to impose. The principle upon which our governments rest, and upon
which alone they continue to exist, is the union of states, sovereign and independent
within their own limits in their internal and domestic concerns, and bound together as
one people by a general government, possessing certain enumerated and restricted pow-
ers, delegated to it by the people of the several states, and exercising supreme authority
within the scope of the powers granted to it, throughout the dominion of the United
States. A power, therefore, in the general government to obtain and hold colonies and
dependent territories, over which they might legislate without restriction, would be
inconsistent with its own existence in its present form. Whatever it acquires, it acquires
for the benefit of the people of the several states who created it. It is their trustee acting
for them and charged with the duty of promoting the interests of the whole people of
the Union in the exercise of the powers specifically granted.

But the power of Congress over the person or property of a citizen can never be a
mere discretionary power under our Constitution and form of government. The powers
of the government and the rights and privileges of the citizen are regulated and plainly
defined by the Constitution itself. And, when the territory becomes a part of the United
States, the federal government enters into possession in the character impressed upon it
by those who created it. It enters upon it with its powers over the citizen strictly defined
and limited by the Constitution, from which it derives its own existence, and by virtue
of which alone it continues to exist and act as a government and sovereignty. It has
no power of any kind beyond it; and it cannot, when it enters a territory of the United
States, put off its character and assume discretionary or despotic powers which the Con-
stitution has denied to it. It cannot create for itself a new character separated from the
people of the United States and the duties it owes them under the provisions of the Con-
stitution. The territory, being a part of the United States, the government and the citizen
both enter it under the authority of the Constitution, with their respective rights defined
and marked out; and the federal government can exercise no power over his person or
property, beyond what that instrument confers, nor lawfully deny any right which it has
reserved.

These powers, and others, in relation to rights of person, which it is not necessary
here to enumerate, are, in express and positive terms, denied to the general government;
and the rights of private property have been guarded with equal care. Thus the rights
of property are united with the rights of person and placed on the same ground by the Fifth
Amendment to the Constitution, which provides that no person shall be deprived of life,
liberty, and property without due process of law. And an act of Congress which deprives
a citizen of the United States of his liberty or property, without due process of law,
merely because he came himself or brought his property into a particular territory of the
United States, and who had committed no offense against the laws, could hardly be digni-
fied with the name of due process of law.

It seems, however, to be supposed that there is a difference between property in a
slave and other property and that different rules may be applied to it in expounding the
Constitution of the United States. And the laws and usages of nations, and the writings
of eminent jurists upon the relation of master and slave and their mutual rights and
duties, and the powers which governments may exercise over it, have been dwelt upon
in the argument.

But, in considering the question before us, it must be borne in mind that there is no
law of nations standing between the people of the United States and their government
and interfering with their relation to each other. The powers of the government and the
rights of the citizen under it are positive and practical regulations plainly written down.
The people of the United States have delegated to it certain enumerated powers and forbidden it to exercise others. It has no power over the person or property of a citizen but what the citizens of the United States have granted. And no laws or usages of other nations, or reasoning of statesmen or jurists upon the relations of master and slave, can enlarge the powers of the government or take from the citizens the rights they have reserved. And if the Constitution recognizes the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction or deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against the encroachments of the government.

Now, as we have already said in an earlier part of this opinion, upon a different point, the right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of the United States, in every state that might desire it, for twenty years. And the government in express terms is pledged to protect it in all future time if the slave escapes from his owner. That is done in plain words—too plain to be misunderstood. And no word can be found in the Constitution which gives Congress a greater power over slave property or which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights.

Upon these considerations it is the opinion of the Court that the act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned is not warranted by the Constitution and is therefore void; and that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory; even if they had been carried there by the owner with the intention of becoming a permanent resident.

Mr. Justice Curtis dissenting:

To determine whether any free persons, descended from Africans held in slavery, were citizens of the United States... at the time of the adoption of the Constitution of the United States, it is only necessary to know whether any such persons were citizens of either of the States under the Confederation, at the time of the adoption of the Constitution.

Of this there can be no doubt. At the time of the ratification of the Articles of Confederation, all free native-born inhabitants of the States of New Hampshire, Massachusetts, New York, New Jersey, and North Carolina, though descended from African slaves, were not only citizens of those States, but of such as had the other necessary qualifications possessed the franchise of electors, on equal terms with other citizens.

That Constitution was ordained and established by the people of the United States, through the action, in each State, of those persons who were qualified by its laws to act thereon, in behalf of themselves and all other citizens of that State. In some of the States, as we have seen, colored persons were among those qualified by law to act on this subject. These colored persons were not only included in the body of "the people of the United States," by whom the Constitution was ordained and established, but in at least five of the States they had the power to act, and doubtless did act, by their suffrages, upon the question of its adoption. It would be strange, if we were to find in that instrument anything which deprived of their citizenship any part of the people of the United States who were among those by whom it was established.

I can find nothing in the Constitution which, proprio vigore [by its own force], deprives of their citizenship any class of persons who were citizens of the United States at the time of its adoption, or who should be native-born citizens of any State after its