

Dred Scott case: the Supreme Court decision

There are two leading questions presented by the record:

- 1) Had the Circuit Court of the United States jurisdiction to hear and determine the case between these parties? And
- 2) If it had jurisdiction, is the judgment it has given erroneous or not?

The plaintiff [Dred Scott]... was, with his wife and children, held as slaves by the defendant [Sanford], in the State of Missouri; and he brought this action in the Circuit Court of the United States for [Missouri], to assert the title of himself and his family to freedom.

The declaration is . . . that he and the defendant are citizens of different States; that... he is a citizen of Missouri, and the defendant a citizen of New York.

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 brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution....

The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who ... form the sovereignty, and who hold the power and conduct the Government through their representatives.... The question before us is, whether the class of persons described in the plea in abatement [people of African ancestry] compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.

The court thinks the affirmative of these propositions cannot be maintained. And if it cannot, [Dred Scott] 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 becomes necessary, therefore, to determine who were citizens of the several States when the Constitution was adopted....

... [T]he 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 difficult at this day to realize the state of public opinion in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted....

They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery. . . . He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion.

And in no nation was this opinion more firmly fixed or more uniformly acted upon than by the English Government and English people. They not only seized them on the coast of Africa, and sold them or held them in slavery for their own use; but they took them as ordinary articles of merchandise to every country where they could make a profit on them, and were far more extensively engaged in this commerce than any other nation in the world.

The opinion thus entertained and acted upon in England was naturally impressed upon the colonies they founded on this side of the Atlantic. And, accordingly, a negro of the African race was regarded by them as an article of property, and held, and bought and sold as such, in every one of the thirteen colonies which united in the Declaration of Independence, and afterwards formed the Constitution of the United States. The slaves were more or less numerous in the different colonies, as slave labor was found more or

less profitable. But no one seems to have doubted the correctness of the prevailing opinion of the time.

The legislation of the different colonies furnishes positive and indisputable proof of this fact....

The province of Maryland, in 1717, passed a law declaring "that if any free negro or mulatto intermarry with any white woman, or if any white man shall intermarry with any negro or mulatto woman, such negro or mulatto shall become a slave during life, excepting mulattoes born of white women, who, for such intermarriage, shall only become servants for seven years. . . ."

The other colonial law to which we refer was passed by Massachusetts in 1705. It is entitled "An act for the better preventing of a spurious and mixed issue," &c.; and it provides, that "if any negro or mulatto shall presume to smite or strike any person of the English or other Christian nation, such negro or mulatto shall be severely whipped.....

... [T]hese laws ... show, too plainly to be misunderstood, the degraded condition of this unhappy race. They were still in force when the Revolution began, and are a faithful index to the state of feeling towards the class of persons of whom they speak, and of the position they occupied throughout the thirteen colonies, in the eyes and thoughts of the men who framed the Declaration of Independence and established the State Constitutions and Governments. They show that a perpetual and impassable barrier was intended to be erected between the white race and the one which they had reduced to slavery, and governed as subjects with absolute and despotic power, and which they then looked upon as so far below them in the scale of created beings, that intermarriages between white persons and negroes or mulattoes were regarded as unnatural and immoral, and punished as crimes, not only in the parties, but in the person who joined them in marriage. And no distinction in this respect was made between the free negro or mulatto and the slave, but this stigma, of the deepest degradation, was fixed upon the whole race.

We refer to these historical facts for the purpose of showing the fixed opinions concerning that race, upon which the statesmen of that day spoke and acted ... in order to determine whether the general terms used in the Constitution of the United States, as to the rights of man and the rights of the people, was intended to include them, or to give to them or their posterity the benefit of any of its provisions.

The language of the Declaration of Independence is equally Conclusive: ...

We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among them is life, liberty, and the pursuit of happiness; that to secure these rights, Governments are instituted, deriving their just powers from the consent of the governed.

The general words above quoted would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood. But 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 appeared, they would have deserved and received universal rebuke and reprobation.

Yet the men who framed this declaration were great men -- high in literary acquirements -- high in their sense of honor, and incapable of asserting principles inconsistent with those on which they were acting. They perfectly understood the meaning of the language they used, and how it would be understood by others; and they knew that it would not in any part of the civilized world be supposed to embrace the negro race, which, by common consent, had been excluded from civilized Governments and the family of nations, and doomed to slavery. They spoke and acted according to the then established doctrines and principles, and in the ordinary language of the day, no one misunderstood them. The unhappy black race were separate from white by indelible marks, and laws long before established, and were never thought of or spoken of except as property, and when the claims of the owner or the profit of the trader were supposed to need protection.

This state of public opinion had undergone no change when the Constitution was adopted, as is equally evident from its provisions and language....

[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.... 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.... And these two provisions show, conclusively, that neither the description of persons therein referred to, nor their descendants, were embraced in any of the other provisions of the Constitution; for certainly these two clauses were not intended to confer on them or their posterity the blessings of liberty, or any of the personal rights so carefully provided for the citizen.

No one of that race had ever migrated to the United States voluntarily; all of them had been brought here as articles of merchandise. The number that had been emancipated at that time were but few in comparison with those held in slavery; and they were identified in the public mind with the race to which they belonged, and regarded as a part of the slave population rather than the free. It is obvious that they were not even in the minds of the framers of the Constitution when they were conferring special rights and privileges upon the citizens of a State in every other part of the Union.

It would be impossible to enumerate ... the various laws, marking the condition of this race, which were passed from time to time after the Revolution, and before and since the adoption of the Constitution of the United States. In addition to those already referred to, it is sufficient to say, that Chancellor Kent, whose accuracy and research no one will question, states in ... his Commentaries ... that in no part of the country except Maine, did the African race, in point of fact, participate equally with the whites in the exercise of civil and political rights.

The legislation of the States therefore shows, in a manner not to be mistaken, the inferior and subject condition of that race at the time the Constitution was adopted, and long afterwards, . . . and it is hardly consistent with the respect due to these States, to suppose that they regarded at that time, as fellow-citizens and members of the sovereignty, a class of beings whom they had thus stigmatized; ... and upon whom they had impressed such deep and enduring marks of inferiority and degradation; or, that when they met in convention to form the Constitution, they looked upon them as a portion of their constituents, or designed to include them in the provisions so carefully inserted for the security and protection of the liberties and rights of their citizens. It cannot be supposed that they intended to secure to them rights, and privileges, and rank, in the new political body throughout the Union, which every one of them denied within the limits of its own dominion. More especially, it cannot be believed that the large slaveholding States regarded them as included in the word citizens, or would have consented to a Constitution which might compel them to receive them in that character from another State. For if they were so received, and entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police regulations which they considered to be necessary for their own safety. It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went. And all of this would be done in the face of the subject race of the same color, both free and slaves, and inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State.

It is impossible, it would seem, to believe that the great men of the slaveholding States, who took so large a share in framing the Constitution of the United States, and exercised so much influence in procuring its adoption, could have been so forgetful or regardless of their own safety and the safety of those who trusted and confided in them....

To all this mass of proof we have still to add, that Congress has repeatedly legislated

upon the same construction of the Constitution that we have given....

The first of these acts is the naturalization law ... [of] March 26, 1790, [which] confines the right of becoming citizens "to aliens being free white persons." . . .

Another of the early laws of which we have spoken, is the first militia law, which was passed in 1792, at the first session of the second Congress. The language of this law is equally plain and significant.... It directs that every "free able-bodied white male citizen" shall be enrolled in the militia. The word white is evidently used to exclude the African race, and the word citizen to exclude unnaturalized foreigners; the latter forming no part of the sovereignty, owing it no allegiance, and therefore under no obligation to defend it. The African race, however, born in the country, did owe allegiance to the Government, whether they were slave or free; but it is repudiated, and rejected from the duties and obligations of citizenship in marked language.

The third act to which we have alluded is even still more decisive; it was passed as late as 1813, (2 Stat., 809) and it provides: "That from and after the termination of the war in which the United States are now engaged with Great Britain, it shall not be lawful to employ, on board of any public or private vessels of the United States, any person or persons except citizens of the United States, *or* persons of color, natives of the United States."

Here the line of distinction is drawn in express words. Persons of color, in the judgment of Congress, were not included in the word *citizens*, and they are described as another and different class of persons, and authorized to be employed, if born in the United States....

The conduct of the Executive Department of the Government has been in perfect harmony upon this subject with this course of legislation. The question was brought officially before the late William Wirt, when he was the Attorney General of the United States, in 1821, and he decided that the words "citizens of the United States" were used in the acts of Congress in the same sense as in the Constitution; and that free persons of color were not citizens, within the meaning of the Constitution and laws; and this opinion has been confirmed by that of the late Attorney General, Caleb Cushing, in a recent case, and acted upon by the Secretary of State, who refused to grant passports to them as "citizens of the United States...."

No one, we presume, supposes that any change in public opinion or feeling, in relation to this unfortunate race, in the civilized nations of Europe or in this country, should induce the court to give to the words of the Constitution a more liberal construction in their favor than they were intended to bear when the instrument was framed and adopted. Such an argument would be altogether inadmissible in any tribunal called on to interpret it. If any of its provisions are deemed unjust, there is a mode prescribed in the instrument itself by which it may be amended; but while it remains unaltered, it must be construed now as it was understood at the time of its adoption. It is not only the same in words, but the same in meaning, and delegates the same powers to the Government, and reserves and secures the same rights and privileges to the citizen; and as long as it continues to exist in its present form, it speaks not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of its framers, and was voted on and adopted by the people of the United States. Any other rule of construction would abrogate the judicial character of this court, and make it the mere reflex of the popular opinion or passion of the day. This court was not created by the Constitution for such purposes. Higher and graver trusts have been confided to it, and it must not falter in the path of duty....

And upon a full and careful consideration of the subject, the court is of opinion, that.... Dred Scott was not a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as 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....

... [I]t appears affirmatively on the record that he is not a citizen, and consequently his suit against Sandford was not a suit between citizens of different States, and the court had no authority to pass any judgment between the parties. The suit ought, in this view of it, to have been dismissed by the Circuit Court, and its judgment in favor of Sandford is erroneous, and must be reversed.

It is true that the result either way, by dismissal or by a judgment for the defendant, makes very little, if any, difference in a pecuniary or personal point of view to either party. But the fact that the result would be very nearly the same to the parties in either

form of judgment, would not justify this court in sanctioning an error in the judgment which is patent on the record, and which, if sanctioned, might be drawn into precedent, and lead to serious mischief and injustice in some future suit.

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

But there is another point in the case which depends on State power and State law. And it is contended, on the part of the plaintiff, that he is made free by being taken to Rock Island, in the State of Illinois, independently of his residence in the territory of the United States; and being so made free, he was not again reduced to a state of slavery by being brought back to Missouri.

Our notice of this part of the case will be very brief; for the principle on which it depends was decided in this court, upon much consideration, in the case of *Strader et al. v. Graham* [1850]. In that case, the slave had been taken from Kentucky to Ohio, with the consent of the owner, and afterwards brought back to Kentucky. And this court held that their status or condition, as free or slave, depended upon the laws of Kentucky, when they were brought back into that State, and not of Ohio; and that this court had no jurisdiction to revise the judgment of a State court upon its own laws. This was the point directly before the court, and the decision that this court had no jurisdiction turned upon it, as will be seen by the report of the case.

So in this case. As Scott was a slave when taken into the State of Illinois by his owner, and was there held as such, and brought back in that character, his status, as free or slave, depended on the laws of Missouri, and not of Illinois....

Upon the whole, therefore, it is the judgment of this court, that it appears by the record before us that the plaintiff in error is not a citizen of Missouri, in the sense in which that word is used in the Constitution; and that the Circuit Court of the United States, for that reason, had no jurisdiction in the case, and could give no judgment in it. Its judgment for the defendant must, consequently, be reversed, and a mandate issued, directing the suit to be dismissed for want of jurisdiction.