SCOTT v. SANDFORD
SUPREME COURT OF THE UNITED STATES
60 U.S. 393
December, 1856
[7 – 2]

All nine Justices write an opinion in this case. I believe that actually reading this case instead of just knowing about this case is important. The terminology is difficult to stomach for all who have come after the colonial era.

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[Much of the Court's first several pages can be easily summarized. This area between the asterisks is that summary.]

In the year 1834, Dred Scott was a negro slave belonging to Dr. Emerson, a surgeon in the U.S. Army. In that year, Emerson took Dred from Missouri to the military post at Rock Island, Illinois, and held him there as a slave until the month of April or May, 1836, when Emerson took Dred to the military post at Fort Snelling in the Territory known as Upper Louisiana, acquired by the United States from France, and situate north of the latitude of thirty-six degrees thirty minutes north, and north of the State of Missouri. Dr. Emerson held Dred in slavery at said Fort Snelling until 1838.

In the year 1835, Harriet was the negro slave of Major Taliaferro, also in the U.S. Army. In that year, Taliaferro took Harriet to Fort Snelling and kept her there as a slave until 1836, then sold and delivered her as a slave to Dr. Emerson. Dr. Emerson held Harriet in slavery at Fort Snelling until the year 1838.

In the year 1836, Dred and Harriet (at Fort Snelling and with the consent of Dr. Emerson, who then claimed to be their master and owner) married. Eliza and Lizzie are the fruit of that marriage. Eliza is about fourteen years old, and was born on board the steamboat Gipsey, north of the north line of the State of Missouri on the Mississippi River. Lizzie is about seven years old, and was born in the State of Missouri, at the military post called Jefferson Barracks.

In the year 1838, Dr. Emerson removed Dred, Harriet and Eliza from Fort Snelling to Missouri where they have ever since resided.

A prior lawsuit [*Scott v. Emerson*] was brought by Dred Scott in the Circuit Court of St. Louis county [i.e., **State Court**] against Dr. Emerson whereby Scott, a slave, sought and won his freedom, but the Supreme Court of Missouri reversed that decision and sent it back to the Circuit Court where it awaits the outcome of this case [*Scott v. Sandford*], the second lawsuit brought by Scott, but this time in **Federal Court**. After *Scott v. Emerson* was filed and before this case (*Scott v. Sandford*) was filed, Emerson sold the Scotts to Sandford. **This case** alleges that Sandford assaulted him, his wife, Harriet, and their children, Eliza and Lizzie. Sandford alleged that the Court had no jurisdiction because Dred Scott is not a citizen of the State of Missouri because he is a negro of African descent; his ancestors were of pure African blood, and were brought into this country and sold as negro slaves. Sandford also pled not guilty to the alleged assaults and that since Dred and his family were negro slaves and his lawful property and he only had gently laid his hands upon them, he had a right to do so.

In **this** case, a jury found that Dred and his family were all the lawful property of Sandford and, therefore, a judgment was entered in favor of Sandford.

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OPINION: Mr. Chief Justice TANEY…The plaintiff…[and his wife and children were held as slaves by the defendant, in the State of Missouri]; and he brought **this action** in the Circuit Court of the **United States** for that district, to assert the title of himself and his family to freedom.

The…[lawsuit alleges what is] necessary to give the court jurisdiction; **that Scott and Sandford are citizens of different States; that is, that Scott is a citizen of Missouri, and Sandford a citizen of New York.**

This is called "diversity" jurisdiction. If all parties on each side are from different states, the plaintiff can get jurisdiction in federal court. So, if Dred is a "citizen of Missouri" and Sandford is a citizen of New York, the federal court has jurisdiction to hear the case. Stay tuned!

[Sandford argued that Dred]…was not a citizen of the State of Missouri…[W]hen a plaintiff… claims a right to sue in a Circuit Court of the United States, under that provision of the Constitution which gives jurisdiction in controversies between **citizens of different States**, he must distinctly [allege] that [the parties] are citizens of different States; and he cannot maintain his suit without showing that fact in the pleadings…

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, guarantied 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 situation of this population was altogether unlike that of the Indian race…[T]hey may, without doubt,…be naturalized by the authority of Congress, and become citizens of a State, and of the United States; and if an individual should leave his nation or tribe, and take up his abode among the white population, he would be entitled to all the rights and privileges which would belong to an emigrant from any other foreign people…

The words 'people of the United States' and 'citizens'…both describe the political body who, according to our republican institutions, 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 [by Sandford] compose a portion of this people and are constituent members of this sovereignty? We think they are not…[and were not] intended to be included under the word 'citizens' in the Constitution, and cannot therefore claim [any] 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.

It is not the province of the court to decide upon the justice or injustice…of these laws…[T]hat question belonged to the political or law-making power; to those who formed the sovereignty and framed the Constitution. The duty of the court is to interpret the instrument they have framed…and to administer it as we find it, according to its true intent…when it was adopted…

Is that a correct analysis of the Court's duty? Should they merely interpret the Constitution and rule, accordingly, letting the cards fall where they may? Or, if they believe such an interpretation is "bad" for the Country, should they disregard the Constitution or interpret it so liberally so as to effectively disregard it and, therefore, do "good" for the Country? As you proceed, consider whether or not the Court made the "right" decision?

It is very clear…that **no State can…[make a person a citizen of the United States by making him a citizen of its own State.] And for the same reason it cannot introduce any person, or description of persons, who were not intended to be embraced in this new political family, which the Constitution brought into existence, but were intended to be excluded from it.**

The question then arises, whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a State should be entitled, 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?

[We believe] the affirmative of these propositions cannot be maintained. And if it cannot, [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 guarantied 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 family, 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.**

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 [the Declaration of Independence.]

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. But the public history of every European nation displays it in a manner too plain to be mistaken.

[Slaves] 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 for his benefit. 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… [M]en 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…

[The **English Government** was far more extensively engaged in the commerce of slavery **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…**[N]o one seems to have doubted the correctness of the prevailing opinion of the time.

[The Court takes a look at the laws of two colonies (one still a large slaveholding State and the other the first State in which slavery ceased to exist) for proof of the foregoing **attitude** about slavery at that time, as follows:]

…The province of **Maryland**, in 1717, passed a law declaring 'that if any free negro… intermarry with any white woman, or if any white man shall intermarry with any negro…, such negro…shall become a slave during life…And any white man or white woman who shall intermarry…with any negro…, such white man or white woman shall become servants during the term of seven years…'

The other colonial law to which we refer was passed by **Massachusetts** in 1705…[I]t provides that 'if any negro…shall presume to smite or strike any person of the English or other Christian nation, such negro…shall be severely whipped…'

These laws show too plainly to be misunderstood the degraded condition of this unhappy 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. It is necessary to do this, 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…**Declaration of Independence**…say[s]: '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 appealed, they would have deserved and received universal rebuke and reprobation.

Yet the men who framed this declaration…spoke and acted according to the then established doctrines...The unhappy black race… were never thought of or spoken of except as property… This state of public opinion had undergone no change when the **Constitution** was adopted, as is equally evident from its provisions and language.

The brief preamble…declares that it is formed by the people of the United States; that is to say, by those who were members of the different political communities in the several States; and its great object is declared to be to secure the blessings of liberty to themselves and their posterity. It speaks in general terms of the people of the United States, and of citizens of the several States, when it is providing for the exercise of the powers granted or the privileges secured to the citizen. **It does not define what description of persons are intended to be included under these terms**, or who shall be regarded as a citizen and one of the people. It uses them as terms so well understood, that no further description or definition was necessary.

But there are <u>two clauses in the Constitution</u> 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 every ELLian said, "That would be Article I, §9, Clause 1, of course."

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.

Article IV, §2, Clause 3.

…[Clearly,] these two clauses were not intended to confer on [slaves] or their posterity the blessings of liberty, or any of the personal rights so carefully provided for the citizen…

It is very true, that in that portion of the Union where the labor of the negro race was found to be unsuited to the climate and unprofitable to the master,…<u>few slaves were held at the time of the Declaration of Independence</u>; and when the Constitution was adopted, [slavery had ceased in one State]…and measures had been taken for its gradual abolition in several others. <u>But this change had not been produced by any change of opinion in relation to this race</u>...for some of the States, where it had ceased or nearly ceased to exist, were actively engaged in the slave trade, procuring cargoes on the coast of Africa, and transporting them for sale to those parts of the Union where their labor was found to be profitable, and suited to the climate and productions. And this traffic was openly carried on, and fortunes accumulated by it, without reproach from the people of the States where they resided. **<u>And it can hardly be supposed that in the States where [slavery was then countenanced in its worst form]…[that] the people could have regarded those who were emancipated as entitled to equal rights with themselves</u>.**

And we may here again refer, in support of this proposition, to the plain and unequivocal language of the <u>laws of the several States</u>, some passed after the Declaration of Independence and before the Constitution was adopted, and some since the Government went into operation…

[Of course, the present slaveholding States have statute books that are full of provisions that continue to treat negroes as an inferior class.]

And as long ago as 1822, the Court of Appeals of Kentucky decided that free negroes…were not citizens within the meaning of the Constitution of the United States…

The Court then provides several examples of the "attitude" of the times set in the States' laws and cases.

[In *Crandall v. State,* it was held that **persons of the African race**] **were not citizens of a State, within the meaning of the word citizen in the Constitution of the United States, and were not therefore entitled to the privileges and immunities of citizens in other States…**[I]n 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, **throughout the thirteen States by which that instrument was framed**; 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; whom, as we are bound, out of respect to the State sovereignties, to assume they had deemed it just and necessary thus to stigmatize, and upon whom they had impressed such deep and enduring marks of inferiority and degradation…**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,…[i]t 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…; 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…

Besides, this want of foresight and care would have been utterly inconsistent with the caution displayed in providing for the admission of new members into this political family. For, when they gave to the citizens of each State the privileges and immunities of citizens in the several States, they at the same time **took from the several States the power of naturalization**, and confined that power exclusively to the Federal Government. No State was willing to permit another State to determine who should or should not be admitted as one of its citizens…The right of naturalization was therefore…surrendered by the States, and confided to the Federal Government. And this power granted to Congress to establish a uniform rule of naturalization is …confined to persons born in a foreign country…It is not a power to raise to the rank of a citizen any one born in the United States, who, from birth or parentage, by the laws of the country, belongs to an inferior and subordinate class…

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. Three laws, two of which were passed almost immediately after the Government went into operation, will be abundantly sufficient to show this…

The first of these acts is the naturalization law, which was passed at the second session of the first Congress, March 26, 1790, and **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…It directs that every **'free able-bodied white male citizen'** shall be enrolled in the militia…

The third act to which we have alluded is even still more decisive…[and] provides: 'That from and after the termination of the war [with Great Britain], it shall not be lawful to employ, on board of any public or private vessels of the United States, any…persons **except citizens of the United States, or persons of color, natives of the United States**…

[These] laws of the States show that this class of persons was governed by special legislation directed expressly to them, and always connected with provisions for the government of slaves, and not with those for the government of free white citizens. And after such a uniform course of legislation as we have stated, by the colonies, by the States, and by Congress, running through a period of more than a century, **it would seem that to call persons thus marked and stigmatized, 'citizens' of the United States, 'fellow-citizens,' a constituent part of the sovereignty, would be an abuse of terms, and not calculated to exalt the character of an American citizen in the eyes of other nations…**

But it is said that a person may be a citizen, and entitled to that character, although he does not possess all the rights which may belong to other citizens; as, for example, the right to vote, or to hold particular offices; and that yet, when he goes into another State, he is entitled to be recognized there as a citizen, although the State may measure his rights by the rights which it allows to persons of a like character or class resident in the State, and refuse to him the full rights of citizenship.

This argument overlooks the language of the provision in the Constitution of which we are speaking.

Undoubtedly, a person may be a citizen, that is, a member of the community who form the sovereignty, although he exercises no share of the political power, and is incapacitated from holding particular offices. **Women and minors**, who form a part of the political family, **cannot vote**; and when a property qualification is required to vote or hold a particular office, those who have not the necessary qualification cannot vote or hold the office, **yet they are citizens**…

The case of *Legrand v. Darnall* has been referred to for the purpose of showing that this court has decided that the descendant of a slave may sue as a citizen in a court of the United States; but the case itself shows that the question did not arise and could not have arisen in the case…

The lengthy discussion of the *Legrand* case is omitted as not central to the main issues.

Besides, we are by no means prepared to say that there are not many cases, civil as well as criminal, in which a Circuit Court of the United States may exercise jurisdiction, although one of the African race is a party; that broad question is not before the court. The question with which we are now dealing is, whether a person of the African race **can be a citizen of the United States**, and become thereby entitled to a special privilege, by virtue of his title to that character, and which, under the Constitution, no one but a citizen can claim. It is manifest that the [*Legrand*] case…has no bearing on that question…

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…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…

Any other rule of construction would…[make] this court…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. [In summary,] what the construction was at that time, we think can hardly admit of doubt…And if anything in relation to the construction of the Constitution can be regarded as settled, it is that which we now give to the word **'citizen'** and the word **'people**.'

The Court will now proceed to discuss the evidence it professes will show that Dred is not a citizen. It will discuss the Declaration of Independence, the Articles of Confederation, the Constitution, legislation of the States, acts of Congress and Executive action.

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…**

This means that Dred did not have the legal capacity to bring a lawsuit in Federal Court and Sandford could not be successful with any complaint against Dred in Federal Court. So, according to the Majority, the case should have been dismissed from the get go.

[Dred] admits that he and his wife were born slaves, but endeavors to make out his title to freedom and citizenship by showing that they were taken by their owner to certain places…

where slavery could not by law exist, and that **they thereby became free**, and upon their return to Missouri became **citizens** of that State.

Now, if the removal of which he speaks did not give them their freedom, then by his own admission he is still a slave; and whatever opinions may be entertained in favor of the citizenship of a free person of the African race, no one supposes that a slave is a citizen of the State or of the United States. If, therefore, the acts done by his owner did not make them free persons, he is still a slave, and certainly incapable of suing in the character of a citizen.

…[I]n this case it does appear that the plaintiff was born a slave; and if the facts upon which he relies have not made him free, then it 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…**We proceed…to inquire whether the facts relied on by the plaintiff entitled him to his freedom…**

In considering this part of the controversy, two questions arise: Was Dred…[and] his family free in Missouri by reason of the stay in the **territory** of the United States…? If they were not, is Dred himself free by reason of his removal to Rock Island in the State of Illinois…?

We proceed to examine the first question.

At his point, how about a summary of the facts?

1834: Dred was a negro slave belonging to Dr. Emerson. Emerson took Dred **from Missouri to Rock Island, Illinois**, and held him there as a slave until the Spring of 1836.

1836: In the Spring of 1836, Emerson took Dred **from Illinois to Fort Snelling in the Louisiana Territory**, situate north of the latitude of thirty-six degrees thirty minutes north, and north of the State of Missouri.

Dr. Emerson held Dred in slavery at said Fort Snelling until 1838.

Harriet was sold as a slave to Emerson at Fort Snelling and married Dred in 1836.

Eliza was born north of Missouri; Lizzie was born in Missouri.

1838: Emerson brought Dred, Harriet and Eliza **from Fort Snelling to Missouri** where they have ever since resided. Lizzie was not born until the family was moved back to Missouri.

Emerson sold the Scotts to Sandford before the second lawsuit was filed.

The act of Congress, upon which the plaintiff relies, declares that slavery and involuntary servitude, except as a punishment for crime, shall be forever prohibited in…[the Louisiana Territory not included within the limits of Missouri]…[Was Congress] authorized to pass

this law under any of the powers granted to it by the Constitution[?] [I]f…[not], it is the duty of this court to declare it void and…incapable of conferring freedom upon any one who is held as a slave under the [laws] of any one of the States.

The counsel for Dred has laid much stress upon that article in the Constitution 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;'[1] but, in the judgment of the court, that provision has no bearing on the present controversy, and the power there given…was intended to be confined **to the territory which at that time belonged to, or was claimed by, the United States…**and can have no influence upon a territory afterwards acquired from a foreign Government…

[The Court spends several pages detailing the history of this "territorial authority" provision of Article IV in conjunction with the ordinance purporting to make slavery illegal in the Louisiana Territory and concludes that the Article IV reference to "territory" limits the power of Congress over territories in existence **at the time of ratification**. Therefore, Congress did not have constitutional authority to make slavery illegal in the Louisiana Territory because it was **purchased after ratification** of the Constitution.]

But the case of the *American and Ocean Insurance Companies v. Canter* has been quoted as establishing a different construction of this clause of the Constitution…

The Court then spends several pages distinguishing the foregoing case from this case, concluding that it does not stand for the proposition sought by Dred; i.e., it does not support power in Congress to abolish slavery in the Louisiana Territory.

This brings us to examine by what provision of the Constitution the present Federal Government…is authorized to acquire territory outside of the original limits of the United States, and what powers it may exercise therein over the person or property of a citizen of the United States, while it remains a Territory, and until it shall be admitted as one of the States of the Union…

[N]o one, we presume, will contend that Congress can make any law in a Territory respecting the establishment of religion, or the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people of the Territory peaceably to assemble, and to petition the Government for the redress of grievances. Nor can Congress deny to the people the right to keep and bear arms, nor the right to trial by jury, nor compel any one to be a witness against himself in a criminal proceeding.

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,

[1] **Article IV, §3, Clause 2**.

without due process of law. **And an act of Congress which deprives a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offence against the laws, could hardly be dignified with the name of due process of law…**

[T]he 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 guarantied 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. This 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.

We have so far examined the case, as it stands under the Constitution of the United States, and the powers thereby delegated to the Federal Government. But there is another point in the case which depends on State power and State law. And it is contended, on the part of Dred, 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…

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**.

…[W]e are satisfied…that it is now firmly settled by the decisions of the highest court in the State, that Scott and his family upon their return were not free, but were, by the laws of Missouri, the property of the defendant; and that the Circuit Court of the United States had no jurisdiction, when, by the laws of the State, the plaintiff was a slave, and not a citizen…

Upon the whole, therefore, it is the judgment of this court, that it appears by the record before us that Dred Scott 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…[The case is dismissed for want of jurisdiction.]

CONCURRENCE: Mr. Justice WAYNE…

[Justice Wayne speaks to issues not relevant to our study.]

DISSENT/SAME EFFECT: Mr. Justice NELSON…The question…is whether or not the removal of [Scott]…from…Missouri to…Illinois, with a view to a temporary residence, and after such residence and return to the slave State, such residence in the free State works an emancipation…

This question has been examined in the courts of several of the slaveholding States, and different opinions expressed and conclusions arrived at…Our opinion is, that the question is one which belongs to each State to decide for itself, either by its Legislature or courts of justice; and hence, in respect to the case before us, to the State of Missouri—a question exclusively of Missouri law, and which, when determined by that State, it is the duty of the Federal courts to follow it. In other words,…the law of the State is supreme over the subject of slavery within its jurisdiction…[T]he judgment of the court below should be affirmed.

CONCURRENCE: Mr. Justice GRIER…[T]he form of the judgment is of little importance; for, whether the judgment be affirmed or dismissed for want of jurisdiction,…[the effect is the same – Scott loses.]

CONCURRENCE: Mr. Justice DANIEL…[T]he African negro race never have been acknowledged as belonging to the family of nations; that as amongst them there never has been known or recognized by the inhabitants of other countries anything partaking of the character of nationality, or civil or political polity; that this race has been by **all the nations of Europe** regarded as subjects of capture or purchase; as subjects of commerce or traffic; and that the introduction of that race into every section of this country was not as members of civil or political society, but as slaves, as property in the strictest sense of the term…

And it now becomes the province of this court to determine whether [Dred Scott]…be clothed with the character and capacities of a citizen of the State of Missouri?

It may be assumed as a postulate that…a slave…is himself strictly property, to be used in subserviency to the interests, the convenience, or the will, of his owner; and to suppose, with respect to the former, the existence of any privilege or discretion, or of any obligation to others incompatible with the magisterial rights just defined, would be by implication, if not directly, to deny the relation of master and slave, since none can possess and enjoy, as his own, that which another has a paramount right and power to withhold. Hence it follows, necessarily, that a slave, the…property of a master, and possessing within himself no civil nor political rights or capacities, cannot be a citizen. For who, it may be asked, is a citizen?...Without fear of contradiction, it does not import the condition of being private property, the subject of individual power and ownership… [T]he term citizen…conveys the ideas of connection or identification with the State or Government, and a participation of its functions…

But it has been insisted…that the emancipation of a slave, effected either by the direct act and assent of the master, or by causes operating in contravention of his will, produces a change in the status or capacities of the slave, such as will transform him from a mere subject of property, into a being possessing a social, civil, and political equality with a citizen. In other words, will make him a citizen of the State within which he was, previously to his emancipation, a slave.

It is difficult to conceive by what magic the mere…renunciation of an interest in a subject of property, by an individual possessing that interest, can alter the essential character of that property with respect to persons or communities unconnected with such renunciation. Can it be pretended that an individual in any State, by his single act, though voluntarily or designedly performed, yet without the co-operation or warrant of the Government, perhaps in opposition to its policy or its guaranties, can create a citizen of that State? Much more emphatically may it be asked, how such a result could be accomplished by means wholly extraneous, and entirely foreign to the Government of the State? The argument thus urged must lead to these extraordinary conclusions. It is regarded at once as wholly untenable…

But, it has been strangely contended that the jurisdiction of the Circuit Court might be maintained upon the ground that Scott was a **resident** of Missouri, and that, for the purpose of vesting the court with jurisdiction over the parties, **residence** within the State was sufficient.

[But,]…the language of the Constitution restricts the jurisdiction of the courts to cases in which the parties shall be **citizens**, and is entirely **silent with respect to residence**…

The correct conclusions upon the question here considered would seem to be these:

That in the establishment of the several communities now the States of this Union, and in the formation of the Federal Government, the African was not deemed politically a person. He was regarded and owned in every State in the Union as property merely, and as such was not and could not be a party or an actor, much less a peer in any compact or form of government established by the States or the United States. That if, since the adoption of the State Governments, he has been or could have been elevated to the possession of political rights or powers, this result could have been effected by no authority less potent than that of the sovereignty—the State—exerted to that end, either in the form of legislation, or in some other mode of operation. It could certainly never have been accomplished by the will of an individual operating independently of the sovereign power…That so far as rights and immunities appertaining to citizens have been defined and secured by the Constitution and laws of the United States, the African race is not and never was recognized either by the language or purposes of the former; and it has been expressly excluded by every act of Congress providing for the creation of citizens by naturalization, these laws, as has already been remarked, being restricted to free white aliens exclusively…

The States…[cannot] create citizens of the United States by any direct or indirect proceeding…

The questions then to be considered…are: 1st. Whether [Emerson]…, holding Scott as his slave in…Missouri,…by carrying with him for his own benefit and accommodation, and as his own slave, the person of the plaintiff into…Illinois, within which State slavery had been prohibited by [its own Constitution], and by retaining Scott…within the State of Illinois, had, upon his return with his slave into the State of Missouri, forfeited his rights as master, by reason of any supposed operation of the prohibitory provision in the Constitution of Illinois, beyond the proper territorial jurisdiction of [Illinois]? 2d. Whether a similar removal of Scott by his master from…Missouri, and his retention in service at a point included within no State, but situated…[in the Louisiana Territory], worked a forfeiture of the right of property of Sandford, and the manumission of Scott?

[First, Illinois cannot determine the ownership interests of Emerson in Scott.]

[Second,] the power of Congress to impose the prohibition [of slavery in the Louisiana Territory] …has been advocated upon an attempted construction of the second clause of the third section of the fourth article of the Constitution, which declares that 'Congress shall have power to dispose of and to make all needful rules and regulations respecting the **territory** and other property belonging to the United States.'…

Nothing can be more conclusive to show the equality of this with every other right in all the citizens of the United States, and the iniquity and absurdity of the pretension to exclude or to disfranchise a portion of them because they are the owners of slaves, than the fact that the same instrument, which imparts to Congress its very existence and its every function, guaranties to the slaveholder the title to his property, and gives him the right to its reclamation throughout the entire extent of the nation; and, farther, that the only private property which the Constitution has specifically recognized, and has imposed it as a direct obligation both on the States and the Federal Government to protect and enforce, is the property of the master in his slave; no other right of property is placed by the Constitution upon the same high ground, nor shielded by a similar guaranty…

CONCURRENCE: Mr. Justice CAMPBELL…The claim of [Scott] to freedom depends upon the effect to be given to his absence from Missouri, in company with his master, in Illinois and Minnesota, and this effect is to be ascertained by a reference to the **laws of Missouri**…The Constitution of Missouri recognizes slavery as a legal condition…

The Federal Constitution and the acts of Congress provide for the return of escaping slaves within the limits of the Union. No removal of the slave beyond the limits of the State, against the consent of the master, nor residence there in another condition, would be regarded as an effective manumission by the courts of Missouri, upon his return to the State…Nor can the master emancipate the slave within the State, except through the agency of a public authority. The inquiry arises, whether the manumission of the slave is effected by his removal, with the consent of the master, to a community where the law of slavery does not exist, in a case where neither the master nor slave discloses a purpose to remain permanently, and where both parties have continued to maintain their existing relations. What is the law of Missouri in such a case?...

No evidence is found in the record to establish the existence of a **domicile** acquired by the master and slave, either in Illinois or Minnesota. The master is described as an officer of the army, who was transferred from one station to another, along the Western frontier, in the line of his duty, and who, after performing the usual tours of service, returned to Missouri; these slaves returned to Missouri with him, and had been there for near fifteen years, in that condition, when this suit was instituted. But absence, in the performance of military duty, without more, is a fact of no importance in determining a question of a change of domicile. Questions of that kind depend upon acts and intentions, and are ascertained from motives, pursuits, the condition of the family, and fortune of the party, and no change will be inferred, unless evidence shows that one domicile was abandoned, and there was an intention to acquire another…

It is upon the assumption, that the law of Illinois or Minnesota was indelibly impressed upon the slave, and its consequences carried into Missouri, that the claim of Scott depends. The importance of the case entitles the doctrine on which it rests to a careful examination…

And, in my opinion, that clause confers no power upon Congress to dissolve the relations of the master and slave on the domain of the United States, either within or without any of the States.

The eighth section of the act of Congress of the 6th of March, 1820, did not, in my opinion, operate to determine the domestic condition and status of the plaintiff and his family during their sojourn in Minnesota Territory, or after their return to Missouri…

His claim to freedom depends upon his temporary location, from the domicile of his origin, in company with his master, to communities where the law of slavery did not prevail…My opinion is, that the opinion of the Circuit Court was correct upon all the claims involved in those issues, and that the verdict of the jury was justified by the evidence and instructions.

The jury have returned that the plaintiff and his family are slaves.

Upon this record, it is apparent that this is not a controversy between citizens of different States; and that the plaintiff, at no period of the life which has been submitted to the view of the court, has had a capacity to maintain a suit in the courts of the United States…I think the judgment should be affirmed…

CONCURRENCE: Mr. Justice CATRON…Scott claims…[he] became free by being kept in Illinois during two years.

The Constitution, laws, and policy, of Illinois, are somewhat peculiar respecting slavery. Unless the master becomes an inhabitant of that State, the slaves he takes there do not acquire their freedom; and if they return with their master to the slave State of his domicile, they cannot assert their freedom after their return…

[Scott also contends] that his freedom (and that of his wife and eldest child) was obtained by force of the act of Congress of 1820, usually known as the Missouri Compromise Act, which declares: 'That in all that territory ceded by France to the United States…slavery and involuntary servitude shall be, and are hereby, forever prohibited.' From this prohibition, the territory now constituting the State of Missouri was excepted; which exception to the stipulation gave it the designation of a compromise…

[Did Congress have the power to outlaw slavery in the Louisiana Territory?] For, if power was wanting, then no freedom could be acquired by the defendant under the act…

[I]t is insisted that…Congress has power to legislate for and govern the Territories of the United States, and that by force of the power to govern, laws could be enacted, prohibiting slavery in any portion of the Louisiana Territory; and, of course, to abolish slavery in all parts of it, whilst it was, or is, governed as a Territory…

My opinion is, that Congress had no power, in face of the compact between Virginia and the twelve other States, to force slavery into the Northwest Territory, because there, it was bound to that 'engagement,' and could not break it…

And how does the power of Congress stand west of the Mississippi river? The country there was acquired from France, by treaty, in 1803…

The Missouri compromise line of 1820 was very aggressive; it declared that slavery was abolished forever throughout a country reaching from the Mississippi river to the Pacific ocean, stretching over thirty-two degrees of longitude, and twelve and a half degrees of latitude on its eastern side, sweeping over four-fifths, to say no more, of the original province of Louisiana…

Dr. Emerson was a citizen of Missouri; he had an equal right to go to the Territory with every citizen of other States. This is undeniable, as I suppose. Scott was Dr. Emerson's lawful property in Missouri; he carried his Missouri title with him; and the precise question here is, whether Congress had the power to annul that title. It is idle to say, that if Congress could not defeat the title directly, that it might be done indirectly, by drawing a narrow circle around the slave population of Upper Louisiana, and declaring that if the slave went beyond it he should be free. Such assumption is mere evasion, and entitled to no consideration. And it is equally idle to contend, that because Congress has express power to regulate commerce among the Indian tribes, and to prohibit intercourse with the Indians, that therefore Dr. Emerson's title might be defeated within the country ceded by the Indians to the United States as early as 1805, and which embraces Fort Snelling. We must meet the question, whether Congress had the power to declare that a citizen of a State, carrying with him his equal rights, secured to him through his State, could be stripped of his goods and slaves, and be deprived of any participation in the common property? If this be the true meaning of the Constitution, equality of rights to enjoy a common country (equal to a thousand miles square) may be cut off by a geographical line, and a great portion of our citizens excluded from it…

I admit that Virginia could, and lawfully did, prohibit slavery northwest of the Ohio, by her charter of cession, and that the territory was taken by the United States with this condition imposed. I also admit that France could, by the treaty of 1803, have prohibited slavery in any part of the ceded territory, and imposed it on the United States as a fundamental condition of the cession, in the mean time, till new States were admitted in the Union.

I concur with Judge Baldwin, that Federal power is exercised over all the territory within the United States, pursuant to the Constitution; and, the conditions of the cession, whether it was a part of the original territory of a State of the Union, or of a foreign State, ceded by deed or treaty; the right of the United States in or over it depends on the contract of cession, which operates to incorporate as well the Territory as its inhabitants into the Union.

My opinion is, that the third article of the **treaty of 1803**, ceding Louisiana to the United States, stands protected by the Constitution, and cannot be repealed by Congress.

And, secondly, that the act of 1820, known as the Missouri compromise, violates the most leading feature of the Constitution, a feature on which the Union depends, and which secures to the respective States and their citizens and entire equality of rights, privileges, and immunities.

On these grounds, I hold the compromise act to have been void; and, consequently, that Scott can claim no benefit under it…Scott is a slave and was so when this suit was brought.

DISSENT (with effect on outcome): Mr. Justice McLEAN/CURTIS…It has never been held necessary, to constitute a citizen within the act, that he should have the qualifications of an elector. Females and minors may sue in the Federal courts, and so may any individual who has a permanent domicile in the State under whose laws his rights are protected, and to which he owes allegiance.

Being born under our Constitution and laws, no naturalization is required…to make him a citizen. The most general and appropriate definition of the term citizen is 'a freeman.' Being a freeman, and having his domicile in a State different from that of the defendant, he is a citizen within the act of Congress, and the courts of the Union are open to him…

[It is] said that a colored citizen would not be an agreeable member of society. This is more a matter of taste than of law. Several of the States have admitted persons of color to the right of suffrage, and in this view have recognized them as citizens; and this has been done in the slave as well as the free States. On the question of citizenship, it must be admitted that we have not been very fastidious. Under the late treaty with Mexico, we have made citizens of all grades, combinations, and colors. The same was done in the admission of Louisiana and Florida. No one ever doubted, and no court ever held, that the people of these Territories did not become citizens under the treaty. They have exercised all the rights of citizens, without being naturalized under the acts of Congress.

There are several important principles involved in this case,…[to wit:]

1. The locality of slavery…

2. The relation which the Federal Government bears to slavery in the States.

3. The power of Congress to establish Territorial Governments, and to prohibit the introduction of slavery therein.

4. The effect of taking slaves into a new State or Territory, and so holding them, where slavery is prohibited.

5. Whether the return of a slave under the control of his master, after being entitled to his freedom, reduces him to his former condition.

6. Are the decisions of the Supreme Court of Missouri, on the questions before us, binding on this court, within the rule adopted…

[1.] As to the locality of slavery. The civil law throughout the Continent of Europe…is that slavery can exist only within the territory where it is established; and that, if a slave **escapes, or is carried** beyond such territory, his master cannot reclaim him…There is no nation in Europe which considers itself bound to return to his master a fugitive slave, under the civil law or the law of nations. On the contrary, the slave is held to be free where there is no treaty obligation, or compact in some other form, to return him to his master. The Roman law did now allow freedom

to be sold. An ambassador or any other public functionary could not take a slave to France, Spain, or any other country of Europe, without emancipating him…

In the great and leading case of *Prigg v. Pennsylvania*, this court [held] that, by the general law of nations, no nation is bound to recognize the state of slavery, as found within its territorial dominions, where it is in opposition to its own policy and institutions, in favor of the subjects of other nations where slavery is organized…

In the case of *Rankin v. Lydia*, Judge Mills, speaking for the Court of Appeals of Kentucky, says: 'In deciding the question (of slavery) we disclaim the influence of the general principles of liberty, which we all admire, and conceive it ought to be decided by the law as it is, and not as it ought to be. Slavery is sanctioned by the laws of this State, and the right to hold slaves under our municipal regulations is unquestionable. But we view this as a right existing by positive law of a municipal character, without foundation in the law of nature, or the unwritten and common law.'

[2.] I will now consider the relation which the Federal Government bears to slavery in the States:

Slavery is emphatically a State institution. In the ninth section of the first article of the Constitution, it is provided 'that the migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.'

In the Convention, it was proposed by a committee of eleven to limit the importation of slaves to the year 1800, when Mr. Pinckney moved to extend the time to the year 1808. This motion was carried…In opposition to the motion, **Mr. Madison said: 'Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves; so long a term will be more dishonorable to the American character than to say nothing about it in the Constitution.'**

The provision in regard to the slave trade shows clearly that Congress considered slavery a State institution, to be continued and regulated by its individual sovereignty; and to conciliate that interest, the slave trade was continued twenty years, not as a general measure, but for the 'benefit of such States as shall think proper to encourage it.'

…The only connection which the Federal Government holds with slaves in a State arises from that provision of the Constitution which declares that 'No person held to service or labor in one State, under the laws thereof, **escaping** into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due.'

This being a fundamental law of the Federal Government, it rests mainly for its execution…on the judicial power of the Union; and so far as the rendition of fugitives from labor has become a subject of judicial action, the Federal obligation has been faithfully discharged.

In the formation of the Federal Constitution, care was taken to confer no power on the Federal Government to interfere with this institution in the States. In the provision respecting the slave trade, in fixing the ratio of representation, and providing for the reclamation of fugitives from

labor, slaves were referred to as persons, and in no other respect are they considered in the Constitution…

Our independence was a great epoch in the history of freedom; and while I admit the Government was not made especially for the colored race, yet many of them were citizens of the New England States, and exercised the rights of suffrage when the Constitution was adopted, and it was not doubted by any intelligent person that its tendencies would greatly ameliorate their condition.

Many of the States, on the adoption of the Constitution, or shortly afterward, took measures to abolish slavery within their respective jurisdictions; and it is a well-known fact that a belief was cherished by the leading men, South as well as North, that the institution of slavery would gradually decline, until it would become extinct. The increased value of slave labor, in the culture of cotton and sugar, prevented the realization of this expectation. Like all other communities and States, the South [was] influenced by what they considered to be their own interests.

But if we are to turn our attention to the dark ages of the world, why confine our view to colored slavery? On the same principles, white men were made slaves. All slavery has its origin in power, and is against right.

[3.] The power of Congress to establish Territorial Governments, and to prohibit the introduction of slavery therein, is the next point to be considered…

Of course, Justice McLean supports the prohibition of slavery in the Territories by Congressional action. That multi-page and extraordinarily complex discussion is excised here.

[4.] I will now consider the fourth head, which is: 'The effect of taking slaves into a State or Territory, and so holding them, where slavery is prohibited.'…

[In] *Prigg v. Pennsylvania*…the court says: 'The state of slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of the territorial laws.' If this be so, slavery can exist nowhere except under the authority of law, founded on usage having the force of law, or by statutory recognition. And the court further says: 'It is manifest, from this consideration, that if the Constitution had not contained the clause requiring the rendition of fugitives from labor, every non-slaveholding State in the Union would have been at liberty to have declared free all runaway slaves coming within its limits, and to have given them entire immunity and protection against the claims of their masters.'

Now, if a slave abscond, he may be reclaimed; but if he accompany his master into a State or Territory where slavery is prohibited, such slave cannot be said to have left the service of his master where his services were legalized. And if slavery be limited to the range of the territorial laws, how can the slave be coerced to serve in a State or Territory, not only without the authority of law, but against its express provisions? What gives the master the right to control the will of his slave? The local law, which exists in some form. But where there is no such law, can the master control the will of the slave by force? Where no slavery exists, the presumption, without

regard to color, is in favor of freedom. Under such a jurisdiction, may the colored man be levied on as the property of his master by a creditor? On the decease of the master, does the slave descend to his heirs as property? Can the master sell him? Any one or all of these acts may be done to the slave, where he is legally held to service. But where the law does not confer this power, it cannot be exercised…

By virtue of what law is it, that a master may take his slave into free territory, and exact from him the duties of a slave? The law of the Territory does not sanction it. No authority can be claimed under the Constitution of the United States, or any law of Congress. Will it be said that the slave is taken as property, the same as other property which the master may own? To this I answer, that colored persons are made property by the law of the State, and no such power has been given to Congress. Does the master carry with him the law of the State from which he removes into the Territory? And does that enable him to coerce his slave in the Territory? Let us test this theory. If this may be done by a master from one slave State, it may be done by a master from every other slave State. This right is supposed to be connected with the person of the master, by virtue of the local law. Is it transferable? May it be negotiated, as a promissory note or bill of exchange? If it be assigned to a man from a free State, may he coerce the slave by virtue of it?...One thing is certain, that its origin has been very recent, and it is unknown to the laws of any civilized country…

There is no other description of property which was not protected in England, brought from one of its slave islands. Does not this show that property in a human being does not arise from nature or from the common law, but, in the language of this court, 'it is a mere municipal regulation, founded upon and limited to the range of the territorial laws?' This decision is not a mere argument, but it is the end of the law, in regard to the extent of slavery. Until it shall be overturned, it is not a point for argument; it is obligatory on myself and my brethren, and on all judicial tribunals over which this court exercises an appellate power.

It is said the Territories are common property of the States, and that every man has a right to go there with his property. This is not controverted. But the court say[s] a slave is not property beyond the operation of the local law which makes him such. Never was a truth more authoritatively and justly uttered by man…The Constitution, in express terms, recognizes the status of slavery as founded on the municipal law: 'No person held to service or labor in one State, under the laws thereof, escaping into another, shall,' &c. Now, unless the fugitive escape from a place where, by the municipal law, he is held to labor, this provision affords no remedy to the master. What can be more conclusive than this? Suppose a slave escape from a Territory where slavery is not authorized by law, can he be reclaimed?

In this case, a majority of the court have said that a slave may be taken by his master into a Territory of the United States, the same as a horse, or any other kind of property…A slave is not a mere [piece of property]. He bears the impress of his Maker, and is amenable to the laws of God and man; and he is destined to an endless existence.

Under this head I shall chiefly rely on the decisions of the Supreme Courts of the Southern States, and especially of the State of Missouri.

In the first and second sections of the sixth article of the Constitution of Illinois, it is declared that neither slavery nor involuntary servitude shall hereafter be introduced into this State, otherwise than for the punishment of crimes whereof the party shall have been duly convicted; and in the second section it is declared that any violation of this article shall effect the emancipation of such person from his obligation to service. In Illinois, a right of transit through the State is given the master with his slaves. This is a matter which, as I suppose, belongs exclusively to the State…

The first slave case decided by the Supreme Court of Missouri…was *Winny v. Whitesides* (1824). It appeared that, more than twenty-five years before, the defendant, with her husband, had removed from Carolina to Illinois, and brought with them the plaintiff; that they continued to reside in Illinois three or four years, retaining the plaintiff as a slave; after which, they removed to Missouri, taking her with them. The court held, that if a slave be detained in Illinois until he be entitled to freedom, the right of the owner does not revive when he finds the negro in a slave State. That when a slave is taken to Illinois by his owner, who takes up his residence there, the slave is entitled to freedom…

In *Julia v. McKinney*, it was held, where a slave was settled in the State of Illinois, but with an intention on the part of the owner to be removed at some future day, that hiring said slave to a person to labor for one or two days, and receiving the pay for the hire, the slave is entitled to her freedom, under the…Constitution of Illinois.

Rachel v. Walker is a case involving, in every particular, the principles of the case before us. Rachel sued for her freedom; and it appeared that she had been bought as a slave in Missouri, by Stockton, an officer of the army, taken to Fort Snelling, where he was stationed, and she was retained there as a slave a year; and then Stockton removed to Prairie du Chien, taking Rachel with him as a slave, where he continued to hold her three years, and then he took her to the State of Missouri, and sold her as a slave. 'Fort Snelling was admitted to be on the west side of the Mississippi river, and north of the State of Missouri, in the territory of the United States. That Prairie du Chien was in the Michigan Territory, on the east side of the Mississippi river. Walker, the defendant, held Rachel under Stockton.'

The court said, in this case:

'The officer lived in Missouri Territory, at the time he bought the slave; he sent to a slaveholding country and procured her; this was his voluntary act, done without any other reason than that of his convenience; and he and those claiming under him must be holden to abide the consequences of introducing slavery both in Missouri Territory and Michigan, contrary to law; and on that ground Rachel was declared to be entitled to freedom.'

In answer to the argument that, as an officer of the army, the master had a right to take his slave into free territory, the court said no authority of law or the Government compelled him to keep the plaintiff there as a slave.

'Shall it be said, that because an officer of the army owns slaves in Virginia, that when, as officer and soldier, he is required to take the command of a fort in the non-slaveholding States or Territories, he thereby has a right to take with him as many slaves as will suit his interests or

convenience? It surely cannot be law. If this be true, the court say, then it is also true that the convenience or supposed convenience of the officer repeals, as to him and others who have the same character, the ordinance and the act of 1821, admitting Missouri into the Union, and also the prohibition of the several laws and Constitutions of the non-slaveholding States.'…

The case of *Dred Scott v. Emerson*…involved the identical question before us, Emerson having, since the hearing, sold the plaintiff to Sandford, the defendant. The court [said]: 'Cases of this kind are not strangers in our court. Persons have been frequently here adjudged to be entitled to their freedom, on the ground that their masters held them in slavery in Territories or States in which that institution is prohibited. From the first case decided in our court, it might be inferred that this result was brought about by a presumed assent of the master, from the fact of having voluntarily taken his slave to a place where the relation of master and slave did not exist. But subsequent cases base the right to 'exact the forfeiture of emancipation,' as they term it, on the ground, it would seem, that it was the duty of the courts of this State to carry into effect the Constitution and laws of other States and Territories, regardless of the rights, the policy, or the institutions, of the people of this State.'…

Chief Justice Gamble dissented [in *Scott v. Emerson*]:

'In every slaveholding State in the Union, the subject of emancipation is regulated by statute; and the forms are prescribed in which it shall be effected. Whenever the forms required by the laws of the State in which the master and slave are resident are complied with, the emancipation is complete, and the slave is free. If the right of the person thus emancipated is subsequently drawn in question in another State, it will be ascertained and determined by the law of the State in which the slave and his former master resided; and when it appears that such law has been complied with, the right to freedom will be fully sustained in the courts of all the slaveholding States, although the act of emancipation may not be in the form required by law in which the court sits…'

This appears to me a most satisfactory answer to the argument of the court. [The] Chief Justice continues:…

'In this State,' he says, 'it has been recognized from the beginning of the Government as a correct position in law, that a master who takes his slave to reside in a State or Territory where slavery is prohibited, thereby emancipates his slave.' These decisions, which come down to the year 1837, seemed to have so fully settled the question, that since that time there has been no case bringing it before the court for any reconsideration, until the present…

When Dred Scott, his wife and children, were removed from Fort Snelling to Missouri, in 1838, they were free, as the law was then settled, and continued for fourteen years afterwards, up to 1852, when the above decision was made. Prior to this, for nearly thirty years, as Chief Justice Gamble declares, the residence of a master with his slave in the State of Illinois, or in the [Louisiana] Territory…, where slavery was prohibited by the act called the Missouri compromise, would manumit the slave as effectually as if he had executed a deed of emancipation; and that an officer of the army who takes his slave into that State or Territory, and holds him there as a slave, liberates him the same as any other citizen—and down to the above time it was settled by numerous and uniform decisions, and that on the return of the slave to

Missouri, his former condition of slavery did not attach. Such was the settled law of Missouri until the decision of [*Scott v. Emerson*]…

This court follows the established construction of the statutes of a State by its Supreme Court… But there is no pretence that the case of *Dred Scott v. Emerson*…overruled the settled law for near thirty years.

This is said by my brethren to be a Missouri question; but there is nothing which gives it this character, except that it involves the right to persons claimed as slaves who reside in Missouri, and the decision was made by the Supreme Court of that State. It involves a right claimed under an act of Congress and the Constitution of Illinois, and which cannot be decided without the consideration and construction of those laws. But the Supreme Court of Missouri held, in this case, that it will not regard either of those laws, without which there was no case before it; and Dred Scott, having been a slave, remains a slave. In this respect it is admitted this is a Missouri question—a case which has but one side, if the act of Congress and the Constitution of Illinois are not recognized…

Dred Scott and his family, beyond all controversy, were free under the decisions made for twenty-eight years, before the case of *Scott v. Emerson*. This was the undoubted law of Missouri for fourteen years after Scott and his family were brought back to that State. And the grave question arises, whether this law may be so disregarded as to enslave free persons. I am strongly inclined to think that a rule of decision so well settled as not to be questioned, cannot be annulled by a single decision of the court. Such rights may be inoperative under the decision in future; but I cannot well perceive how it can have the same effect in prior cases…

[5.] Under the fifth head, we were to consider whether the status of slavery attached to the plaintiff and wife, on their return to Missouri. This doctrine is not asserted in the late opinion of the Supreme Court of Missouri, and up to 1852 the contrary doctrine was uniformly maintained by that court. In its late decision, the court say[s] that it will not give effect in Missouri to the laws of Illinois, or the law of Congress called the Missouri Compromise…

The slave States have generally adopted the rule, that where the master, by a residence with his slave in a State or Territory where slavery is prohibited, the slave was entitled to his freedom everywhere. This was the settled doctrine of the Supreme Court of Missouri. It has been so held in Mississippi, in Virginia, in Louisiana, formerly in Kentucky, Maryland, and in other States…

If a citizen of a free State shall entice or enable a slave to escape from the service of his master, the law holds him responsible, not only for the loss of the slave, but he is liable to be indicted and fined for the misdemeanor. And I am bound here to say, that I have never found a jury in the four States which constitute my circuit, which have not sustained this law, where the evidence required them to sustain it…This has been done to vindicate the sovereign rights of the Southern States, and protect the legal interests of our brethren of the South.

Let these facts be contrasted with the case now before the court. Illinois has declared in the most solemn and impressive form that there shall be neither slavery nor involuntary servitude in that State, and that any slave brought into it, with a view of becoming a resident, shall be emancipated…With a full knowledge of these facts, a slave is brought from Missouri to Rock

Island, in the State of Illinois, and is retained there as a slave for two years, and then taken to Fort Snelling, where slavery is prohibited by the Missouri Compromise Act, and there he is detained two years longer in a state of slavery. Harriet, his wife, was also kept at the same place four years as a slave, having been purchased in Missouri. They were then removed to the State of Missouri, and sold as slaves, and in the action before us they are not only claimed as slaves, but a majority of my brethren have held that on their being returned to Missouri the status of slavery attached to them.

I am not able to reconcile this result with the respect due to the State of Illinois. Having the same rights of sovereignty as the State of Missouri in adopting a Constitution, I can perceive no reason why the institutions of Illinois should not receive the same consideration as those of Missouri. Allowing to my brethren the same right of judgment that I exercise myself, I must be permitted to say that it seems to me the principle laid down will enable the people of a slave State to introduce slavery into a free State, for a longer or shorter time, as may suit their convenience; and by returning the slave to the State whence he was brought, by force or otherwise, the status of slavery attaches, and protects the rights of the master, and defies the sovereignty of the free State. There is no evidence before us that Dred Scott and his family returned to Missouri voluntarily…It would be a mockery of law and an outrage on his rights to coerce his return, and then claim that it was voluntary, and on that ground that his former status of slavery attached…

In every decision of a slave case prior to that of *Dred Scott v. Emerson*, the Supreme Court of Missouri considered it as turning upon the Constitution of Illinois, the ordinance of 1787, or the Missouri Compromise Act of 1820. The court treated these acts as in force, and held itself bound to execute them, by declaring the slave to be free who had acquired a domicile under them with the consent of his master.

The late decision reversed this whole line of adjudication, and held that neither the Constitution and laws of the States, nor acts of Congress in relation to Territories, could be judicially noticed by the Supreme Court of Missouri. This is believed to be in conflict with the decisions of all the courts in the Southern States, with some exceptions of recent cases…

[6.] I now come to inquire, under the sixth and last head, 'whether the decisions of the Supreme Court of Missouri, on the question before us, are binding on this court.'

While we respect the learning and high intelligence of the State courts, and consider their decisions, with others, as authority, we follow them only where they give a construction to the State statutes. On this head, I consider myself fortunate in being able to turn to the decision of this court, given by Mr. Justice Grier, in *Pease v. Peck*, a case from the State of Michigan, …[where he] said:

'We entertain the highest respect for that learned court, (the Supreme Court of Michigan,) and in any question affecting the construction of their own laws, where we entertain any doubt, would be glad to be relieved from doubt and responsibility by reposing on their decision. There are, it is true, many dicta to be found in our decisions, averring that the courts of the United States are bound to follow the decisions of the State courts on the construction of their own laws. But although this may be correct, yet a rather strong expression of a general rule, it cannot be received as the annunciation of a maxim of universal application. Accordingly, our reports

furnish many cases of exceptions to it. In all cases where there is a settled construction of the laws of the a State, by its highest judicature established by admitted precedent, it is the practice of the courts of the United States to receive and adopt it, without criticism or further inquiry. **When the decisions of the State court are not consistent, we do not feel bound to follow the last, if it is contrary to our own convictions; and much more is this the case where, after a long course of consistent decisions, some new light suddenly springs up, or an excited public opinion has elicited new doctrines subversive of former safe precedent.'**

…For twenty-eight years, the decisions of the Supreme Court of Missouri were consistent on all the points made in this case. But this consistent course was suddenly terminated, whether by some new light suddenly springing up, or an excited public opinion, or both, it is not necessary to say. In the case of *Scott v. Emerson*, they were overturned and repudiated…

But there is another ground which I deem conclusive, and which I will re-state.

The Supreme Court of Missouri refused to notice the act of Congress or the Constitution of Illinois, under which Dred Scott, his wife and children, claimed that they are entitled to freedom.

This being rejected by the Missouri court, there was no case before it, or least it was a case with only one side. And this is the case which, in the opinion of this court, we are bound to follow. The Missouri court disregards the express provisions of an act of Congress and the Constitution of a sovereign State, both of which laws for twenty-eight years it had not only regarded, but carried into effect.

If a State court may do this, on a question involving the liberty of a human being, what protection do the laws afford? So far from this being a Missouri question, it is a question, as it would seem, within the twenty-fifth section of the judiciary act, where a right to freedom being set up under the act of Congress, and the decision being against such right, it may be brought for revision before this court, from the Supreme Court of Missouri.

I think the judgment of the court below should be reversed.

DISSENT (with effect on outcome): Mr. Justice CURTIS…[T]he question is, whether any person of African descent, whose ancestors were sold as slaves in the United States, can be a citizen of the United States…

Citizens of the United States at the time of the adoption of the Constitution can have been no other than citizens of the United States under the Confederation. By the Articles of Confederation, a Government was organized, the style whereof was, 'The United States of America.' This Government was in existence when the Constitution was framed and proposed for adoption, and was to be superseded by the new Government of the United States of America, organized under the Constitution…[T]he citizens of the several States were citizens of the United States under the Confederation…

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 such of them

as had the other necessary qualifications possessed the franchise of electors, on equal terms with other citizens…

The fourth of the fundamental articles of the Confederation was as follows: 'The free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice, excepted, shall be entitled to all the privileges and immunities of free citizens in the several States.'

The fact that free persons of color were citizens of some of the several States, and the consequence, that this fourth article of the Confederation would have the effect to confer on such persons the privileges and immunities of general citizenship, were not only known to those who framed and adopted those articles, but the evidence is decisive, that the fourth article was intended to have that effect, and that more restricted language, which would have excluded such persons, was deliberately and purposely rejected.

On the 25th of June, 1778, the Articles of Confederation being under consideration by the Congress, the delegates from South Carolina moved to amend this fourth article, by inserting after the word 'free,' and before the word 'inhabitants,' the word 'white,' so that the privileges and immunities of general citizenship would be secured only to white persons. Two States voted for the amendment, eight States against it, and the vote of one State was divided. The language of the article stood unchanged, and both by its terms of inclusion, 'free inhabitants,' and the strong implication from its terms of exclusion, 'paupers, vagabonds, and fugitives from justice,' who alone were excepted, it is clear, that under the Confederation, and at the time of the adoption of the Constitution, free colored persons of African descent might be, and, by reason of their citizenship in certain States, were entitled to the privileges and immunities of general citizenship of the United States.

Did the Constitution of the United States deprive them or their descendants of citizenship?

That Constitution was ordained and established by the people of the United States, through the action, in each State, or those persons who were qualified by its laws to act thereon, in behalf of themselves and all other citizens of that State…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…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 adoption; nor any power enabling Congress to disfranchise persons born on the soil of any State, and entitled to citizenship of such State by its Constitution and laws. And my opinion is, that, under the Constitution of the United States, every free person born on the soil of a State, who is a citizen of that State by force of its Constitution or laws, is also a citizen of the United States…

The first section of the second article of the Constitution uses the language, '**a natural-born citizen**.' It thus assumes that citizenship may be acquired by birth. Undoubtedly, this language of the Constitution was used in reference to that principle of public law, well understood in this country at the time of the adoption of the Constitution, which referred citizenship to the place of birth. At the Declaration of Independence, and ever since, the received general doctrine has been,

in conformity with the common law, that free persons born within either of the colonies were subjects of the King; that by the Declaration of Independence, and the consequent acquisition of sovereignty by the several States, all such persons ceased to be subjects, and became citizens of the several States, except so far as some of them were disfranchised by the legislative power of the States, or availed themselves, seasonably, of the right to adhere to the British Crown in the civil contest, and thus to continue British subjects.

The Constitution having recognized the rule that persons born within the several States are citizens of the United States, one of four things must be true:

First. That the Constitution itself has described what native-born persons shall or shall not be citizens of the United States; or,

Second. That it has empowered Congress to do so; or,

Third. That all free persons, born within the several States, are citizens of the United States; or,

Fourth. That it is left to each State to determine what free persons, born within its limits, shall be citizens of such State, and thereby be citizens of the United States…

The conclusions at which I have arrived on this part of the case are:

First. That the free native-born citizens of each State are citizens of the United States.

Second. That as free colored persons born within some of the States are citizens of those States, such persons are also citizens of the United States.

Third. That every such citizen, residing in any State, has the right to sue and is liable to be sued in the Federal courts, as a citizen of that State in which he resides.

Fourth. That as the plea to the jurisdiction in this case shows no facts, except that the plaintiff was of African descent, and his ancestors were sold as slaves, and as these facts are not inconsistent with his citizenship of the United States, and his residence in the State of Missouri, the plea to the jurisdiction was bad, and the judgment of the Circuit Court overruling it was correct.

I dissent, therefore, from that part of the opinion of the majority of the court, in which it is held that a person of African descent cannot be a citizen of the United States…

In my opinion, the judgment of the Circuit Court should be reversed, and the cause remanded for a new trial.