

Dred Scott v. Sandford / Excerpts from the Majority Opinion—Answer Key

The following are excerpts from Chief Justice Roger B. Taney’s majority opinion:

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.

We think they [people of African ancestry] are not [citizens], 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.

[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.

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 ... 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.

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 all that part of the territory ceded by France, under the name of Louisiana, which lies north of thirty-six degrees thirty minutes north latitude, and not included within the limits of Missouri. And the difficulty which meets us at the threshold of this part of the inquiry is, whether Congress was authorized to pass this law under any of the powers granted to it by the Constitution; for if the authority is not given by that instrument, it is the duty of this court to declare it void and inoperative, and

incapable of conferring freedom upon any one who is held as a slave under the laws of any one of the States.

There is certainly no power given by the Constitution to the Federal Government to establish or maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure; nor to enlarge its territorial limits in any way, except by the admission of new States. That power is plainly given; and if a new State is admitted, it needs no further legislation by Congress, because the Constitution itself defines the relative rights and powers, and duties of the State, and the citizens of the State, and the Federal Government. But no power is given to acquire a Territory to be held and governed permanently in that character.

But the power of Congress over the person or property of a citizen can never be a mere discretionary power under our Constitution and form of Government. The powers of the Government and the rights and privileges of the citizen are regulated and plainly defined by the Constitution itself. And when the Territory becomes a part of the United States, the Federal Government enters into possession in the character impressed upon it by those who created it. It enters upon it with its powers over the citizen strictly defined, and limited by the Constitution, from which it derives its own existence, and by virtue of which alone it continues to exist and act as a Government and sovereignty. It has no power of any kind beyond it; and it cannot, when it enters a Territory of the United States, put off its character, and assume discretionary or despotic powers which the Constitution has denied to it.

[T]he rights of private property have been guarded with ... care. Thus the rights of property are united with the rights of person, and placed on the same ground by the fifth amendment to the Constitution, which provides that no person shall be deprived of life, liberty, and property, without due process of law. And an act of Congress which deprives a citizen of the United States of his liberty or property, 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.

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.

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.

[I]n the case of *Strader et al. v. Graham* ... the slaves 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.

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.

Questions to Consider

1. Why does Chief Justice Taney believe that Dred Scott is not a citizen of the United States? Why is this issue important for the case?

Chief Justice Taney believes that Dred Scott is not a citizen because the language used in the Constitution shows that enslaved people were not intended to be citizens. He cites evidence of the enslaved person's non-citizen status including their inability to freely move from state to state, their lack of freedom of speech, and their inability to carry arms freely, among other things. This point is important for the case because to sue in a court on a constitutional matter requires citizenship, according to Chief Justice Taney.

2. What is Chief Justice Taney's reasoning for declaring that the Missouri Compromise is unconstitutional? Why is this issue important for the case?

Chief Justice Taney declares that the Missouri Compromise was unconstitutional because Congress did not have the power to enter into such an agreement. Chief Justice Taney states that there is no power given in the Constitution for the government to "establish or maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure; nor to enlarge its territorial limits in any way, except by the admission of new States."

3. Does Chief Justice Taney agree with the doctrine "once free, always free"? Explain.

Chief Justice Taney might agree with the idea of "once free, always free" in principle, but in this case he believes that the controlling state law is the original state of residence, not the state to which the enslaver and the enslaved person traveled. So, just because Scott was brought to a free state, does not mean he becomes free. Chief Justice Taney reminds the states of the Fifth Amendment protection of property; since the Constitution applies to all states, property (including enslaved people) must be protected by all states. Just because a person brings property into another state, does not mean he can be divested of it. All states must protect private property regardless of how it wishes to define property itself. This issue is important for the case because Scott believes that once he entered territory that had been

defined as free, that he himself was a free man. But if Chief Justice Taney declares that Sanford's property (namely Scott) must be protected regardless of where he travels in the United States, then Scott was never free when he entered a free territory.

4. Since Chief Justice Taney first determined that Dred Scott did not have standing to sue in federal court (and therefore that the federal court system had no jurisdiction in this case), do you think Chief Justice Taney had authority to comment on the constitutionality of the Missouri Compromise? Why or why not?

Since Chief Justice Taney declared that Scott did not have standing to sue, he did not need to continue his judgment in this case. If a person does not have standing to sue, the case is dismissed. In most cases the Court would refrain from continuing to make a judgment about the case so as not to create law where there is no case on which to base it.

5. Why do you suppose Chief Justice Taney extended his opinion to address the constitutionality of the Missouri Compromise?

Battles over the legal status of enslaved people were heating up day by day and Chief Justice Taney likely saw Scott's case as a way for the Court to step in to resolve some of the heated issues surrounding slavery.