**Background Summary and Questions** •

Dred Scott was born a slave in Virginia around 1799. In 1830, Scott and his master moved to Missouri, which was a slave state. Four years later, a surgeon in the U.S. army named Dr. John Emerson bought Scott and moved him to the free state of Illinois. In 1836, Scott and Emerson moved to Fort Snelling, Wisconsin Territory. The Missouri Compromise prohibited slavery in this territory. That same year, Scott married a slave named Harriet. In 1838, the Emersons and the Scotts moved back to Missouri where the Scotts had two daughters. Emerson died in 1843 and left his possessions, including the Scotts, to his widow Irene. In 1846, Scott asked Mrs. Emerson if he could work for his freedom. According to Scott, she refused.

Scott sued Mrs. Emerson for "false imprisonment" and battery. Scott argued that he was being held illegally because he had become a free man as soon as he had lived in a free state. He claimed he was taken to a slave state against his will. Many slaves had sued their owners in this way and won their freedom in the past. In 1847, Emerson won in the Missouri Circuit court because Scott's lawyers failed to prove that she was holding Scott as a slave. Scott's lawyers successfully argued for a new trial.

By the time the new case went to trial in 1850, Emerson had moved to Massachusetts leaving her brother, John Sanford, in charge of Scott's case. The jury agreed that Scott and his family should be freed in accordance with the doctrine "once free, always free." The case was appealed to the Missouri Supreme Court in 1852, where two of the three judges found for Emerson and Sanford. William Scott wrote the decision of the court, stating that states have the power to refuse to enforce the laws of other states.

Sanford was legally recognized as Scott's owner in 1853. Sanford moved to New York leaving the Scotts in Missouri. Scott filed a new lawsuit in federal court (the other suits had been in state court). Federal courts settle disputes between citizens of different states. A clerk mistakenly added a letter to Sanford's name, so the case permanently became *Dred Scott* v. *John F.A. Sandford*.

In 1854, the U.S. Court for the District of Missouri heard the case. John Sanford argued in this federal lawsuit that Dred Scott could not sue because he was not a citizen. Judge Wells did not accept this argument, but he did instruct the jury to apply only the laws of Missouri in its decision. The jury found in favor of Sanford. Dred Scott then appealed to the Supreme Court of the United States.

Unfortunately for Scott, the political divisions over slavery worsened from the time his case first came to trial in 1847 through 1857, when the Court finally announced its decision. Events of this period that increased conflicts included the passage of the Fugitive Slave Act (1850), publication of *Uncle Tom's Cabin* (1852), enactment of The Kansas-Nebraska Act (1854), violence in "bleeding Kansas" (1856), and Representative Brooks's battery of Senator Sumner in the U.S. Senate (1856). Like almost all people of their time, the justices had strong personal views about slavery. One justice, Peter V. Daniel of Virginia, supported slavery so much that he even refused to travel north of the Mason-Dixon line into a free state. Some historians believe that Chief Justice Taney hoped that his decision in the *Dred Scott* case would help prevent, not create future disputes over slavery.

**Questions to Consider:**

1. Why did Dred Scott sue Emerson? What was his goal?
2. Summarize the basic argument made by Scott's lawyers in the Missouri Circuit Court (the state court). Did Dred Scott have reason to believe that he would win his case?
3. How do you think the political divisions over slavery affected Dred Scott's chances of winning his case?

#### Key Excerpts from the Majority Opinion

**The decision was 7 to 2.**

**Chief Justice Roger B. Taney delivered the opinion of the Court.**

. . . 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.

. . . [I]t may be safely assumed that citizens of the United States who migrate to a Territory belonging to the people of the United States, cannot be ruled as mere colonists, dependent upon the will of the General Government, and to be governed by any laws it may think proper to impose. The principle upon which our Governments rests is the union of States, sovereign and independent within their own limits in . . . their internal and domestic concerns, and bound together as one people by a General Government, possessing certain enumerated and restricted powers, delegated to it by the people of the several States.

. . .

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.

Read the judgment in the Supreme Court case *Dred Scott* v. *John F. A. Sandford*, March 6, 1857 from the National Archives.

#### Key Excerpts from the Majority Opinion

**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?
2. What is Chief Justice Taney's reasoning for declaring that the Missouri Compromise is unconstitutional? Why is this issue important for the case?
3. Does Chief Justice Taney agree with the doctrine "once free, always free"? Explain.
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?
5. Why do you suppose Chief Justice Taney extended his opinion to address the constitutionality of the Missouri Compromise?

#### Key Excerpts from the Dissenting Opinion

**Justice McLean wrote the dissenting opinion.**

. . . He [Scott] is averred to have had a negro ancestry, but this does not show that he is not a citizen of Missouri, within the meaning of the act of Congress authorizing him to sue in the Circuit Court. 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, as one of foreign birth, 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.

In the discussion of the power of Congress to govern a Territory, in the case of the *Atlantic Insurance Company* v. *Canter*, (1Peters, 511; 7 Curtis, 685,) Chief Justice Marshall, speaking for the court, said, " . . . the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result necessarily from the fact that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory; whichever may be the source whence the power is derived, the possession of it is unquestioned."

If Congress may establish a Territorial Government in the exercise of its discretion, it is a clear principle that a court cannot control that discretion. This being the case, I do not see on what ground the act [Missouri Compromise] is held [by the Supreme Court majority's opinion in the *Scott* case] to be void. It did not purport to forfeit property, or take it for public purposes. It only prohibited slavery; in doing which, it followed the ordinance of 1787.

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.

. . . 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? What shall this thing be denominated? Is it personal or real property? Or is it an indefinable fragment of sovereignty, which every person carries with him from his late domicile? One thing is certain, that its origin has been very recent, and it is unknown to the laws of any civilized country. . . .

#### Key Excerpts from the Dissenting Opinion

**Questions to Consider:**

1. On what key points does Justice McLean disagree with Chief Justice Taney?
2. What examples does Justice McLean use to demonstrate that Scott has the right to sue in court?
3. In his decision, Chief Justice Taney declared the Missouri Compromise unconstitutional. How does Justice McLean deal with this argument in his dissent?