An examination of the case of Dred Scott against Sandford, in the Supreme Court of the United States, and a full and fair exposition of the decision of the court, and of the opinions of the majority of the judges. Prepared at the request of, and read before “The Geneva Literary and Scientific Association,” on Tuesday evening, 28th December, 1858. By Hon. Samuel A. Foot ... Pub. by order of the Association, Geneva, N.Y., January, 1859.

AN EXAMINATION OF THE CASE OF DRED SCOTT AGAINST SANDFORD, IN THE SUPREME COURT OF THE UNITED STATES, AND A FULL AND FAIR EXPOSITION OF THE DECISION OF THE COURT, AND OF THE OPINIONS OF THE MAJORITY OF THE JUDGES.

PREPARED AT THE REQUEST OF, AND READ BEFORE “THE GENEVA LITERARY AND SCIENTIFIC ASSOCIATION,” ON TUESDAY EVENING, 28TH DECEMBER, 1858.

BY HON. SAMUEL A. FOOT, L.L.D., LATE JUDGE OF THE COURT OF APPEALS.

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AN EXAMINATION OF THE CASE OF DRED SCOTT AGAINST SANDFORD, In the Supreme Court of the United States, AND A FULL AND FAIR EXPOSITION OF THE DECISION OF THE COURT, AND OF THE OPINIONS OF THE MAJORITY OF THE JUDGES.

The duty assigned me for this evening is an examination of the case of Dred Scott *against* Sandford, in the Supreme Court of the United States; and an exposition of the decision of the Court, and of the opinions of the majority of the Judges.

As this duty has been assigned to me, to accomplish no partisan or ambitious purpose, but solely for our mutual instruction and improvement, that we, thereby, may be the better able to understand our rights and duties as citizens of this State, and of the United States, I shall discharge it with entire impartiality and truthfulness, and make no statement, nor advance any proposition, of doubtful correctness; and, as our object is not to acquaint ourselves with the technical and professional niceties of the case, but to obtain clear and correct views of the real and true question which was before the Court, and decided by it, and of the propositions advanced and sanctioned by a majority of the Judges, and which affect the rights of the several States, and of the citizens thereof, I shall pass over all the questions arising on the record, which relate to the form of 2 the pleadings, and the manner in which the case came before the Court.

The action was commenced in the Circuit Court of the United States, for the District of Misouri, to establish the freedom of Dred Scott, his wife and their two daughters, who were claimed and held by Sandford, the defendant, as slaves.

The courts of the United States are not courts of general jurisdiction, having a right to hear and decide controversies of all kinds, but have jurisdiction over, and authority to hear and determine only certain specified cases, all of which are designated in the Constitution of

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the United States. Among those cases so designated, are controversies between citizens of different States. It follows, as a natural and logical sequence from this constitution of the Courts of the United States, that whenever a party commences an action in one of those courts, he must show on his written pleading, that he has a right to commence his suit in that court; or, in other words, that the controversy between him and his adversary is one of those specified in the Constitution of the United States, which the courts thereof have a right to hear and decide. If he fails to show this, his suit is always dismissed for want of jurisdiction. Accordingly, Dred Scott, in his first written pleading, called in this case, a declaration, stated, that he was a citizen of the State of Missouri, and Sandford, a citizen of the State of Massachusetts; and hence the controversy, to be heard and decided, was between citizens of different States.

Sandford, by his written pleas, placed his defence on two grounds: *First.* —He interposed what is technically called a plea in abatement to the jurisdiction of the Court, and alleged that Dred Scott was not a citizen of the State of Missouri, because he was, “a negro of African descent; his ancestors were of pure African blood, and were brought into this country and sold as negro slaves,” and prayed judgment, that the Court would not take further cognizance of the action. *Second.* —He interposed what is technically called a plea in bar; or, in other words, a defence on the merits; and alleged, that Dred Scott, his wife and daughters, were his slaves.

The fact stated by Sandford, in his plea in abatement, was 3 admitted by Scott to be true—viz., that he was, “a negro of African descent,” &c.

In answer to Sandford's plea in bar on the merits, Scott replied, and denied, that he, his wife and daughters, were slaves of Sandford, and insisted that they were free.

Scott, to show that he, his wife and daughters, were free; and Sandford, to show that they were slaves; relied on and mutually admitted the following facts, (it is only necessary, however, for the present propose, to state those which relate to Scott,) viz.: That he was

formerly a slave in Missouri; was taken by his then master to the State of Illinois, and held there in servitude nearly two years, and was from there taken to a territory of the United States west of the Mississippi river, and north of thirty-six degrees and thirty minutes of north latitude, and there held in servitude for more than a year, and then, and in the year 1838, brought back to Missouri, and there held in servitude, and sold, before this suit was commenced, to Sandford. While in the territory of the United States and in the year 1836, Scott was married to his wife, with the consent of his and her then owner.

The Circuit Court decided in favor of Scott, on the question of jurisdiction, and against him, on the question of his freedom. He appealed to the Supreme Court. Before this high tribunal, the case was twice elaborately argued.

The jurisdiction of the Court depended on the question, whether Scott was a citizen of the State of Missouri; and his freedom on the question, whether the taking of a slave by his master into a free State to reside, by the laws of which, slavery is prohibited, dissolves the relation of master and slave, and constitutes the slave a freeman, and so fully and absolutely, that if taken back again by his master into a slave State, and there held in slavery, he can assert and maintain his freedom.

The Supreme Court of the United States is composed of nine judges. Five, are citizens of slave States, and four, of free States.

In this case, they were divided in opinion; and their views of the Constitution and law, applicable to the rights of the parties, exceedingly diverse.

Chief Justice Taney of Maryland, and Justices, Wayne of 4 Georgia, Catron of Tennessee, Daniel of Virginia, and Campbell of Alabama, being a majority, concurred substantially in their views of the rights of the parties, and of the Constitution and law, by which those rights were to be determined. The Chief Justice delivered the opinion of the Court, and in it presents the arguments and propositions assented to and approved by the majority.

To enable us to understand and form a correct judgment of the positions advanced by the Chief Justice, we must keep in view the Constitution and law, as they were generally understood in the country, before the decision of the case under consideration.

Previous to the adoption of the Federal Constitution, each of the thirteen States, then existing, was sovereign and independent. They were united by a league, called the "Confederation," but by entering into that league, they did not surrender any portion of their sovereignty. Each State had, and exercised the right of determining, who were, or who might become, citizens of it. The confederation not being a government, and only a league between sovereign States, had not, and could not have, citizens. The only citizens there were, or could be, before the adoption of the Federal Constitution, were citizens of the several States.(a.)

(a.) In most, and probably in all, of the States, at the adoption of the Federal Constitution, there were free colored persons of African descent, who were citizens of the State, and many of whom had done good service in the war of the Revolution. The 4th article of the Confederation recognised the existence of such citizens in the several States. The language of it is: "The *free* inhabitants of each of these States * * * * shall be entitled to all the privileges and immunities of free citizens in the several States."

Among civilized nations, and especially those who have adopted that system of law known as the English Common Law, there are two, and only two, classes of citizens. One acquire their citizenship by birth, and the other by law. They are generally know and distinguished by the appellatives " *native,* " and " *adopted.* "

When the Government of the United States was established by the adoption of the Constitution, there were no persons who 5 could be citizens of it, except those who were citizens of the several States.

Our federal Government, as we all know, is one of special powers. It can excercise no authority except over the subjects especially committed to its care; and every power not delegated to the United States by the Constitution, or prohibited by it to the States, is reserved to the States. The only provision in the Federal Constitution in regard to citizenship, is that which authorizes Congress “to establish an uniform rule of naturalization.” Under this provision, Congress passed a law soon after the adoption of the Constitution, prescribing the terms and manner in which any alien may become “a citizen of the United States, or any of them.” The Constitution of the United States is silent on the subject of citizenship by birth, and Congress has passed no law on that subject. Hence citizenship of the United States, by birth, rests on the general principle, that all persons, born within the limits of the United States, are citizens thereof. As there were none such at the adoption of the Federal Constitution, except native citizens of the several States, they became, like citizens of the United States. The Constitution recognises the two classes of citizens above mentioned, by the provisions, that no person shall be a representative unless he has been seven years a citizen of the United States; nor a senator, unless he has been nine years a citizen of the United States; nor president, unless a natural born citizen, or a citizen of the United States at the adoption of the Constitution. No power was prohibited to the States respecting citizenship, except so far as the adoption of aliens was concerned. The States were left, and now are, sovereign in respect to the citizenship of all persons except aliens. With that exception, each State may declare by law, who shall, and who shall not be citizens of it. A naturalized citizen, by residence in a State, becomes a citizen thereof. (Gassies *v.* Ballou, 6 Pet. R., 762.) But each State may determine by law, what rights and privileges the citizens, or any class of citizens thereof, shall have and enjoy in it. By the Constitution of the United States, “The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.” The right, which the citizen of a State has, to resort to the Courts of the United States, is not confined to controversies between citizens 6 of different States, but extends to several other kinds of controversies, and is an important and valuable right.(a.) Hence the power of a State to

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declare who shall and who shall not be a citizen thereof, has an exceedingly high value under the Constitution of the United States, in addition to the rights and privileges, which may be conferred by the State, and held and enjoyed within it.

(a.) A citizen of the United States, as such, has no right to sue in the United States Courts; but if he is a resident of, or identified with, any State in the Union, he has a right to sue in the Federal Courts, and cannot be deprived of that right, unless he is shown to be a mere wanderer without a home. (Opinion of Thompson, Justice, in Rabaud *vs.* De Wolfe, 1 Paine C. C. R., 588.)

The foregoing presents the true position of citizenship in this country, from the adoption of the Federal Constitution, to the promulgation of the opinions of the majority of the judges in this case of Dred Scott.(b.)

(b.) Applications had been made occasionally, by colored men, at the Department of State, at Washington, for passports as American citizens to go abroad, and refused. But as the granting or refusing of a passport determined no right, the action of the Department of State made no change in citizenship, under our Federal and State Constitutions and laws.

The first, and controlling question in the case we are considering was, whether Dred Scott was a citizen of the State of Missouri. Chief Justice Talley discusses it elaborately, and states the conclusions of himself and the Justices who concurred with him, in the following words: “And upon a full and careful consideration of the subject, the Court is of opinion, that, upon the facts in the plea of abatement, Dred Scott was not a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as such, to sue in its courts, and consequently, that the Circuit Court had no jurisdiction of the case. and that the judgment of that court on the plea in abatement is erroneous.” (19 How. R., 427.)

As the State of Missouri had the sole right to determine, who should, and who should not, be citizens thereof, (other than naturalized citizens of the United States, of whom it was

not pretended Dred Scott was one,) if the Chief Justice had confined his inquiry to the ascertainment of the fact, whether by the constitution and laws of that State, as expounded by her courts, Dred Scott was not a citizen of Missouri, “because he was a 7 negro of African descent, his ancestors of pure African blood, and brought into this country and sold as slaves,” then the opinions of himself and his concurring associates would have made no change in the powers and rights of the States in respect to citizenship. But the Chief Justice, not only, did not confine himself to that inquiry, but he did not make it at all. He commenced his discussion of the question of jurisdiction raised by the plea in abatement, by stating, that “The question is simply this; can a negro, whose ancestors were imported into this country and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and, as such, become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen—one of which rights is, the privilege of suing in a Court of the United States in the eases specified in the Constitution.” After remarking; that the plea in abatement “applies to that class of persons only, whose ancestors were negroes of the African race, and imported into this country, and sold and held as slaves,” the Chief Justice proceeds and re-states the question as follows: “The only matter in issue before the Court, therefore, is, whether the descendants of such slaves, when they shall be emancipated, or who are born of parents, who had become free before their birth, are citizens of a state, in the sense in which the word citizen is used in the Constitution of the United States.” (19 How. R., 403.)

The Chief Justice then proceeds to show, by various modes of reasoning, that free colored persons of the class mentioned belonged to a degraded race, when the Federal Constitution was adopted—were not a portion of the community intended to be protected by the government then instituted—and, in his own words, “had no rights which the white man was bound to respect.” (19 How. R., 407.) He then maintains, by like modes of reasoning, that their condition has not since been changed, and concludes, that they are

not citizens of the United States, and are not, and cannot become citizens of a state, so as to be entitled to sue in the Courts of the United States.(a.)

(a.) This position disfranchises all colored persons of African descent and their descendants, who were citizens of the several States, when the Constitution of the United States was adopted.

8

This last proposition, viz., that they are not citizens of a State, and cannot become such, coming in conflict with the power reserved to the States to determine, who shall, and who shall not, be citizens thereof, the Chief Justice, speaking, as already mentioned, for himself and his four concurring associates, states and maintains the proposition, “that the Constitution of the United States, upon its adoption, took from the States all power, by any subsequent legislation, to introduce as a citizen into the political family of the United States any one, no matter where he was born, or what might be his character or condition.” (19 How. R., 418.) If this proposition was clothed with judicial authority, so as to have become the law of the land, the several States of the Union would be deprived by it of one of their important and valuable sovereign rights.

We should not omit to notice here, that, in this case, it was not alleged, or even suggested, that there had been any legislation by the State of Missouri subsequent to the adoption of the Federal Constitution, affecting, in the least, Scott's right of citizenship; indeed, the proposition, in the form stated, was inapplicable to Missouri, as she did not commence her existence as a State, until more than thirty years after the Constitution was adopted. But there had been such legislation in the State of Massachusetts, under which, colored citizens of that State had claimed, under the Constitution of the United States, their rights as citizens of one of the States of the Union, in some of the slave states, and their rights had been, in those states, not only denied, but a fair trial of them prevented by disorderly assemblies of the people.(a.)

(a.) The right which a citizen of one State has in another State, under the Federal Constitution, came under review before Justice Washington, of the Supreme Court of the United States, in the case of Lessee of Butler *vs.* Fansworth, (4 Wash. C. C. R., 102–3,) and Justice Washington says, “With respect to the immunities which the rights of citizenship can confer, the citizen of one State is to be considered as a citizen of each and every other State in the Union.”

In this connection, and before proceeding to examine and give an exposition of the opinions of the majority of the Judges on the question, whether Dred Scott, his wife and their daughters, were slaves, it is proper to state two principles of law, well 9 established and universally adhered to by upright and enlightened Judges.

First.—The decision of a court is a binding authority only on the point or proposition, upon which the case *necessarily turned,* and was decided.

Second.—An opinion expressed or a proposition stated by a Judge in delivering his opinion, which is not necessarily involved in the decision of the case before the Court for judgment, is called, professionally, “ *obiter dictum,*” rendered into English, “a thing said by the way,” and meaning, “an opinion given in passing, and which, not applying judicially to the case, is not to be resorted to as an authority.”

Beside the above principles of law, there are two rules of judicial action, which should be stated.

First.— When there are several reasons which may be assigned for a decision, a discreet Judge will be content with giving only one of them, especially if that one is conclusive, and the other reasons involve delicate or important questions partaking of political or party strife.

Second.—When an objection is made to the jurisdiction of the Court, and the Judges decide that the Court has not jurisdiction, the case is dismissed, and the Judges do not

proceed and decide the cause on its merits. To do so is obviously, and, I believe, is universally considered improper.

In this connection, I ought also to draw your attention to the provisions of the Constitution of the United States, which give the Federal Courts their jurisdiction.

By article 3, section 1, “The judicial power of the United States shall be vested in one Supreme Court, and in such inferior conrts as Congress may from time to time ordain and establish.” By the same article, section 2, “The judicial power 2 10 shall extend to, (enumerating the several cases, and among others), controversies between citizens of different States.”

From these provisions of the Constitution, it is obviously immaterial, on a question of jurisdiction in the Federal Courts, in what court the action is pending, whether in the Supreme or an inferior court, for the question is not, which of the courts of the United States has authority to hear and decide the given case, but whether the *judicial power* of the United States extends to the case, in whatever court it may be pending. So in this case, when the Court decided, that Dred Scott was not a citizen of the State of Missouri, they decided, that this was not a case to which the judicial power of the United States extended, and of course, no court of the United States had jurisdiction over it.

After announciug the conclusion above stated, that Scott was not a citizen of the State of Missouri, and consequently, that the Circuit Court had no jurisdiction of the case, and that the judgment of that court sustaining its jurisdiction, was erroneous and must be reversed, the Chief Justice speaking, let it always be remembered, for himself and his concurring associates, proceeds to discuss and decide the case on the merits, and determine whether Dred Scott was a slave; asserting the right and duty to do so on two grounds— *One,* that if Scott was a slave, he was not a citizen, and for that additional reason had not a right to commence this suit in a Court of the United States— *the other,* that the Supreme Court has a right, and it is its duty, to review the decisions of the Circuit

Court, and as that Court had decided this case on the merits and adjudged that Scott was a slave, the Supreme Court ought to review that question and ascertain if it was rightly decided.

The Chief Justice presented a most elaborate argument to prove that Scott was a slave, and in the course of that argument expresses several very important opinions; and as I present them, I will state in connection with each, what was the general understanding of the country previously, on the same subject.

First.—The opinion is given, that the provision in the third section of the fourth article of the Constitution of the United 11 States, respecting the territory thereof, in the following words, viz.: "The Congress shall have power to dispose of, and make all needful rules and regulations, respecting the territory, or other property belonging to the United States," was only applicable to the territory owned by the United States when the Constitution was adopted, and did not apply to any territory subsequently acquired, (19 How. R., 432, 436, 441, 442;) and that over territory, acquired subsequently to the adoption of the Constitution, Congress has not full power of legislation. (19 How. R., 447 to 450).

Previous to the announcement of this opinion, the general, and I think it should be said, the universal understanding of the country, and of the different departments of the General Government, was, that the clause in the Constitution above mentioned did apply to *all* the territories of the United States, whenever and however acquired, and gave Congress full power to legislate concerning them, without reference to the time when the right to them was acquired.

In this connection, we should recall and keep in view the fact, that Congress has exercised full power of legislation over *all* the territories of the United States, from the adoption of the Constitution to the present time; and that, too, without any reference to the time when they were acquired.

Second.—The opinion is given; that there is no "difference between property in a slave and other property;" that each is entitled to the same protection, and stands on the same footing under our Constitution and laws. (19 How. R., 451, 452.)

Before this opinion was announced, the universal understanding of the country was, that there was a broad distinction between the two kinds of property in many important and marked respects, but palpably and especially in this, that while property in lands and chattels was recognised throughout the whole country, and in every State of the Union, it was with equal universality acknowledged, that property in a slave was against natural right, and could only exist by positive law; that such law could have no operation beyond the limits of the State which enacted it; and that if the slave passed beyond those limits, he was free, with this single qualification, viz., if he 12 *escaped* from servitude into another State of our Union, his master, under a provision of the Constitution of the United States, might reclaim him.

Third.—The opinion is given, that the Constitution of the United States extends to the territories thereof. (19 How. R., 449, 450.)

Before this opinion was announced, the understanding of the country, it is believed, was universal, that the Constitution of the United States was made for the States, and for them only; that it did not, and could not, by its very terms, include the territories. It was made by "The People of the *United States*" "for the United States of America;" and "in order to form a more perfect Union" between the States. All its provisions relate to the States and citizens thereof. The territories are the property of the United States, and remain their property till they become States and are admitted into the Union. When so admitted, they come under the Federal Constitution, and are governed and protected by it, and not till then. While the property of the United States, Congress exercises over them plenary power of legislation, not only under the clause in the Constitution, giving Congress power to "make all needful rules and regulations, respecting the territory" of the United States, but by virtue of the sovereign power, which the United States has over the

territories belonging to them. This sovereign power has been freely exercised from the beginning of the government, without any regard to the provisions of the Constitution. One of many instances showing this, is the removal by the President of territorial judges; while all judges, high and low, under the Constitution, hold their offices “during good behavior.”

Fourth.—The opinion is given, that Congress has not power to prohibit slavery in the territories of the United States acquired since the adoption of the Constitution, and that the owners of slaves have a right to take their slaves into such territories and hold them there in servitude, (19 How. R., 449 to 452,) and that the law of Congress, which prohibited slavery in the territories of the United States north of thirty-six degrees and 13 thirty minutes of north latitude, called the Missouri Compromise, (those territories having been acquired since the adoption of the Constitution), was unconstitutional and void.(a.)

(a.) Mr. Justice Catron, while concurring in this opinion, placed his own, on reasons different from those of his associates.

(19 How. R., 452.)

Previous to the announcement of this opinion, the general understanding of the country was, that Congress had power to prohibit slavery in all the territories of the United States, and without reference to the time when they were acquired—that the owners of slaves had not a right to take them into a territory of the United States, where slavery did not exist by law, and if they did, the slaves became free—and that the law, prohibiting slavery in the territories of the United States north of thirty-six degrees and thirty minutes of north latitude, was constitutional and valid.

In this connection, and to enable us to understand fully and judge correctly of the opinion above stated, we should remember and keep in view, *the fact,* that Congress has, in nine instances, and by as many separate laws, prohibited slavery in the territories of the United States; the first act being passed in August, 1789, and the last one in August, 1848. Four of them prohibited slavery in territory acquired since the adoption of the Constitution; *also*

the fact, that the Constitution of the United States contains a provision, that “No State shall pass a law impairing the obligation of contracts.” A vested right is a contract executed; and the courts of the United States, by a series of decisions, have established the principle, that a State cannot, either by a law of its Legislature, or a clause in its constitution, destroy or injuriously disturb a vested right, as that would impair the obligation of a contract. Hence, if the owners of slaves may take them into a territory of the United States and hold them there, as they may other property, that territory, when it becomes a state, cannot by a provision in its constitution, or a law of its Legislature, put an end to slavery within it.(b.)

(b.) 1. This shows, that “squatter or popular sovereignty,” as it is called, is an illusion; and assuming that the opinion of the five judges, viz., that slaves may be taken into the territories and held there, is law, then Mr. Buchanan's declaration that “Kansas is as much a slave state as South Carolina,” is strictly true—and so will every other state be a slave state, which shall be formed out of a territory into which slaves may have been taken.

2. In this connection, the startling thought arises, what will be the effect of the opinions of the majority of the judges, in connection with the clause in the Constitution protecting vested rights, upon the legislation of the several states which have abolished slavery? Does not that whole body of legislation fall as unconstitutional? And what can prevent former owners of slaves or their heirs, in the free states, from reclaiming their former slaves, and the posterity of their female slaves, and reducing them again to slavery?

— *also* 14 *the fact,* that if a citizen of a slave state, say of Georgia, being the owner of slaves under and by virtue of the laws of that State, has a right to take them into a territory of the United States and hold them there, while it is a territory, and after it becomes a State, he so holds them by virtue of the laws of Georgia; and thus effect is given to laws of that State, not only beyond the limits of the State, but in a territory of the United States, and in another State of the Union; *also,* and *lastly, the fact,* that the law, called the “Missouri Compromise,” was not only acquiesced in from its passage in 1820, to its repeal in 1854, but was reenacted in 1845, when Texas was admitted into the Union.(a)

(a) The third article of the act, admitting Texas, is as follows: “Article III. New States of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territoty thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And such States as may be formed out of that portion of said territory lying north of thirty-six degrees thirty minutes north latitude, commonly called the Missouri Compromise line, shall be admitted into the Union, with or without slavery, as the people of each state asking may desire; and in such state or states as shall be formed out of said territory, north of said Missouri Compromise line, slavery, or involuntary servitude, (except for crime), shall be prohibited.”

Fifth.—The opinion is given, that the taking of Dred Scott by his master into the State of Illinois, where slavery is forbidden by its constitution and laws, and holding him there in servitude nearly two years, did not emancipate him.

Previous to the announcement of this opinion, the general, and I believe the universal, understanding of the country was, that the great and noble principle of the common law prevailed 15 in all the free States of this Union; that as soon as a slave placed his foot on free soil, he became a freeman; and that the only modification of this principle was in the provision of our Federal Constitution, before mentioned, which entitles a master to a return of his slave, when he escapes from his service into another state.

To form a correct judgment respecting the fifth opinion above stated, we must call to mind the obvious results which follow from it. If an owner of slaves can take them into a free state for a temporary purpose, or residence, without thereby dissolving the relation of master and slave, and emancipating them, then the law of the slave state, under and by virtue of which they are his slaves, has an operation, not only beyond the limits of that slave state, but actually in another sovereign state of the Union; and thus compels the latter state to tolerate slavery within its borders and against its will. If an owner of slaves

can hold them in a free state for the length of time the owner of Dred Scott held him in Illinois, without thereby emancipating them, there seems to be nothing to prevent an owner from taking his slaves into a free state and holding them for any length of time and for any purpose, provided he does not intend to become a permanent resident of the free state, and designs at some future day to return with his slaves to the slave state from which he came, or go to some other slave state. In this way slave labor may be brought into contact and competition with free labor in the free states. An owner of slaves may take a contract on a canal or railroad in a free state, and bring his slaves there to do the work. And if property in a slave stands on the same footing under the constitution and laws as property in lands and chattels, as the majority of the judges hold that it does, it would seem to follow, that a slave may be taken and held anywhere, in any state, and for any length of time, that a citizen may take and hold his carriage or his horse.

After expressing the opinions above stated, and making full and elaborate arguments to sustain them, the Chief Justice states the final judgment of the Court to be; that Dred Scott is not a citizen of the State of Missouri, “and that the Circuit Court of the United States, for that reason, had no jurisdiction of the case, and could give no judgment in it. Its judgment 16 for the defendant (Sandford) must consequently be reversed, and a mandate issued, directing the suit to be dismissed for want of jurisdiction.” (19 How. R., 454.)

Justices, Nelson of New York, and Grier of Pennsylvania, expressed no opinion on the question of jurisdiction, not considering it before the Court, but discussed the case on the merits, viz., whether Dred Scott was a slave, and were of opinion that that question should be determined by the laws of Missouri, and after a full examination of the constitution, laws and decisions of that State, came to the conclusion, that by them, Dred Scott was a slave, and they were in favor of affirming the judgment of the Circuit Court. (19 How. R., 469.) Justice Grier also expressed an opinion, that the Missouri Compromise was unconstitutional.

Justices, McLean of Ohio, and Curtis of Massachusetts, discussed most elaborately all the questions which arose in the cause, and took opposite views, and expressed opposite opinions, on all of them, to the majority of the judges. Their opinions were, that Dred Scott was a citizen of the State of Missouri, and had a right to sue Sandford in the Courts of the United States; and as those Courts had jurisdiction of the cause, they were bound to examine and decide it on the merits. They accordingly did examine the question, whether Dred Scott was a slave, and came to the conclusion, that he was a freeman; and as the Circuit Court had decided that Scott was a slave, they were of opinion, that for that reason the judgment of that Court was erroneous, and ought to be reversed.

The foregoing statement and exposition of the judgment of the Court and of the opinions of Chief Justice Taney and his four concurring associates, will enable all to form a correct judgment, whether the first question before the Court was, whether this was a case to which the judicial power of the United States extended, or, in other words, whether it was a controversy between citizens of different states, and depended on the question whether Scott was a citizen of the State of Missouri according to the constitution and laws thereof. If that was the first question, and the Court decided, as the majority of the Judges certainly did, and pronounced the judgment of the Court to be, that Dred Scott was not a citizen of the State of 17 Missouri, and for that reason the courts of the United States had not jurisdiction of the case and ordered it to be dismissed; then a correct judgment can be formed, whether the Judges in the majority, having decided this was not a case to which the judicial power of the United States extended, had a right, or could, with even the appearance of judicial propriety, go farther, and express the opinions above stated, viz.:

1. That free colored persons, whose ancestors were imported into this country and sold as slaves, “had no rights which the white man was bound to respect,” and were not citizens of the United States.

2. That “the Constitution of the United States, upon its adoption, took from the States all power by any subsequent legislation to introduce as a citizen into the political family of the

United States any one, no matter where he was born, or what might be his character or condition."

3. That the clause in the Federal Constitution, which gives Congress full power of legislation over the territories of the United States, applies only to the territories, which the general government owned when the constitution was adopted, and does not apply to territories subsequently acquired.

4. That over territories acquired by the general government since the adoption of the Federal Constitution, Congress has not full power of legislation.

5. That there is no difference between property in a slave and other property.

6. That the Constitution of the United States extends to the territories thereof.

7. That Congress has not power to prohibit slavery in the territories acquired since the constitution was adopted. 3

18

8. That the owners of slaves have a right to take their slaves into territories so acquired, and hold them there in servitude.

9. That the act of Congress passed in 1820, prohibiting slavery in the territories north of thirty-six degrees and thirty minutes of north latitude, was unconstitutional and void.

10. That the taking of a slave by his master into a free state, and keeping him there in his service for two years, does not entitle him to his freedom.

If these opinions are clothed with judicial authority, and for that reason are the law of the land, we cannot fail to see, that they give the country a new constitution, and a new system of law, on the subject of slavery and the government of our territories, and widely different from those given us by our fathers, and under which we have hitherto lived.

But if they are extra judicial, mere " *obiter dicta,* " and have no judicial authority, then a most serious question arises for the decision of the country, and upon which every citizen should be prepared to form an enlightened judgment; and that question is, what constitutional and lawful action can be taken, to prevent these opinions from being engrafted on our Constitution and laws by judicial legislation. Should the Supreme Court of the United States remain organized as at present, with only nine judges, and five of them citizens of the slave states, there can scarcely remain a doubt but that, as cases arise, they will be decided in accordance with these opinions. Congress has power to reorganize that court; and the question is, Shall that be done, so as to give the free states a fair representation in that tribunal? In favor of this measure, it is said, that the slave states have less than half the number of free white people, and less than one-third of the amount of litigation, which the free states have; and that it is, consequently, just and proper, that the Court should be so organized, as to give each portion of the Union an equal and fair proportion of the judges. On the other hand, it is said, re-organization of the Court would be a harsh and dangerous measure. Each citizen must decide for himself which is the 19 greater evil, to re-organize the Court, or allow these opinions to become parts of our constitution and laws, and give us a new constitutional and legal system on the subject of slavery and our territories.(a.)

(a.) In February, 1847, Mr. Calhoun, then a Senator in Congress, from South Carolina, submitted to the Senate the following resolutions:

" *Resolved,* That the territories of the United States belong to the several States composing this Union, and are held by them as their joint and common property.

" *Resolved,* That Congress, as the joint agent and representative of the States of the Union, has no right to make any law or do any act whatever that shall directly, or by its effects, make any discrimination between the States of this Union, by which any one

of them shall be deprived of its full and equal rights in any territory of the United States acquired or to be acquired."

" *Resolved,* That the enactment of any law which should directly, or by its effects, deprive the citizens of any of the States of this Union from emigrating with their property, into any of the territories of the United Stats, would make such a discrimination; and would, therefore, be a violation of the Constitution, and the rights of the States from which such citizens emigrated, and in derogation of that perfect equality which belongs to them as members of this Union, and would tend directly to subvert the Union itself."

These resolutions were at once denounced on all sides as a "fire-brand," calculated to increase dissensions between the free and slave states, and disturb the peace of the country. They were so universally condemned, not only in the free states, but by the considerate and patriotic citizens of the slave states, for their ultra, sectional, and unconstitutional sentiments and principles, that Mr. Calhoun himself never ventured to ask any action in the Senate upon them. They produced no action anywhere, except in a few of the slave states—Virginia, South Carolina, Florida and Missouri adopted them at the time, as the basis of a new party organization; but it was not adhered to, and the resolutions sunk into the mass of extravagant excesses of sectional and partisan zeal, and were forgotten. Yet unfortunately for the peace and harmony of the country—unfortunately for the dignity and usefulness of our highest judicial tribunal—it is too plain, that the majority of the Judges in this case of Dred Scott, called up these resolutions from the oblivion to which they had been justly consigned, and passing beyond the question before the Court, have endeavored to give to them judicial sanction, and engraft them, and their ultra, pro-slavery, and unconstitutional principles, upon our institutions, and thus change them, and so fundamentally, as to nationalize slavery, and turn this nation into a great slaveholding republic.

Geneva, N. Y., December 28, 1858.

An examination of the case of Dred Scott against Sandford, in the Supreme Court of the United States, and a full and fair exposition of the decision of the court, and of the opinions of the majority of the judges. Prepared at the request of, and read before "The Geneva Literary and Scientific Association," on Tuesday evening, 28th December, 1858. By Hon. Samuel A. Foot ... Pub. by order of the Association, Geneva, N.Y., January, 1859. http://www.loc.gov/resource/rbcmisc.lst0103