

TANEY, C.J., Opinion of the Court
SUPREME COURT OF THE UNITED STATES

60 U.S. 393

Scott v. Sandford

[Abbreviated Version]

Mr. Chief Justice TANEY delivered the opinion of the court.

There are two leading questions presented by the record:

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

Doomed From the First Pleading

The plaintiff in error, who was also the plaintiff in the court below, was, with his wife and children, 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 declaration is in the form usually adopted in that State to try questions of this description, and contains the averment necessary to give the court jurisdiction; that he and the defendant are citizens of different States; that is, that he is a citizen of Missouri, and the defendant a citizen of New York.

The defendant pleaded in abatement to the jurisdiction of the court, that the plaintiff was not a citizen of the State of Missouri, as alleged in his declaration, being a negro of African descent, whose ancestors were of pure African blood and who were brought into this country and sold as slaves.

If the question raised by it is legally before us, and the court should be of opinion that the facts stated in it disqualify the plaintiff from becoming a citizen, in the sense in which that word is used in the Constitution of the United States, then the judgment of the Circuit Court is erroneous, and must be reversed.

Because, under the Constitution and laws of the United States, the rules which govern the pleadings in its courts in questions of jurisdiction stand on different principles, and are regulated by different laws.

This difference arises, as we have said, from the peculiar character of the Government of the United States. For although it is sovereign and supreme in its appropriate sphere of action, yet it does not possess all the powers which usually belong to the sovereignty of a nation. Certain specified powers, enumerated in the Constitution, have been conferred upon it, and neither the legislative, executive, nor judicial departments of the Government can lawfully exercise any authority beyond the limits marked out by the Constitution.

Hence, when a plaintiff sues in a court of the United States, it is necessary that he should [p402] show, in his pleading, that the suit he brings is within the jurisdiction of the court, and that he is entitled to sue there. And if he omits to do this, and should, by any oversight of the Circuit Court, obtain a judgment in his favor, the judgment would be reversed in the appellate court for want of jurisdiction in the court below.

And if the 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 aver in his pleading that they are citizens of different States, and he cannot maintain his suit without showing that fact in the pleadings.

In this case, the citizenship is averred, but it is denied by the defendant in the manner required by the rules of pleading, and the fact upon which the denial is based is admitted by the demurrer.

The Basic Issue Before the Court

The question is simply this: can a negro whose ancestors were imported into this country and sold as slaves become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen, one of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution?

It will be observed that the plea 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 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.** And this being the only matter in dispute on the pleadings, the court must be understood as speaking in this opinion of that class only, that is, of those persons who are the descendants of Africans who were imported into this country and sold as slaves.

Africans are Unlike Indians

The situation of this population was altogether unlike that of the Indian race. The latter, it is true, formed no part of the colonial communities, and never amalgamated with them in social connections or in government. **But although they were uncivilized, they were yet a free and independent people, associated together in nations or tribes and governed by their own laws.** Many of these political communities were situated in territories to which the white race claimed the ultimate [p404] right of dominion.

These Indian Governments were regarded and treated as foreign Governments as much so as if an ocean had separated the red man from the white, and their freedom has constantly been acknowledged, from the time of the first emigration to the English colonies

to the present day, by the different Governments which succeeded each other. Treaties have been negotiated with them, and their alliance sought for in war, and the people who compose these Indian political communities have always been treated as foreigners not living under our Government.

It is true that the course of events has brought the Indian tribes within the limits of the United States under subjection to the white race, and it has been found necessary, for their sake as well as our own, to regard them as in a state of pupilage, and to legislate to a certain extent over them and the territory they occupy.

But they may, without doubt, like the subjects of any other foreign Government, 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.

Were African Slaves Intended To Be Included as Citizens in the Constitution

We proceed to examine the case as presented by the pleadings.

The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They 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. They are what we familiarly call the "sovereign people," and every citizen is one of this people, and a constituent member of this sovereignty.

The question before us is whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? **We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States.**

On the contrary, **they were at that time considered as a subordinate [p405] 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.**

Heard by a Strict Constructionist Court

It is not the province of the court to decide upon the justice or injustice, the policy or impolicy, of these laws. The decision of that question belonged to the political or lawmaking power, to those who formed the sovereignty and framed the Constitution. The duty of the court is to interpret the instrument they have framed with the best lights we can obtain on the subject, and to administer it as we find it, according to its true intent and meaning when it was adopted.

State Citizenship Does Not Automatically Confer US Citizenship

In discussing this question, we must not confound the rights of citizenship which a State may confer within its own limits and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a

State, that he must be a citizen of the United States. He may have all of the rights and privileges of the citizen of a State and yet not be entitled to the rights and privileges of a citizen in any other State.

For, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of citizen, and to endow him with all its rights. But this character, of course, was confined to the boundaries of the State, and gave him no rights or privileges in other States beyond those secured to him by the laws of nations and the comity of States.

Nor have the several States surrendered the power of conferring these rights and privileges by adopting the Constitution of the United States. Each State may still confer them upon an alien, or anyone it thinks proper, or upon any class or description of persons, **yet he would not be a citizen in the sense in which that word is used in the Constitution** of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them. **The Constitution has conferred on Congress the right to establish an uniform rule of naturalization, and this right is evidently exclusive,** and has always been held by this court to be so. **Consequently, no State, since the adoption of the Constitution, can, by naturalizing an alien, invest him with the rights and privileges secured to a citizen of a State under the Federal Government,** although, so far as the State alone was concerned, he would undoubtedly be entitled to the rights of a citizen and clothed with all the [p406] rights and immunities which the Constitution and laws of the State attached to that character.

It is very clear, therefore, that no State can, by any act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It cannot make him a member of this community by making him a member of its own. 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?**

The court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error 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, recognised as citizens in the several States became also citizens of this new political body, but none other; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges guaranteed to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards by birthright or

otherwise become members according to the provisions of the Constitution and the principles on which it was founded.

It 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 [p407] 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.

Who Were Citizens of the Several States When the Constitution was Adopted?

It becomes necessary, therefore, to determine **who were citizens of the several States when the Constitution was adopted**. And in order to do this, we must recur to the Governments and institutions of the thirteen colonies when they separated from Great Britain and formed new sovereignties, and took their places in the family of independent nations. We must inquire **who, at that time, were recognized as the people or citizens of a State whose rights and liberties had been outraged by the English Government, and who declared their independence and assumed the powers of Government to defend their rights by force of arms**.

In the opinion of the court, the 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.

How Were Africans Viewed at the Time 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.

They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race either in social or political relations, and **so far inferior that they had no rights which the white man was bound to respect**, and that **the negro might justly and lawfully be reduced to slavery 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. It was regarded as an axiom in morals as well as in politics which no one thought of disputing or supposed to be open to dispute, and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion.

And in no nation was this opinion more firmly fixed or more [p408] uniformly acted upon than by the English Government and English people... The opinion thus entertained and acted upon in England was naturally impressed upon the colonies they founded on this side of the Atlantic. **And, accordingly, a negro of the African race was regarded by them as an article of property, and held, and bought and sold as such**, in every one of the thirteen

colonies which united in the Declaration of Independence and afterwards formed the Constitution of the United States.

Legislation Among the Colonies Proves the Prevailing View of Africans, Slave or Free

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

It would be tedious, in this opinion, to enumerate the various laws they passed upon this subject. It will be sufficient, as a sample of the legislation which then generally prevailed throughout the British colonies, to give the laws of two of them, one being still a large slaveholding State and the other the first State in which slavery ceased to exist.

The province of Maryland, in 1717, ch. 13, s. 5, passed a law declaring

that if any free negro or mulatto intermarry with any white woman, or if any white man shall intermarry with any negro or mulatto woman, such negro or mulatto shall become a slave during life, excepting mulattoes born of white women, who, for such intermarriage, shall only become servants for seven years, to be disposed of as the justices of the county court where such marriage so happens shall think fit, to be applied by them towards the support of a public school within the said county. And any white man or white woman who shall intermarry as aforesaid with any negro or mulatto, such white man or white woman shall become servants during the term of seven years, and shall be disposed of by the justices as aforesaid, and be applied to the uses aforesaid.

The other colonial law to which we refer was passed by Massachusetts in 1705 (chap. 6). It is entitled "An act for the better preventing of a spurious and mixed issue," &c., and it provides, that

if any negro or mulatto shall presume to smite or strike any person of the English or other Christian nation, such negro or mulatto shall be severely whipped, at [p409] the discretion of the justices before whom the offender shall be convicted.

And

that none of her Majesty's English or Scottish subjects, nor of any other Christian nation, within this province, shall contract matrimony with any negro or mulatto;

We give both of these laws in the words used by the respective legislative bodies because the language in which they are framed, as well as the provisions contained in them, show, too plainly to be misunderstood the degraded condition of this unhappy race. They were still in force when the Revolution began, and **are a faithful index to the state of feeling towards the class of persons of whom they speak**, and of the position they occupied throughout the thirteen colonies, in the eyes and thoughts of the men who framed the Declaration of Independence and established the State Constitutions and Governments.

They show that a perpetual and impassable barrier was intended to be erected between the white race and the one which they had reduced to slavery, and governed as subjects with absolute and despotic power, and which they then looked upon as so far below them in the scale of created beings, that intermarriages between white persons and negroes or mulattoes were regarded as unnatural and immoral, and punished as crimes, not only in the parties, but in the person who joined them in marriage. And no distinction in this respect was made between the free negro or mulatto and the slave, but this stigma of the deepest degradation was fixed upon the whole race.

We refer to these historical facts for the purpose of showing the fixed opinions concerning that race upon which the statesmen of that day spoke and acted. 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 Framers of the Declaration of Independence Knew Exactly What They Were Saying

The language of the Declaration of Independence is equally conclusive:

It begins by declaring that,

[w]hen in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to [p410] assume among the powers of the earth the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect for the opinions of mankind requires that they should declare the causes which impel them to the separation.

It then proceeds to say:

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 were great men -- high in literary acquirements, high in their sense of honor, and incapable of asserting principles inconsistent with those on which they were acting. They perfectly understood the meaning of the language they used, and how it would be understood by others, and they knew that it would not in any part of the civilized world be supposed to embrace the negro race, which,

by common consent, had been excluded from civilized Governments and the family of nations, and doomed to slavery. They spoke and acted according to the then established doctrines and principles, and in the ordinary language of the day, and no one misunderstood them. The unhappy black race were separated from the white by indelible marks, and laws long before established, and were never thought of or spoken of except as property, and when the claims of the owner or the profit of the trader were supposed to need protection.

The Constitution Gives Explicit Recognition to the Inferiority of Africans and to the Institution of a Constitutionally Protected Slavery

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 sets forth by whom it was formed, for what purposes, and for whose benefit and protection. It declares [p411] 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 two clauses in the Constitution which point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the Government then formed. One of these clauses reserves to each of the thirteen States the right to import slaves until the year 1808¹ if it thinks proper. And the importation which it thus sanctions was unquestionably of persons of the race of which we are speaking, as the traffic in slaves in the United States had always been confined to them. 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 service², and be found within their respective territories. By the first above-mentioned clause, therefore, the right to purchase and hold this property is directly sanctioned and authorized for twenty years by the people who framed the Constitution. And by the second, they pledge themselves to maintain and uphold the right of the master in the manner specified, as long as the Government they then formed should endure. And these two provisions show conclusively that neither the description of persons therein referred to nor their descendants were embraced in any of the other provisions of the Constitution, for certainly these two clauses were not intended to confer on them or their posterity the blessings of liberty, or any of the personal rights so carefully provided for the citizen.

No one of that race had ever migrated to the United States voluntarily; all of them had been brought here as articles of merchandise. The number that had been emancipated at that time were but few in comparison with those held in slavery, and they were identified in the public mind with the race to which they belonged, and regarded as a part of the slave population rather than the free. It is obvious that they were not [p412] even in the minds of

¹ Article I, Section 9, Clause 1; see also Article V, which prevents any amendments to this section for 20 years (until 1808).

² Article IV, Section 2, Clause 3; see also Article I, Section 8, Clause 15 and Article IV, Section 4, which ensure that federal troops would be used to put down any slave rebellion.

the framers of the Constitution when they were conferring special rights and privileges upon the citizens of a State in every other part of the Union.

The View of the Black Race in the Several States

Indeed, when we look to the condition of this race in the several States at the time, it is impossible to believe that these rights and privileges were intended to be extended to them.

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, but few slaves were held at the time of the Declaration of Independence, and when the Constitution was adopted, it had entirely worn out in one of them, and measures had been taken for its gradual abolition in several others. But this change had not been produced by any change of opinion in relation to this race, but because it was discovered from experience that slave labor was unsuited to the climate and productions of these States, 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.** And it can hardly be supposed that, in the States where it was then countenanced in its worst form -- that is, in the seizure and transportation -- the people could have regarded those who were emancipated as entitled to equal rights with themselves.

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

We need not refer on this point particularly to the laws of the present slaveholding States. Their statute books are full of provisions in relation to this class in the same spirit with the Maryland law which we have before quoted. They have continued to treat them as an inferior class, and to subject them to strict police regulations, drawing a broad line of distinction between the citizen and the slave races, and legislating in relation to them upon the same principle which prevailed at the time of the Declaration of Independence. **As relates to these States, it is too plain for argument that they have never been regarded as a part of the people or citizens of the State, nor supposed to possess any political rights which the dominant race might not withhold or grant at their pleasure. [p413]** And as long ago as 1822, the Court of Appeals of Kentucky decided that free negroes and mulattoes were not citizens within the meaning of the Constitution of the United States, and the correctness of this decision is recognized, and the same doctrine affirmed, in 1 Meigs's Tenn.Reports, 331.

And if we turn to the legislation of the States where slavery had worn out, or measures taken for its speedy abolition, we shall find the same opinions and principles equally fixed and equally acted upon.

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...

It cannot be supposed that they intended to secure to them rights and privileges and rank, in the new political body throughout the Union which every one of them denied within

the limits of its own dominion. More especially, **it cannot be believed that the large slaveholding States regarded them as included in the word citizens, or would have consented to a Constitution which might compel them to receive them in that character from another State. For if they were so received, and entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police [p417] regulations which they considered to be necessary for their own safety.**

It would give to persons of the negro race, who were recognised as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went. And all of this would be done in the face of the subject race of the same color, both free and slaves, and inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State.

The Privileges and Immunities of Citizenship Came at the Price of Naturalization

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

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, and entitled to demand equal rights and privileges with their own people, within their own territories.

The right of naturalization was therefore, with one accord, surrendered by the States, and confided to the Federal Government. And this power granted to Congress to establish an uniform rule of naturalization is, by the well understood meaning of the word, confined to persons born in a foreign country, under a foreign Government. It is not a power to raise to the rank of a citizen anyone born in the United States who, from birth or parentage, by the laws of the country, belongs to an inferior and subordinate class. And when we find the States guarding themselves from the indiscreet or improper admission by other States of emigrants from other countries by giving the power exclusively to Congress, we cannot fail to see that **they could never have left with the States a much [p418] more important power -- that is, the power of transforming into citizens a numerous class of persons who, in that character, would be much more dangerous to the peace and safety of a large portion of the Union than the few foreigners one of the States might improperly naturalize.**

The Constitution upon its adoption obviously took from the States all power by any subsequent legislation to introduce as a citizen into the political family of the United States anyone, no matter where he was born or what might be his character or condition, and it gave to Congress the power to confer this character upon those only who were born outside of the dominions of the United States. And no law of a State, therefore, passed

since the Constitution was adopted, can give any right of citizenship outside of its own territory.

The Articles of Confederation

A clause similar to the one in the Constitution in relation to the rights and immunities of citizens of one State in the other States was contained in the Articles of Confederation. But there is a difference of language which is worthy of note. The provision in the Articles of Confederation was

that the *free inhabitants* of each of the States, paupers, vagabonds, and fugitives from justice, excepted, should be entitled to all the privileges and immunities of free citizens in the several States.

It will be observed that, under this Confederation, each State had the right to decide for itself, and in its own tribunals, whom it would acknowledge as a free inhabitant of another State. The term *free inhabitant*, in the generality of its terms, would certainly include one of the African race who had been manumitted. But no example, we think, can be found of his admission to all the privileges of citizenship in any State of the Union after these Articles were formed, and while they continued in force. And, **notwithstanding the generality of the words "free inhabitants," it is very clear that, according to their accepted meaning in that day, they did not include the African race, whether free or not,** for the fifth section of the ninth article provides that Congress should have the power

to agree upon the number of land forces to be raised, and to make requisitions from each State for its quota in proportion to the number of *white* inhabitants in such State, which requisition should be binding.

Words could hardly have been used which more strongly mark the line of distinction between the citizen and the subject -- the free and the subjugated races. The latter were not even counted when the inhabitants of a State were to be embodied in proportion to its numbers for the general defence. And it cannot for a moment be supposed that a class of [p419] persons thus separated and rejected from those who formed the sovereignty of the States, were yet intended to be included under the words "free inhabitants," in the preceding article, to whom privileges and immunities were so carefully secured in every State.

What Congress Intended Is Evidenced by its Parallel Acts

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 two first are particularly worthy of notice, because many of the men who assisted in framing the Constitution, and took an active part in procuring its adoption, were then in the halls of legislation, **and certainly understood what they meant when they used the words "people of the United States" and "citizen" in that well-considered instrument.**

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."**

Now the Constitution does not limit the power of Congress in this respect to white persons. And they may, if they think proper, **authorize the naturalization of anyone, of any**

color, who was born under allegiance to another Government. But the language of the law above quoted shows that **citizenship [p420] at that time was perfectly understood to be confined to the white race**; and that they alone constituted the sovereignty in the Government.

Congress might, as we before said, have authorized the naturalization of **Indians because they were aliens and foreigners**. But, in their then untutored and savage state, no one would have thought of admitting them as citizens in a civilized community. And, moreover, the atrocities they had but recently committed, when they were the allies of Great Britain in the Revolutionary war, were yet fresh in the recollection of the people of the United States, and they were even then guarding themselves against the threatened renewal of Indian hostilities. **No one supposed then that any Indian would ask for, or was capable of enjoying, the privileges of an American citizen, and the word white was not used with any particular reference to them.**

Neither was it used with any reference to the African race imported into or born in this country; **because Congress had no power to naturalize them**, and therefore there was no necessity for using particular words to exclude them.

It would seem to have been used merely because it followed out **the line of division which the Constitution has drawn between the citizen race, who formed and held the Government, and the African race, which they held in subjection and slavery and governed at their own pleasure.**

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

The third act to which we have alluded is even still more decisive; it was passed as late as 1813, 2 Stat. 809, and it provides:

That from and after the termination of the war in which the United States are now engaged with Great Britain, it shall not be lawful to employ, on board of any public or private vessels of the United States, any person or persons **except citizens of the United States, or persons of color**, natives of the United States. [p421]

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

This law, like the laws of the States, shows that this class of persons were 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 an 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.

Acts in the Executive Branch are Consistent With This Lack of Citizenship View

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

But it is said that a person may be a citizen, and entitled to [p422] 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 recognised 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.

So, too, a person may be entitled to vote by the law of the State, who is not a citizen even of the State itself. And in some of the States of the Union, foreigners not naturalized are allowed to vote. And the State may give the right to free negroes and mulattoes, but that does not make them citizens of the State, and still less of the United States. And the provision in the Constitution giving privileges and immunities in other States does not apply to them.

Neither does it apply to a person who, being the citizen of a State, migrates to another State. For then he becomes subject to the laws of the State in which he lives, and he is no longer a citizen of the State from which he removed. And the State in which he resides may then, unquestionably, determine his status or condition, and place him among the class of persons who are not recognised as citizens, but belong to an inferior and subject race, and may deny him the privileges and im But if he ranks as a citizen in the State to which he belongs, within the meaning of the Constitution of the United States, then, whenever he goes into another State, the Constitution clothes him, as to the rights of person, will all the privileges and immunities which belong to citizens of the [p423] State. And if persons of the African race are citizens of a State, and of the United States, they would be entitled to all of these privileges and immunities in every State, and the State could not restrict them, for they would hold these privileges and immunities under the paramount authority of the Federal Government, and its courts would be bound to maintain and enforce them, the Constitution and laws of the State to the contrary notwithstanding.

And if the States could limit or restrict them, or place the party in an inferior grade, this clause of the Constitution would be unmeaning, and could have no operation, and would give no rights to the citizen when in another State. He would have none but what the State itself chose to allow him. This is evidently not the construction or meaning of the clause in question. It guaranties rights to the citizen, and the State cannot withhold them. And these rights are of a character and would lead to consequences which make it absolutely certain that the African race were not included under the name of citizens of a State, and were not in the contemplation of the framers of the Constitution when these privileges and immunities were provided for the protection of the citizen in other States.

Under the Constitution Africans Are Property

The only two provisions which point to them [Africans] and include them treat them as property and make it the duty of the Government to protect it; no other power, in relation to this race, is to be found in the Constitution; and as it is a Government [p426] of special, delegated, powers, no authority beyond these two provisions can be constitutionally exercised. **The Government of the United States had no right to interfere for any other purpose but that of protecting the rights of the owner, leaving it altogether with the several States to deal with this race, whether emancipated or not, as each State may think justice, humanity, and the interests and safety of society, require.** The States evidently intended to reserve this power exclusively to themselves.

The Words of the Constitution Must Be Construed as When Framed and Adopted

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

What the construction was at that time we think can hardly admit of doubt. **We have the language of the Declaration of Independence and of the Articles of Confederation, in addition to the plain words of the Constitution itself; we have the legislation of the different States, before, about the time, and since the Constitution was adopted; we have the legislation of Congress, from the time of its adoption to a recent period; and we have the constant and uniform action of the Executive Department, all concurring together, and leading to the same result. 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."**

And, upon a full and careful consideration of the subject, [p427] the court is of opinion, that, upon the facts stated in the plea in 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 on the plea in abatement is erroneous.

The Missouri Compromise of 1820 Is Declared to be Unconstitutional

Before the commencement of this suit, said Dr. Emerson sold and conveyed the plaintiff, and Harriet, Eliza, and Lizzie, to the defendant, as slaves, and the defendant has ever since claimed to hold them, and each of them, as slaves.

In considering this part of the controversy, two questions arise: 1. Was he, together with his family, free in Missouri by reason of the stay in the territory of the United States hereinbefore [p432] mentioned? And 2. If they were not, is Scott himself free by reason of his removal to Rock Island, in the State of Illinois, as stated in the above admissions?

We proceed to examine the first question.

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 anyone who is held as a slave under the laws of any of the States.

The counsel for the plaintiff 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," but, in the judgment of the court, that provision has no bearing on the present controversy, and the power there given, whatever it may be, is confined, and was intended to be confined, to the territory which at that time belonged to, or was claimed by, the United States, and was within their boundaries as settled by the treaty with Great Britain, and can have no influence upon a territory afterwards acquired from a foreign Government. It was a special provision for a known and particular territory, and to meet a present emergency, and nothing more.

... 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. It cannot create for itself a new character separated from the citizens of the United States and the duties it owes them under the provisions of the Constitution. The Territory being a part of the United States, the Government and the citizen both enter it under the authority of the Constitution, with their respective rights defined and marked out, and the Federal Government [p450] can exercise no power over his person or property beyond what that instrument confers, nor lawfully deny any right which it has reserved.

... 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.**

...It seems, however, to be supposed that there is a difference between property in a slave and other property and that different rules may be applied to it in expounding the Constitution of the United States.

... And if the Constitution recognises the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction or deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against the encroachments of the Government.

Now, as we have already said in an earlier part of this opinion upon a different point, **the 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 [p452] 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.

Scott's Freedom Must Be Determined by Missouri Law and Not Illinois Law

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

Our notice of this part of the case will be very brief, for the principle on which it depends was decided in this court, upon much consideration, in the case of *Strader et al. v. Graham*, reported in 10th Howard 82. In that case, 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, and that this court had no jurisdiction to revise the judgment of a State court upon its own laws.** This was the point

directly before the court, and the decision that this court had not jurisdiction turned upon it, as will be seen by the report of the case.

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

It has, however, been urged in the argument that, by the laws of Missouri, he was free on his return, and that this case [p453] therefore cannot be governed by the case of *Strader et al. v. Graham*, where it appeared, by the laws of Kentucky, that the plaintiffs continued to be slaves on their return from Ohio. But whatever doubts or opinions may at one time have been entertained upon this subject, **we are satisfied, upon a careful examination of all the cases decided in the State courts of Missouri referred to, 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.**

The Supreme Court of Missouri Had Already Declared Scott To Be a Slave

Moreover, the plaintiff, it appears, brought a similar action against the defendant in the State court of Missouri, claiming the freedom of himself and his family upon the same grounds and the same evidence upon which he relies in the case before the court. The case was carried before the Supreme Court of the State, was fully argued there, and that court decided that neither the plaintiff nor his family were entitled to freedom, and were still the slaves of the defendant, and reversed the judgment of the inferior State court, which had given a different decision. If the plaintiff supposed that this judgment of the Supreme Court of the State was erroneous, and that this court had jurisdiction to revise and reverse it, the only mode by which he could legally bring it before this court was by writ of error directed to the Supreme Court of the State, requiring it to transmit the record to this court. If this had been done, it is too plain for argument that the writ must have been dismissed for want of jurisdiction in this court. The case of *Strader and others v. Graham* is directly in point, and, indeed, independent of any decision, the language of the 25th section of the act of 1789 is too clear and precise to admit of controversy.

A Federal Court and the Supreme Court Has Not the Right to Overrule the State Supreme Court On the State Law Issue of Slavery

And while the case is yet open and pending in the inferior State court, the plaintiff goes into the Circuit Court of the United States, upon the same case and the same evidence and against the same party, and proceeds to judgment, and then brings here the same case from the Circuit Court, which the law would not have permitted him to bring directly from the [p454] State court. And if this court takes jurisdiction in this form, the result, so far as the rights of the respective parties are concerned, is in every respect substantially the same as if it had, in open violation of law, entertained jurisdiction over the judgment of the State court upon a writ of error, and revised and reversed its judgment upon the ground that its opinion upon the question of law was erroneous. It would ill become this court to sanction such an attempt to evade the law, or to exercise an appellate power in this circuitous way which it is forbidden to exercise in the direct and regular and invariable forms of judicial proceedings.

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.