DECISION OF THE SUPREME COURT IN THE CASE OF DRED SCOTT
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This important case, involving questions in respect to the citizenship of colored persons, and the constitutionality of the Ordinance of 1787 and of the Missouri Compromise, was decided in the Supreme Court, March 6th, 1857, Chief Justice Taney delivering the opinion of the Court, "reversing the judgment of the Circuit Court of the United States for the District of Missouri, for the want of jurisdiction in that Court, and remanding the cause, with directions to dismiss the case for want of jurisdiction in that Court."

In this opinion, we learn, Justices Wayne, Daniel, Grier, and Campbell concurred, constituting, with the Chief Justice, the majority of the Court.

Justices McLean, Catron, Nelson, and Curtis, concurred in the opinion that the Circuit Court had jurisdiction of the case.

The statement has already gone out to the public, that the Supreme Court decided the questions concerning the *validity of the Ordinance of* 1787, the Power of Congress over Territory, the Power of Territorial Governments, and the constitutionality of the Missouri Compromise; but this is a grave misconception. The single de-

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cision made by the Court was that the Circuit Court had no jurisdiction of the case, and it therefore reversed the judgment of said Court, remanded the cause, and directed the Circuit Court to dismiss the case. This decision, according to its own rules, precluded it from deciding any question arising upon the merits of the case, inasmuch as it refused to entertain it. "If I thought," said Justice Catron, "that this Court was without jurisdiction of this case, I should go no further, as I hold that a Court having no power to decide the case, or to deal with it in any way further than to docket and dismiss it, has no right to discuss the merits, as no jurisdiction exists to give a judgment on them. But as I hold that there is jurisdiction to decide the merits, I will proceed to examine the case."

Justice Curtis took a similar view, and announced, if we understood him correctly, that he should not hold the opinions expressed by the Court on the issues arising out of the case and its merits, as decisions upon them. And such, we understand, is the position of Justice McLean.

It follows, that the editorial statement in the *National Intelligencer*, below, assuming that several important points have been decided, is entirely erroneous.

"The opinion of the Supreme Court in the case of *Scott vs. Sanford*, was delivered yesterday by Chief Justice Taney. It was a full and elaborate statement of the views of the Court, and decides the following all-important points:

"1. Negroes, whether slaves or free—that is, men of the African race—are not citizens of the United States by the Constitution.

"2. The Ordinance of 1787 had no independent constitutional force or legal effect subsequently to the adoption of the Constitution, and could not operate of itself to confer freedom or citizenship within the North-West Territory, on negroes not citizens by the Constitution.

"3. The provision of the act of 1820, commonly called the Missouri Compromise, in so far as it undertook to exclude negro slavery from, and communicate freedom and citizenship to negroes in the northern part of the Louisiana cession, was a legislative act exceeding the powers of Congress, and void, and of no legal effect to that end.

"In deciding these main points the Supreme Court determined also the following incidental points:

"1. The expression "Territory and other property" of the Union, in the Constitution, applies *in terms* only to such territory as the Union possessed at the time of the adoption of the Constitution.

"2. The rights of citizens of the United States emigrating into any Federal territory, and the power of the Federal Government there, depend on the general provisions of the Constitution, which define in this, as in all other respects, the powers of Congress.

"3. As Congress does not possess power itself to make enactments relative to the persons or property of citizens of the United States in Federal territory, other than such as the Constitution confers, so it cannot constitutionally delegate any such powers to a Territorial Government organized by it under the Constitution.

"4. The legal condition of a slave in the State of Missouri is not affected by the temporary sojourn of such slave in any other State, but on his return his condition still depends on the laws of Missouri."

The simple question *decided*, was a *question of jurisdiction*: the elaborate argument read by Chief Justice Taney, merely presented the opinions of the majority of the Court on questions not before the Court for decision, and the decision of which was precluded by the declaration of a want of jurisdiction in the premises. So far, then, as the points named are concerned, they are still undecided by Judicial Authority, the individual opinions of Justice Taney having no more authority in settling what is Law than the individual opinions of Justice McLean.

The decision of the Court reversing the judgment of the Circuit Court for want of jurisdiction is obligatory, because a majority of the Justices concurred in it—but, how many concurred in all the opinions expressed by the Chief Justice, or in the reasoning by which he attempted to support them, does not appear. Judge Grier concurred only in some of the positions taken: Judge Catron, as we shall see, differed on important points: the other Judges of the majority, we learn, have prepared separate opinions. The *Intelligencer*, therefore, is again in error, in saying without qualification, that "the conclusions stated by the Chief Justice were concurred in by six Justices of the Court."

We need hardly say that the opinions of Chief Justice Taney sanction all the dogmas put forth at any time by the most extreme advocates of Slavery. They recognize Slavery as supreme, Freedom as subordinate—Slavery as a fundamental law of the Union—Property in Man as a fundamental idea of the Constitution.

They deny the power of Congress, and they deny the power of any Territorial Government to interfere with the right to hold slaves in a Territory, while they assert the duty of the Federal Government to interpose against any obstruction sought to be thrown in the way of its exercise.

These opinions are not yet law, and let us hope for the honor, and peace, and well being of the country, that they may never become law. As it is, their utterance by the Chief Justice, with the endorsement, it is believed, of a majority of the bench, has given a blow to the reputation of the Court, from which it cannot recover so long as it shall remain as now constituted. The legal mind of the country will not assent to novel and monstrous doctrines, unsustained by argument or

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authority; and the people will revolt at views repugnant to humanity and the great principles of Christian civilization.

Judge Nelson read a paper, in which he discussed the question, whether Dred Scott was exempt from Slavery in Missouri, after having been returned from Illinois, whither he had been carried by his master. He argued the negative, on the ground that a State has the right to determine for itself the *status* of its inhabitants, and is not bound to recognize any foreign jurisdiction any further than it pleases. Under the legislation of Illinois, Dred Scott, sojourning in that State, might become free—but, if returned to Missouri, the servile condition might again attach to him, without detriment to the right of Illinois—Missouri was not bound within her limits to give force to the laws of Illinois operating on his *status*. Such was the decision of the Supreme Court of Missouri, and that decision was binding.

The questions relating to the Ordinance of 1787, the Power of Congress over Territory, and the Missouri Compromise, were not discussed by the Judge, and no opinion was expressed concerning them. So far as he, a Judge from the State of New York, was concerned, the views on those subjects which prevail in the free States, and which have determined to a great extent the legislation of the country since 1787, were left without a word in exposition or support.

Judge Catron followed with an Opinion, in which he announced his entire concurrence with Judge Nelson in relation to the particular point discussed by him.

He then examined the question, Did Dred Scott, his wife and child, acquire their freedom by sojourn in the territory north of 36 deg. 30 min., in virtue of the Missouri Compromise? He argued the negative, discussing in the course of his argument the whole question of the power of Congress over Territory. He held that the Ordinance of 1787, prohibiting Slavery, was within the power of the States enacting it—that, by the Federal Constitution, it became binding on the new Government, like the other engagements of the confederation—that the third section of the fourth article of the Constitution, granting power to Congress to make all needful rules and regulations respecting territory, &c., did not apply alone to the territory northwest of the Ohio, but invests Congress with power to govern the Territories of the United States. "It is due to myself," he remarked, "to say that it is asking much of a judge, who has for nearly twenty years been exercising jurisdiction, from the Western Missouri line to the Rocky Mountains, and, on this understanding of the Constitution, inflicting the extreme penalty of death for crimes committed where the direct legislation of Congress was the only rule, to agree that he had been all the while acting in mistake, and as an usurper."

This remark doubtless was suggested by the novel assumption of Chief Justice Taney, that the third section of the fourth article of the Constitution had no application to any other than the Northwest Territory.

The Judge proceeded to say that the only question then was, as to the limit of the power to govern Territories. The Ordinance restrained it in relation to the Northwest Territory, so that Congress could not force slavery therein. The deeds of cession of North Carolina and Georgia, in 1790 and 1802, providing against the prohibition of slavery in the Territories ceded by them, restrained Congress from attempting to force slavery out of them. The treaty of 1803 with France, whereby we acquired Louisiana Territory, binding the United States to protect the liberty, property and religion of the inhabitants—some of their most valuable property being slaves—limited the power of Congress, precluding it from the right to abolish Slavery anywhere in said Territory. For this reason, the act of Congress prohibiting Slavery in that part of the Territory lying north of 36 deg. 30 min. was in violation of treaty obligation, and therefore null and void. But, not confining himself to this view, he went on to argue that, by the Constitution, the slaveholder has the right to carry his slaves into any Territory of the United States, and to be protected therein.

The next day, dissenting opinions were read by Justices McLean and Curtis, the only two members of the Bench now maintaining the Law of Freedom. As judicial expositions of the Principles of the Constitution, of the Law of Nations, and the Common Law, bearing upon Human Rights, they stand unrivalled. On the subject of citizenship, particularly, Judge Curtis left nothing to be said. The misconceptions and mis-statements of Chief Justice Taney became manifest in the light of the historical facts he presented. We shall not attempt even a synopsis of his Opinion, as we heard only the part relating to citizenship. We were more fortunate in regard to Judge McLean, whose argument, it seemed to us, furnished a complete reply to the elaborate opinion of the Chief Justice.

He discussed the question under several heads.

1. The locality of Slavery as held in the Supreme Court, and in the Courts of the States.

Under this head, by a reference to the civil law, he showed that throughout Europe Slavery was limited to the locality where it was established by law; and that without an express compact, one nation would not deliver up an absconding slave to the citizen of another country.

He also showed that, by the decision in the case of Prigg *vs.* the State of Pennsylvania, the Court held that Slavery was local, and could exist only by virtue of the local law. That if the Constitution had not required the rendition of fugitives from labor, every State might have manumitted every slave that entered a non-slaveholding State

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with impunity, as there was no principle in the law of nations which required the return of the slave.

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

Under this head he showed that Slavery was local, and under the control of State sovereignty; that the Federal Government had no action over it, except in regard to a surrender of fugitives from service or labor. That slaves were spoken of in the Constitution as persons, and not as property. That Congress could not regulate the slave trade among the States, and that the continuance of the slave trade twenty years after the adoption of the Constitution, was not a general measure, but in favor of such States as should think proper to encourage it.

And he referred to the remark of Mr. Madison, who was desirous that no word should be used in the Constitution which indicated there could be property in man.

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

Under this head he showed, by the proceedings of the Convention which framed the Constitution, that the necessity of a power to establish temporary Government, as initiatory to the establishment of State Governments, and to dispose of the public lands, was felt and acknowledged; that the sale of these lands was looked to for the payment of the Revolutionary debt. And that ample provision was made to establish Territorial Governments by the 3d section of the 4th article of the Constitution, which gave Congress power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States. That for sixty years this power was universally admitted by all Courts, Federal and State, and by all statesmen. And he vindicated and maintained the opinion of the Supreme Court in the case of the Atlantic Insurance Co. *vs.* Center, 1 Peters, 511.

4. Under this head he discussed the effect of taking slaves into a free State or Territory, and so holding them, where Slavery is prohibited.

He assented to the doctrine clearly announced in the case of Prigg *vs.* Pennsylvania, that Slavery could only exist in a State where it was established by law; and, consequently, if a slave be taken where it is not authorized, the master could not coerce the slave. And that where Slavery was prohibited, in Illinois and north of Missouri, if a slave were taken there by his master, and remained there in his service, he was free, under the decisions of the Supreme Court, and by numerous decisions by the Supreme Courts of the Southern States. These were cited largely, and relied on, as fully sustaining the ground of freedom, especially the decisions of the Supreme Court of Missouri. That for twenty-eight years the course of decision in that Court was uniformly in favor of the slave, until the case of Dred Scott came before it.

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

Under this head he examined the decisions of Lord Stowell, in the case of Grace, and numerous authorities of the slave States, all of which, except a few recent cases, hold that the return of the slave did not cause his former status to attach. This was uniformly the course of the decisions of the Supreme Court of Missouri for twenty-eight years, until it was changed against Dred Scott, avowedly by the majority of the Court, to check the "fell spirit of Anti-Slavery" in the free States.

In England, a slave could not be coerced by his master, although there was no express prohibition against Slavery; but it is not authorized. And he alleged, from the facts agreed to, that the return of Dred Scott was not voluntary, as the fact admitted was, "that he was removed by his master from Fort Snelling to Missouri," which shows that the slaves acted under the coercion of their masters, and not under their own volition.

6. Are the decisions of the Supreme Court of Missouri, on the questions before the Court, binding, within the rule adopted?

Under this head he showed that the Missouri Court refused to recognize the act of Congress or the Constitution of Illinois, under both of which Dred Scott claimed his freedom. That this being done, there was no case before the Court, or it was a case which had but one side. And he argued that such a case may not be followed by the Supreme Court. And he referred to a late decision of the Supreme Court, fully sustaining his refusal to follow the decision in the case of Dred Scott.

Both Justices, McLean and Curtis, took the position that, as the Court had refused to entertain jurisdiction of the case, its opinions on the questions arising on its merits were not decisive; that these questions still remain open for adjudication; that they would not therefore consider them settled.—*National Era.*

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