SUPREME COURT OF THE UNITED STATES,

DECEMBER TERM, 1856.

No.

DRED SCOTT, PLAINTIFF IN ERROR,

vs.

JOHN F. A. SANFORD.

Case for Defendant in Error.

This was an action of trespass brought in the Circuit Court of the United States for the Missouri District, by the plaintiff in error, claiming to be *a citizen of the State of Missouri*, against the defendant, a citizen of the State of New-York. The declaration contains three counts:—The first alleges, "that the defendant with force and arms assaulted the plaintiff, and, without law or right, held him as a slave, and imprisoned him for the space of six hours and more, and did threaten to beat him and hold him imprisoned and restrained of his liberty; and that by means of such threats the plaintiff was put in fear and could not attend to his business, and thereby lost great gains which he might have made, and otherwise would have made, in the prosecution of his business."

The second count charges that the defendant did assault Harriet, the wife of the plaintiff, and did imprison and hold her as a slave, and did threaten to beat her and hold her as a slave, *whereby she was put in great fear and pain, and did not and could not attend to plaintiff's business, and the plaintiff lost and was deprived of the society, comfort and assistance of his said wife, and thereby lost great gains and profits.* The third count

charges a like assault upon and imprisonment of Eliza and Lizzie, infant children and servants of the plaintiff, and that *they also were put in great fear, and could not and did not attend to plaintiff's business, and the plaintiff thereby lost the society, comfort, service and assistance of his said children and servants.*

The defendant pleaded to the jurisdiction of the court, alleging that the plaintiff is not a citizen of the State of Missouri, because he is a negro of African descent, &c. This plea was adjudged insufficient on demurrer. The defendant then pleaded the general issue to all the counts, and specially to each, that the plaintiff, his wife and children, respectively, were negro slaves, the lawful property of the defendant. The plaintiff joined issue on the first plea, and traversed the special pleas.

At the trial, the plaintiff on his part read in evidence a statement of facts, agreed to between the parties, as follows:

"In the year 1834, the plaintiff was a negro slave belonging to Doctor Emerson, who was a surgeon in the Army of the United States. In that year (1834) said Dr. Emerson took the plaintiff from the State of Missouri to the military post at Rock Island, in the State of Illinois, and held him there as a slave until the month of April, 1836. At the time last mentioned, said Dr. Emerson removed the plaintiff from said military post at Rock Island to the military post at Fort Snelling, situated on the west bank of the Mississippi river, in the territory known as Upper Louisiana, acquired by the United States of France, and situate north of the latitude 36 degrees 30 minutes north, and north of the State of Missouri. Said Dr. Emerson held the plaintiff in slavery at said Fort Snelling until the year 1838.

"In the year 1835, Harriet (who is named in the second count of the plaintiff's declaration) was the negro slave of Major Taliaferro, who belonged to the Army of the United States. In that year (1835) said Major Taliaferro took said Harriet to said Fort Snelling, a military post situated as hereinbefore stated, and kept her there as a slave until the year 1836, and then sold and delivered her as a slave at said Fort Snelling unto the said Dr. Emerson, hereinbefore named; and said Dr. Emerson held said Harriet in slavery at said Fort Snelling until the year 1838.

"In the year 1836, the plaintiff and said Harriet, at said Fort Snelling, with the consent of said Dr. Emerson, who then claimed to be their master and owner, intermarried, and took each other for husband and wife. Eliza and Lizzie, named in the third count of the plaintiff's declaration, are the fruit of that marriage. Eliza is about 14 years old, and was born on board the steamboat Gipsey, north of the north line of the State of Missouri, and upon the river Mississippi; Lizzie is about 7 years old, and was born in the State of Missouri, at the military post called Jefferson Barracks.

"In the year 1838, said Dr. Emerson removed the plaintiff and said Harriet and their said daughter Eliza from said Fort Snelling to the State of Missouri, where they have ever since resided.

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

"At the times mentioned in the plaintiff's declaration, the defendant, claiming to be the owner as aforesaid, laid his hands upon said plaintiff, Harriet, Eliza and Lizzie, and imprisoned them; doing in this respect, however, no more than he might lawfully do if they were of right his slaves at such times."

No other evidence was given by either party. The plaintiff claimed to have been emancipated by the fact of his temporary sojourn at the military post at Rock Island, by virtue of article 6th, section 1st, of the constitution of Illinois, which provides that "neither slavery nor involuntary servitude shall be introduced into this State, otherwise than for the punishment of crime whereof the party shall have been duly convicted."

It was also claimed that the plaintiff, his wife, and children, are entitled to their freedom by virtue of the 8th section of the act of Congress of the 6th March, 1820, which provides that "in all the territory ceded by France to the United States, under the name of Louisiana, which lies north of 36 d. 30 m. north latitude, not included within the limits of Missouri, slavery and involuntary servitude, otherwise than for the punishment of crimes whereof the party shall have been duly convicted, shall be and is hereby forever prohibited; *provided*, that any person escaping into the same from whom service or labor is lawfully claimed in any State or Territory

of the United States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor as aforesaid."

The plaintiff prayed the court to instruct the jury, "that, upon the facts agreed to by the parties, they ought to find for the plaintiff;" which instruction the court refused to give, and instructed the jury, "that, upon the facts in the case, the law is with the defendant." The issues were found for the defendant, and judgment being rendered accordingly, the plaintiff prosecutes this writ of error.

The cause was argued before this court at the December term, 1855, when it was ordered to be reargued by counsel for the respective parties at the next term of the court, and especially upon the following points:

1. Whether or not the facts admitted by the demurrer to the plea to the jurisdiction given, that the defendant answer over, and that the submission of the defendant to that judgment by pleading over to the merits, the appellate court can take notice of these facts, thus admitted upon the record, in determining the question of jurisdiction of the court below to hear and fully dispose of the case; and

2. Whether or not, assuming that the appellate court is bound to take notice of the facts thus appearing upon the record, the plaintiff is a citizen of the State of Missouri within the meaning of the 11th section of the judiciary act of 1789.

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1. The averment that the plaintiff is a citizen of the State of Missouri, is a necessary averment. If it had been omitted, or defectively stated, it would have been error in the Circuit Court to entertain jurisdiction, even though the defendant had not traversed the averment, but pleaded to the merits. (3 Dall. 382; 2 Cranch, 1, 126; Sullivan v. The Fulton, 6 Wheat. 450; Turner v. Emilie, 4 Dall. 7; Capron v. Van Norden, 2 Cranch, 125.)

If the plea demurred to is to be regarded as a traverse of the averment of citizenship of the plaintiff, then the fact on which the plaintiff claims a right to sue in the Circuit Court does not appear by the record; on the contrary, it appears affirmatively that he had no right to sue in that court.

The whole question, whether the court could entertain jurisdiction and allow the defendant to plead over, depends upon the decision on the demurrer. If that was erroneous, it was error to

proceed further, and the defendant's pleading over could not give jurisdiction.

2. It appears by the record that the defendant is a negro, born a slave, and therefore, whether he is entitled to freedom or not, by virtue of his temporary residence at Rock Island or Fort Snelling, or both, he is not and can not be a citizen of the State of Missouri within the meaning of the constitution or the 11th section of the judiciary act.

Citizens within the meaning of art. 3, sec. 2, are citizens of the United States who are citizens of the States in which they respectively reside. (Reed v. Bertrand, 4 Wash. C. C. R. 516; Knox v. Greenlief, 4 Dall. 360; 3 Story, Const. 565, § 1687, 1688; 6 Peters' R. 761.)

Citizens are natives or naturalized. All persons born in the United States are not citizens; the exceptions are, first, children of foreign ambassadors; secondly, Indians; and thirdly, in general, persons of color. (1st Bouv. Inst. pp. 16, 64; Amy v. Smith, 1 Litt. Ky. R. 334.)

"Negroes or other slaves born within and under the allegiance of the United States are *natural born subjects, not citizens.* Citizens under our constitution mean free inhabitants born within the United States, or naturalized under the law of Congress." (2 Kent's Com. p. 258, note *b.*)

Free blacks are not citizens within the provisions of the constitution, art. 4, sec. 2. So held by Dagget, Ch. J., in Connecticut. (See note Kent's Com. supra.) And by the Supreme Court of Tennessee, in The State v. Claibourne, 1 Meigs, 331. (See the official opinion of *Attorney General Wirt*, November 7th, 1821.—*Opinions of the Attorneys General*, vol. 1, page 382, edition 1841, and vol. 1, page 506, Hall's edition of 1852. See also "An Inquiry into the political grade of the Free Colored Population under the Constitution of the United States," by John F. Denny, Esq.)

Persons who are not citizens of the United States by birth, can become such only by virtue of a treaty, or in pursuance of some law of the United States. The power of naturalization is exclusively vested in Congress. (U. States v. Viletto, 2 Dall. 370; Cherac v. Cherac, 2 Wheat. 269; Houston v. Moore, 5 Wheat. 48.) A slave, who is not a citizen, can not become such

by virtue of a deed of manumission or other discharge from bondage.

3. Assuming that the Circuit Court had jurisdiction, the facts, as agreed by the parties, do not establish the right of the plaintiff, his wife and children, or either of them, to freedom.

The first section of the sixth article of the constitution of Illinois, and the 8th section of the act of 6th March, 1820, above quoted, both prohibit the introduction of slavery, but neither declares the consequence of bringing a slave within the territory embraced; there is no exception or saving in respect to the rights of travellers or sojourners; the effect of the provision is in terms the same whether the slave is introduced to reside, or for the mere purpose of transit or other temporary purpose.

The effect of the prohibitory clause in each case is not to change the condition of the slave brought into the territory embraced by it, nor to divest the right of the owner. The consequences are the same as in case of a like introduction into any state or country where slavery does not by law exist. The slave is held to be free while he remains within such state or country, only because his owner has not the authority of law to restrain him of his liberty; but unless the owner has done some act which in law amounts to an emancipation with his consent, his authority is restored if the slave returns to or is found within a state or country where slavery exists by law. (Ex parte Grace, 2 Hag. Adm. R. 94; Willard v. The People, 4 Scam. Ills. R. 461; Strader v. Graham, 5 B. Monroe's Ky. R. 181; 7 do. 633; Collins v. America, 9 B. Monroe's Ky. R. 505; Mercer v. Gilman, 11 B. Monroe's Ky. R. 210; Marlow v. Kirby, 12 do. 542; Lewis v. Fullerton, 1 Rand. Va. R. 15.)

Where an owner of a slave brings him into a state or country in which slavery does not exist, or is prohibited by law, *with the intention to make it his domicil*, it has been held in some cases to operate as an emancipation of the slave by the owner, who loses his dominion over him, and can not resume it though he return to or is found in a country where slavery exists by law. (Rankin v. Lydia, 2 A. K. Marsh's Ky. R. 539; Griffith v. Fanny Gilm. Va. R. 143; Lunsford v. Coquillon, 14 Martin's La. Rep. 405; Josephine v. Poultney, La. An. Rep. 329.)

The same doctrine was held by the Supreme Court of Missouri in Winny v. Whiteside, 1 Mo. Rep. 472; Milly v. Smith, 2 Mo.

R. 32; Nat v. Riddle, 3 Mo. R. 282, and Rachel v. Walker, 4 do. 350; and overruled by the same court in Scott v. Emerson, 15 Mo. R. 576; Sylvia v. Kirby, 17 do. 454.

These are cases of emancipation by the voluntary act of the master binding upon him everywhere, as would be an emancipation by any other proof recognized by law. But although the removal of an owner with his slave into a State where slavery is prohibited, with the intention of making it his residence, and the residence of the slave may operate as an emancipation by the owner; it is otherwise where the removal is for a transient purpose and the residence temporary. Slaves attending their owners sojourning in or travelling through a State wherein slavery does not exist by law, are not thereby emancipated. (2 A. K. Marsh's Ky. Rep. 467.) The owner is not to be understood as renouncing his right to his slave by taking him with him to Ohio for a temporary purpose. (Graham v. Strader, 5 B. Monroe's Ky. R. 181; Mercer v. Gilman, 11 do. 210; Marlow v. Kirby, 12 B. Monroe's Ky. R. 542; Lewis v. Fullerton, 1 Rand. Va. R. 15; Henry v. Bull, 1 Wheat. 1; Sprigg v. Mary, 3 Har. & J. Md. R.; Pocock v. Hendrichs, 8 Gill & J. Md. R. 421.)

In Summersett's case (Howell's State Trials, vol. 20), Lord Mansfield, with the silent concurrence of the other judges, discharged the negro; thereby establishing that the owners of slaves had no authority or control over them in England, nor any power of sending them back to the colonies. But in the case of the slave Grace (2 Hag. Adm. R. 94), where a female attendant, by birth and servitude a domestic slave, accompanied her mistress to England, resided there a year and then returned with her mistress to the place of her birth and servitude, it was held that the right to exercise such dominion revived.

In the Commonwealth v. Aves, 18 Pick. Mass. R. 193, it was held that slaves brought into the State of Massachusetts voluntarily, though *to remain only for a short time*, became free in that State—"not so much because of any alteration in their *status* or condition, as because there is no law which will warrant, but there are laws (if they choose to avail themselves of them) which prohibit, their forcible detention or forcible removal."

Chief Justice Shaw, delivering the opinion of the court, said: "Whether, if a slave voluntarily brought here, and with his own

consent returning with his master, would resume his condition as a slave, is a question which was incidentally raised in the argument; but is one on which we are not called to give an opinion in this case, and we give none. From the principles above stated, on which a slave brought here becomes free, to-wit: that he becomes entitled to the protection of our laws, and there is no law to warrant his forcible arrest and removal; it would seem to follow as a necessary conclusion, that if the slave waives the protection of those laws and returns to a State where he is held as a slave, his condition is not changed."

Where a negro woman went with her owner from the Island of Barbadoes to England, and was afterwards brought into Maryland as a slave, between 1678 and 1681, and during her life was held as a slave, it was held that her descendants were not entitled to freedom in Maryland. (Mahony v. Ashton, 4 H. & McH. Md. Rep. 295.)

A slave went with her mistress from Kentucky to Pennsylvania, and was there discharged from service by a writ of *habeas corpus;* she returned to Kentucky with her mistress, and in that State sued out a writ of *habeas corpus;* held, that she was not entitled to her freedom in Kentucky on account of the former decision, nor because she was free by the laws of Pennsylvania. (Marlow v. Kirby, 12 B. Monroe's Ky. R. 542.)

Where a slave removed from Virginia to Ohio, with the consent of his master, for a mere transitory purpose, and with the *animus revertendi*, he did not thereby acquire a right to freedom in Virginia; nor is such right established by a judgment on a *habeas corpus* in Ohio in favor of the slave. (Lewis v. Fullerton, 1 Rand. Va. R. 15.)

In the case at bar, there is no evidence that the owner of the slave removed to the State of Illinois, or the Territory embraced by the 8th section of the act of 1820, to reside, or that he intended to make his residence or the residence of his slave; he went to the military post on Rock Island, and Fort Snelling, in obedience to orders, and returned to Missouri, the place of his domicil, which it does not appear he intended to change; he cannot therefore be held to have emancipated his slave or been divested of his right by his temporary stay at either of the posts named.

In the case of Rachel v. Walker, (4 Mo. R. 350,) it was held that an officer of the United States, who takes his slave to a military post within a Territory wherein slavery is prohibited, and retains her several years in attendance upon himself and family, *forfeits his property* in such slave by virtue of the ordinance of 1787. Not that the residence of the master and slave in the Territory operated as a voluntary emancipation, binding on the owner everywhere; but it was held to be a *forfeiture of property* for the reason that the officer, though bound to go to the post himself, was not obliged to take his slave with him. But it is submitted that an officer who is ordered to service in a State where slavery is prohibited has a right to take his slave with him, without incurring a forfeiture, as much so as a sojourner in or traveller passing through the same State, who is under no compulsion to go into the State, nor obliged to take his slaves with him if he does.

The case of Rachel v. Walker was expressly overruled by the Supreme Court of Missouri, in the case of Scott, the now plaintiff in error, against Emerson, his former owner; where, upon the state of facts in evidence in the case at bar, it was held that the plaintiff was not entitled to his freedom. (15 Mo. Rep. 576.) This case was reviewed and affirmed by the same court in Silva v. Kirby (17 M. Rep. 454). By the laws of Missouri, therefore, the claimants are slaves, and these laws must determine their condition in the courts of the United States.

In the case of Strader v. Graham (10 Howd. 93–4) this court said: "Every State has an undoubted right to determine the status or domestic and social condition of persons domiciled within its territory, except so far as the powers of the States in this respect are restrained, and duties and obligations imposed by the constitution of the United States. There is nothing in the constitution of the United States that can in any degree control the law of Kentucky on this subject, and the condition of the negroes therefore as to freedom or slavery, after their return, depended altogether upon the laws of that State, and could not be influenced by the laws of Ohio. It was exclusively within the power of Kentucky to determine for itself whether their employment in another State should or should not make them free. The court of appeals have determined that by the law of that State they continued to be slaves."

4. No residence of a slave at Fort Snelling could change his condition or divest the title of his owner. Slavery existed by law in all the territory ceded by France to the United States, and Congress has not the constitutional power to repeal that law, or abolish or prohibit slavery within any part of that territory.

The power of Congress to institute municipal governments for the territory within the United States, and not within any particular State, is not denied. It has been often exercised by Congress and recognized by this court; but the power is raised only by implication, and, from whatever source derived, does not carry with it supreme, universal and unlimited power over the persons and property of the inhabitants, to abolish slavery, or to interfere with the local law of property in any form.

The 8th section of the act of the 6th March, 1820, is the first and almost the only instance of an assumption by Congress of the power to abolish slavery in a Territory. It has never been recognized by this court. It is understood to be claimed, that authority of Congress to erect Territorial governments is conferred by Art. 4, sect. 3, of the Constitution, which gives the "power to dispose of and make all needful rules and regulations respecting the *territory or other property belonging to the United States*," or to result from the power to acquire territory; and in either case, it comprehends a power of legislation, exclusive, universal, absolute and unlimited. (Story's Commentaries on the Constitution, vol. 3, sects. 1314, 1315, 1318, 1319, 1320, 1322; Kent's Com. vol. 1, p. 423.)

In McCullough v. Maryland, 4 Wheat. 422, the Chief Justice, in delivering the opinion of the court, referred to Art. 4, sec. 3, of the Constitution, as the source of the power to institute Territorial governments. But afterwards, in American Ins. Co. v. Carter, 1 Pet. 342, he expresses some doubt as to the source of the power, and in U. S. v. Gratiot, 14 Pet. 526, 537, it was held, that "the term *Territory*, as used in the clause in question is merely descriptive of one kind of property, and is equivalent to the word *Lands*.

The clause is therefore judicially interpreted to be a power to dispose of and make all needful rules and regulations respecting the *lands* and other property of the United States.

The primary sense of the word *territory*, is *land*, or *tract of country;* it was never used in any other sense prior to the adoption of the constitution. In the clause in question it means unappropriated lands, to which alone the proviso can have reference. (See Federalist, No. 43.)

The subject of the power conferred by art. 4, sec. 3, is *property*, and the property *only* of the United States, not of the inhabitants of the States or Territories. Whatever Congress may regulate under that clause, it may dispose of absolutely. It is a power over the *territory*—that is, the *unappropriated lands*—of the United States, whether within a State or Territory. The power attaches to the territory and other property belonging to the United States wherever situate.

To organize a municipal government or corporation for a district of county, to prohibit slavery, or to interfere in any way with the law of property, is not to make needful rules and regulations respecting the territory or other property belonging to the United States within such district. Therefore the power to institute such a government, and more especially an unlimited power to *legislate* in all cases whatsoever over the inhabitants of a Territory and their property, can not be deduced from the clause under consideration.

The power of Congress to legislate for the government of acquired territory, can not be claimed as the inevitable consequence of the right to acquire. The power of acquisition is raised by implication and carries with it no incidents. The sovereignty and jurisdiction of acquired territory is vested in the United States, not in Congress. The legislative power of Congress depends on the constitution, not on the law of nations; and is the same over acquired territory as over that within the original limits of the United States, and no greater. By the laws of nations the sovereign may change the municipal laws, but Congress represents the sovereign only to the extent of the powers granted by the constitution. Such legislation is not necessary and proper to carry into execution any of the powers vested by the constitution in the government or any department thereof, nor of the implied power of acquisition, and therefore not granted by art. 1, sec. 8, cl. 17. When territory is acquired, the power of acquisition as to that territory is exhausted.

The power of Congress to institute temporary governments over any territory results necessarily from the fact that it is not within the jurisdiction of any particular States, and is within the power and jurisdiction of the United States. It is a power resulting from the necessity of the State, and is limited to the necessity from which it arises.

Congress has power to admit new States into the Union. The institution of a temporary government may be necessary to that *end* in cases where the territory to be organized is within the United States, and not within any one or more particular States.

The power does not depend upon the proprietary right of soil; the United States may have no property within the territory. Nor upon acquisition; the power is the same whether the territory was within or without the original limits of the United States. Nor upon the number of inhabitants.

But the power, from whatever source derived, is a power only to institute temporary governments, and not a supreme, universal, absolute and unlimited power over persons and property. To change the law of property, to emancipate slaves, to abolish slavery where by law it exists, to confiscate property, or divest vested rights, can not be necessary or proper to the institution of a temporary government.

The prohibition of slavery is not a rule or regulation needful or otherwise respecting the territory or other property belonging to the United States.

The power of Congress over the territory belonging to the United States can not authorize legislation which practically excludes from such territory the people of any portion of the Union, or prevent them from taking with them and holding in such Territory any property recognized by the constitution and the local laws of the Territory.

Finally. A temporary government is necessary, but it is not necessary to that end to abolish slavery or change the local law of property. Nor is it just or defensible, much less necessary and proper, to deprive any citizen of his right to remove to a country open to all others, with any property recognized by the constitution of the United States and protected by the local laws.

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For Defendant in Error.