SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1855.

DRED SCOTT, PLAINTIFF IN ERROR,

vs.

JOHN F. A. SANDFORD, DEFENDANT.

Brief of the Plaintiff.

The plaintiff, a man of color, brought this suit to try his right to freedom. He claims to have been emancipated by his master's having taken him to reside in the State of Illinois, which act, it is declared by the constitution of the State, operated to emancipate him. (See 6 art. constitution of Illinois.)

The circuit court decided against the plaintiff on two grounds:

1. That by his return to Missouri his master' sright, dormant whilst residing in Illinois, was revived. 2. That the constitution of Illinois was a penal law which the courts of other States were not bound to enforce.

These grounds are also taken in the opinion of the supreme court of Missouri, delivered by Judge Scott in the case of Scott vs. Emerson, (15 Mo. Rep., p. 576,) in which case a majority of the court overruled the doctrine previously and uniformly recognised in Missouri, and generally in the United States, that the removal of a slave by his master into a free State makes him free forever.

(See dissenting opinion of Judge Gamble, p. 587, where the cases are referred to.)

The decision of Lord Stowell in the case of the slave Grace, 2 Hagg, 90, and Story's Conflict of Laws, § 36—38, 95–'6, are cited and relied on as authority for the new doctrine.

1. The decision of Lord Stowell proceeds expressly upon the ground that there is no statute law in England which made slaves free who are brought into England, and asserted that the negro Somerset was discharged from custody merely because the laws of England did not give slaveholders the means necessary to enforce their dominion. Their dominion was suspended, therefore, for the want of power to enforce it; the right to the service was not taken away, but merely the remedy; and the case is therefore analogous to a right of action barred by limitation, which may be enforced on a new promise, or in a forum where the limitation does not exist. In this case, however, not only the right

to enforce the service is suspended by the introduction of a slave within the limits of the State of Illinois, but the constitution declares that the slave shall thereby become free.

2. It is felt that no effect can be given to this law without recognising the claim of the plaintiff, and therefore it is insisted that the courts of Missouri are not bound to regard it; and it is said they may disregard it because it is penal in its nature, and the courts of one sovereignty are not bound to enforce the penal laws of another, or those laws which are prejudicial to the State or its citizens.

The question is treated in the opinion of Judge Scott as if it were a controversy between Missouri and Illinois, or between the people of free States and the people of the slave States; and involved the vexed topics of the politics of the day; and he feels authorized in overruling the settled law in Missouri, as declared in many decisions of the Supreme Court, because "the times now are not as they were when the former decisions on this subject were made. Since then, not only individuals, but States, have been possessed with a dark and fell spirit in relation to slavery, whose gratification is sought in the pursuit of measures whose inevitable consequence must be the overthrow and destruction of our Government. Under such circumstances it does not behoove the State of Missouri to show the least countenance to any measure which might countenance this spirit." (See p. 586.)

On the other hand, Judge Gamble says (p. 589): "I regard the question as conclusively settled by repeated adjudications of this court; and if I doubted or denied the propriety of those decisions, I would not feel myself any more at liberty to overturn them than I would any other series of decisions by which the law upon any other question had been settled. There is with me nothing in the law of slavery which distinguishes it from the law on any other subject, or allows any more accommodation to the temporary excitements which are gathered around it. * * * * But in the midst of all such excitement it is proper that the judicial mind, calm and self-balanced, should adhere to principles established when there was no feeling to disturb the view of the legal questions upon which the rights of parties depend."

"In this State it has been recognised from the beginning of the Government as a correct position in law, that the master who takes his slave to reside in a State or Territory where slavery is prohibited, thereby emancipates his slave." (Winney vs. Whitesides, 1 Mo. 473; Le Grange vs. Chouteau, 2 Mo. 20; Milley vs. Smith, Ib. 36; Ralph vs. Duncan, 3 Mo. 194; Julia vs. McKinney, Ib. 270; Nat vs. Ruddle, Ib. 400; Rachel vs. Walker, 4 Mo. 350; Wilson vs. Melvin, 592.)

These decisions, which come down to the year 1837, seem to have so fully settled the question, that since that time there has been no case bringing it before the court for any reconsideration until the present. In the case of Winney vs. Whitesides the question was made in the argument, "whether one nation would execute the penal laws of another," and the court replied in this language: "Huberus, quoted in 3 Dall. 375, says, 'Personal rights or disabilities, obtained or com-

municated by the laws of any particular place, are of a nature which accompany the person wherever he goes.' If this be the case in countries altogether independent of each other, how much more in the case of a person removing from this common territory of all the States to one of the States. An adjudication of these rights in the country in which they accrue may be evidence of them, but cannot give them. We are clearly of opinion, that if by a residence in Illinois the plaintiff in error lost her right to the property in defendant, that right was not revived by a removal of the parties to Missouri."

To the same effect he cites Lunsford vs. Coquellon, 2 Martin, 401; Marie Louise vs. Marot, 9 L. R. 475; Smith vs. Smith, 13 L. R. 441; Thomas vs. Generis, L. R. 483; Josephine vs. Poultney, 1 Annual R. 329; Harry vs. Decker and Hopkins, Walker, 36, (Miss.;) Griffith vs. Fanny Gilmers, 143, (Va.;) Rankin vs. Lydia, 2 A. K. Marshall, 468, (Ky.;) Bush's Reps. vs. White, 3 Mon. 104.

In all of these cases the courts of slaveholding States enforce a right to freedom acquired by residence in a free State, and it never occurred to them that they were enforcing the penal statutes of another State. All of them merely declare the effect of certain acts on the relation of the slave with reference to the law of the place. It cannot be said with any greater propriety, that a penal law was enforced in these cases, than if the slaves had been declared free in virtue of the will of a deceased master made in Virginia, and valid according to the law of Virginia, but not properly attested to be admitted to probate in Missouri. The question in both instances is, what act of the owner of a slave will be sufficient to effect his manumission? The same acts are not required every where. What is required to be done, depends upon the special provisions of the law under which it is done.

When it is claimed, as in this case, that the slave was emancipated in Illinois, the question is to be tried by applying the laws of Illinois to the facts proved, in the same way as we would try the question by applying the laws of Virginia to the facts if the slave claimed to have been emancipated in Virginia.

Provision is made in both States for emancipation. Why should not the manumission effected by the law be regarded in the one case as well as in the other? It is the law in both cases which gives meaning to the acts of the parties.

If it were a question of intention, it is said by this court in the case of Legrand vs. Darnall, 2 Peters, 670, "that a devise of property, real or personal, entitles a slave to his freedom by necessary implication." The implication is necessary because a slave can hold no property, and the master is supposed to know it; and when, therefore, he gives him property, it will be presumed that he intends also to give him freedom, to enable him to hold it. (Justinian's Institutes, lib. 1, tit. vi.)

Here there is no room for implication. The law, in express terms, gives an effect to the act which the party knows, and which is as conclusive of his intention as if he had put his hand and seal to a deed of manumission.

The same principle upon which the cases above cited were determined is held in Virginia, with reference to the statute of Maryland of 1796, prohibiting the importation of slaves into Maryland; by the Maryland courts, with reference to the Virginia act of 1792, declaring that slaves shall be free when brought into Virginia; by the circuit court of this District in various cases; and is fully recognised by this court in the case of Scott vs. London, 3 Cr. 324, and other cases. I shall refer to Williams vs. Ash, 1 Howard, p. 1; Lee vs. Lee, 8 P. 48; Rhodes vs. Bell, 2 Howard, 405; Prigg vs. State of Pennsylvania, 16 P. 539. The maxim of the civil law, "Liberty, once admitted, cannot be recalled," (Justinian's Ins., lib. 1, tit. vi, § 6,) and the maxim of the common law, "Once free, always free," are adopted in this country. (8 Gill, 314.)

II.—1. The record presents another question of interest. The plea denies the right of the plaintiff to sue in the circuit court of the United States, as a citizen of Missouri, "because he is a negro of African descent; his ancestors were of pure African blood, and were brought into this country and sold as negro slaves." The plaintiff demurred to this plea, and the circuit court sustained the demurrer, (p. 7.)

The sum of the objections to the plaintiff's claim of citizenship is, that persons of his color have not *all* the immunities and privileges which certain citizens exercise. It is true that they are not electors, or jurors, or witnesses, in cases between white persons. But these are rather political functions than civil rights, which are not extended to a multitude of other persons in the State whose citizenship is unquestioned.

It is true, however, that there is a recognised social distinction which excludes them from association on equal terms with whites in all the States, even in those where by law they are in all respects the equals of the whites. But this distinction is not recognised by the courts in dealing with their rights. It does not prevent them from suing and being sued; from holding property, both real and personal; take away the right to trial by jury, to the writ of habeas corpus, or to any right or privilege essential to the enjoyment of their liberty and property. This social exclusion with respect to free negroes, which makes them a caste in society, does not deprive them of the character in the State as freemen, as recognised in the Constitution and laws. It is only more marked than certain other social distinctions which are known to observers of manners and customs, but which are unknown to the law.

There is nothing in the context to suggest that the term "citizen," as used in art. III, § 2 of the Constitution, and in § 11 of the Judiciary act, was used in a peculiar or restricted sense, or meant any thing beyond the definition given in the edition of Johnson's dictionary of that era—"a freeman of a city, not a foreigner, not a slave."

The term ought to be construed with reference to the object of the provision, and to promote that object, (16 P. 610; 12 W. 441.) The mischief in view was, lest in certain conditions of public feeling the controversies between individuals of different States might engender strife between the

States, if they were left to be determined by tribunals owing their existence and power to one, only, of the States, in which the judges would naturally sympathise with their neighbors, and might be swayed, or might be supposed to be swayed, by the passions of people about them. The remedy was, to give jurisdiction over these controversies to a tribunal derived from a government common to both parties. See report of speech and propositions of Mr. Randolph, vol. 2, p. 728, Madison Papers; in which, among the defects of the articles of confederation, the want of power to check quarrels between the States, or between a State and a foreign power, is considered, and a national judiciary is proposed, with jurisdiction almost the same as subsequently granted, as a remedy. See also p. 855, where, on motion of Mr. Randolph and Mr. Madison, it was resolved, "that the jurisdiction of the national judiciary shall extend to cases which respect the collection of the revenue, impeachments of national officers, and questions which involve the national peace and harmony."

It is obvious that the object of this provision will not be promoted by limiting its application to any class, and excluding from its operation persons identified with the communities where they reside, and who, though not possessed of its highest political rights, have a standing in the courts of the States, hold property, and assert their rights to it in their own names, and are therefore as liable to raise embarrassing questions between the States, by controversies in the courts, as other citizens. Indeed, no reason can be urged for or against its application to one class, which are not equally applicable to the other.

In Gordon vs. Longest, 16 P., 104, this court declared that the object of these provisions was "to have a tribunal in each State presumed to be free from local influence, and to which all who were non-residents or aliens might resort for legal redress."

Consistently with this view of the purposes of these provisions, and in opposition to the supposition that the federal courts are to be closed to all save those who are entitled to exercise all the political rights, in 1 Payne C. C. Rep. 394, the court say that a person need not have acquired all these rights, it is only necessary that he should have acquired a domicil to enable him to sue as a "citizen;" and in 3 Wash. 546, that "citizenship means nothing but residence."

For the same reason, to secure harmony between the States, provision is made in the Constitution for giving jurisdiction to the courts of the United States of suits between "citizens" of the same State claiming lands under grants from different States; and there is equal reason for applying the term to all persons who are capable of holding the controverted rights.

Although the point under consideration has not been expressly decided by this court, suits have been entertained here without question, in which free persons of color were parties in character of "citizens." An instance is the case above cited to another point, that of Legrand vs. Darnall, a suit brought by the present chief justice, in which it appears that the defendant was a negro, both by the nature of the con-

troversy and from the description given of him in the opening of the bill to show jurisdiction. The decision involved, as already stated, the question of his freedom, as well as of the title to the land which the complainant sought to establish, and affirmed the jurisdiction of the court.

2. The effort may be made to apply to this case the rulings on the subject of this term given by the courts of Kentucky, Georgia, Tennessee and Arkansas, to be found in 1 Littell, 326; 4 Georgia, 68; Meigs, 339, and 1 English, 509. These decisions construe the word "citizen" as used in § 2 of the 4th art. of the Constitution, and at most only decide that free persons of color are not such citizens as are entitled to *all* the privileges and immunities of citizens of the several States; and the whole weight of the objections to sustaining the jurisdiction in this case is derived from considering the claim to citizenship as presented in this case, as involving a construction of § 2 of the 4th art., and that they cannot be considered competent to maintain a suit in the courts of the United States, without deciding that they are entitled to all the rights of citizens in the several States. The contrary has been decided and can be maintained; and it will be seen, by examining the decisions referred to, that they are limited to construing § 2 of 4th art.

The leading case among those cited is the first, but it is not the unanimous opinion of the court.

Judge Mills delivered a dissenting opinion, which, under all the circumstances, can scarcely be considered here as of less authority than the opinion of the court.

But the case before that court did not involve the general question. Amy claimed as a citizen of Pennsylvania, and the court say she was "not a citizen of Pennsylvania, unless she belonged to a class of society upon which, by the institutions of the State, was conferred a right to enjoy *all* the privileges and immunities appertaining to the State. * * On the contrary, it appears from the preamble of the Abolition act of Pennsylvania, that the legislature of that State intended to confer, upon those whom it was their object to emancipate, only a *portion* of the freedom they themselves enjoyed."

This admits, that if she had not been under disabilities in Pennsylvania, she would have been a citizen of Kentucky; but the plea in this case controverts that, and declares that the plaintiff could not by possibility have become a citizen of Missouri.

It is said, however, by the court, that the laws respecting naturalization mark the national sentiment as to who were citizens; and as they exclude negroes from naturalization, they afford a presumption that they were not recognised as citizens by any State before the formation of the Constitution.

If it were true, as matter of fact, (which it is not, as I shall presently show,) that no State had then recognised any but whites as citizens, it does not follow that such other natives as should thereafter be recognised as citizens by the State should not have the advantage of a constitutional provision which in terms includes them.

The naturalization laws, enacted under a different provision of the Constitution, cannot be regarded as a legislative construction of this, and are not at all conclusive that naturalization of foreigners was intended by the Constitution to be allowed to whites only. If this had been intended, it could have been expressed as easily there as in the law. But it was left to the discretion of Congress by the Constitution, and the *inhabitants* of Louisiana, the Mexicans of California, and Choctaws and Cherokee Indians, have been naturalized or acknowledged as citizens since the decision in Kentucky. See treaty with France for Louisiana; Treaty with Mexico, art. 8, vol. 9, p. 929; Treaty with Choctaws, art. 14, 20th September, 1830, vol. 7, p. 335; also Treaty with Cherokees, 12th art. Ib. p. 483.

This last treaty does not stipulate expressly that the individuals who remain in the States after the removal of their tribe and their separation from it, shall be citizens, but assumes it to result as a legal consequence from such separation.

The Constitution, and many of the laws of the United States of a general character—as the laws respecting judicial proceedings, commercial regulations, for the disposition of the public domain, and on other subjects—recognise but two classes of free persons, citizens and aliens.

As free negroes are permitted to hold property in all the States; to carry on commerce under the laws of the United States; are entitled to bounties and to pre-empions, (see Opinion of Legare, Ops. Att'ys Gen'l, vol. 4, p. 147;) and as none of the provisions applicable to aliens are applicable to them, they must be embraced in the class of citizens.

The laws of the United States which recognise the distinction between free persons of white and black, recognise the citizenship of both classes.

The 3d section of the act of 6th March, 1820, 3d vol. Stat. 546, which provides the establishment of State government in Missouri, authorizes "all free *white* male citizens" to vote for members of the convention. The 6th section of the act of 1812, to form Territorial government in Missouri, defines qualifications of electors in same terms.

The Militia act, 17th May, 1792, § 1, directs the enrolment of "every free able-bodied *white* male citizen."

The constitutions and laws of the States are to the same effect. The constitutions of some of the States—as Vermont, New Hampshire, Massachusetts, New York, and others—recognise no such distinctions among their citizens. In others—as Kentucky, Louisiana, Mississippi, Connecticut, and Missouri—the distinction is recognised. In Kentucky, the 8th sec., 2d art. of the old constitution, provided, that "in all elections for representatives, every free male citizen, (negroes, mulattoes, and Indians excepted,) &c., shall enjoy the right of an elector."

In Louisiana, by tit. 2, art. 6, no person shall be a representative who is not "a *free white* male citizen" of the United States; § 6, art. 3, of constitution of Missouri is to same effect; and so of § 1, 3d art. of that of Mississippi; and § 2, art. 6, of Connecticut.

Free blacks are thus recognised as citizens in all the States. Where the law does not prescribe, as one of the qualifications of an elector, that he shall be *white*, they vote as other citizens, and they are excepted nowhere from any duty or privilege appertaining to citizens, unless by express provision of law. And so of the United States.

That they have not the qualifications required by law, in many States, for representatives, electors, jurors, witnesses or militiamen, does not take from them their character of citizens. These laws profess only to prescribe the qualifications of representatives, electors, &c. Most of them require citizenship and something besides; others do not require citizenship at all; and none of them are prescribed as tests or characteristics of citizenship. Property, age, sex, religious belief or the want of it, religious offices, and a variety of circumstances besides color, determine these qualifications in the States as well as in England, without at all affecting the question of citizenship.

Vattel, ch. 19, § 212, 213, 214, divides the inhabitants of countries into citizens, strangers (aliens), and an intermediate class called *perpetual* inhabitants, who are an inferior class of citizens; but he admits that citizenship is acquired in England by birth. His divisions are, therefore, inapplicable to England, and for the same reason to the United States.

In the illustrious period of Rome it is said citizens were the highest class of subjects, &c. But Justinian, lib. 1, tit. v, § 3, says that formerly citizenship was extended to but one class of freedmen, but in his time it was extended to all. We have adopted to a great extent the rules of Justinian and the civil law with respect to slavery, and there is nothing in the character of our institutions which warrants the establishment here of a less liberal rule on the subject of freedmen.

These considerations would authorize the conclusion that the framers of the Constitution and the patriots of that era regarded this class of persons as citizens, and included them in that character in the provisions of the Constitution; and this is fully confirmed by reference to the laws and records of that day.

Thus an act was passed in Massachusetts on 6th March, 1788, forbidding any negro not a subject of the emperor of Morocco, or a citizen of the United States, from tarrying in the commonwealth.

The most satisfactory resolution of the question is found in the proceedings of Congress, where it will be seen this very question attracted attention and was decided.

It was moved by South Carolina to amend the 4th article, on 25th June, 1778, which is as follows: "The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in the Union, the *free* inhabitants of each of these States—paupers, vagabonds, and fugitives from justice excepted—shall be entitled to all the privileges and immunities of free citizens of the several States," by inserting the word *white* before the words "free inhabitants." The motion was negatived eight to two, and one divided. It was then moved, after the words "the several States," to insert

"according to the law of such States respectively for the government of their own *free white* inhabitants." Negatived eight to two, divided one. (See Journals, vol. 2, p. 606.)

Again, in 1783, it was also resolved "that all charges of war, and all expenses that have been or shall be incurred for the common defence and general welfare, &c., shall be defrayed out of the common treasury, which shall be supplied by the several States in proportion to the whole number of white and *other free citizens* and inhabitants of every age, sex and condition," &c. (Journals, 1st April, vol. 4, p. 183.)

In the organization of the Western Territory, first by the resolutions adopted 23d April, 1784, the organization was committed to the "*free males of full age;*" afterwards, by the ordinance of 1787, to "the free male inhabitants of full age," residents in the Territory for a specified time, and to "the citizens of the States" resident there. The 4th article provides for the admission of the States to be formed out of the territory into the Union on an equal footing with the original States, and the celebrated and long-contested 6th article abolished slavery. The ordinance, therefore, distinctly contemplated not only the establishment of civil and political equality in Territories, but designed that its "free inhabitants," including those made free by the ordinance, should "be entitled to the privileges and immunities of the several States."

These proceedings show, 1st, that Congress refused emphatically to allow any distinction to be made between the *white* and other inhabitants in the privileges to be extended to them by the several States; and, 2d, that others were recognised as *citizens* besides the whites, and together demonstrate that the substitution, which was made without objection, of the word "*citizen*" for "*free inhabitant*" in the Constitution was not done to exclude such others from the privileges conferred by the Constitution.

See Kent's Commentaries, vol. 2, p. 258, note *d*, where this point is considered, and the learned commentator comes to the conclusion that free negroes are citizens, within the meaning of the Constitution.

A legislative construction of the provision in question is found in the history of the admission of Missouri into the Union, (See Annals of Congress, 2d Session, 16th Congress,) which was accomplished by the accession of the State to the resolution of Congress, of March 3, 1821, by which it was agreed to as a fundamental condition, that the 4th clause of § 26, art. 3 of the constitution of Missouri, (which provided that it should be the duty of the legislature "to pass laws to prevent free negroes and mulattoes from coming to and settling in the State under any pretext whatever,") "shall not be construed to authorize the passage of any law, and no law shall be passed in conformity thereto, by which any citizen of either of the States of this Union shall be excluded from the enjoyment of any of the privileges and immunities to which such citizens are entitled under the Constitution of the United States;" and, in accordance with this fundamental condition, the laws of Missouri provide for the residence within the

State of "free negroes or mulattoes who produce a certificate of citizenship from some one of the United States." (Rev. Laws Mo. of 1845, p. 755.) This is a recognition, both by Congress and by Missouri, which precludes the courts of both governments from holding what this plea asserts, that such persons could under no circumstances become citizens of that State.

The other cases in which this question is noticed do not necessarily involve it. They are cases in which the police regulations of the States were sought to be invalidated, on the ground that they conflicted with this provision; and it was decided that they did not, because they were police regulations, and because those persons were not within the provision in question.

The mischiefs apprehended by the slave States from giving the provision its natural meaning, and allowing it to include all free persons, or at least all those recognised by the laws of the States as possessed of equal rights, obviously entered into these decisions; but as these are obviated by police regulations, the question has lost its importance in this respect.

In N. Y. vs. Miln, 11 P. 101, at page 139, the court declares the extent of police power of States, and the grounds on which it is placed, and say, "the right to punish or prevent crime does in no degree depend on citizenship;" and in Moore vs. Illinois, 14 H. 18, the power to exclude paupers, vagabonds, free negroes, &c., when the States deem such exclusion necessary to their safety or welfare, is recognised. (See also Mr. Berrien's op. on S. C. statute, Ops. Attys. Gen'l, vol. II, p. 427.)

M. BLAIR.