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Chapter 12
The Controversial Dred Scott Decision

The central question before the nation during the 1850's was the issue of slavery in the territories. It was discussed in every town and village, debated on the floor of Congress, and fought out on the soil of Kansas.

By 1857, positions on slavery in the territories had hardened. A man's beliefs on this subject were often influenced by the section of the country in which he lived. Northerners generally believed that Congress can make a regulation prohibiting slavery in a Territory [but] they can not make a regulation allowing it." Westerners held to Stephen Douglas's belief "that slavery can neither be established nor prohibited by Congress," but he believed that people living in territories could make those decisions. Southerners argued that the Constitution "allows every slave owner the right to take his property anywhere in the country."[57]

Under the American system of government, the Supreme Court was supposed to be the final arbitrator of any judicial dispute. Perhaps it was for this reason that the President-elect James Buchanan was prepared to allow the courts to settle the slavery issue. A case, ready made to resolve this issue, was before the Court while Buchanan was writing his inaugural address. In the most important part of this speech, Buchanan asked his countrymen to suspend their own opinions, and follow the ruling of the Supreme Court:

> *It is a judicial question, which legitimately belongs to the Supreme Court of the United States, before whom it is now pending, and will, it is understood, be speedily and finally settled. To their decision, in common with all good citizens, I shall cheerfully submit, whatever this may be.* [58]

The Dred Scott Case

Buchanan may have been less likely to advise his countrymen accept the Court's decision if he did not already know what the Court was about to pronounce. He had corresponded with at least two members of the Supreme Court. He had urged Robert Grier, a fellow Pennsylvanian, to join the Court's majority in the Dred Scott case. Justice Grier's sympathies, as those of the President-elect, were with the South on the slavery issue. Four of the remaining justices, including Chief Justice Roger Taney, were from the South. Only two, John McLean and Benjamin Curtis, were not Democrats.

The facts of the Dred Scott case were complex, but well understood by most Americans who had followed it with great interest. Dred Scott had been a slave owned by a resident of Missouri, Dr. Emerson. Between 1834 and 1838, Scott lived with his master in the state of Illinois and in what today is Minnesota. At that time. slavery was banned in Minnesota by the Missouri Compromise. Upon returning to Missouri, Scott sued his new master, John Sanford, who had bought him for the purpose of bringing a test case to

57 19 Howard, 620
58 Allan Nevins, The Emergence of Lincoln, Charles Scribner's Sons, New York, 1950, p. 88.

the Supreme Court. Through his lawyers, Scott claimed his freedom on the grounds that he was no longer legally a slave because of his residence in a free territory where slavery had been prohibited by Congress. Scott's claim was upheld by one court in Missouri but overturned by a higher court and then appealed to the Supreme Court.

The Dred Scott case presented three major issues to the Supreme Court. First, whether Scott, or any Negro, was a citizen and had the right to sue in Court. Second, whether Scott's status as a slave was affected by his residence in a free territory. And, third, whether Congress had the power to ban slavery in the territories. Should the Court rule negatively on the first issue, it would not have to pass judgment on the others.

Only the first and third issues need concern us here, for the real question in the Dred Scott case was not the fate of Scott himself, but the rights of Negroes under the Constitution and the power of Congress to legislate on the status of slavery in the territories. On March 6, 1857, the eighty-year old Chief Justice Roger Taney read his decision in which five members of the Court concurred. Taney ruled that Scott, as a Negro, had no rights that the white man was bound to respect, and that the only power Congress had over slavery in the territories was the power coupled with the duty of guarding and protecting the owner in his property. Excerpts from the decision follow:

Suggested Student Exercises:

After reading the excerpts from the majority and minority opinions, on the next page:

1. Briefly summarize the facts of the Dred Scott case and the conclusion reached by the Court.

2. If your teacher directs, break into groups of three student each; in each of the groups, one person will present Taney's and the other one Curtis' argument. The third person will decide which is stronger. After about 15-20 minutes the teacher will call the class together for a full class discussion on these issues.

3, Read what the Court decided and comment on the decision.

Can Negroes be Citizens and Have Rights Under the Constitution

Taney: Yes

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, when the Constitution of the United States was framed and adopted They had for more than a century before been regarded as beings of an inferior order, 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

Taney

respect; and that the Negro might justly and lawfully be reduced to slavery for his benefit. There are two clauses in the Constitution which to the Negro race as a separate class of persons and show clearly that they are 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 1808, 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 service, and be found within their respective territories. And these two provision 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

Can Congress Prohibit Slavery

Curtis : No

I can find nothing in the Constitution which deprives of their citizenship any class of persons who were citizens of the United States at the time of its adoption, or who should be native-born citizens of any State after its adoption; nor any power enabling Congress to disenfranchise persons born on the soil of any State, and entitled to citizenship, of such State by its Constitution and laws. And my opinion is, that, under the Constitution of the United States, every free person born on the soil of a State, is a citizen of the United States.

Curtis

It has been often asserted that the Constitution was made exclusively by and for the white race. It has already been shown that in five of the thirteen original States, colored persons then possessed the elective franchise, and were among those by whom the Constitution was ordained and established. If so, it is not true, in point of fact, that the Constitution was made exclusively for the white race. And that it was made exclusively for the white race is, in my opinion, not only an assumption not warranted by anything in the Constitution, but contradicted by its opening declaration, that it was ordained and established by the people of the United States, for themselves and their posterity. And as free colored persons were then citizens of at least five States, and so the United States they were among those for whom and whose posterity the Constitution was ordained and established.

in the Territories?

Taney

The territory being 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 can exercise no power over []) person or property, beyond what [the Constitution] confers, nor lawfully deny any right which it has reserved.

For example, no one, we presume, will contend that Congress can make any law in a Territory respecting the establishment of religion, or the free exercise thereof, or abridging the freedom of speech or of the press, or the rights of the people of the Territory peaceably to assemble, and to petition the Government for the redress of grievances. These powers, and others, in relation to rights of person, are, in express and positive terms denied to the General Government; and the rights of private property have been guarded with equal care. Thus the rights of property are untied 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, who had committed no offense against the laws, could hardly be dignified with the name of the due process of law.

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 [the Missouri Compromise], is not warranted by the Constitution, and is therefore void . . . *

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Curtis

The Constitution declares that Congress shall have power to make all needful rules and regulations respecting the territory belonging to the United States.

It will not be questioned that when the Constitution of the United was framed and adopted, the allowance and prohibition of Negro slavery were recognized subjects of municipal legislation; every State had in some measure acted thereon; and the only legislative action concerning the territory contained a prohibition of slavery. The purpose and object of the clause being to enable Congress to provide a body of municipal law for the government of the settlers, the allowance or the prohibition of slavery comes within the known and recognized scope of that purpose and subject. An Act was passed on the 7th day of August, 1789, . . . which recites: Whereas in order that the ordinance of the United States in Congress assembled, for the government of the territory northwest of the river Ohio, may

continue to have full effect, it is required that certain provisions should be made, so as to adapt the same to the present Constitution of the United States.

Here is an explicit declaration of the will of the first Congress, of which fourteen members, including Mr. Madison, had been members of the Convention which framed the Constitution, that the ordinances, one article of which prohibited slavery, should continue to have full effect. General Washington, who signed this bill, as President, was the President of that Convention. 59

59 19 Howard, 407-617

* In a case upholding the Embargo before the War of 1812, the Supreme Court did not rule it violated property rights

Epilogue

Chief Justice Taney spoke for a divided Supreme Court, but his decision had the same force of law as if it had been unanimous. The main points of the decision, which produced howls of protest in the North, were as follows.

1. Scott, as a Negro, had no rights that the white man was bound to respect.

2. The only power Congress had over slavery in the territories was the power coupled with the duty of guarding and protecting the owner in his property.

The implications of the decision were clear. Congress did not have the right to prohibit slavery in the territories. The Missouri Compromise's a well as the Northwest Ordinances's prohibitions on slavery were illegal. The Republican Party's main platform, to prevent the extension of slavery in the territories, was illegal. The South had won a legal victory of historic proportions. The question now remained whether, in Buchanan's words, "all good citizens" would "cheerfully submit" to it.