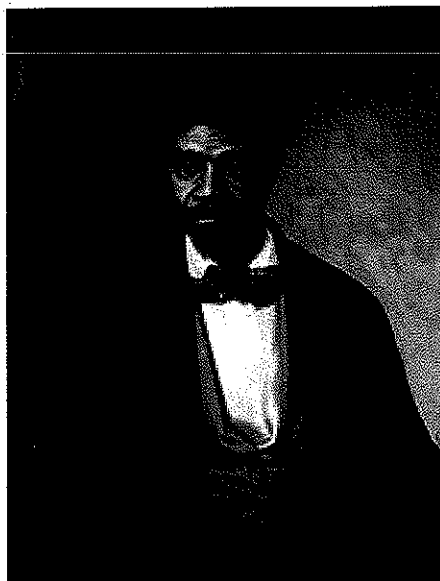


Revisiting the Dred Scott Case (*Dred Scott v. Sandford*, 1846)



Profile of Litigant

Name: Dred Scott

Age (in 1846): 51 yrs.

Health issues: Advanced TB (litigant has not worked for some years)

State of Birth: Virginia

Owner/Residence (who owns title to your person at this time): Dr. John Emerson -- John Sandford, Missouri

Marital status (how and when were you married, describe the circumstances): Married to Harriet Robinson Scott 1836/1837 at Fort Snelling, Minnesota

At the time of your marriage, was your spouse free or enslaved: free

Names and ages of children: Eliza (8 yrs) & Lizzie (7 yrs)

Who currently owns legal title to your children (please provide this information for all children listed above): John Sandford

Describe sequence of residences, approximate lengths of residence in each place, and years of residence: VA, MO, MN, LA, MN, MO



Profile of Litigant

Name: Harriet Robinson Scott

Age: 26/27 yrs

Health issues: none

State of Birth: Bedford, Pennsylvania (likely)

Owners (who owns title to your person at this time): Litigant was "given to Dred Scott" upon marriage to same by owner Major Lawrence Taliaferro, U.S. Indian Agent

Marital status (how and when were you married, describe the circumstances): Married to Dred Scott 1836/1837 at Fort Snelling, Minnesota

At the time of your marriage, was your spouse free or enslaved: enslaved

Names and ages of children: Eliza (8 yrs) & Lizzie (7 yrs)

Who currently owns legal title to your children (please provide this information for all children listed above): John Sandford

Describe sequence of residences, approximate lengths of residence in each place, and years of residence: PA, MO, MN, LA, MN, MO

The Dred Scott Decision (1857)

Roger Taney, presiding

In the 7-2 United States Supreme Court opinion by Justice Taney, the Court held that:

1. Congress had no authority to eliminate slavery in any of the federal territories;
2. Dred Scott was not a citizen of the United States, nor was he permitted to use the courts of the United States to sue for his freedom;
3. Because Congress had no authority to eliminate slavery in the federal territories and because Dred Scott was not a citizen of the United States, the federal courts did not have jurisdiction over Dred Scott's claim;
4. Dred Scott's residency in free territory did not make him free because the 1820 Missouri Compromise violated the Fifth Amendment Due Process Clause by depriving slaveholders of their property;
5. Dred's residence in another state, Illinois, had no effect on his status as a slave once he returned to Missouri, at which point Missouri law, not Illinois law, applied.

In its most infamous pronouncement, the Court majority maintained that "[Negroes] had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race . . . and so far inferior, that they had no rights which the white man was bound to respect."

By August 1862, when Abraham Lincoln replied to Horace Greeley's "The Prayer of Twenty Millions," he had already reconsidered his views on the relationship between an emancipationist policy and preserving the Union. He had come to believe that, for several reasons, adopting emancipation as a war aim would help the Union war effort. It would discourage such emancipationist European powers as Great Britain and France from recognizing the Confederacy. It would encourage more slaves to escape. It was essential to a new policy promoting black enlistment in Union armies. Lincoln had also tired of placating proslavery sentiment in the border slave states. But Lincoln realized that to declare emancipation to be his goal, at a time when the Union appeared to be losing the war, would appear to be weak and desperate. Therefore he waited until after the Army of the Potomac had turned back Robert E. Lee's invasion of Maryland at Antietam to issue his Preliminary Emancipation Proclamation on September 22. It declared that slaves in those portions of the South still in rebellion on January 1, 1863 would "be then, thenceforward, and forever free." When, by that date, no Confederate state sought to end the conflict, Lincoln, fully supported by the Republican Party, issued his final Emancipation Proclamation. It was a war measure rather than a declaration of human rights, affected slaves only in areas not under Union control, and lacked Lincoln's famous eloquence. Nevertheless it transformed the character of the Civil War and encouraged black men to participate in Union armies.

1 Whereas on the 22nd day of September, AD 1862, a proclamation was issued by the President of the United States, containing, among other things, the following, to wit:

2 That on the 1st day of January, AD 1863, all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free; and the executive government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons and will do no act or acts to repress such persons or any of them in any efforts they may make for their actual freedom.

3 That the Executive will on the 1st day of January aforesaid, by proclamation, designate the States and parts of States, if any, in which the people thereof, respectively, shall then be in rebellion against the United States; and the fact that any State or the people thereof shall on that day be in good faith represented in the Congress of the United States by members chosen thereto at elections wherein a majority of the qualified voters of such States shall have participated shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such State and the people thereof are not then in rebellion against the United States.

4 Now, therefore, I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as Commander-in-Chief of the Army and Navy of the United States in time of actual armed rebellion against the authority and

156 Political Perspectives

government of the United States, and as a fit and necessary war measure for suppressing said rebellion, do, on this 1st day of January, AD 1863, and in accordance with my purpose so to do publicly proclaimed for the full period of one hundred days from the first day above mentioned, order and designate as the States and parts of States wherein the people thereof, respectively, are this day in rebellion against the United States the following to wit:

5 Arkansas, Texas, Louisiana (except the parishes of St. Bernard, Paquet, Terrebonne, Lafourche, St. Mary, St. Martin, and Orleans, including the city of New Orleans), Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia (except the forty-eight counties designated as West Virginia, and also the counties of Berkeley, Accomac, Northampton, Elizabeth City, York, Princess Anne, and Norfolk, including the cities of Norfolk and Portsmouth), and which excepted parts are for the present left precisely as if this proclamation were not issued.

6 And by virtue of the power and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States and parts of States are, and henceforward shall be, free; and that the Executive Government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.

7 And I hereby enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defence; and I recommend to them that, in all cases when allowed, they labor faithfully for reasonable wages.

8 And I further declare and make known that such persons of suitable condition will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.

9 And upon this act, sincerely believed to be an act of justice, warranted by the Constitution upon military necessity, I invoke the considerate judgment of mankind and the gracious favor of Almighty God.

10 In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

11 Done at the city of Washington, this 1st day of January, AD 1863, and of the Independence of the United States of America the eighty-seventh.

ABRAHAM LINCOLN
By the President

Source: James D. Richardson, ed., *A Compilation of the Messages and Papers of the Presidents*, 10 vols. (Washington, DC: Government Printing Office, 1897), 6:157-9.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 12, 1864.

Mr. WILSON asked, and by unanimous consent obtained, leave to bring in the following joint resolution; which was read twice, referred to the Committee on Military Affairs and the Militia, and ordered to be printed.

JOINT RESOLUTION

To encourage enlistments and to promote the efficiency of the military forces of the United States.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*
3 That, for the purpose of encouraging enlistments and pro-
4 moting the efficiency of the military and naval forces of the
5 United States, it is hereby enacted that the wife and children,
6 if any be have, of any person that has been, or may be,
7 mustered into the military or naval service of the United
8 States shall, from and after the passage of this act, be for-
9 ever free, any law, usage, or custom whatsoever to the con-
10 trary notwithstanding; and in determining who is or was the
11 wife and who are the children of the enlisted person herein
12 mentioned, evidence that he and the woman claimed to be
13 his wife have cohabited together, or associated as husband
14 and wife, and so continued to cohabit or associate at the
15 time of the enlistment, or evidence that a form or ceremony
16 of marriage, whether such marriage was or was not author-
17 ized or recognized by law, has been entered into or cele-
18 brated by them, and that the parties thereto thereafter lived
19 together, or associated or cohabited as husband and wife, and
20 so continued to live, cohabit, or associate at the time of
21 the enlistment, shall be deemed sufficient proof of marriage
22 for the purposes of this act, and the children born during the
23 continuance of any such marriage shall be deemed and taken
24 to be the children embraced within the provisions of this act,
25 whether such marriage shall or shall not have been dissolved
26 at the time of such enlistment.