

Dred Scott Decision: The Lawsuit That Started The Civil War

Posted By [HistoryNet Staff](#) On 6/12/2006 @ 8:15 pm In [Civil War Times](#)

The Chief Justice of the United States was dying and would not live out the day. On October 12, 1864, three physicians were summoned to Roger B. Taney's small bedroom in a stucco house on Indiana Avenue. When Dr. James C. Hall, the chief justice's usual physician, entered, Taney expressed his regret at not being able to rise. After an examination, all three physicians agreed that the end was mere hours away. Taney's semi-invalid daughter, Ellen, sat by her father's bedside. 'My dear child,' he said in a nearly inaudible voice, 'my race is run. I have no desire to stay longer in this painful world, but for my poor children.'

Dr. Hall, perhaps to distract his patient, read from an article in the *Baltimore Sun* about the election soon to be held in Maryland. Voters would decide whether or not to adopt a state constitution under which slaves would be set free without compensation to their owners. He then read a letter printed by the newspaper suggesting that the oath of allegiance proposed by President Abraham Lincoln and included in the new constitution might be taken even though conscience disapproved. 'There must be no compromise of principle,' said the chief justice with surprising strength.

History does not record the thoughts of the physicians, but undoubtedly they recalled the great case of seven years earlier that had set in motion the events which would free the slaves in Maryland — and later every state — and had all but extinguished the old order, just as Taney's life was flickering out. Whatever else he did in that case, the chief justice had not compromised.

The great case was *Scott v. Sandford*, the most consequential opinion ever issued by the U.S. Supreme Court. The author of the opinion was Chief Justice Taney, who held that Negroes in bondage were property without rights and that Congress had no power to limit the expansion of slavery. The opinion ignited a political firestorm that set the nation irrevocably on the path to what novelist/historian Shelby Foote has called 'the crossroads of our being.'

An illiterate slave, Dred Scott, as humble a litigant as could be imagined, managed to get the case to the Supreme Court. Little is known of Scott's origin, other than he was born in Virginia on the farm of the Peter Blow family, which later moved to St. Louis and became prominent. In St. Louis, Scott was sold by the Blow family to a U.S. Army doctor named John Emerson. Dr. Emerson was eventually ordered to a fort in Illinois, a free state, and then to Fort Snelling in what is now Minnesota but was then a territory where slavery was banned under the Missouri Compromise of 1820.

Emerson took Scott with him as a personal valet, also planning to hire him out to residents of the forts, a common practice at the time. At Fort Snelling, Scott met and married slave girl Harriet Robinson, who had been acquired by Emerson from the fort's Indian agent. Dred Scott managed to raise two children and keep his family from being sold — no mean feat for a slave.

Emerson, accompanied by his slaves, returned to St. Louis after leaving the Army. After his sudden death in 1843, his wife Irene became the Scotts' owner. Dred Scott tried to buy his freedom, but Irene Emerson refused to let the family go. Scott then demonstrated a remarkable ability to find lawyers to bring a series of lawsuits aimed at attaining his own and his family's freedom.

Dred and Harriet Scott's first petitions were filed in state court in St. Louis in 1846. Their lawyers relied on an 1824 Missouri Supreme Court case, *Winny v. Whitesides*, in which the Court held that when a master takes a slave to a free state 'and by the length of residence there indicates an intention of making that place his residence and that of his slave,' the slave is permanently freed. The court had followed the Winny ruling in every similar case presented over the next two decades, including one, *Rachel v. Walker*, where the slave won

her freedom because her owner, a U.S. Army officer, had taken her to Fort Snelling in free territory. The Scotts' claim appeared to be open and shut.

The case was tried twice, in 1847 and again in 1850, in what is now known in St. Louis as the Old Courthouse. As the Scotts walked into the building on the first day of trial they could have passed a slave auction, since the courthouse steps were used by St. Louis slave dealers. Such was the peculiarity of slave law that the Scotts could sue for their freedom inside a courthouse on whose outside steps they might be bought and sold.

Both trials were presided over by Judge Alexander Hamilton, an anti-slavery Pennsylvanian. The simple task of the Scotts' attorneys was to prove that Irene Emerson had owned Dred and Harriet in a free state or territory. Because slaves were barred from testifying, even in their own lawsuits, the Scotts' proof had to come from former residents of the Army forts who had known the Emersons and their slaves.

The Scotts' lawyers botched the trial by calling the wrong witness from Fort Snelling, one Samuel Russell. He testified that, while Dred Scott had been hired out to his wife, he had no knowledge of Irene Emerson's ownership of the Scotts. As a result, the jury returned a verdict for Irene Emerson. As historian Don E. Fehrenbacher later wrote, 'The decision had the absurd effect of allowing Mrs. Emerson to keep her slaves simply because no one had proved that they were her slaves.' The Scotts' attorneys moved for a new trial, arguing that they had been surprised by Russell's testimony. Judge Hamilton granted the motion for retrial.

Dred Scott managed to find new lawyers. At the 1850 trial they called Mrs. Russell, who testified that Irene Emerson was the owner of the Scotts. Judge Hamilton gave a charge based on the *Winny* case that required a verdict for the Scotts if the jury found that they had resided either in a free state or in a territory in which the Missouri Compromise barred slavery, which they indisputably had. The jury found in favor of the Scotts.

Irene Emerson appealed the case to the Missouri Supreme Court, where it was heard in 1852. The timing could not have been worse for the Scotts because sectional conflict over slavery had begun to boil over. In an opinion filled with resentful language, the Missouri Supreme Court, by a vote of 2-1, reversed the judgment freeing the Scotts. The court repudiated its rulings in the *Winny v. Whitesides* and *Rachel v. Walker* cases and excoriated perceived Northern hypocrisy about slavery: 'we will not go to them to learn law, morality or religion on the subject.'

There Dred Scott's quest for freedom could have ended. But this persistent slave managed to find new lawyers to take up his cause. His adversary had also changed — Irene Emerson had remarried and left St. Louis, and now her brother, John Sanford, who lived in New York, owned the Scott family. Dred Scott's new attorney was Roswell Field, a lawyer from Vermont who left for St. Louis after an ill-fated marriage to a much younger woman. Field was later assisted by young Harvard Law School graduate and fellow Vermonter Arba Crane, who formed a close friendship with Dred Scott. Field filed a new suit in federal court on the basis of Article III, Section 2 of the Constitution, commonly known as the diversity clause, which gives federal courts jurisdiction over suits between citizens of different states. Scott, alleged to be a free citizen of Missouri, would be suing John Sanford, a citizen of New York. It was not a far-fetched theory because several Southern courts had recognized that the act of emancipation conferred at least some citizenship rights on a freed slave.

Scott v. Sandford (the federal courts misspelled Sanford's name) was filed in the federal circuit court of St. Louis in 1853. The lawsuit again asserted that Scott had been freed by his residence in Illinois and at Fort Snelling. The case was assigned to Judge Robert W. Wells, a Virginian who had been attorney general of Missouri. Wells rejected Sanford's argument that Negroes of African ancestry could never be citizens within the meaning of the diversity clause. He held that 'every person born in the United States and capable of holding property was a citizen having the right to sue in the United States courts.'

While Scott had convinced the court that it had the jurisdiction to hear his case, he still had to prove that his travels to Illinois and Fort Snelling had freed him under the law of Missouri. The case went to trial in 1854.

Judge Wells, though sympathetic to the Scotts, had no choice but to give a charge that reflected the ruling by the Missouri Supreme Court in *Scott v. Emerson*, since the federal case concerned solely a wrongful imprisonment charge and Scott had never proven unequivocally in any state case that he was declared free in Illinois. This amounted to a continuation of Scott's servitude.

Scott's attorneys appealed to the U.S. Supreme Court. Sitting on that highest court were four slave state justices, four justices from free states and Roger Taney from Maryland, a border state that permitted slavery.

It is easy in hindsight to see why the Scott lawyers might have viewed Taney as a possible fifth vote in their favor. As a young lawyer, Taney had defended an abolitionist minister against charges of inciting slaves to rebellion. In his summation, he told the jury in defense of his client that 'Until the time shall come when we can point without a blush, to the language in the Declaration of Independence, every friend of humanity will seek to lighten the galling chain of slavery and better, to the utmost of his power, the wretched condition of the slave.' The jury, made up mostly of slave owners, acquitted the minister.

Taney had freed his own slaves and, after joining the Supreme Court, voted to free the slaves in the Amistad case. Once called a man with a 'moonlit mind' because it shone with 'all of the moon's brightness but none of its glare,' Taney had sided with Northern interests in non-slavery cases. In appearance he was frail and soft-spoken, to some resembling an old wizard, but his eyes shone with bright and piercing intelligence.

The case was argued in the Supreme Court in 1855 and again in late 1856, just as Americans began to debate slavery with more than words. On May 21, 1856, border ruffians sacked the free-state town of Lawrence, Kan., in the conflict known as 'Bleeding Kansas.' The next day, Massachusetts Senator Charles Sumner, an outspoken abolitionist, was beaten half to death on the floor of the U.S. Senate by South Carolina Senator Preston Brooks. Two days after that John Brown — who, as one of his sons remembered, went 'crazy' at the news of the beating — led a raid on Osawatimie, Kan., killing five pro-slavery men.

The Scott case also coincided with tragedy in the Taney family. For many years, the family had vacationed at Old Point Comfort near Norfolk, Va. In the summer that the case reached the Supreme Court, an outbreak of cholera was reported in Norfolk. Taney's daughter, Alice, was invited by concerned friends to vacation instead in Newport, R.I. She asked her father's permission in a letter. He wrote in response, 'I have not the slightest confidence in the superior health of Newport over Old Point and I look upon it as nothing more than that unfortunate feeling of inferiority in the South, which believes everything in the North to be superior to what we have.'

Taney's daughter canceled plans to vacation in Newport and went to Old Point Comfort, where she contracted cholera and died. Her mother died of a stroke the same day. Taney, then 78 years old, had begun writing his autobiography at Old Point Comfort. As Taney biographer Carl Swisher wrote: 'The broken-hearted family boarded a boat for Baltimore. Taney was leaving Old Point, the scene of many happy summers and of one terrible tragedy, never to return, and the writing of the story of his life, which had begun there, was never to be resumed.' Another historian suggested that the tragedy deprived Taney of emotional reserves necessary to maintain judicial balance.

In the Supreme Court, Dred Scott was represented by Montgomery Blair, from one of the most influential families in American politics. John Sanford was represented by Missouri Senator Henry Geyer and Reverdy Johnson, regarded as the country's leading Supreme Court advocate. After the first argument, it was clear that Geyer and Johnson were defending nothing less than slavery itself. In response to Scott's claim to freedom by virtue of residence in a territory where slavery had been banned by the Missouri Compromise, they argued that the Compromise was unconstitutional. In challenging the authority of Congress to limit the expansion of slavery, the Sanford attorneys struck at the foundation of the legislative compromises that had saved the Union.

Instead of issuing an opinion, the Supreme Court set the case down for another argument in December 1856. That November, Democrat James Buchanan won the presidential election, beating John Frmont, the candidate of the emerging Republican Party. According to Fehrenbacher, when the Scott case was argued yet again, on December 15, 1856, 'Every one of the nine justices must have realized by this time that the Court had an explosive package on its hands. Many more people were now aware of what might be at stake in one Negro's suit for freedom.'

Following the second argument, the Supreme Court was initially divided. Finally, a majority coalesced around a sweeping opinion. At the suggestion of Justice James M. Wayne, the author would be Chief Justice Taney, who, according to Fehrenbacher, 'behind his mask of judicial propriety' had become 'a bitter sectionalist, seething with anger at Northern insult and Northern aggression.'

In February 1857, Justice John Catron of Tennessee wrote to president-elect Buchanan, urging him to press Pennsylvania's Justice Robert C. Grier to join a majority opinion. Buchanan wrote to Justice Grier, who agreed to concur with the chief justice. Buchanan, now privy to the forthcoming ruling, declared at his inauguration on March 4, 1857, that the Supreme Court would soon settle the issue of 'when the people of a Territory shall decide this question [slavery] for themselves.' By today's standards, and perhaps even in those days, Buchanan's statement was a flagrant breach of judicial ethics.

On March 6, 1857, the Supreme Court was filled, and many were turned away. For two hours, Chief Justice Taney, about to turn 80 years old, read from the Court's opinion in a nearly inaudible voice. He first held that Scott, as a Negro of African ancestry, had no rights, including the right to sue in federal court as a citizen: 'They had for more than a century before been regarded as beings of an inferior order, and 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 respect....'

Taney then went on to issue a stunning ruling that attempted to end the slavery controversy forever. He held that Congress had no power to bar slavery in the territories because, among other things, Negroes in bondage are property and the Constitution protects property owners from deprivation of their property without due process of law: 'the right of property in a slave is distinctly and expressly affirmed in the Constitution.' The final vote was 7-2 against Scott. Only Ohio's Justice John Mclean and Massachusetts' Justice Benjamin R. Curtis voted in Scott's favor.

That morning freedom had been national and slavery local. By the afternoon, it was the other way around. The country was a tinderbox, and now the Supreme Court had lit a match. Angry Northern editorials denounced the opinion, calling it, in one paper's words, 'no better than what might be obtained in a Washington City bar room fight.' The abolitionist ministers preached resistance to the decision, saying that 'if the people obey this decision, they disobey God.' Northern legislatures passed laws that said no person in the state should be considered as property, and set free every slave who came into the state. For the first time, Northern anger was not directed only at the expansion of slavery but at the South.

Southern editors called the decision 'right and the argument unanswerable, we presume, but whether or not, what this tribunal decides the Constitution to be, that it is; and patriotic men will acquiesce.' In Southern opinion, the decisions covered every question regarding slavery, including the inferior status of Negroes, and settled it in favor of the South. Southerners warned that the opinion must be accepted by the North or there would be disunion.

For two months Justice Taney refused to publish his opinion, and even ordered the Supreme Court clerk not to give a copy to dissenting Justice Curtis. Meanwhile, Taney was rewriting sections of his opinion to respond to the cascade of Northern anger that had descended on the Supreme Court. When he finally allowed it to be published, reporters who had been at the court noted that parts of the published opinion did not correspond to their notes and, if read aloud at the same pace as Taney's delivery, appeared to be a third longer.

In 1858 Justice Curtis resigned from the Supreme Court, denying that he did so because of *Scott v. Sandford*. That same year, on August 27 in Freeport, Ill., Republican Senatorial candidate Abraham Lincoln and Democratic Senator Stephen A. Douglas held the second of their famous debates, which were largely about the Dred Scott case.

Lincoln posed the famous Second Freeport Question to Douglas, 'Can the people of a United States Territory, in any lawful way, against the wishes of any citizen of the United States, exclude slavery from its limits prior to the formation of a State Constitution?' Douglas was impaled on the barbed choice between appeasing the Northern wing of his party by repudiating the Dred Scott decision, while losing the Southern wing if he did, and vice versa. He answered with a gusto that ultimately satisfied no one by stating, 'the people have the lawful means to introduce or exclude it as they please.' He won the election, but Lincoln became a national figure.

At its 1860 convention, the Democratic Party came apart over the Dred Scott decision. When their request for adoption of a national slave code based on the decision was rejected, the states that would later secede from the Union after Lincoln's election, with the exception of Arkansas, walked out of the convention. Lincoln ran as the sole Republican candidate for president against a fractured Democratic Party that produced three candidates, one being Stephen A. Douglas.

In one of the most ironic moments in American history, Chief Justice Taney swore in Lincoln as president in 1861. As historian Charles Warren later wrote, Taney 'elected Abraham Lincoln to the Presidency.' Shortly after that the Civil War, America's defining moment, began.

In 1859 Taney sat for a portrait by the painter Emanuel Leutze. By then, the year of John Brown's raid on Harpers Ferry, it was clear to Taney that the nation was headed for catastrophe. The chief justice wears black robes in the portrait. His left hand rests on a pad of paper, while his right hand hangs limply, almost lifelessly against the right arm of the chair. His eyes are bleak, as though he had seen into a ruinous future that he had wrought, but had not intended and could never undo. Taney remained on the court during the Civil War until his death in 1864. He was described by a diarist of the time as one of the saddest figures in Washington.

And what of his adversary, Dred Scott? In a bizarre turn, after she lost the trial in *Scott v. Emerson*, Irene Emerson married Dr. Calvin Chaffee, a Massachusetts congressman and outspoken abolitionist. After the Supreme Court's decision, newspaper reporters tracked her down and discovered her remarriage. By now, John Sanford was in an insane asylum, which left Irene Emerson Chaffee in charge of his 'property.'

Apparently, Irene had not informed her husband of her slaveholding past. Abolitionist Representative Chaffee awoke one morning to discover that he was married to the most famous slave owner in America. A Massachusetts newspaper, the *Springfield Argus*, excoriated him, writing, 'All the long years of servitude through which this [Scott] family has been doomed to labor has this hypocrite kept their ownership by his family from the public, while he had profited, not only by their labor, but by his extraordinary professions of love for the poor Negro.' Newspapers across the country would carry similar denunciations.

After being forced by outraged public opinion to free (or urge his wife to free) Dred Scott, Dr. Chaffee did not run for reelection. The Chaffees transferred ownership of the Scotts to Taylor Blow, and he freed them shortly thereafter. Irene Chaffee later claimed to a newspaper reporter that she 'was always in sympathy with the cause of the negro.'

Arba Crane drew up the legal papers that ultimately freed the Scotts. Their emancipation on May 26, 1857, made headlines throughout the nation.

Dred Scott found a job as a porter at Barnum's Hotel in St. Louis, where guests regarded him as a celebrity. Following his death on September 17, 1858, he was buried in Wesleyan Cemetery. Harriet Scott outlived her

husband by several years. She worked as a laundress in St. Louis and it is believed she died sometime around 1870.

In 1867 Taylor Blow moved Dred Scott's grave to Calvary Cemetery. The grave was unmarked until 1957, but during that year, the 100th anniversary of the Dred Scott decision, its location was identified and a stone was placed on it.

Dred Scott died a free man. He had won his lawsuit after all.