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TO THE APPROACH OF THE CIVIL WAR

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The Dred Scott decision was the most divisive judicial decision in America's legal history. It concerned a single slave's plea for freedom. It highlighted the evermore controversial issue of slavery in the United States. The Dred Scott case became an unparalleled cause célèbre in the issue-laden decade of the 1850's.

The decision aggravated an already bitter sectional conflict and to some degree determined the shape of the final crisis. Public reaction to the decision was prompt and intense. There was an uproar of anger and of defiance from the antislavery quarters. The antislavery issue was continuously present in the consciousness of Americans. The Dred Scott case was not an isolated eruption but part of a sequential pattern, and during the 1850's the sectional quarrels over slavery reached a national crisis.

Dred Scott was born in 1797 in Hampton County, Virginia, the property of a Peter Blow. He was later sold to Dr. John Emerson, an army surgeon. In 1834 Dr. Emerson was posted to Rock Island, Illinois and later to Fort Snelling in the Wisconsin Territory. During his tour in these places, the doctor took his slave with him.

Accordingly, Scott spent five years on free soil by the time Dr. Emerson returned to St. Louis in 1838, taking Scott back to the slave state of Missouri. Since other Negroes had won their freedom in Missouri because of their residence in free territory, Scott was informed by the Blows, who were his principal supporters, of his rights, and he tried to obtain his freedom.

On April 6, 1846, Francis B. Murdoch filed suit in the circuit court of St. Louis for Scott's freedom. Scott's initial effort was successful. Lawyers for Scott argued that his five-year sojourn on free soil had ended his bondage, and that on his return to Missouri the court should make formal declaration of his freedom. After many intricate maneuvers by counsel, the lower court declared Scott a free man in 1850.

During the next two years Scott was living together with his wife and child; they subsisted on the charity of the Blow family, and at a later time Scott became dependent on the generosity of the Blows.

But on March 22, 1852, Mrs. Emerson appealed to the Missouri Supreme Court. The court reversed the decision and nearly thirty years of precedents—and declared that Scott was still a slave.

Not until 1857, when the United States Supreme Court ruled in the case did the federal government finally dispel all doubts concerning Negro citizenship. Chief Roger Brooke Taney could find appropriate precedents in the actions of Congress.

By 1854 it was obvious that the real point of the Dred Scott case was not so much to win freedom for Scott personally as to win a legal point in the broad fight against slavery as an institution.

Three issues were involved. Was Scott actually a citizen of Missouri and so entitled to sue in a federal court? Did his residence on free soil give him a title to his freedom? Finally was the Missouri Compromise, which permitted slavery in Missouri, but prohibited it "forever...in all territory ceded by France to the United

States... which lies north of 36° 30'...not included within the limits of [that] state," constitutional?

On March 6, 1857, the Court handed down its decision. Chief Justice Taney declared himself, that only a pronouncement by the highest national judicial tribunal on the status of slavery in the territories would defuse growing sectional tensions and help promote a peaceful solution to the slavery question.

First, Taney held that the Constitution ruled out citizenship for slaves. Slaves were property; the Fifth Amendment banned Congress from violating the property rights of slaveholders; and the Missouri Compromise's ban on slavery violated the Fifth Amendment. According to Taney, the Constitution treated slaves as property and made it the duty of the government to protect it.

Taney made an effort to show that Negroes could not be citizens. To do this, he maintained that citizenship was derived from the federal government. But the Constitution, inferentially, had left it to the states themselves to determine citizenship; even the right to sue in federal court on grounds of diverse citizenship depended solely upon state citizenship.

Free Negroes were in fact citizens of the United States and Congress was constitutionally empowered under Article IV, Section 3, Paragraph 2, to regulate slavery in the territories. In territory under the direct jurisdiction of the federal government North of 36° 30' outside of Missouri everyone was free and Congress was the sole rule-maker for such territory.

To the question of Scott's citizenship, Taney concluded that because even free blacks were treated as inferior beings, prevented from serving in the militia, prevented from exercising many rights of mobility as association to whites in both free and slave states, Scott could not be regarded as a citizen.

Having concluded that Scott was not entitled to sue in the federal courts even if he was free, Taney proceeded to a determination of whether Scott was free. Taney disposed quickly of the suggestion that Scott became free from virtue of his residence in Illinois. Taney went on to the question of whether Dred Scott might have gained his freedom by living in Louisiana territory, in the area that Congress had declared free. Taney concluded that Scott could not have gained freedom by residence in the Louisiana territory because Congress did not have the power to forbid slavery in the territory.