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The Dred Scott Case.

MINORITY REPORT
OF
HON. WILLIAM H. WELSH,
IN THE SENATE OF PA.,

From the Select Committee to which was referred the Resolutions relative to the Decision of the Supreme Court of the United States in the Dred Scott case.

The undersigned, members of the select committee to which was referred the resolutions relative to the decision of the Supreme Court of the United States in the Dred Scott case, not agreeing with the opinions and conclusions of their three colleagues in the report submitted by them, beg leave to present their views in relation to the question before the committee.

Before touching upon the great principles contained in the decision, the minority of your committee deem it both right and proper to advert to one or two points which are involved in the discussion of this subject.—We cannot but express our deep regret, that a hostile attitude has been assumed towards the recent action of the Supreme Court of the United States. Whatever difference of opinion may exist in reference to that decision, it should receive the respect and sanction of all law-abiding citizens, until the same breath that gave it existence shall pronounce its principles erroneous and its doctrines untenable. To 'repudiate" it—to say that it is "inoperative as law"—and to pro claim its authors "dictatorial," "tyrannical," and "unworthy of confidence and respect," cannot but be regarded as startling propositions in the candid estimation of all who view that Court as the great conservative element in our government, and the constitutional protector of the rights and liberties of the people. Such terms are, at least, of questionable propriety. Their boldness is only equalled by their utter fallaciousness. Instead of attempting to weaken the influence of the judiciary by assailing it with hollow and unmeaning declamation, we should endeavor to throw around it the broad and ample shield of public confidence. While it is acknowledged as one of the co-ordinate branches of our government, it must be considered supreme in the enunciation of law and sacred in the assertion of authority. In the past its binding force has been the oil which has calmed the troubled waters and quieted the stormy sea of fanaticism; and in the future, if the hand of narrow sectionalism should be raised to break down the barriers erected to protect the Constitution, the inherent strength contained within that Court of last resort, will be found to be of sufficient power to resist and overcome all the assaults that may be aimed at the common liberties of more than twenty-five millions of *white* freemen.—Viewing it in the light just indicated, we feel called upon by an imperative sense of duty, most earnestly to deprecate all efforts to bring its decisions into disrepute, or to rob it of that potential sway which has hitherto made it the true conservator of our national freedom.

The minority of our committee, also beg leave to call in question the propriety of a State Legislature attempting to review the action of the Supreme Court of the United States. It must be patent to every one that such a course is entirely futile and without any possible effect. No practical results, or positive benefit, can, in any way, accrue to the parties raising such an issue. The powers of a State Legislature and the functions of the United States judiciary are settled and distinct in their nature. They can never come in conflict. Entirely independent of each other, they have their separate and determined sphere of operations. This legislature was not chosen by the people of Pennsylvania to engage in useless discussions upon questions which, under its most extended privileges, should never arise upon this floor. They have no business here. This is not the proper forum for their consideration, and raising the question of "jurisdiction," we confidently assert, that if the "opinions and declarations" of the Supreme Court be, as is alleged, "extra judicial," in a greater degree is the action of the majority of the committee, extra-legislative. They propose no measure that can affect that court—they assume no authority to resist or oppose its decisions—they ask no legislation that would, in any manner, cure the evils of which they so loudly complain. While we cannot refuse them the luxury of lamenting over the decision of that tribunal, we most emphatically deny their right in a legislative capacity to interfere with its action or to controvert its opinions. The greatest criminal in the land may bewail his sentence, but no one will pretend to say it is his prerogative to arraign the Judge who condemned him. The resolutions submitted by the majority must, therefore, be regarded as "void" and altogether "inoperative as law." The legislature of Pennsylvania may enact them, and every day replace them on her statute books. The voice of denunciation may echo through her halls and go out upon the wings of the wind to the people of this Commonwealth. The suppressed cry of resistance may be heard, and even the strong arm of lawless faction may be lifted in defiance of the constitutional authority of that Court. Yet it will still survive, and be proudly looked upon as the guardian of the people's rights, long after its assailants have passed into oblivion. Afar from scuffling partisans, unawed by the restive murmurs of reckless demagogues, and unseduced by the blandishments of place or power, that fearless and independent judiciary, which has always been the glory of our free and happy country, will still continue to perform its acknowledged constitutional functions and enunciate those great principles of government upon which our national fabric was founded.

It is not our purpose, in thus expressing our views and opinions, to attempt a vindication of the Supreme Court of the United States, or its decision. We feel satisfied that time will prove the soundness of the latter, as well as the wisdom of its authors. Believing, however, that the majority report does not present the case which originated this discussion in a fair and proper light, it becomes our earnest duty to examine, as briefly as possible, the important question introduced into this body by the resolutions now under consideration.

What are the facts in this case? The record shows the following: "Dr. Emmerson, a surgeon in the army of the United States, while stationed at Jefferson barracks in the year 1834, held a negro slave, named Dred Scott, under the laws of Missouri. In that year, Emmerson took Scott from Missouri to the military post at Rock Island, in the free State of Illinois, and held him there as a slave till 1836. At the time last mentioned, Scott was removed by his master to the military post at Fort Snelling, in the Territory of Minnesota, situated on the west bank of the Mississippi river, in the Territory known as the Upper Louisiana, acquired by the United States from France. In the year 1835, Major Taliaferro, of the United States army, took a female slave, named Harriet, to Fort Snelling, the military post before mentioned, and sold her to Dr. Emmerson, and in the following year she married the said Scott with the consent and approbation of his master. Two children, Eliza and Lizzie, were the fruits of that marriage—the one born on board the steamboat Gipsey, north of the north line of the State of Missouri, on the Mississippi river, and the other at Jefferson barracks, in Missouri. In 1838, Dr. Emmerson removed Scott and his wife and daughter, from Fort Snelling, back to the State of Missouri where they have since resided, and where their second child, Lizzie, was born. Before the commencement of this suit, Dr. Emmerson sold and conveyed the said Dred Scott and his family, to Mr. J. F. A. Sanford, as slaves, under the local law of Missouri, who subsequently left that State and took up his residence in New York. The record, also, shows that at certain times Mr. Sanford, claiming to be the owner of said Scott and his family, laid his hands upon the latter and imprisoned them, doing in this respect, however, no more than what he might lawfully do if they were of right his slaves."

After Sanford's removal to New York, Scott instituted a suit against him in St. Louis county, Missouri, in the Circuit Court of the United States, under the judiciary act of 1789, in the form of an action at common law, for trespass *vi et armis* and false imprisonment. The Court decided the suit against the plaintiff, and on an appeal the case was taken to the Supreme Court of the United States. After an able and elaborate argument on both sides, the opinion of the Court, sustaining the Court below, was delivered by Chief Justice Taney, and concurred in by five of his colleagues—namely: Justices Wayne, Catron, Grier, Daniel and Campbell.

It is a source of much regret that we have not before us an authorized copy of the opinion, and in its absence we are compelled to take the report as it appeared in the daily journals. Upon an examination of that decision we discover two leading points, viz:

First. That negroes, whether slaves or free—that is, men of the African race—are not citizens of the United States within the meaning of the second section of the fourth article of the Constitution.

Second. That the legal condition of a slave is not affected by his temporary sojourn in any other State in this confederacy; but on his return into a slave State, his former condition of slavery, to all intents and purposes, re-attaches to him.

1. The first point decided is one of vast importance to the people of this Union, and cannot fail to exert a powerful influence throughout the United States. In the majority report we find this proposition stigmatized as "novel and startling," and "contrary to all past history and judicial precedent." This assumption we hold to be entirely unfounded, and assert that our "past history" establishes just the reverse. In sustaining this position the Chief Justice argues the question in the following manner:

"They who framed the Declaration of Independence were men of too much honor, education and intelligence to say what they did not believe; and they knew that in no part of the civilized world were the negro race, by common consent, admitted to the rights of freemen. They spoke and acted according to the practices, doctrines and usages of the day. That unfortunate race was supposed to be separated from the whites, and was never thought or spoken of except as property. These opinions underwent no change when the Constitution was adopted. The preamble sets forth for what purpose and for whose benefit it was formed. It was formed by the people—such as had been members of the original States, and the great object was to 'secure the blessings of liberty to ourselves and our posterity.' It speaks in general terms of citizens and people of the United States when providing for the powers granted, without defining what description of persons should be included or who should be regarded as citizens. But two clauses of the Constitution point to the negro race as separate, and not regarded as citizens, for whom the Constitution was adopted. One clause reserves the right to import slaves until 1808, and in the second, the States pledge themselves one to another, to preserve the rights of the master, and to deliver up slaves escaping to their respective territories. By the first clause, the right to purchase and hold this property is directly sanctioned and authorized by the persons who framed the Constitution, for twenty years; and the States pledged themselves to uphold the right of the master as long as the government then formed shall endure. And this shows, conclusively, that another description of persons was embraced in the provisions of the Constitution. These two clauses were not intended to confer upon them, or their posterity, the blessings of liberty so carefully conferred upon the whites. None of this class ever emigrated to the United States voluntarily. They were all articles of merchandize. The number emancipated were as few compared with those who were held in slavery, and not sufficiently numerous to attract attention as a separate class, and were regarded as a part of the slave population, rather than free."

This line of argument has not been met and controverted by the majority of your committee. It is clear and conclusive that ours was designed to be a government of *white* men. It was not intended by its founders that any other class, or race, should ever be permitted to control its destinies. The intermingling of races upon our soil—a soil won by the blood of white men—is so repugnant to "reason and humanity," that we cannot view it in any other light than monstrous.—The infusion of mixed blood into the veins of our people, would bring innumerable evils in its train. The health, the vigor, and the intellectual strength that characterize the population now gathered together upon our shores, would be lost and destroyed by the inevitable degeneracy flowing from a degrading and heterogeneous amalgamation. The distinctive tastes and habits and degree of refinement of the white and colored races would be mingled in inextricable confusion, and the acknowledged superiority of the former, as the revolting process of admixture continued, would silently disappear in the same proportion as the corrupting element of the latter instilled itself into the blood of our descendants. To protect ourselves and our posterity from such alarming results, we must carefully guard against the causes which would certainly produce them. This can only be done by placing a barrier, wide and impassable, between the two races now in conflict; and such we hold to be the true merit of the recent decision of the Court, which, in its future application and development, will amply shield us from the dangers to which we have adverted. However much we may regret the unfortunate condition of the colored race, we cannot, in our examination of a question fraught with so much interest, lose sight of the great truth that "self-preservation is the first law of nature."

To admit the citizenship of the negro, is to place him, without limitation, upon the same equality with the white man. Its ultimate effect would be to witness the African and his descendants blustering around the polls in the exercise of the same inestimable privileges now enjoyed by the great Caucasian race, and perhaps a few years would exhibit the startling spectacle of colored representatives occupying the same seats now so respectably filled by the majority of the committee. Such a state of things would be full of perils to our common country, and was never contemplated by the fathers of the republic. The Articles of Confederation, adopted by the thirteen original States, at a time when emancipated negroes were "not sufficiently numerous to attract attention as a separate class," but "were regarded as a part of the slave population," contains the following article.

ART. IV. "The better to secure and perpetuate mutual friendship and intercourse among the people of the different States, in this Union, the FREE inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of FREE citizens in the several States; and the people of each State shall have free ingress and egress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of PROPERTY imported into any State, to any other State *of which the owner is an inhabitant;* provided also that no imposition, duties or restriction shall be laid by any State on the property of the United States, or either of them."

When the foregoing article was adopted, the negro was essentially regarded in all the States as merchantable property. The word 'free' there use, was intended to embrace, exclusively, the then existing *white* population, and in its application was not designed to include any other class of people. The word 'property,' as employed in the Articles of Confederation, clearly covered the negro, and at that time, within its true intent and meaning, he was recognized as an "article of merchandize." The adoption of the Constitution, in 1789, wrought no change whatever in the meaning of the words "free" and "property," or in the peculiar *status* of the African. As has been indicated by the Chief Justice, "but two clauses of the Constitution point to the negro race"—the one in reference to the suppression of the slave trade after the year 1808, and the other relating to the rights of the master to recover fugitives from labor. There is not a word or syllable, in that well guarded instrument, which confers the high attributes of citizenship upon the colored race. This position is no new or "novel" one, as has been strangely asserted in the majority report.—It was first officially promulgated in 1812, by William Wirt, when Attorney General of the United States, more than a quarter of a century before the Dred Scott decision excited the attention of the people. The question arose upon the construction of the navigation laws of the United States, which require that masters of vessels shall be *citizens*. In view of this statute, a difficulty arose in the Treasury Department, as to whether a free negro of Virginia could be placed in command of a vessel; and the point was submitted to Mr. Wirt for his decision. In answer to the inquiry, he replied, officially, as follows:

"I presume that the description, 'citizens of the United States,' used in the Constitution, has the same meaning that it had in the several acts of Congress passed under the authority of the Constitution; otherwise there will arise a vagueness and uncertainty in our laws which will make their execution, if not impracticable, at least extremely difficult and dangerous. Looking to the Constitution as the standard of meaning, it seems very manifest that no person is included in the description of citizen of the United States who has not the full rights of a citizen in the State of his residence. Among other proofs of this, it will be sufficient to advert to the constitutional provision, that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States.

"Now, if a person born and residing in Virginia, but possessing none of the high characteristic privileges of a citizen of the State, is nevertheless a citizen of Virginia, in the sense of the Constitution, then, on his removal to another State, he acquires all the immunities and privileges of a citizen of that State, although he possessed none of them in the State of his nativity, a consequence which certainly could not have been in the contemplation of the convention. Again: the only qualification required by the Constitution to render a person eligible as President, Senator, or Representative of the United States is, that he shall be a 'citizen of the United States' of a given age and residence. Free negroes and mulattoes can satisfy the requisitions of age and residendetas well as the white man; and if nativity, residence and allegiance combined (without the rights and privileges of a white man) are sufficient to make him a 'citizen of the United States' in the sense of the Constitution, then free negroes and mulattoes are eligible to those high offices, and may command the purse and sword of the nation.

"For these and other reasons, which might easily be multiplied, I am of the opinion that the Constitution, by the description of 'citizens of the United States,' intended those only who enjoyed the full and equal privileges of white citizens in the State of their residence."

After further discussing the question, Mr. Attorney General Wirt concludes his opinion in the following words:

"Upon the whole, I am of the opinion, that free persons of color in Virginia are not citizens of the United States, within the intent and meaning of the acts regulating foreign and coasting trade, so as to be qualified to command vessels." (*Opinions of Attorney's Gen. of U. S., Vol. 1. p. 506, ed.* 1852.

Concurrent with this important decision of the Treasury Department, under the direction of the Attorney General, runs the unbroken action of the Post Office Department of our country. Since the organization of the government by the act of Congress, "no person of color can be engaged in the Post Office or in the transportation of mail matter." In that branch of the government, the negro, free or bond, has no constitutional existence, and is not permitted to be employed in any of its ramifications. Not regarded by it as a citizen under the Constitution of the United States, he is therefore debarred from discharging any of its various functions. Nor has the State Department been less decided in its action upon this question. The following official document, in reference to the granting of passports, was addressed to a citizen of New York, under the direction of the Secretary of State, and needs on comment from the undersigned:

DEPARTMENT OF STATE,
Washington, Nov. 4, 1856.

SIR: Your letters of the 29th ult. and 3d inst., requesting passports for eleven colored persons, have been received, and I am directed by the Secretary to inform you that the papers transmitted by you do not warrant the department in complying with your request.

A passport is a certificate that the person to whom it is granted is a citizen of the United States, and it can only be issued upon proof of this fact. In the papers which accompany your communication there is not satisfactory evidence that the persons for whom you request passports are of this description. They are represented in your letter as "colored," and described in the affidavits as "black," from which statements it may be fairly inferred that they are negroes. If this is so, there can be no doubt that they are not citizens of the United States.

The question whether free negroes are such citizens, is now presented for the first time, but has repeatedly arisen in the administration of both National and State governments. In 1821, a controversy arose as to whether free persons of color were citizens of the United States within the intent and meaning of the acts of Congress regulating foreign and coasting trade, so as to be qualified to command vessels; and Mr. Wirt, Attorney General, decided that they were not; and he moreover held the words "citizens of the United States," were used in the acts of Congress in the same sense as in the Constitution. This view is also fully sustained in a recent opinion of the present Attorney General.

The judicial decisions of the country are to the same effect. In Kent's Commentaries, vol. 2, p. 277, it is stated that in 1832 Chief Justice Daggett, of Connecticut, held that free blacks are not "citizens" within the meaning of the term as used in the constitution of the United States; and the Supreme Court of Tennessee, in the case of the State against Claiborne, held the same doctrine. Such being the construction of the Constitution in regard to free persons of color, it is conceived that they cannot be regarded, when beyond the jurisdiction of the government, as entitled to the full rights of citizens; but the Secretary directs me to say that though the department could not certify that such persons are citizens of the United States, yet, if satisfied of the truth of the facts, it would give a certificate, that they were born in the United States, are free, and that the government thereof would regard it to be its duty to protect them if wronged by a foreign government while within its jurisdiction for a legal and proper purpose.

I am, sir, respectfully,
Your obedient servant,
J. A. THOMAS, *Ass't Sec.*

H. H. RICE, New York city.

The several acts of Congress in reference to the naturalization of foreigners, exhibit the same settled and determinate policy. Under their provisions no negro, or his descendants, can be naturalized, or be made citizens of the United States. The words of the first act of Congress, passed but a few months after the adoption of the Federal Constitution, and sanctioned by the approval of George Washington, are as follows: "Any alien, being a free *white* person, may become a citizen," &c. The act of 1795 uses the following language: "Any free *white* person may become a citizen," &c. The act of 1798, signed by John Adams, and that of 1802, approved by Thomas Jefferson, make use of the same specific language; and the subsequent enactments of Congress, passed in 1813 and 1824, indicate precisely the same restrictive policy upon the negro race. Chancellor Kent, in his "Commentaries on American Law," sustains this point in the following words:

"The act of Congress confines the description of aliens capable of naturalization, to 'free white persons.' I presume this excludes the inhabitants of Africa and their descendants; and it may become a question, to what extent persons of mixed blood are excluded, and what shades and degrees of mixture of color disqualify an alien from application for the benefits of the act of naturalization. Perhaps there might be difficulties also, as to the copper-colored natives of America, or the yellow or tawney races of the Asiatics, and it may well be doubted whether any of them are 'white persons' within the purview of the law."—(2 *Kent's Com. 8th Ed.* 36)

The same distinguished writer says:

"In most of the United States there is a distinction in respect to the political privileges, between free white persons and free colored persons of African blood; and in no part of the country, except in Maine, do the latter, in point of fact, participate equally with the whites, in the exercise of civil and political rights."—(2 *Kent, Notes,* 278.)

He then proceeds to examine, at length, the various disabilities under which the negro race labor in the different States, and after citing various authorities which prove that, as a general thing, they do not possess and enjoy the same privileges and immunities belonging to a citizen under the Constitution of the United States, he employs the following significant language: "The better opinion I should think, was, that negroes, or other slaves, born within and under the allegiance of the United States, are natural born subjects, but not citizens." (2 *Kent, Notes,* p. 222.)

But we are told that "judicial precedent" is against us, and "there is no such logic in the books" as will sustain the point at issue, or that "can in any way be tortured into the support of the doctrine, that a colored person cannot be a citizen of any State, or of the United States." Let us see how far we are supported by the authority of the courts.

In the year 1838, the Supreme Court of Tennessee decided and adjudged, that free blacks were not citizens within the provisions of the second section of the fourth article of the Constitution of the United States. (*State vs. Claiborne,* 1. *Meig's Reps.* 331.) And in the same State, Chief Justice Catron, in the case of *Fisher vs. Dubbs,* 6 *Yerger's Reps.* 119, "gives a strong picture of the degredation of free negroes living among whites, without motive and without hope."

In the State of Connecticut, the same decision is arrived at in a case which is thus stated by Chancellor Kent in the notes to his Commentaries, *vol.* 2, *page* 281: "In Connecticut, by statute, in 1833, any colored person, not an inhabitant of the State, who shall come to reside there for the purpose of being instructed, may be removed, under the act for the admission and settlement of inhabitants; and it was made penal to set up or establish any school or literary institution in that State, for the instruction of colored persons not inhabitants of the State, or to instruct or teach in any such school or institution, or to board or harbor, for that purpose, any such person without the previous consent in writing, of the civil authority of the town in which such school or institution might be. In an information under that provision against *Prudence Crandall,* filed by the public prosecutor, it was held by Chief Justice Daggett, at the trial in 1833, that free blacks were not *citizens* within the meaning of the term, as used in the Constitution of the United States."

By referring to the case, as reported, we find the subjoined forcible language used by Chief Justice Daggett. Having presented the act of Assembly under which the information was made, he asks the question: "Does it clearly violate the Constitution of the United States? The section claimed to have been violated reads as follows, to wit: *Art. 4 sec.* 2 'The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States,' It has been urged, that this section was made to direct exclusively the action of the general government, and, therefore, can never be applied to State laws. This is not the opinion of the court. The plain and obvious meaning of this provision is to secure to the *citizens* of all the States the same privileges as are secured to our own, by our own State laws. * * * The persons contemplated in this act are not citizens within the meaning of that section of the Constitution of the United States which I have just read. Let me begin by putting this plain question: Are *slaves* citizens? At the adoption of the Constitution of the *United States* every State was a slave State. *Massachusetts* had begun the work of emancipation within her borders. And *Connecticut,* as early as 1784, had enacted laws making all those free at the age of 25, who might be born within the State after that time. We all know that slavery is recognized in that Constitution; and it is the duty of this court to take that Constitution as it is, for we have sworn to support it. Although the term 'slavery' cannot be found written out in the Constitution, yet no one can mistake the object of the 3d section of the 4th article: 'No person held to service or labor in one State, under the laws thereof, escaping to another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered, upon claim of the party to whom such service or labor may be due.

"The 2d section of the 1st article, reads as follows: 'Representatives and direct taxes shall be apportioned among the several States which may be included in this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding *Indians* not taxed, three-fifths of *all other persons.*' The 'other persons' are slaves, and they become the basis of representation, by adding them to the white population in that proportion. Then slaves were not considered citizens by the framers of the Constitution.

* * * * * * *

"Are *free blacks* citizens? It has been ingeniously said, that vessels may be owned and navigated by free blacks, and that the *American* flag will protect them; but you will remember that the statute which makes this provision, is an act of Congress, and not the Constitution. Admit, if you please, that Mr. *Coffee,* a respectable merchant, has owned vessels, and sailed them under the *American* flag; yet this does not prove him to be such a citizen as the Constitution contemplates.—But that question stands undecided by any legal tribunal within my knowledge. * *

"To my mind it would be a perversion of terms, and the well-known rule of construction, to say that slaves, free blacks or Indians were citizens, within the meaning of that term, as used in the Constitution. God forbid that I should add to the degredation of this race of men; but I am bound by my duty to say they are not citizens."—[*Crandall vs. The State,* 10 *Connecticut Reps.* 243.]

In June, 1837, the same court laid down a similar doctrine in the decision of a case adverse to a slave, who had been brought from Georgia to Connecticut. Chief Justice Williams, although deciding that the slave could not be held in bondage under the *lex loci* of the State, was compelled to admit, in referring to the constitution of Connecticut, that "Slaves cannot be said to be parties to that compact, [he is speaking of our social compact,] or to be represented in it. The very definition of a slave, as given in the Louisiana code, shows, that he could not be contemplated as a party to a national compact. 'A slave is one who is in the power of a master to whom he belongs.—The master may sell him, dispose of his person, his industry and his labor. He can do nothing, possess nothing, nor acquire anything, but what must belong to his master.' So, too, when by another article in the constitution, all colored persons are excluded from the privilege of electors, it would seem as if all such persons were considered as excluded from the social compact."

And he says further:

"The 8th section of the bill of rights (of Connecticut) has also been pressed upon us; that 'the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches or seizures.'—This is almost a transcript to the 4th article of the amendments of the United States.—And the fact that this amendment was adopted at all, and that amidst all the conflict of opinions upon the subject of slavery, this clause has never been claimed to affect that subject, shows very strongly that it was not intended to apply to that description of persons. When the preamble to the constitution of the United States speaks of 'WE THE PEOPLE —— to secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution,' it cannot be seriously contended, that it included that class of people called slaves; and the term 'people,' in the bill of rights, must have been used in a similar sense. The 8th section of the bill of rights, then, cannot be intended to include slaves.

"The 10th section of the bill of rights also provides, that 'no person shall be arrested, detained, or punished, except in cases clearly warranted by law.' And under this the petitioner rests a claim. But this only brings us back to the question, What detentions are warranted by law? If the power of a master over his slave is one recognized by law, then this article in the bill of rights cannot affect the question before the Court. And while this solicitude for personal liberty manifested in the Constitution, makes it our duty to inquire, with great care, whether this detention is clearly warranted by law, well feel bound to declare, as the result of our examination of the constitution of this State, that is provisions do not, and were not intended, to vary the relation of master and servant, as by law established, at the time of the adoption of that instrument. And in this opinion the court are unanimous." (*Jackson vs. Bullock,* 12 *Connecticut Reps.* 43.)

In Pennsylvania, also, it has been decided that 'free blacks' were not citizens under our former constitution and laws. In 1835 it was held by the Supreme Court of this State, (before the adoption of our present constitution, which contains a restrictive clause upon negro suffrage, and when the question might have been a mooted one,) that free persons of color did not fulfil the requirements necessary to constitute a qualified elector, and that they did not come up to the standard of citizenship as prescribed by our laws, or the Constitution of the United States. The case came before the Supreme Court of Pennsylvania on a suit instituted by a free negro against the officers of an election for denying him the privilege of voting for State officers. The opinion of the Court was delivered by Chief Justice Gibson, and is marked with that peculiar vigor of thought and expression which characterizes all the productions of that eminent Judge. In his analysis of the case he informs us that: "About the year 1795, as I have it from James Gibson, Esq., of the Philadelphia bar, the very point before us was ruled by the high court of errors and appeals against the right of negro suffrage."

After establishing the doctrine that free negroes according to usage and prior legislation were not freemen within the purview of our constitution, he adds:

"But in addition to interpretation from usage, this antecedent legislation furnishes other proofs that no colored race was party to our social compact. As was justly remarked by President Fox, in the matter of the late contested election, our ancestors settled the province as a community of white men; and the blacks were introduced into it as a race of slaves; whence an unconquerable prejudice of caste, which has come down to our day, insomuch that a suspicion of taint still has the unjust effect of sinking the subject of it below the common level. Consistently with this prejudice, is it to be credited that parity of rank would be allowed to such a race? Let the question be answered by the statute of 1726, which denominated it an idle and slothful people; which enjoined the magistrates to bind out free negroes for laziness and vagrancy; which forbade them to harbor Indian or mulatto slaves, on pain of punishment by fine, or to deal with negro slaves on pain of stripes; which annexed to the interdict of marriage with a white, the penalty of reduction to slavery; which punished them for tippling, with stripes, and even a white person with servitude for intermarriage with a negro. * * *

"I have thought it fair to treat the question as it stands affected by our own municipal regulations without illustration from those of other States, where the condition of the race had been still less favored. Yet it is proper to say that the second section of the fourth article of the Federal Constitution, presents an obstacle to the political freedom of the negro which seems to be insuperable. It is to be remembered that citizenship, as well as freedom, is a constitutional qualification; and how it could be conferred so as to overbear the laws imposing countless disabilities on him in other States, is a problem of difficult solution. In this aspect the question becomes one, not of intention, but of power; and of power so doubtful as to forbid the exercise of it. Every man must lament the necessity of these disabilities; but slavery is to be dealt with by those whose existence depends on the skill with which it is treated. Considerations of mere humanity, however, belong to a class with which, as Judges, we have nothing to do; and interpreting the Constitution in the spirit of our institutions, we are bound to pronounce that men of color are destitute of title to the elective franchise. (*Hobbs et al. vs. Foggs,* 6 *Watts,* 555.)

In controversion of the spirit of these authorities, the majority of the committee cite several cases to support their position, and among the number we find four taken from the decisions of the Supreme Court of the United States, viz: Lee vs. Lee, 8 Peters, 48; Wallingsford vs. Allen, 10 Peters, 583;