

Scott v. Sandford

Mr. Justice WAYNE.

Concurring as I do entirely in the opinion of the court, as it has been written and read by the Chief Justice-without any qualification of its reasoning or its conclusions-I shall neither read nor file an opinion of my own in this case, which I prepared when I supposed it might be necessary and proper for me to do so.

The opinion of the court meets fully and decides every point which was made in the argument of the case by the counsel on either side of it. Nothing belonging to the case has been left undecided, nor has any point been discussed and decided which was not called for by the record, or which was not necessary for the judicial disposition of it, in the way that it has been done, by more than a majority of the court.

In doing this, the court neither sought nor made the case. It was brought to us in the course of that administration of the laws which Congress has enacted, for the review of cases from the Circuit Courts by the Supreme Court.

In our action upon it, we have only discharged our duty as a distinct and efficient department of the Government, as the framers of the Constitution meant the judiciary to be, and as the States of the Union and the people of those States intended it should be, when they ratified the Constitution of the United States.

The case involves private rights of value, and constitutional principles of the highest importance, about which there had [60 U.S. 393, 455] become such a difference of opinion, that the peace and harmony of the country required the settlement of them by judicial decision.

It would certainly be a subject of regret, that the conclusions of the court have not been assented to by all of its members, if I did not know from its history and my own experience how rarely it has happened that the judges have been unanimous upon constitutional questions of moment, and if our decision in this case had not been made by as large a majority of them as has been usually had on constitutional questions of importance.

Two of the judges, Mr. Justices McLean and Curtis, dissent from the opinion of the court. A third, Mr. Justice Nelson, gives a separate opinion upon a single point in the case, with which I concur, assuming that the Circuit Court had jurisdiction; but he abstains altogether from expressing any opinion upon the eighth section of the act of 1820, known commonly as the Missouri Compromise law, and six of us declare that it was unconstitutional.

But it has been assumed, that this court has acted extra-judicially in giving an opinion upon the eighth section of the act of 1820, because, as it has decided that the Circuit Court had no jurisdiction of the case, this court had no jurisdiction to examine the case upon its merits.

But the error of such an assertion has arisen in part from a misapprehension of what has been heretofore decided by the Supreme Court, in cases of a like kind with that before us; in part, from a misapplication to the Circuit Courts of the United States, of the rules of pleading concerning pleas to the jurisdiction which prevail in common-law courts; and from its having been forgotten that this case was not brought to this court by appeal or writ of error from a State court, but by a writ of error to the Circuit Court of the United States.

The cases cited by the Chief Justice to show that this court has now only done what it has repeatedly done before in other cases, without any question of its correctness, speak for themselves. The differences between the rules concerning pleas to the jurisdiction in the courts of the United States and common-law courts have been stated and sustained by reasoning and adjudged cases; and it has been shown that writs of error to a State court and to the Circuit Courts of the United States are to be determined by different laws and principles. In the first, it is our duty to ascertain if this court has jurisdiction, under the twenty-fifth section of the judiciary act, to review the case from the State court; and if it shall be found that it has not, the case is at end, so far as this court is concerned; for our power [60 U.S. 393, 456] to review the case upon its merits has been made, by the twenty-fifth section, to depend upon its having jurisdiction; when it has not, this court cannot criticise, controvert, or give any opinion upon the merits of a case from a State court.

But in a case brought to this court, by appeal or by writ of error from a Circuit Court of the United States, we begin a review of it, not by inquiring if this court has jurisdiction, but if that court has it. If the case has been decided by that court upon its merits, but the record shows it to be deficient in those averments which by the law of the United States must be made by the plaintiff in the action, to give the court jurisdiction of his case, we send it back to the court from which it was brought, with directions to be dismissed, though it has been decided there upon its merits.

So, in a case containing the averments by the plaintiff which are necessary to give the Circuit Court jurisdiction, if the defendant shall file his plea in abatement denying the truth of them, and the plaintiff shall demur to it, and the court should erroneously sustain the plaintiff's demurrer, or declare the plea to be insufficient, and by doing so require the defendant to answer over by a plea to the merits, and shall decide the case upon such pleading, this court has the same authority to inquire into the jurisdiction of that court to do so, and to correct its error in that regard, that it had in the other case to correct its error, in trying a case in which the plaintiff had not made those averments which were necessary to give the court jurisdiction. In both cases the record is resorted to, to determine the point of jurisdiction; but, as the power of review of cases from a Federal court, by this court, is not limited by the law to a part of the case, this court may correct an error upon the merits; and there is the same reason for correcting an erroneous judgment of the Circuit Court, where the want of jurisdiction appears from any part of the record, that there is for declaring a want of jurisdiction for a want of necessary averments. And attempt to control the court from doing so by the technical common-law rules of pleading in cases of jurisdiction, when a defendant has been denied his plea to it, would tend to enlarge the jurisdiction of the Circuit Court, by limiting this court's review of its judgments in that particular. But I will not argue a point already so fully discussed. I have every confidence in the opinion of the court upon the point of jurisdiction, and do not allow myself to doubt that the error of a contrary conclusion will be fully understood by all who shall read the argument of the Chief Justice.

I have already said that the opinion of the court has my unqualified assent.