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LAWYERS who select for light reading the opinions of the United States Supreme Court will find two curious cases which, while almost identical in the legal questions involved, were strangely dissimilar in their historical effect upon the public mind.

The first is Dred Scott vs. Sanford, 19 Howard 393. Dred Scott sued in the Federal Court, and to do so it was necessary that he be a citizen of the State in which he sued. A plea to his declaration set up the fact that Dred Scott was a negro of African descent whose ancestors were slaves of pure African blood. Dred Scott demurred to this exemplification of his pedigree and a majority of the Supreme Court of the United States, on appeal, said, "a free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a 'citizen' within the meaning of the constitution." The opinions, pro and con, occupied 240 printed pages, but that was the rule given.

Four years of civil war followed, precipitated, some claim, by this decision. Then came the Fourteenth Amendment providing that "all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

This amendment was supposed to have set aside the rule of the Dred Scott case. Not so, however.

In Omaha, Nebraska, in 1880, an Indian named John Elk, who had been separated from his tribe for several years and was engaged in the then necessary occupation of driving a hack on the streets of the Nebraska metropolis, applied to one Charles Wilkins, an election official of the Fifth Ward, to be registered as a voter at the coming election. Wilkins refused to register him, and Elk sued for $6,000.00 damages in the United States Circuit Court of the District of Nebraska, alleging his citizenship of that State and the further fact that he was an Indian, born here, and his consequent right to vote.

The Elk case then followed the path beaten by Dred Scott in 1854. Wilkins filed a general demurrer and the Circuit Court sustained it. When the case reached the Supreme

Court of the United States, Judge Gray wrote the opinion and followed the rule announced in the Dred Scott case. His opinion contained all the copious learning on the subject that could be derived from the Dred Scott case with such variations as were necessary in a case when an Indian instead of a Negro claimed to be an American citizen by means apparently not provided for by the Constitution. Elk vs. Wilkins, 112 U. S. 94.

Justices Harlan and Woods dissented and their opinion is as rich with reason and authority as were the dissenting opinions in the Dred Scott case. It is plain, from reading these opinions, that the language of the Constitution is not always and everywhere exactly clear and plain, even where clarified by amendments.

But no dreadful consequences followed the refusal to allow John Elk the right to sue in a Federal Court. No armies with banners assembled to vindicate the rights of the humble Jehu of pure Indian descent. Congress merely passed an act providing that Indians, voluntarily separated from their tribes for more than one year, became ipso facto citizens of the United States and thereby the descending lines of Elks were merged with the Scotts to mingle with what has sometimes been referred to as the heterogeneous mass of our citizenry.

Lawyers, judges or law-makers, who have in mind employing the apparently all embracing words "citizen" or "all persons" are respectfully referred to the two cases cited herein for guidance. The words, apparently, do not comprehend as much as might be supposed.