

sylvania, and having resided within the said commonwealth for two years next before said election, in the township of Greenfield; and being also above the age of twenty-one years, and having paid a county tax, assessed at least six months before the said election, all which being made known to the plaintiffs in error, he offered to vote, but they contriving, and fraudulently, and maliciously intending to injure and damnify him, the plaintiff in error, in this behalf, absolutely refused to receive his vote, and thus prevented him from doing so.

On the trial of the cause, the facts stated, by the plaintiff below, in his declaration, with the exception that his vote was fraudulently or maliciously refused; and with the addition, that the plaintiff was a negro or mulatto, were admitted. It was distinctly admitted by the plaintiff below, that there was no express malice on the part of the defendants below, in refusing to receive his vote; and that he was a free negro or mulatto.

There being no controversy between the parties, as to the facts of the case, the president judge (Scott) charged the jury as follows: "This suit is brought for the purpose of ascertaining the political rights of the man of color in Pennsylvania. The defendants insist, 1st, that even supposing the plaintiff was entitled to recover in any form of action, he cannot, in an action on the case. That the act of assembly gives a specific remedy, which must be pursued. Upon this point, the court charged the jury, that this is not a proceeding to recover the penalty imposed by any act of assembly, but to recover damages for a personal wrong, in being deprived of the right of suffrage by the defendants, who were officers of the election, they well knowing that he was a legal voter. Such action may be sustained, notwithstanding the penal sanction of the laws and the specific modes prescribed for enforcing them. Upon this point, the court instruct the jury, that the declaration sets forth every fact necessary, under the act of assembly, to qualify the plaintiff to exercise the rights of a voter, and that the defendants well knowing the premises rejected his vote. It is, therefore, unnecessary for the plaintiff to prove express malice; malice is implied in law.

"It is finally urged, that a free negro or mulatto is not a citizen within the meaning of the constitution and laws of the United States, and of the State of Pennsylvania, and, therefore, is not entitled to the right of suffrage. This, the court regard as the most important point in the cause; and the question, as it is avowed on the part of the plaintiff, which this suit was brought to settle.

"We know of no expression in the constitution or laws of the United States, nor in the constitution or laws of the State of Pennsylvania, which can legally be construed to prohibit free negroes and mulattoes, who are otherwise qualified, from exercising the rights of an elector. The preamble to the act, for the gradual abolition of slavery, passed on the 1st of March 1780, breathes a spirit of piety and patriotism, and fully indicates an intention in the legislature to make the man of color a *freeman*.