Citizenship and the Federal Courts after the Fourteenth Amendment

Article III, Section 2 of the Constitution of the United States (of America) provides that "[t]he judicial Power shall extend to controversies between Citizens of different States." Jurisdiction then of the courts of the United States is declared to extend to controversies between "citizens of different States."

Before the Fourteenth Amendment, who were deemed "citizens of different States"?:

> "The next inquiry, growing out of this part of the clause, is, who are to be deemed citizens of different States, within the meaning of it. Are all persons born within a State to be always deemed citizens of that State, notwithstanding any change of domicil? Or does their citizenship change with their change of domicil? The answer to this inquiry is equally plain and satisfactory. The Constitution having declared, that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, every person, who is a citizen of one State, and removes into another, with the intention of taking up his residence and inhabitancy there, becomes *ipso facto* a citizen of the State, where he resides; and he then ceases to be a citizen of the State, from which he has removed his residence. Of course, when he gives up his new residence, or domicil, and returns to his native, or other State residence or domicil, he reacquires the character of the latter. What circumstances shall constitute such a change of residence or domicil, is an inquiry, more properly belonging to a treatise upon public or municipal law, than to commentaries upon constitutional law. In general, however, it may be said, that a removal from one State into another, with an intention of residence, or with a design of becoming an inhabitant, constitutes a change of domicil, and of course a change of citizenship. But a person, who is a native citizen of one State, never ceases to be a citizen thereof, until he has acquired a new citizenship elsewhere." A Familiar Exposition Of The Constitution Of The United States . . . ; Joseph Story, LL. D.; (Boston: Marsh, Capen, Lyon, and Webb); 1840; Section 344, Page 207.

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A citizen of a State, therefore, was considered to be "citizens of different States". Also, a corporation created under the law of an individual State:

> "The plaintiff in error, who was also plaintiff below, avers in his declaration that he is a citizen of Virginia, and that 'The Baltimore and Ohio Railroad Company, the defendant, is a body corporate by an act of the General Assembly of Maryland.' . . . .
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> By the Constitution, the jurisdiction of the courts of the United States is declared to extend, *inter alia*, to 'controversies between citizens of different States.' The Judiciary Act confers on the circuit courts jurisdiction 'in suits between a citizen of the State where the suit is brought and a citizen of another State.'
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> The reasons for conferring this jurisdiction on the courts of the United States, are thus correctly stated by a contemporary writer (*Federalist, No. 80.*) 'It may be esteemed as the basis of the Union, "that the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States." And if it be a just principle, that every government ought to possess the means of executing its own provisions by its own authority, it will follow, that in order to the inviolable maintenance of that equality of privileges and immunities, the national judiciary ought to preside in all cases, in which one State or its citizens are opposed to another State or its citizens.'
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> Now, if this be a right, or privilege guaranteed by the Constitution to citizens of one State in their controversies with citizens of another, it is plain that it cannot by taken away from the plaintiff (a citizen of Virginia) by any legislation of the State in which the defendant resides." Marshall v. Baltimore and Ohio Railroad Company: 57 U.S. (16 Howard) 314, at 325, 326 (1853).

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To this a citizen of the United States:

> "The courts of the United States have not jurisdiction in cases between citizens of the United States, unless the record expressly states them to be citizens of different states." Wood v. Wagon: 6 U.S. (2 Cranch) 1 (1804).

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And a naturalized citizen of the United States as well as a citizen of the territory of the United States:

"And a person, who is a naturalized citizen of the United States, by a like residence in any State in the Union, becomes *ipso facto* a citizen of that State. So a citizen of a Territory of the Union, by a like residence, acquires the character of the State, where he resides. But a naturalized citizen of the United States, or a citizen of a Territory, is not a citizen of a State, entitled to sue in the courts of the United States, in virtue of that character, whiles he resides in any such Territory, nor until he has acquired a residence or domicil in the particular State." A Familiar Exposition Of The Constitution Of The United States . . . ; Joseph Story, LL. D.; (Boston: Marsh, Capen, Lyon, and Webb); 1840; Section 345, Page 208.

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The Fourteenth Amendment was adopted on July 28, 1868. Did the amendment affect or modify Article III, Section 2 of the Constitution of the United States (of America). The answer is no:

"In the oral argument before this court, the inquiry arose, whether since the adoption of the Fourteenth Amendment to the Federal Constitution the mere allegation of residence in Illinois did not make such a *prima facie* case of citizenship in that State as, in the absence of proof, should be deemed sufficient to sustain the jurisdiction of the Circuit Court. That amendment declares 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 where they reside.' It was suggested that a resident of one of the States is *prima facie* either a citizen of the United States or an alien, – if a citizen of the United States, and also a resident of one of the States, he is, by the terms of the Fourteenth Amendment, also a citizen of the State wherein he resides, – and if an alien, he was entitled in that capacity to sue in the Federal court, without regard to residence in any particular State. It is not to be denied that there is some force in these suggestions, but they do not convince us that it is either necessary or wise to modify the rules heretofore established by a long ling of decisions upon the subject of the jurisdiction of the Federal courts. Those who think that the Fourteenth Amendment requires some modification of those rules, claim, not that the plaintiff's residence in a particular State necessarily or conclusively proves him to be a citizen of that State, within the meaning of the Constitution, but only that a general allegation of residence, without indicating the character of such residence, whether temporary or permanent, made a *prima facie* case of right to sue in the Federal courts. As the jurisdiction of the Circuit Court is limited in the sense that it has none except that conferred by the Constitution and laws of the United States, the presumption now, as well as before the adoption of the Fourteenth Amendment, is, that a cause is without its jurisdiction unless the

contrary affirmatively appears. In cases where jurisdiction depends upon the citizenship of the parties, such citizenship, or the facts which in legal intendment constitute it, should be distinctly and positively averred in the pleadings, or they should appear affirmatively and with equal distinctness, in other parts of the record. And so where jurisdiction depends upon the alienage of one of the parties. In *Brown v. Keene* (8 Pet. 115), Mr. Chief Justice Marshall said: 'The decisions of this court require that the averment of jurisdiction shall be positive, that the declaration shall state expressly the fact on which jurisdiction depends. It is not sufficient that jurisdiction may be inferred argumentatively from its averments.' Here the only fact averred or appearing from the record is that Cease was a resident of Illinois; and we are, in effect, asked, in support of the jurisdiction of the court below, to infer argumentatively from the mere allegation of 'residence,' that, if not an alien, he had a fixed permanent domicile in that State and was a native or naturalized citizen of the United States, and subject to the jurisdiction thereof. By such argumentative inferences, it is contended that we should ascertain the fact, vital to the jurisdiction of the court, of his citizenship in some State other than that in which the suit was brought. We perceive nothing in either the language or policy of the Fourteenth Amendment which requires or justifies us in holding that the bare averment of the residence of the parties is sufficient, *prima facie*, to show jurisdiction. The judgment must, therefore, be reversed upon the ground that it does not affirmatively appear from the record that the defendant in error was entitled to sue in the Circuit Court." Robertson v. Cease: 97 U.S. 646, at 648 thru 650 (1878).

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A citizen of the United States, under the Fourteenth Amendment, has to aver that he or she is a citizen of the United States and a citizen of a State. See *Woods v. Wagon*, supra, also.

A citizen of the United States as well as a citizen of a State were **distinct** before the adoption of the Fourteenth Amendment. However, in the *Slaughterhouse Cases*, the Supreme Court of the United States determined that a citizen of the United States was **separate and distinct** from a citizen of a State:

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"Of the privileges and immunities of the citizen of the United States, and of the privileges and immunities of the citizen of the State, and what they respective are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause (Section 1, Clause 2 of the Fourteenth Amendment) under the protection of the Federal Constitution,

and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the amendment." **[Footnote 1]**

"The language is 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.' It is a little remarkable, if this clause was intended as a protection to the citizen of a State against the legislative power of his own State, that the word citizen of the State should be left out when it is so carefully used and used in contradistinction to citizens of the United States, in the very sentence which precedes it. It is to clear for argument that the change in phraseology was adopted understandingly and with a purpose." **[Footnote 2]**

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"The constitutional provision there alluded to did not create those rights, which it called privileges and immunities of citizens of the States. It threw around them in that clause (Article IV, Section 2, Clause 1) no security for the citizen of the State in which they were claimed or exercised. Nor did it profess to control the power of the State governments over the rights of its own citizens.

Its sole purpose was to declare to the several States, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction." **[Footnote 3]**

Slaughterhouse Cases: 83 U.S. (16 Wall.) 36, at 74, 77 (1873). **[Footnote 4], [Footnote 5]**

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A citizen of a State, since the adoption of the Fourteenth Amendment, has to aver that he or she is a citizen of an individual State:

"The bill filed in the Circuit Court by the plaintiff, McQuesten, alleged her to be 'a citizen of the United States and of the State of Massachusetts, and residing at Turner Falls in said State,' while the defendants Steigleder and wife were alleged to be 'citizens of the State of Washington, and residing at the city of Seattle in said State.' *Statement of the Case*, Steigleider v. McQuesten: 198 U.S. 141 (1905).

"The averment in the bill that the parties were citizens of different States was sufficient to make a prima facie case of jurisdiction so far as it depended

on citizenship.' *Opinion*, Steigleider v. McQuesten: 198 U.S. 141, at 142 (1905). **[Footnote 6]**

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A citizen of a State, since the adoption of the Fourteenth Amendment, can pursue a cause of action against a corporation created under the law of an individual State:

> ". . . [I]t appears from the record that one of the plaintiffs, to wit, Francis B. Sweeney, is a resident in and citizen of the State of New York, and that Halbert J. Porterfield is a resident in and citizen of the State of Pennsylvania, while the defendant is a corporation created and existing under and by virtue of the laws of the State of West Virginia, and domiciled in the Northern District of West Virginia." *Statement of the Case*, Sweeney v. Carter Oil Company: 199 U.S. 252, at 253 (1905).
>
> "The Circuit Court dismissed the case for want of jurisdiction in that the controversy was not between citizens of different States, within the meaning of the statute, because plaintiffs were citizens of different States as between themselves, and could not be joined in an action against a citizen of West Virginia. That was the sole point determined below, and the correctness of the conclusion is the sole question for determination here. . . .
>
> The judicial power under the Constitution extends to 'controversies between citizens of different States.'
>
> The first section of the act of March 3, 1887, as corrected by that of August 13, 1888, 25 Stat. 433, c. 866, provides 'that the Circuit Courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, . . . or in which there shall be a controversy between citizens of different States, in which the matter in dispute exceeds, exclusive of interest and costs, the sum of value aforesaid, . . . and no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant; . . .'
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> The controversy here was 'between citizens of different States;' the jurisdiction of the Circuit Court was founded on diversity of citizenship; and the suit was brought in the district of the residence of the defendant.

> We do not feel warranted in construing the words 'controversy between citizens of different States' to mean 'controversy between citizens of the same State and citizens of another State,' and unless that is done this judgment must be reversed.
>
> In our opinion defendant, being a citizen of West Virginia, and plaintiffs being citizens of other States than West Virginia, the Circuit Court had jurisdiction." Opinion, Sweeney v. Carter Oil Company: 199 U.S. 252, 254 thru 256 (1905). **[Footnote 10]**

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So can a citizen of the United States:

> "The petition in this case alleges that the plaintiffs are colored people of African descent, residents and citizens of this state and citizens of the United States, and the defendant is a corporation charted by this state." Smoot v. Kentucky Central Railroad Company: 13 Fed. Rep. 337, at 340 (1882).

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A citizen of a State, since the adoption of the Fourteenth Amendment, can pursue a cause of action against another citizen of a different State:

> "The appellants brought suit in the United States District Court for the Southern District of New York for the purpose of recovering from the Trustee an interest in a trust estate which had been sold, transferred and assigned by Conrad Morris Braker, the beneficiary. The complainants were citizens and residents of Pennsylvania. Both defendants were citizens and residents of New York. ***Notwithstanding the diversity of citizenship***, the court dismissed the bill on the ground that, as the assignor Braker, a citizen of New York, could not in the United States District Court, have sued Fletcher, Trustee and citizen of the same State, neither could the Complainants, his assignees, sue therein, even though they were residents of the State of Pennsylvania.
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> The appeal from that decision involves a construction of §24 of the Judicial Code, which limits the jurisdiction of the United States District Court when suit is brought therein . . . 'to recover upon any promissory note or other chose in action in favor of any assignee. . . .' ." Brown v. Flectcher: 235 U.S. 589, at 594 thru 595 (1914).

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A citizen of a State, since the adoption of the Fourteenth Amendment, can be pursued in a cause of action against a citizen of a foreign State:

> "By the Constitution, the judicial power of the United States extends to controversies between citizens of a State, 'and foreign States, citizens or subjects.' And by statute, Circuit Courts of the United States have original cognizance of all suits of a civil nature, at common law or in equity, in which there is 'a controversy between citizens of a State and foreign States, citizens, or subjects.' 25 Stat. 433, c. 866. . . . .
>
> As complainants were citizens of a foreign State and defendant was a citizen of Nebraska, as affirmatively appeared from the pleadings, no issue of fact arising in that regard, the Circuit Court had jurisdiction." Hennessy v. Richardson Drug Company: 189 U.S. 25, at 34 (1903).

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Also:

> "The defendant, from the allegations of the complaint and the information he then had, assumed that the plaintiff was a citizen of the United States and of the state of New York, and such were the allegations of the petition of removal. On this motion to remand the plaintiff states he is not a citizen of the United States, but an alien, a citizen and subject of the kingdom of Italy, and a resident and an inhabitant of said county of Saratoga, N. Y. The defendant moves to amend his petition of removal to accord with the facts, and that motion to amend is granted. Wilbur v. R. J. C. C. & C. Co. (C. C.) 153 Fed. 662, 664; Southern Pac., etc., v. Stewart, 245 U.S. 359, 363, 38 Sup. Ct. 130, 203, 62 L.Ed. 3345, 472.
>
> On the main question the plaintiff contends that the cause is not a removable one, as the plaintiff is not a citizen of the United States or of the state of New York, but, as stated, a citizen and subject of the kingdom of Italy.
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> Under the Constitution of the United States (section 2, art. 3) the judicial power extends to all cases in law and equity 'between a state, or the citizens thereof and foreign states, citizens or subjects.' The Judicial Code (Act March 3, 1911, c. 231, 36 Stat. 1091 [Comp. St. §968 et. seq.]) provides (section 24 [Comp. St. §991]) that—
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> > 'The District Courts shall have original jurisdiction as follows: . . . Where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, . . . or . . . is between citizens of different states, or . . . is between citizens of a state and foreign states, citizens, or subjects.'
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> Hence this is a case to which the judicial power of the United States

extends, and one of which the United States District Court has original jurisdiction. There is no chance for quibble over this language. The plaintiff is a citizen and subject of the kingdom of Italy, a foreign state, and defendant is a citizen of the state of Massachusetts. The cause of action alleged arose in the Northern district of the state of New York, of which the plaintiff is an actual resident and inhabitant in the county of Saratoga in that judicial district." Matarazzo v. Hustis: 256 Fed. Rep. 882, at 884 (1919).

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A citizen of a State, since the adoption of the Fourteenth Amendment, can pursue a cause of action against a consul:

> "This action was brought in the Circuit Court of the United States for the Southern District of New York. The plaintiff below, Preston, was a citizen of that State, while the defendant was the consul at the port of New York, for the Kingdoms of Norway and Sweden." *Statement of Facts*, Bors v. Preston: 111 U.S. 252, at 253 (1884).
>
> "We proceed then to inquired whether, under the Constitution and laws of the United States, a Circuit Court may, under any circumstances, hear and determine a suit against the consul of a foreign government; in other words, whether other courts have been invested with exclusive jurisdiction of such suits.
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> The Constitution declares that 'the judicial power of the United States shall extend . . . to all cases affecting ambassadors or other public ministers and consuls;' 'to controversies between citizens of a State and foreign citizens or subjects;' that 'in all cases affecting ambassadors, other public ministers and consuls, . . . the Supreme Court shall have original jurisdiction;' and that in all other cases previously mentioned in the same clause 'the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.' . . . .
>
> It is thus seen that neither the Constitution nor any act of Congress defining the powers of the courts of the United States has made the jurisdiction of this court, or of the District Courts, exclusive of the Circuit Courts in suits brought against persons who hold the position of consul, or in suits or proceedings in which a consul is a party. The jurisdiction of the latter courts, conferred without qualification, of a controversy between a citizen and an alien, is not defeated by the fact that the alien happens to be the consul of a foreign government. Consequently, the jurisdiction of the court below cannot be questioned upon the ground simply that the defendant

is the consul of Kingdom of Norway and Sweden.

But as this court and the District Courts are the only courts of the Union which, under the Constitution or the existing statutes, are invested with jurisdiction, without reference to the citizenship of the parties, of suits against consuls, or in which consuls are parties, and since the Circuit Court was without jurisdiction, unless the defendant is an alien or citizen of some State other then New York, it remains to consider whether the record shows him to be either such citizen or an alien. There is neither averment nor evidence as to his citizenship, unless the conceded fact that is the consul of a foreign government is to be taken as adequate proof that he is a citizen or subject of that government. . . . .

But it seems unnecessary to pursue the subject further. When the jurisdiction of the Circuit Court depends upon the alienage of one of the parties, the fact of alienage must appear affirmatively either in the pleadings or elsewhere in the record. Brown v. Keene, 8 Pet. 115; Bingham v. Cabot, 3 Dall. 382; Capron v. Van Noorden, 2 Cranch. 126; Robertson v. Cease, 97 U.S. 646. It cannot be inferred, argumentatively, from the single circumstance that such person holds and exercises the office of consul of a foreign government. Neither the adjudged cases nor the practice of this government prevent an American citizen—not holding an office of profit or trust under the United States—from exercising in this country the office of consul of a foreign government.

Our conclusion is that, as it does not appear from the record that the defendant is an alien, and since it is consistent with the record that the defendant was and is a citizen of the same State with the plaintiff, the record, as it now is, does not present a case which the Circuit Court had authority to determine. . . .

Mr. Justice Gray.—Mr. Justice Miller (*concurring opinion*) and myself concur in the judgment of reversal, on the ground that the Circuit Court had no jurisdiction of the case, because the record does not show that the defendant was an alien, or a citizen of a different State from that of which the plaintiff was a citizen." *Opinion*, Bors v. Preston: 111 U.S. 252, at 256, 261, 263 (1884).

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A citizen of a State, since the adoption of the Fourteenth Amendment, cannot pursue a cause of action against another citizen of the same State:

"This case is here upon writ of error and certificate presenting the

question of jurisdiction of the District Court. It comes under §238 of the Judicial Code, and presents to this court the question of jurisdiction only. The suit was begun on November 5, 1904, in the United States Circuit Court for the District of Connecticut. On May 24, 1905, a substituted complaint was filed. The object of the suit was to recover for alleged breaches of a certain indemnity contract set forth in the complaint. In this substituted complaint, as well as in the original complaint, the allegation as to diverse citizenship is that plaintiff is a citizen of the State of Michigan, and defendants are citizens of the State of Connecticut. On August 3, 1907, an answer was filed, in which it was admitted that the defendants were citizens of the State of Connecticut, and it was averred that the defendants had no knowledge or information as to the citizenship of the plaintiff, and would 'leave him to proof thereof.' On April 27, 1911, the defendants filed a motion to dismiss the suit for want of jurisdiction. On October 5, 1911, defendants filed another motion to dismiss for want of jurisdiction. . . . Both of the motions to dismiss were upon the ground that the plaintiff was not a citizen of the State of Michigan but was a citizen of the State of Connecticut. . . .

After the taking effect of the Judicial Code on January 1, 1912, the case was transferred to the District Court of the United States for the District of Connecticut. On August 26, 1912, a jury was impaneled, and the case came on for trial. The court directed that the trial should proceed upon the question of jurisdiction. Thereupon the parties proceeded to offer testimony upon the question of plaintiff's residence. At the conclusion of this testimony, the court found that the plaintiff and defendants were citizens of the State of Connecticut at the time the action was begun, and accordingly dismissed the suit upon the sole ground of want of jurisdiction, and ordered the jury discharged from further consideration of the case. . . . .

As the record brings up the testimony upon which the court below decided the question, it becomes the duty of this court to consider it and determine whether the court rightly found that the plaintiff at the beginning of the suit was not a citizen of the State of Michigan. *Wetmore v. Rymer*, 169 U.S. 115, *supra*. If the plaintiff was domiciled in the State of Michigan when this suit was begun, he was a citizen of that State within the meaning of the Judicial Code. Morris v. Gilmer, 129 U.S. 315. Williamson v. Osenton, 232 U.S. 619, 624. . . .

The question is, Had he lost his domicile in Michigan and acquired one in Connecticut, so that he was at the beginning of the suit in 1904 in reality a citizen of the last-mentioned State? . . .

. . . [W]e have no doubt that the court was right in holding that he [plaintiff] had acquired a new domicile in the State of Connecticut. . . . .

We find no error in the conclusion of the District Court upon the question of jurisdiction, and its judgment is therefore, *Affirmed*." Gilbert v. David: 235 U.S. 561, at 565 thru 571 (1915).

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A citizen of a State, since the adoption of the Fourteenth Amendment, cannot pursue a cause of action against a citizen of an unnamed State. Such unnamed State must be different from the one he or she is a citizen of:

(opinion delivered by Justice Miller)

"While this petition sets forth the citizenship of Hodges to be in the State of Arkansas, both at the commencement of the suit and at the time of the application for removal, it does not state that of any of the complainants, but merely says 'that none of the complainants are or were at that time citizens of said State of Arkansas,' nor have we been able to find in the record any evidence, allegation or statement as to the citizenship of any of them. That the defendant, Hodges was a citizen of Arkansas, in connection with the fact that none of the complainants were citizens of that State, is not sufficient to give jurisdiction in a Circuit Court of the United States. *Brown v. Keene*, 8 Pet. 112, 115.

The adverse party must be a citizen of some other named State than Arkansas, or an alien. All the complainants might be residents and citizens of the District of Columbia, or of any Territory, and they might now be citizens of the State of Tennessee where the suit was brought, or indeed, of any State in the Union. A citizen of a Territory, or of the District of Columbia, can neither bring nor sustain a suit of the ground of citizenship, in one of the Circuit Courts. *Barney v. Baltimore*, 6 Wall. 280.

This court has always been very particular in requiring a distinct statement of the citizenship of the parties, and of the particular State in which it is claimed, in order to sustain the jurisdiction of those courts; and inasmuch as the only citizenship specifically averred and set out in the case before us is that of the defendant, Hodges, at whose instance the cause was removed, and as that is the only ground upon which the removal was placed, it seems clear that the Circuit Court did not have jurisdiction of it, and that the suit should have been dismissed or remanded for that reason. *Robertson v. Cease*, 97 U.S. 646." Cameron v Hodges: 127 U.S. 322, at 324 thru 325 (1887).

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A citizen of a territory of the United States cannot pursue a cause of action under Article III, Section 2 of the Constitution of the United States (of America), however, a citizen of a territory can pursue a cause of action against a citizen of a State under the constitutional power of Congress; under Article I, Section 8 of the Constitution, to legislate for its territories:

> "Our first inquiry is whether, under the third, or Judiciary, Article of the Constitution, extending the judicial power of the United States to cases or controversies 'between citizens of different States,' a citizen of the District of Columbia has the standing of a citizen of one of the states of the Union. This is the question which the opinion of Chief Justice Marshall answered in the negative, by way of dicta if not of actual decision. *Hepburn & Dundas v. Ellzey*, 2 Cranch 445. . . . .
>
> We therefore decline to overrule the opinion of Chief Justice Marshall, and we hold that the District of Columbia is not a state within Article III of the Constitution. In other words, cases between citizens of the District and those of the states were not included in the catalogue of controversies over which the Congress could give jurisdiction to the federal courts by virtue of Art. III.
>
> This conclusion does not, however, determine that Congress lacks power under other provisions of the Constitution to enact this legislation (the Act of April 20, 1940). Congress, by the Act in question, sought not to challenge or disagree with the decision of Chief Justice Marshall that the District of Columbia is not a state for such purposes. It was careful to avoid conflict with that decision by basing the new legislation on powers that had not been relied upon by the First Congress in passing the Act of 1789.
>
> The Judiciary Committee of the House of Representatives recommended the Act of April 20 1940, as 'a reasonable exercise of the constitutional power of Congress to legislate for the District of Columbia and for the Territories. This power the Constitution confers in broad terms. By Art. I, Congress is empowered 'to exercise exclusive Legislation in all Cases whatsoever, over such District.' And, of course, it was also authorized 'To make all Laws which shall be necessary and proper for carrying into Execution' such powers. These provisions were not relevant in Chief Justice Marshall's interpretation of the Act if 1789, because it did not refer in terms to the District but only to states. It is therefore significant that, having decided that District citizens' cases were not brought within federal jurisdiction by Art. III and the statute enacted pursuant to it, the Chief Justice added, as we have seen, that it was extraordinary that the federal courts should be closed to the citizens of 'that particular district which is subject to the jurisdiction of congress.' Such language clearly refers to Congress' Art. I

power of 'exclusive Legislation in all Cases whatsoever, over such District.' And mention of that power seems particularly significant in the context of Marshall's further statement that the matter is a subject for 'legislative not for judicial consideration.' Even if it be considered speculation to say that this was an expression by the Chief Justice that Congress had the requisite power under Art. I, it would be in the teeth of his language to say that it is a denial of such power. The Congress had acted on the belief that it possesses that power. We believe their conclusion is well founded."

"Footnote 10:

The effect of the Act (of April 20, 1940) was to amend 28 U.S.C. (1946 ed.) § 41 (1) so that it read in pertinent part: "The district courts shall have original jurisdiction as follows: . . . Of all suits of a civil nature, at common law or in equity . . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and . . . (b) Is between citizens of different States, or citizens of the District of Columbia, the Territory of Hawaii or Alaska, and any State or Territory. . . ." National Mutual Insurance Company v. Tidewater Transfer Company, Incorporated: 337 U.S. 582, at 586, 588 thru (1949).

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Footnotes:

1. ". . . ***There is a difference between the privileges and immunities belonging to the citizens of the United States as such, and those belonging to the citizens of each state as such***. The privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of its constitution, or its laws and treaties made in pursuance thereof; and it is these rights which are placed under the protection of congress by the fourteenth amendment. *People v. Loeffler*, 175 Ill. 585, 51 N. E. 785; *Slaughter-House Cases*, 16 Wall. 36, 21 L. Ed. 394. The right to use or display the flag (of the United States) would seem to be a privilege of a citizen of the United States, rather than the privilege of a citizen of any one of the states." Ruhstrat v. People: 57 N.E. 41, at 45; 185 Ill. 133 (1900).

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"***In the celebrated Slaughterhouse Cases, 16 Wall. 36(, at 74) it was held that it was only the privileges and immunities of the citizens of the United States which are placed by this clause under the protection of the federal constitution, and that those of the citizens of the state, whatever they may be, are not intended to have any additional protection by this paragraph of the amendment***. It is not necessary, therefore, further to discuss whether the citizens of this state, or the creature of the state, as the defendant in this case is, can derive any further protection from the paragraphs of the fourteenth amendment over and above that which it enjoys under our state constitution. We think the reasoning and authority of the *Slaughterhouse Cases* a sufficient answer to the objection we are considering." Peel Splint Coal Company v. State of West Virginia: 15 S.E. 1000, at 1008 (1892).

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"In the *Slaughter-house cases*, 16 Wall. 36, the subject of the privileges or immunities of citizens of the United States, as distinguished from those of a particular State, was treated by Mr. Justice Miller in delivering the opinion of the court. He stated . . . that ***it was only privileges and immunities of the citizen of the United States that were placed by the [Fourteenth] amendment under the protection of the Federal Constitution, and that the privileges and immunities of a citizen of a State, whatever they might be, were not intended to have any additional protection by the paragraph in question, but they must rest for their security and protection where they have heretofore rested.***"

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In accord:

"***The rights, privileges, and immunities which the fourteenth amendment to the Constitution of the United States guaranties, and which this section of the Revised Statutes was designed to protect, were the rights, privileges, and immunities which belong to citizens of the United States as such, but not the rights, privileges, and immunities which belong to the citizens of the state***. There are privileges and immunities belonging to citizens of the United States in that relation and character, and it is these, and these alone, that a state is forbidden to abridge. *Bradwell v. The State*, 16 Wall. 130-138, 139, 21 L. Ed. 442." Wadleigh v. Newhall: 136 Fed. Rep. 941, at 946 (1905).

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2. "***The Constitution forbids the abridging of the privileges of a citizen of the United States, but does not forbid the state from abridging the privileges of its own citizens***." Hopkins v. City of Richmond: 86 S. E. Rep. 139, at 145 (1915), citing the entire opinion of *Coleman v. Town of Ashland*, in its opinion (*per curiam*).

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". . . Is it contended that the 1st section of the Fourteenth Amendment has been violated? That section declares that 'all persons born in the United States are citizens of the United States and the State wherein they reside,' and provides that 'no State shall make or enforce any law which shall abridge the privileges of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws.' This section, after declaring that all persons born in the United States shall be citizens (1) of the United States and (2) of the State wherein they reside, goes on in the same sentence to provide that no State shall abridge the privileges of citizens of the United States; ***but does not go on to forbid a State from abridging the privileges of its own citizens***. Leaving the matter of abridging the privileges of its own citizens to the discretion of each State, the section proceeds, in regard to the latter, only to provide that no State 'shall deny to any person within its jurisdiction the equal protection of the laws. . . . " Ex Parte Edmund Kinney: 3 Hughes 9, at 12 (1879) [4th cir ct Va.].

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"It will be observed that the language of the (fourteenth) amendment is peculiar in respect to the rights which the State is forbidden to abridge. Although the same section makes all persons born or naturalized in the United States, and subject to the jurisdiction thereof, citizens of the United States and of the State wherein they reside, yet in speaking of the class of privileges and immunities which the State is forbidden to deny the citizen, they are referred to as the privileges and immunities which belong to them as citizens of the United States. ***It has been argued from this language that such rights and privileges as are granted to its citizens, and depend solely upon the laws of the State for their origin and support, are not within the constitutional inhibition and may lawfully be denied to any class or race by the States at their will and discretion***. This construction is distinctly and plainly held in *The Slaughter-House Cases* (16 Wall. 36), by the Supreme Court of the United States. The doctrine of that case has not, to our knowledge, been retracted or questioned by any of its subsequent decisions." People v. Gallagher: 45 Am. Rep. 232, at 236 thru 237; 93 N.Y. 438 (1883).

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". . . It is, then, to the Fourteenth Amendment that the advocates of the congressional act must resort to find authority for its enactment, and to the first section of that amendment, which is as follows: '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. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'

In the first clause of this section, declaring who are citizens of the United States, there is nothing which touches the subject under consideration. The second clause, declaring that 'no State shall make or enforce any law which will abridge the privileges or immunities of citizens of the United States,***' is limited, according to the decision of this court in Slaughter-House Cases, to such privileges and immunities as belong to citizens of the United States, as distinguished from those of citizens of the State***." Neal v. State of Delaware: 103 U.S. 370, at 406 (1880).

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3. "Section 2 of article 4 of the constitution of the United States declares that 'the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.' ***In this there is no striking down of or limitation upon the right of a state to confer such immunities and privileges upon its citizens as it may deem fit***. The clause of the constitution under consideration is protective merely, not destructive, nor yet even restrictive. Over and over again has the highest court of the United States so construed this provision. Thus, in the *Slaughter-house Cases*, 16 Wall. 36, it is said: 'The constitutional provision there alluded to did not create those rights which it called privileges and immunities of citizens of the states. . . . . ***Nor did it profess to control the power of the state governments over the rights of its own citizens***. Its sole purpose was to declare to the several states that whatever rights, as you grant or establish them to your own citizens, or as you limit or qualify or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction": See, also, *Blake v. McClung*, 172 U.S. 239, 19 Sup. Ct. Rep. 165; *Ward v. Maryland*, 12 Wall. 418." In Re Johnson Estate: 96 Am. State Rep. 161, at 164; 73 Pac. Rep. 424; 139 Cal. 532 (1903).

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"It is contended, however, and correctly, that the provisions of the federal Constitution do not have the effect of rendering invalid that portion of the Workmen's Compensation Act providing for an extension of its benefits to residents who are injured abroad, but that it allows this portion of the act to stand as effective and valid, and automatically and without regard to the intent of the state Legislature extends the benefits created by the act to nonresidents, or rather to such nonresidents as are citizens of sister states. In support of this contention respondents rely upon *Estate of Johnson*, 139 Cal. 532, 73 Pac. 424, 96 Am. St. Rep. 161. No good reason has been advanced for departing from the doctrine therein declared as follows:

> 'It will be noted, not only that the constitutional provision is not restrictive, but that it is neither penal or prohibitory. It nowhere intimates that an immunity conferred upon citizens of a state, because not in terms conferred upon citizens of sister states, shall therefore be void. Some force might be given to such an argument, were the constitutional provision couched in appropriate language for the purpose. If, for example, it had said, "No citizen of any state shall be granted any immunity not granted to every citizen of every state," or had it begun its declaration by saying that "it shall be unlawful to grant to citizens of any state any privilege or immunity not granted to citizens of every state," it might then have been argued that a legislative attempt so to do would be declared violative of the express mandate of the Constitution, and therefore void. But such is neither the scope, purpose, nor intent of the provision under consideration. It leaves to the state perfect freedom to grant such privileges to its citizens as it may see fit, but secures to the citizens of all the other states, by virtue of the constitutional enactment itself, the same rights, privileges, and immunities. So that, in every state law conferring immunities and privileges upon citizens, the constitutional clause under consideration, *ex proprio vigore*, becomes an express part of such statute. . . . The Constitution itself becomes a part of the law. And this, in giving operation to that constitutional provision, is what the courts have always done. They have never annulled the exemption. They have always construed the law so as to relieve the citizens of other states, and place all upon equal footing.'

This is in harmony with and declaratory of the principle laid down by the United States Supreme Court in the *Slaughter-House Cases*, 16 Wall. 36, 77 (21 L.Ed. 394) in the following words:

> 'The constitutional provision there alluded to did not create those rights with it called privileges and immunities of citizens of the states. . . . Nor did it profess to control the power of the state governments over the rights of its own citizens. Its sole purpose was to declare to the several states that whatever those rights, as you grant or establish them to your own citizens, or

as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction.'

The discrimination complained of in the instant case is to be found in the fact that the state statute under consideration confers upon the citizens of the state privileges and immunities which are not extended by the terms of the statute, either expressly or impliedly, to nonresidents of the state, and clearly the statute in question does not impose nor attempt to impose upon noncitizens of the state burdens or exactions not imposed upon citizens of the state. This difference is all important in controlling the construction and application of that provision of the federal Constitution which declares that—

> 'The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.' " Quong Ham Wah Company v. Industrial Accident Commission: 192 Pac. Rep. 1021, at 1027 (1920).

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"The petitioner, who is a citizen and resident of the state of New York, prays for a writ of mandamus, requiring the respondent, an insurance commissioner of this state, to issue to him a license, as an insurance broker, under the terms of an act, approved March 2, 1916, entitled, 'An act to provide for the licensing of insurance brokers.' The first section of the act declares an insurance broker to be such person as shall be licensed by the insurance commissioner to represent citizens of this state in placing insurance with insurers licensed in this state or in any other state or country. The second section prescribes the terms and conditions upon which insurance brokers may be licensed. Among these, it is provided:

> 'Only such persons may be licensed as are residents of this state and have been licensed insurance agents of this state for at least two years.'

The petitioner has complied, or offered to comply, with all the terms and conditions of the act, except those prescribed in the provision above quoted, and for his failure to comply with those his application was refused. The sole question is whether that provision of the act is void, on the ground that it discriminates against citizens of other states in favor of citizens of this state, in violation of the provision of section 2, art. 4, of the federal Constitution, to wit:

> 'The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.' . . . .

But, however cogent may be the reasons for it (the provision above quoted), it cannot be sustained if it violates the Constitution. We need not consider the extent of the meaning of the words 'privileges and immunities' used in the provision of the Constitution invoked. It will be sufficient to show that by the provision of the act in

question, citizens of this state are granted no privilege by reason of citizenship alone that may not be as freely enjoyed by the citizens of any other state of the Union upon the same terms and conditions; that is all that the Constitution requires. . . .

The meaning of this provision of the Constitution (section 2, art. 4,) was also considered in the *Slaughterhouse Cases*, 83 U.S. (16 Wall.) 36, 77 (21 L.Ed. 394), where the court says:

> 'The constitutional provision there alluded to did not create those rights, which it called privileges and immunities of citizens of the states. It threw around them in that clause no security for the citizen of the state in which they were claimed or exercised. Nor did it profess to control the power of the state governments over the rights of its own citizens. Its sole purpose was to declare to the several states that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction.'

The principle decided in these cases has been followed in numerous subsequent decisions of the federal Supreme Court. Under the terms of this act, a citizen of any state of the Union who is a resident of this state and has been a licensed insurance agent of this state for at least two years may obtain a broker's license; on the other hand, a citizen of this state, who is not a resident of the state and has not been a licensed insurance agent of this state for two years, may not be licensed. No discrimination is made on account of citizenship. It rests alone on residence in the state and experience in the business." La Tourette v. McMaster: 89 S. E. 398, at 399, 400 (1916).

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See also:

" . . . The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights and lies at the foundation or orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each State to the citizens of all other States to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the States, but is granted and protected by the Federal Constitution. *Corfield v. Coryell*, 4 Wash. C. C. 371, 380, per Washington, J.; *Ward v. Maryland*, 12 Wall. 418, 430, per Clifford, J.; *Cole v. Cunningham*, 133 U.S. 107. 114, per Fuller, C. J.; *Blake v. McClung*, 172 U.S. 239, 252, per Harlan, J.

But, subject to the restrictions of the Federal Constitution, the State may

determine the limits of the jurisdiction of its courts, and the character of the controversies which shall be heard in them. The state policy decides whether and to what extent the State will entertain in its courts transitory actions, where the causes of action have arisen in other jurisdictions. Different States may have different policies and the same State may have different policies at different times. ***But any policy the State may choose to adopt must operate in the same way on its own citizens*** and those of other States. The privileges which it affords to one class it must afford to the other. ***Any law by which privileges to begin actions in the courts are given to its own citizens*** and withheld from the citizens of other States is void, because in conflict with the supreme law of the land." Chambers v. Baltimore & Ohio Railroad Company: 207 U.S. 142, at 148 thru 149 (1907)

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[See Footnote 5]

(1.) (2.) (3.) ". . . It is also insisted that the provisions of the state law were forbidden by section 1 of amendment 14 of the constitution of the United States, as follows:

> '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. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.'

This section declares: (1) 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. They are made citizens of two distinct governments. (2) It declares that 'no state shall make or enforce any law which shall abridge the privileges or immunities or citizens of the United States.' The enactment of state laws depriving or abridging the privileges or immunities of citizens of the state is left to the state legislature so far as this provision goes. It secures to citizens of the United States, in any state, privileges and immunities of the citizens of that state. Expounding the provision now under consideration, the supreme court of the United States said: 'The constitutional provision there alluded to did not create those rights which it called "privileges" and "immunities" of citizens of the state(s). It threw around them in that clause no security for the citizen of the state in which they were claimed and exercised; nor did it profess to control the power of the state government over the rights of its own citizens. Its sole purpose was to declare to the several states that whatever those rights as you grant or establish them to your own citizens, or as you limit or qualify or impose restrictions on their exercise, the same, neither more or less, shall be the measure of the rights of citizens of other

states within your jurisdiction.' *Slaughterhouse Cases*, 16 Wall. 76. As the plaintiff is a citizen of this state, the second clause of the first section last above quoted has no bearing upon his case, as his privileges and immunities must be ascertained from the constitution of the state and its laws." Holden v. Hardy: 46 Pac. Rep. 765, at 758 thru 759 (1896).

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4. " . . . There is no inherent right in a citizen to thus sell intoxicating liquors by retail. It is not a privilege of a ***citizen of the State or of a citizen of the United States***." Crowley v. Christensen: 137 U.S. 86, at 91 (1890).

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"3. Same—Discrimination.

"Nor is the act (of congress of August 8, 1890; 26 Stat. at Large, p. 313) in contravention of the constitutional provisions (article 4, §2, and the fourteenth amendment) forbidding any state to discriminate ***against citizens of other states or citizens of the United States***." *Syllabus*, Cantini v. Tillman: 54 Fed. Rep. 969, at 970 (1893).

(at page 973) *Opinion*

"Another objection to the act is that it is in violation of section 2, art. 4, of the constitution of the United States, and of the fourteenth amendment, in that this act discriminates both as to persons and products. Section 2, art. 4, declares that the citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states; and the fourteenth amendment declares that no state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States. But we have seen that the supreme court, in Crowley v. Christensen, 137 U.S. 91, 11 Sup. Ct. Rep. 15, has declared that there is no inherent right in a citizen to sell intoxicating liquors by retail. It is not a privilege of ***a citizen of a state or of a citizen of the United States***." *Opinion*, Cantini v. Tillman: 54 Fed. Rep. 969, at 973 (1893).

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[See Footnote 5]

"The prosecutor was sued for the penalty of $50 prescribed for non-residents of this State who kill quail without complying with the by laws of the game protective

societies, according to 'An Act for the Protection of Game and Game Fish,' approved April 4, 1878, P.L. 1878, 293. . . .

He insists that the Act violates the Federal and State Constitutions, and is also invalid as an unwarranted delegation of legislative power.

Two clauses of the United States Constitution are invoked: §2 of art. 4, which declares that 'The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States,' and part of §1 of the 14th Amendment: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'

A comparison of the statute under review with the other game laws of the State shows that, with regard to hunting game, greater restrictions are placed upon non-residents than upon residents, and that the penalties incurred by the former for violating the restrictions imposed are severer than those incurred by the latter.

The discriminations of the statute are not based upon the fact of citizenship, nor does appear by the record before us that the prosecutor was a ***citizen either of a sister State or of the United States***. Consequently, §2 of article 4 and so much of the 14th Amendment as secures the privileges and immunities of the citizen of the Nation are not applicable to the case in hand." Allen v. Wyckoff: 2 Cen. Rep. 213 (1886).

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In accord:

"The act was considered in *Johnson v. United States*, 160 U.S. 546, and we there held that a person who was not a citizen of the United States at the time of an alleged appropriation of his property by a tribe of Indians was not entitled to maintain an action in the Court of Claims under the act in question. There was not in that case, however, any assertion that the claimant was a citizen of a State as distinguished from a citizen of the United States. . . . [U]ndoubtedly in a purely technical and abstract sense citizenship of one of the States may not include citizenship of the United States . . . Unquestionably, in the general and common acceptation, ***a citizen of the State is considered as synonymous with citizen of the United States, and the one is therefore treated as expressive of the other. This flows from the fact that the one is normally and usually the other, and where such is not the case, it is purely exceptional and uncommon***." United States v. Northwestern Express, Stage & Transportation Company: 164 U.S. 686, 688 (1897).

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"And all that the Supreme Court decided in the *Slaughter-house Cases*, was that the United States by force of the Fourteenth Amendment was not clothed with authority to enforce the rights common to all men but those only peculiar to citizenship.

The right to vote is not the common right of all persons resident in Virginia. It is not the right of all citizens of Virginia, *per se*, because ***a person might be a citizen of Virginia who is not a citizen of the United States,*** and the Constitution of the State confers the right to vote upon citizens of the United States solely." (*Opinion of Judge Bond*) United States v. Petersburg Judges of Election: 1 Hughes 493, at 500 (1877).

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"To determine, then, who were citizens of the United States before the adoption of the [14th] amendment it is necessary to ascertain what persons originally associated themselves together to form the nation, and what were afterwards admitted to membership. Looking at the Constitution itself we find that it was ordained and established by 'the people of the United States,' and then going further back, we find that these were the people of the several States that had before dissolved the political bands which connected them with Great Britain, and assumed a separate and equal station among the powers of the earth, and that had by Articles of Confederation and Perpetual Union, in which they took the name of 'the United States of America,' entered in to a firm league of friendship with each other for their common defence, the security of their liberties and their mutual and general welfare, binding themselves to assist each other against all force offered to or attack made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Whoever, then, was one of the people of either of these States when the Constitution of the United States was adopted, became ipso facto a citizen - a member of the nation created by its adoption. He was one the persons associating together to form the nation, and was, consequently, one of its original citizens. As to this there has never been a doubt. Disputes have arisen as to whether or not certain persons or certain classes of persons were part of the people at the time, but never as to their citizenship if they were." Minor v. Happersett: 88 U.S. 162, 167 (1874).

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Note: A citizen of the United States before the adoption of the Fourteenth Amendment was considered to be a citizen of a State. However, with the adoption of the Fourteenth Amendment, a citizen of the United States can become also a citizen of a State, that is a citizen of the United States and a citizen of a State, by residing in

an individual State, this under Section 1, Clause 1 of the Fourteenth Amendment which states:

"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."

Therefore, a citizen of the United States, since the adoption of the Fourteenth Amendment, is separate and distinct from a citizen of a State.

5. "As applied to a ***citizen of another State, or to a citizen of the United States*** residing in another State, a state law forbidding sale of convict made goods does not violate the privileges and immunities clauses of Art. IV, Sec. 2 and the Fourteenth Amendment of the Federal Constitution if it applies also and equally to the citizens of the State that enacted it." *Syllabus,* Whitfield v. State of Ohio: 297 U.S. 431 (1936)

"The court below proceeded upon the assumption that petitioner was a citizen of the United States; and his status in that regard is not questioned. The effect of the privileges and immunities clause of the Fourteenth Amendment, as applied to the facts of the present case, is to deny the power of Ohio to impose restraints upon citizens of the United States resident in Alabama in respect of the disposition of goods within Ohio, if like restraints are not imposed upon citizens resident in Ohio.

The effect of the similar clause found in the Fourth Article of the Constitution (section 2), as applied to these facts, would be the same, since that clause is directed against ***discrimination by a state in favor of its own citizens*** and against the citizens of other states. *Slaughterhouse Cases* (Live-Stock Dealers' & Butchers' Ass'n v. Crescent City Live-Stock Landing & Slaughter-House Co.), Fed.Cas. No. 8,408, 1 Woods 21, 28; *Bradwell v. State of Illinois*, 16 Wall. 130, 138." *Opinion*, Whitfield v. State of Ohio: 297 U.S. 431, 437 (1936).

http://www.loislaw.com/advsrny/doclink.htp?alais=USCASE&cite=297+U.S.+431

6. A citizen of a State is also a citizen of the several States:

> "The intention of section 2, Article IV (of the Constitution), was to confer on the ***citizens of the several States a general citizenship***, and to communicate all the privileges and immunities which the citizen of the same State would be entitled to under like circumstances, and this includes the right to institute actions." Cole v. Cunningham: 133 U.S. 107, 113-114 (1890).

http://books.google.com/books?id=oGYUAAAAYAAJ&pg=PA113#v=onepage&q=&f=false

"There can be no doubt that Balk, as a citizen of the State of North Carolina, had the right to sue Harris in Maryland to recover the debt which Harris owed him. Being a citizen of North Carolina, he was entitled to all ***privileges and immunities of citizens of the several States***, one of which is the right to institute actions in the courts of another State." Harris v. Balk: 198 U.S. 215, at 223 (1905).

http://books.google.com/books?id=ceIGAAAAYAAJ&pg=PA223#v=onepage&q&f=false

"In speaking of the meaning of the phrase '***privileges and immunities of citizens of the several States***,' under section second, article fourth, of the Constitution, it was said by the present Chief Justice, in *Cole v. Cunningham*, 133 U.S. 107, that the intention was 'to confer on the ***citizens of the several States a general citizenship***, and to communicate all the privileges and immunities which the citizens of the same State would be entitled to under the like circumstances, and this includes the right to institute actions.' " Maxwell v. Dow: 176 U.S. 581, at 592 (1900). **[Footnote 7]**

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A citizen of a State then should aver that he or she is a citizen of the several States (that is a citizen of the several States, generally) as well as a citizen of a State:

". . . Any established form of words used for the expression of a particular fact, is a sufficient averment of it in law." Marshall v. Baltimore and Ohio Railroad Company: 57 U.S. (16 Howard) 314, at 329 (1853).

http://books.google.com/books?id=DhEGAAAAYAAJ&pg=PA314#v=onepage&q&f=false

Also:

"The point for determination is the liability of J.W. Wright, Jr., ***a citizen*** and resident ***of Alabama***. . . . .

The power of a State to make reasonable and natural classifications for purposes of taxation is clear and not questioned; but neither under forms of classification nor otherwise can any State enforce taxing laws which in their practical operation materially abridge or impair the equality of ***commercial privileges*** secured by the Federal Constitution to ***citizens of the several States***." Chalker v. Birmingham & Northwestern Railroad Company: 249 U.S. 522, at 525, 527 (1919).

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And:

> "Respondent, ***a citizen*** and resident ***of the state of Idaho***, brought this action to recover $952 from the defendant, as sheriff of Elko county, Nevada. . . .
>
> Two questions are presented in this case: First, is the statute violative of section 2, art. 4, of the federal Constitution? And, second, if the statute is void, was the payment so involuntary as to justify its recovery?
>
> The section of the Constitution mentioned reads:
>
> > 'The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.'
>
> The question is: Does the act in question discriminate against citizens of other states? . . .
>
> The question of the constitutionality of the act came before the Supreme Court of that state, where the point was made, as here, that the act was unconstitutional because it was discriminatory against citizens of other states. That court held that the act did not discriminate against citizens of sister states. . . .
>
> The case was taken to the Supreme Court of the United States, and that court took the opposite view and reversed the judgment of the Tennessee court. It said:
>
> > 'The power of a State to make reasonable and natural classifications for purposes of taxation is clear and not questioned; but neither under forms of classification nor otherwise can any State enforce taxing laws which in their practical operation materially abridge or impair the equality of commercial privileges secured by the Federal Constitution to ***citizens of the several States***. . . . . ' *Chalker v. Birmingham & Northwestern Railroad Compan*y: 249 U.S. 522, 39 Sup. Ct 366, 63 L.Ed. 748. . . .
>
> Whether or not we are disposed to agree with the reasoning of Supreme Court of the United States as presented in the above quotation is of no consequences, since the ruling is controlling upon us, and it seems that its viewpoint as presented in the quotation is equally as forceful in its application to this case as it was to the case in which it stated the rule." Hostetler v. Harris: 197 Pac. Rep. 697, at 697, 698 (1921).

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7. Privileges and immunities of a citizen of the several States are not the same as the privileges and immunities of a citizen of the United States. Privileges and immunities of a citizen of the United States arise "out of the nature and essential character of the Federal government, and granted or secured by the Constitution" (*Duncan v. State of Missouri*: 152 U.S. 377, at 382 [1894]) or, in other words, "owe their existence to the Federal government, its National character, its Constitution, or its laws." (*Slaughterhouse Cases*: 83 (16 Wall.) U.S. 38, at 79 [1873]).

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Privileges and immunities of a citizen of the several States are those described in *Corfield v. Coryell* decided by Mr. Justice Washington in the Circuit Court for the District of Pennsylvania in 1823:

> "In the *Slaughter House Cases*, 16 Wall. 36, 76, in defining the privileges and immunities of citizens of the several States, this is quoted from the opinion of Mr. Justice Washington in *Corfield v. Coryell*, 4 Wash. Cir. Ct. 371, 380." Hodges v. United States: 203 U.S. 1, at 15 (1906).

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The location for privileges and immunities of a citizen of the United States is Section 1, Clause 2 of the Fourteenth Amendment:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The designation for privileges and immunities of a citizen of the several States is Article IV, Section 2, Clause 1 of the Constitution of the United States (of America):

> "Fortunately we are not without judicial construction of this clause of the Constitution (Article IV, Section 2, Clause 1). The first and leading case of the subject is that of *Corfield v. Coryell*, decided by Mr. Justice Washington in the Circuit Court for the District of Pennsylvania in 1823.
>
> > 'The inquiry,' he says 'is, what are the ***privileges and immunities of citizens of the several States***? . . .
>
> This definition of the privileges and immunities of citizens of the States is adopted in the main by this court in the recent case of *Ward v. The State of Maryland*." Slaughterhouse Cases: 83 (16 Wall.) 36, at 75 thru 76 (1873).

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A citizen of the several States is therefore not the same as a citizen of the United States:

> "Williams was arrested upon a warrant charging him with 'the offense of acting as emigrant agent without a license.' He made application to the judge of the superior court of the Ocmulgee circuit for a writ of habeas corpus, alleging that the warrant under which he was arrested charged him with a violation of that provision of the general tax act of 1898 which imposed 'upon each emigrant agent, or employer or employe of such agents, doing business in this state, the sum of five hundred dollars for each county in which such business is conducted.' Acts 1898, p. 24. He further alleged that the law which he was charged with having violated was in conflict with certain provisions of the constitutions of the United States and of the state of Georgia, enumerating in the application the various clauses of which the act was alleged to be violative . . . .
>
> Is the law (the general tax act of 1898) a regulation or restriction of intercourse among the citizens of this state and those of other states? Under this branch of commerce the states are prohibited from passing any law which either restricts the free passage of the ***citizens of the United States*** through the several states, or which undertakes to regulate or restrict free communication between the ***citizens of the several states***. A tax on the right of a citizen to leave the state, or on the right of a citizen of another state to come into the state, is a regulation of interstate commerce, and void. *Crandall v. Nevada*, 6 Wall. 35, 18 L.Ed. 744; *Henderson v. Mayor*, etc., 92 U.S. 259, 23 L.Ed. 543; *People v. Compagnie Generale Transatlantique*, 107 U.S. 59, 2 Sup. Ct. 87, 27 L.Ed. 383; *Passenger Cases*, 7 How. 282, 12 L.Ed. 702. Nor can a state pass a law which attempts to regulate or restrict communication between the ***citizens of different states***. *Telegraph Co. v. Pendleton*, 122 U.S. 347, 7 Sup. Ct. 1126, 30 L.Ed. 1187; *Pensacola Tel. Co. v. W. U. Tel. Co.*, 96 U.S. 1, 24 L.Ed. 708. But the law under consideration in the present case neither regulates nor restricts the right of citizens of this state to leave its territory at will, nor to hold free communication with the citizens of other states." Williams v. Fears: 35 S.E. 699, at 699, 701 (1900).

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> "It is quite clear, then, that there is a citizenship of the United States, and a citizenship of a state, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual.
>
> We think this distinction and its explicit recognition in this Amendment of great weight in this argument, because the next paragraph of this same section (first section, second clause), which is the one mainly relied on by the

plaintiffs in error, speaks only of ***privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several states***. *The argument, however, in favor of the plaintiffs, rests wholly on the assumption that the citizenship is the same and the privileges and immunities guaranteed by the clause are the same*." Slaughterhouse Cases: 83 U.S. 36, 74 (1873).

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"The first question presented for adjudication is: Admitting the tax to be unequal, is the ordinance providing for its levy and enforcement in violation of the 1st section of the 14th amendment to the constitution of the United States, especially the last clause of the section? The section reads as follows: '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. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The complainant, to be entitled to the protection of this constitutional provision, must be either a citizen of the United States or a person in the sense in which that term is used in this section.

It has been repeatedly held, by the supreme court of the United States, that corporations were not ***citizens of the several states*** in such sense as to bring them within the protection of that clause in the constitution of the United States (section 2, article IV), which declares that 'the citizens of each state shall be entitled to all the privileges and immunities of citizens OF the several states;' *Bank of Augusta v. Earle*, 13 Peters, 586; *Paul v. Virginia*, 8 Wallace, 177. **[Footnote 8]**

Are corporations ***citizens of the United States*** within the meaning of the constitutional provision now under consideration? It is claimed in argument that, before the adoption of the 14th amendment, to be a citizen of the United States, it was necessary to become a citizen of one of the states, but that since the 14th amendment this is reversed, and that citizenship in a state is the result and consequence of the condition of citizenship of the United States.

Admitting this view to be correct, we do not see its bearing upon the question in issue. Who are citizens of the United States, within the meaning of the 14th amendment, we think is clearly settled by the terms of the

amendment itself. '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.' No words could make it clearer that citizens of the United States, within the meaning of this article, must be natural, and not artificial persons; for a corporation cannot be said to be born, nor can it be naturalized. I am clear, therefore, that a corporate body is not a citizen of the United States as that term is used in the 14th amendment." The Insurance Company v. The City of New Orleans: 1 5th. Jud. Cir. 85, at 86 thru 88 (1870)

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IN THE HOUSE OF REPRESENTATIVES, on March 6, 2001, Mr. Ron Paul, submitted the following concurrent resolution, which was referred to the Committee on International Relations:

107th Congress, 1st Session, H. Con. Res. 49 –

CONCURRENT RESOLUTION

Expressing the sense of Congress that the treaty power of the President does not extend beyond the enumerated powers of the Federal Government, but is limited by the Constitution, and any exercise of such Executive power inconsistent with the Constitution shall be of no legal force or effect.

Whereas article VI of the Constitution provides that only those Treaties made 'under the Authority of the United States' are the Supreme Law of the Land;

Whereas the Authority of the United States is limited to the powers of the Federal Government specifically enumerated in the Constitution, and is further limited, by the procedures and prohibitions set forth therein; and

Whereas, as a limit on governmental power, the People of the United States have vested Federal powers in three coequal branches of government, each with unique and limited powers and each with a coequal duty to uphold and sustain the Constitution of the United States: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of Congress that--

(1) no treaty, or any provision thereof, which denies or abridges any constitutionally enumerated right shall be of any legal force or effect;

(2) no treaty, or any provision thereof, which denies or abridges the powers reserved by the Constitution to the several States or to the people shall be of any legal force or effect;

(3) no treaty, or any provision thereof, shall authorize or permit any foreign power or any international organization to oversee, supervise, monitor, control, or adjudicate the legal rights or the **privileges and immunities of citizens of the United States or of citizens of the several States**, when such rights, privileges and immunities are, according to the Constitution, subject to the domestic jurisdiction of the United States or the several States; and any decision of any international body to the contrary, shall be disregarded by the courts of the United States and of the several States;

(4) no treaty, or any provision thereof, shall have any force or effect as law within the United States except as provided for by appropriate legislation duly enacted by Congress pursuant to its constitutionally enumerated powers; and

(5) no Executive Agreement, or other agreement between the United States Government and the government of any other nation, shall have any force or effect as law within the United States, but shall be subject to the same procedures and limitations on treaties as set forth in the Constitution, including but not limited to ratification by the two-thirds vote required by article II, section 2.

http://thomas.loc.gov/cgi-bin/query/z?c107:H.CON.RES.49:

(**Note**: semicolon after the number 49 may not show up in your browser, you will have to type the semicolon in after the number 49 and refresh your browser to see the concurrent resolution.)

It is to be noted that privileges and immunities of a citizen of a State are those in the constitution and laws of the individual State:

"... Whatever may be the scope of section 2 of article IV -- and we need not, in this case enter upon a consideration of the general question -- the

> Constitution of the United States does not make the privileges and immunities enjoyed by the citizens of one State under the constitution and laws of that State, the measure of the privileges and immunities to be enjoyed, as of right, by a citizen of another State under its constitution and laws." McKane v. Durston: 153 U.S. 684, at 687 (1894).

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Therefore, in any State of the Union, there are two State citizens **[Footnote 9]**, a citizen of a State (***as well as*** a citizen of the several States (Article IV, Section 2, Clause 1)), and, a citizen of the United States ***and*** citizen of the State (Fourteenth Amendment):

> "Because the ordinance and specifications, under which the paving in this case was done, require the contractor to employ only bona fide resident citizens of the city of New Orleans as laborers on the work, it is contended, on behalf on the plaintiff in error, that thereby ***citizens of the State of Louisiana, and of each and every State and the inhabitants thereof, are deprived of their privileges and immunities under article 4, sec. 2, and under the Fourteenth Amendment to the Constitution of the United States***. It is said that such an ordinance deprives every person, not a bona fide resident of the city of New Orleans, of the right to labor on the contemplated improvements, and also is prejudicial to the property owners, because, by restricting the number of workmen, the price of the work is increased.
>
> Such questions are of the gravest possible importance, and, if and when actually presented, would demand most careful consideration; but we are not now called upon to determine them.
>
> In so far as the provisions of the city ordinance may be claimed to affect the rights and privileges of citizens of Louisiana and of the other States, the plaintiff in error is in no position to raise the question. It is not alleged, nor does it appear, that he is one of the laborers excluded by the ordinance from employment, or that he occupies any representative relation to them. Apparently he is one of the preferred class of resident citizens of the city of New Orleans." Chadwick v. Kelley: 187 U.S. 540, at 546 (1903).

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8. "But in no case which has come under our observation, either in the State or Federal courts, has a corporation been considered a citizen within the meaning of

that provision of the Constitution which declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens OF the several States." Paul v. State of Virginia: 75 U.S. 168, 178 (1868).

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9. " . . . In the Constitution and laws of the United States, the word 'citizen' is generally, if not always, used in a political sense to designate who has the rights and privileges of a ***citizen of a State or of the United States***." Baldwin v. Franks: 120 U.S. 678, at 690 (1887).

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"The Constitution forbids the abridging of the privileges of a citizen of the United States, but does not forbid the state from abridging the privileges of its own citizens.

The rights which a person has as a citizen of the United States are those which the Constitution and laws of the United States confer upon a citizen as a citizen of the United States. For instance, a man is a ***citizen of a state*** by virtue of his being resident there; but, if he moves into another state, he becomes at once a citizen there by operation of the Constitution (Section 1, Clause 1 of the Fourteenth Amendment) making him a citizen there; and needs no special naturalization, which, but for the Constitution, he would need.

On the other hand, the rights and privileges which a ***citizen of a state*** has are those which pertain to him as a member of society, and which would be his if his state were not a member of the Union. Over these the states have the usual power belonging to government, subject to the proviso that they shall not deny to any person within the jurisdiction (i.e., to their own citizens, the citizens of other states, or aliens) the equal protection of the laws. These powers extend to all objects, which, in the ordinary course of affairs, concern the lives, liberties, privileges, and properties of people, and of the internal order, improvement, and prosperity of the state. *Federalist, No. 45*" Hopkins v. City of Richmond: 86 S. E. Rep. 139, at 145; 117 Va. 692; Ann. Cas. 1917D, 1114 (1915), citing the entire opinion of *Town of Ashland v. Coleman*, in its opinion (*per curiam*); overruled on other grounds, *Irvine v. City of Clifton Forge*: 97 S. E. Rep. 310, 310; 124 Va. 781 (1918), citing the Supreme Court of the United States case of *Buchanan v. Warley*, 245 U.S. 60; 38 Sup. Ct. 16, 62 L. Ed. 149.

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Town of Ashland v. Coleman:

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". . . It is contended that the 1st section of the Fourteenth Amendment has been violated? That section declares that 'all persons born in the United States are citizens of the United States and the State wherein they reside,' and provides that 'no State shall make or enforce any law which shall abridge the privileges or citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws.' This section, after declaring that all persons born in the United States shall be citizens (1) of the United States and (2) of the State wherein they reside, goes on in the same sentence to provide that no State shall abridge the privileges of citizens of the United States; but does not go on to forbid a State from abridging the privileges of its own citizens. Leaving the matter of abridging the privileges of its own citizens to the discretion of each State, the section proceeds, in regard to the latter, only to provide that no State 'shall deny to any person within its jurisdiction the equal protection of the laws. . . .

The rights which a person has a ***citizen of a State*** are those which pertain to him as a member of society, and which would belong to him if his State were not a member of the American Union. Over these the States have the usual powers belonging to government, and these powers 'extend to all objects, which, in the ordinary course of affairs, concern the lives, liberties, (privileges), and properties of people; and of the internal order, improvement, and prosperity of the State. *Federalist, No. 45.* . . .

On the other hand, the rights which a person has as a citizen of the United States are such as he has by virtue of his State being a member of the American Union under the provisions of our National Constitution. For instance, a man is a ***citizen of a State*** by virtue of his being native and resident there; but, if he emigrates into another State he becomes at once a citizen there by operation of the provision of the Constitution (Section 1, Clause 1 of the Fourteenth Amendment) making him a citizen there; and needs no special naturalization, which, but for the Constitution, he would need to become a citizen." Ex Parte Edmund Kinney: 3 Hughes 9, at 12 thru 14 (1879) [4th cir ct Va.].

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10. "These statutes (Section 1736 and Section 1737, R. S. 1909) were under consideration in the case of *Newlin v. Railroad Co*., 222 Mo. 375, 121 S.W. 125, and the court there held that these statutes were founded upon comity, and opened the doors of our courts to causes of action accruing under the laws of sister states.

Meaning, of course, that the doors were not opened at the discretion of the court, as was formerly the case, but mandatory, in harmony and in keeping with section 2 of article 4 and section 1 of the fourteenth amendment of the Constitution of the United States, which reads as follows:

> '**Section 2, art. 4. Privileges and immunities of citizens of the several states**. The citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states.'
>
> '**Section 1 of the 14th Amendment. Citizenship—Rights of citizens—Due process of law and equal protection of the laws**. 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. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'

By reading these two constitutional provisions together, it will be seen that the latter is much broader, in many particulars, than the former; and this is also true regarding citizenship. By the former nothing was said about citizens of the United States, while the latter in express terms makes all persons born in the United States or naturalized, in pursuance to its authority, citizens not only of the state in which they reside, but also citizens of the United States. The last section also provides that no state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, which of course includes all of the citizens of all of the states, and the Supreme Court of the United States has repeatedly held that the latter clause includes corporations, whenever engaged in interstate commerce, or whenever legally authorized to do business in any such state or states.

That being true, the Supreme Court of the United States, in speaking of the rights of a citizen of Massachusetts to sue in the courts of New York, in the case of *Cole v. Cunningham*, 133 U.S., loc. cit. 113, 114, 10 Sup. Ct. 271, 33 L.Ed. 538, said: 'The intention of section 2 of article 4 was to confer on the citizens of the several states a general citizenship, and to communicate all the privileges and immunities which the citizens of the same state would be entitled to under the like circumstances, and this includes the right to institute actions. The fact of the citizenship of Butler and Hayden did not affect their privilege to sue in New York and have the full use and benefit of the courts of that state in the assertion of their legal rights.' That court has also repeatedly held, under the constitutional provisions before mentioned, that ***any citizen of the United States or of any state thereof may sue in the courts of any other state*****,** wherever a citizen of such state may do so under the laws thereof. That court, in discussing this question in the case of *International Text-Book Company*, 207 U.S. 9(1), loc. cit. 111, 30 Sup. Ct. 481, 487 (24 L.Ed. 678, 24 L.R.A.

[N.S.] 493), used this language: 'This court, held, in *Chambers v. Baltimore & Ohio Railroad Co*., 207 U.S. 142, 148 [28 Sup. Ct., 34, 35 (52 L.Ed. 143)], that a state may, subject to the restrictions of the federal Constitution, "determine the limits of the jurisdiction of its courts, and the character of the controversies which shall be heard in them." But it also said in the same case: "The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the federal Constitution." '

The same question came before this court in the case of *International Text-Book Co. v. Gillespie*, 229 Mo. 397, 129 S.W. 922. There was quoted with approval the foregoing language of the Supreme Court of the United States, and in pursuance thereto held: '(c) That where a foreign corporation has a valid cause against a citizen of this state, it may sue said citizen thereon in the courts of this state, provided a citizen of this state might do the same, notwithstanding the provisions of said section 1025 to the contrary. *Chambers v. Railroad*, 207 U.S. 142, 148 [28 Sup. Ct. 34, 52 L.Ed. 143]; *United Shoe Machinery Co. v. Ramloes*, 210 Mo. 681 [109 S.W. 567].'

The same identical question was decided in the cases of the *United Shoe Machinery Co. v. Ramloes*, 231 Mo. 508, 132 S.W. 1133, and in *Roeder v. Robertson*, 202 Mo. 522, 100 S.W. 1086.

Both the federal courts, and this court in the case cited, and in many more, have uniformly held that, whenever a nonresident or a foreign corporation has a valid cause of action under the laws of this state or under the laws of any other state, he or it may sue thereon in the courts of this state, provided legal service can be had upon the defendant, and provided, further, that a citizen of this state, under its laws, is authorized to sue in our courts on a cause of action similar to the one sued on by said nonresident or foreign corporation; and that, too, despite a statute of the state denying to such corporation such right to sue. Those rulings are based upon the ground that, under the constitutional provisions previously mentioned, all citizens of the United States are entitled to all the privileges and immunities which are granted by the laws of any state to her own citizens, as previously stated; and that any statute of a state which denies such right of such person or corporation to sue in the courts of such state is violative of said constitutional provisions, and are therefore absolutely null and void. That is not only the law as announced by those courts but it was correctly so announced. ***It would be both unjust and intolerable for one state of the Union to possess the power and authority to enact a valid statute closing the doors of its courts to citizens of the United States, or of other states, and deny to them the right or privilege of suing in the courts thereof,***

while the citizens of such state enjoy that right or privilege. To so hold would be not only to nullify the spirit of the provisions of the federal Constitution previously mentioned, but the letter thereof as well.

While, as previously stated, counsel for the petitioner cite some respectable authorities holding that the Legislature and courts of a state possess such power and authority, upon an examination of them it will be seen that they were decided solely upon the principle of comity, and the constitutional provisions mentioned were not considered. Consequently they have no binding effect upon this court.

Having thus seen that the doors of our courts, under the law of comity, the statutes of this state as previously quoted, and the constitutional provisions before mentioned, are ever opened to all citizens of the United States and the citizens of the various states to sue upon any valid transitory cause of action, which might be sued upon in our courts, by a citizen of this state, it only remains for us, in this connection, to ascertain whether or not the cause of action of Mrs. Rawn, the plaintiff in the case against the petitioner, is a valid transitory cause of action, and could a citizen of this state sue in our courts on a similar cause of action." State of Missouri v. Pacific Mutual Life Insurance Company: 143 S.W. 483, at 497 thru 498 (1911).

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