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Privileges and Immunities of Citizens in the Several States

W. J. Meyers

THE PRIVILEGES AND IMMUNITIES OF CITIZENS IN THE SEVERAL STATES

THE Federal Constitution, Art. IV., § 2, cl. 1, declares that "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." Of this clause Alexander Hamilton wrote:[1] "It may be esteemed the basis of the Union"; and more than seventy years after it had gone into effect, Judge Denio said of it, in deciding the great case of *Lemmon* v. *People*,[2] "No provision has tended so strongly to constitute the citizens of the United States one people as this."

It is the purpose of this inquiry to ascertain what are the "privileges and immunities of the citizens" of a state to which, when within it, the citizens of every other state are entitled.

It must be kept constantly in mind that this is not an attempt to ascertain what are "the privileges and immunities of citizens of the United States," which a state is, by the Fourteenth Amendment, forbidden to abridge. Although the expression "privileges and immunities" is the same in both cases, the particular privileges and immunities intended are radically different. In the one case it is the privileges and immunities of citizens in the several states; in the other, the privileges and immunities of citizens of the United States. It is with the former, alone, that it is intended now to deal.

I.

The history of this clause, which will hereinafter be referred to as the "equal privileges clause," may throw some light upon this question. Its first appearance in American constitutional law and history seems to be in the Articles of Confederation:—

"Art. IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this Union, the free inhabitants of each of these states (paupers, vagabonds, and fugitives from justice excepted), shall be entitled to all the privileges and immunities of free citizens in the several states, and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the owner is an inhabitant."[3]

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[1] The Federalist, No. LXXX.

[2] 20 N. Y. 562, 607.

[3] 1 Elliott's Debates, 2d ed., 79. Hereinafter referred to as Ell.

While the construction of this article warrants Madison's characterization of it as being "a confusion of language truly remarkable,"[1] it yet shows sufficiently clearly the purpose "to secure and perpetuate mutual friendship and intercourse among the people of the different states in this Union, ' and this purpose is not negatived, or in any wise abridged in any of the subsequent forms of the provision under consideration. The clause appears in its present form in Pinckney's Draft, submitted to the constitutional convention, May 29, 1787, and retained that form throughout the deliberations of that convention.[2]

In this connection it may be noted that the Ordinance of 1787, enacted by congress on July 13th of that year provided (Art. IV., s. 14) that "in no case shall non-resident proprietors be taxed higher than residents."

II.

But before proceeding to consider more in detail the various rights included in the "privileges and immunities" of a citizen of a state, it may be remarked that the provision under consideration does not entitle a citizen within his own state, to the privileges and immunities that may be enjoyed in other states by the citizens of those states. This construction, while possibly fairly within the language of the provision, is immediately negatived by a consideration of its purpose as disclosed by its history. This contention was raised, however, by the counsel for McKane in the case of *McKane* v. *Durston*,[3] but was summarily disposed of by the court. McKane had been convicted under the laws of New York of a crime other than murder, and was therefor incarcerated in the state prison at Sing Sing. From the judgment ordering his imprisonment in Sing Sing, McKane prayed and was allowed an appeal to the general term of the supreme court of New York, but was retained in the custody of the warden of the prison. Thereupon his counsel presented to the circuit court for the southern district of New York an application for a writ of habeas corpus, alleging that he was deprived of his liberty in violation of the constitution of the United States. The decision of the circuit court being adverse, McKane appealed to the supreme court of the United States, contending that the constitution of the United States secured to him the right to give bail, pending his appeal to the general term of the supreme court of New

[1] The Federalist, No. XLII.

[2] 1 Ell. 145, 149, 221, 223, 229, 272, 304.

[3] (1894) 153 U. S. 684, 38 L. ed., 867.

York, inasmuch as by the "equal privileges clause" it secured to him "all privileges and immunities of citizens in the several states," he being a citizen of the state of New York, and the laws of most of the states in the union providing that a defendant convicted of a criminal charge other than murder has the right, upon the granting of an appeal from the judgment of conviction, to give bail pending such appeal. Of this contention, said the court, speaking through Mr. Justice Harlan:—

"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 the citizens of another state under its constitution and laws. . . . . A citation of authorities upon this point is unnecessary."[1]

But the Missouri supreme court held in *In re Flukes*,[2] that a statute which penalized the sending of any chose in action out of the state for collection by garnishment or attachment, or like proceeding, against the wages of any debtor resident within the state, was repugnant to the "equal privileges clause," since it could not be enforced against non-residents, and the residents of the state should be upon equally good footing. Here the court would seem to have allowed its zeal against a reprehensible statute to overcome its capacity for good logic.

The purpose of the provision is to prevent discrimination between citizens of the state and citizens of other states, adverse to the latter. The case of *Downham* v. *Alexandria*,[3] arose out of a license tax imposed by ordinance on all agents or dealers in beer or ale by the cask, not manufactured in Alexandria, but brought there for sale. Downham contended that this was void as being repugnant to the "equal privileges clause" of the federal constitution. The record did not show whether the beer sold by Downham was manufactured within or without the state of Virginia. The court held Downham's contention worthless, since the ordinance made no distinction between beer manufactured in Virginia and beer manufactured without, and citizens manufacturing beer without the state were on an equal footing with those manufacturing it within the state outside of Alexandria. Said the Court, speaking by Mr. Justice Field:—

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[1] See also Wright *v.* State, (1898), 88 Md. 705, 41 Atl. 795.

[2] (1900) 157 Mo. 125, 57 S. W. 545.

[3] (1870) 77 U. S., 10 Wall., 173, 19 L. ed. 929.

"It is only *equality* of privileges and immunities between citizens of different states that the constitution guarantees."[1]

Had the ordinance been directed against agents selling liquors manufactured outside the state, the decision must have been different. Such was the case in *City of Cullman* v. *Arndt*.[2]

But the clause does not give to the citizens of a state privileges that that state may grant to citizens of other states. In the case of *Commonwealth* v. *Griffin*,[3] a statute of Kentucky prohibited the importation of slaves by its citizens, while it allowed the citizens of other states to bring their slaves into the state. Griffin was a citizen of Kentucky, and violated this statute by importing slaves. Upon his trial he contended that the statute was void, as discriminating between citizens of Kentucky and citizens of other states who might come into Kentucky. The court replied that it was only discrim ination *adverse* to the citizens of other states that was prohibited.

III.

Our question therefore becomes,—As to what rights granted by a state to its individual citizens is it prohibited by the federal constitution from discriminating in favor of its citizens as against the citizens of other states? These rights must be "the privileges and immunities of a citizen" of a state, enjoyed by him by virtue of his citizenship. This inquiry may be somewhat forwarded by first ascertaining some of the rights that such "privileges and immunities" do not include.

Dicta in regard to the limitations to be placed upon the clause under consideration very early appeared. The provision seems first to have been brought before the courts for construction in 1797. In the case of *Campbell* v. *Morris*,[4] certain lands in Maryland, the property of Robert Morris, of Pennsylvania, had been attached under the statutory provision of Maryland, then in force, providing that "If any person, whatsoever, not being a citizen of this state, and not residing therein, shall or may be indebted unto a citizen of this state, or of any other of the United States; or if any citizen of this state, being indebted unto another citizen thereof, shall actually

[1] To the like effect are:—Paul *v.* Virginia (1869), 75 U. S., 8 Wall., 168, 19 L. ed. 357; Woodruff *v.* Parham (1869), 75 U. S. 8 Wall, 123, 19 L. ed. 382; Ward *v.* Maryland (1871), 79 U. S. 12 Wall, 418, 20 L. ed. 449; Detroit *v.* Osborne (1890), 135 U. S. 492, 34 L. ed. 260; Allen *v.* Sarah (1838), 2 Harr. (Del), 434; Rothermel *v.* Meyerle (1890), 136 Pa. St. 250, 9 L. R. A. 366; Wright *v.* State (1899), 88 Md. 705, 41 Atl. 795.

[2] (1900), —— Ala. ——, 28 So. 70.

[3] (1842), 42 Ky., 3 B. Mon., 208.

[4] 3 Harr. & McH., (Md.) 535.

run away, abscond, or fly from justice, or secretly remove him or herself from his or her place of abode, with the intent to evade the payment of his or her just debts, such creditor may, in either case make application," etc., for the issue of a warrant of attachment against the lands of the said debtor. It was contended that this statute discriminated against the citizens of other states, inasmuch as it permitted the issue of the warrant in all cases, if the debtor resided outside of Maryland and were not a citizen of Maryland, while if he were a citizen of Maryland the issue would be permitted only when he "shall actually run away," etc. Judge Chase, in delivering his opinion upon the case at the May term of the general court of Maryland, 1797, said of this contention:—

"The peculiar advantages and exemptions contemplated under this part of the constitution may be ascertained, if not with precision and accuracy, yet satisfactorily. By taking a retrospective view of our situation antecedent to the formation of the first general government, or the confederation, in which the same clause is inserted *verbatim* [here the learned judge must have been speaking from recollection merely], one of the great objects must occur to every person, which was the enabling the citizens of the several states to acquire and hold real property in any of the states, and deemed necessary, as each state was a sovereign independent state, and the states had confederated only for the purpose of general defense and security, and to promote the general welfare.

"It seems agreed, from the manner of expounding or defining the words, immunities and privileges, by the counsel on both sides, that a particular and limited operation is to be given to these words, and not a full and comprehensive one. It is agreed it does not mean the right of election, the right of holding offices, the right of being elected. The court are of opinion it means that the citizens of all the states shall have the peculiar advantage of acquiring and holding real as well as personal property, and that such property shall be protected and secured by the laws of the state, in the same manner as the property of the citizens of the state is protected. It means, such property shall not be liable to any taxes or burdens which the property of the citizens is not subject to. It may also mean that as creditors they shall be on the same footing with the state creditor in the payment of the debts of deceased debtor. It secures and protects personal rights."

Although this is, in this particular case, obiter, it indicated fairly well, the line of division since followed, between "privileges and immunities of citizens" and other privileges and immunities. Roughly, the "privileges and immunities" belonging to a *citizen* by virtue of citizenship are "personal" rights, that is, *private* rights, as distinguished from *public* rights.

The first reported case in which this section of the constitution was brought before a *Federal* court for interpretation was *Corfield* v. *Coryell*.[1] The statute of New Jersey provided that:—

[1] (1825) 4 Wash. C. C. 371.

"It shall not be lawful for any person who is not at the time an actual inhabitant and resident of this state, to rake or gather . . . oysters . . . in any of the rivers, bays, or waters in this state, on board of any . . . vessel not wholly owned by some person, inhabitant of, and actually residing in this state; and every person offending herein shall forfeit . . . the . . . vessel employed in the commission of such offense, with, etc."

Corfield "offended herein," and his vessel was confiscated in accordance with the provisions of the statute. Coryell, acting under authority of the statute seized the vessel, and thereupon was sued in trespass by Corfield, who contended that the statute above quoted was repugnant to the constitution of the United States in that it infringed art. IV., sec. 2, clause 1. Mr. Justice Washington, in passing upon the contention, said:—

"The inquiry is, what are the privileges and immunities of citizens in the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature *fundamental;* which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of *habeas corpus;* to institute and maintain actions of any kind in the courts of the state; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other [?] citizens of the state; may be mentioned as some of the particular privileges and immunities of citizens which are clearly embraced by the general description of privileges deemed to be fundamental: to which may be added the elective franchise, as regulated and established by the laws or constitution of the state in which it is to be exercised. These, and many others which might be mentioned, are, strictly speaking, *privileges and immunities*, and the enjoyment of them by citizens of each state, in every other state, was manifestly calculated (to use the expressions of the preamble of the corresponding provision in the old Articles of Confederation) 'the better to secure and perpetuate mutual friendship and intercourse among the people of the different states of the union.'"

"But we cannot accede to the proposition which was insisted on by the counsel, that, under this provision of the constitution, the citizens of the several states are permitted to participate in *all the rights* which belong exclusively to the citizens of any other particular state, merely upon the ground that they are enjoyed by those citizens; much less, that in regu-

lating the use of the common property of the citizens of such state, the legislature is bound to extend to the citizens of all the other states the same advantages as are secured to their own citizens."

The learned judge proceeded further to declare that the fisheries upon the public lands of the state were such "common property," and that therefore the above-stated contention of the plaintiff must fail. While the above given statement of the rights comprehended by the terms "privileges and immunities" of a citizen is thus *obiter*, it has yet had a very considerable influence upon the subsequent decisions of the courts.

But to leave *dictum* and come to *decision*, the cases show that the "privileges and immunities" of citizens of a state do not include:—

1. *Political rights*, such as—(a) Right of Suffrage. The case of *Minor* v. *Happersett*[1] is most nearly in point here. It arose in Missouri, and was finally decided in the United States Supreme Court, March 29, 1875. The plaintiff, a woman, claimed that the provision of the constitution of Missouri, restricting the right of suffrage to males, denied her one of the rights, privileges and immunities of a citizen of the United States, and was therefore void as in contravention of the Fourteenth Amendment of the constitution of the United States. The question did not therefore directly involve a question of the "privileges and immunities of a citizen" of a state, but the court discussed the question generally, and speaking by Mr. Chief Justice Waite, declared that the word *citizen* is to be "understood as carrying the idea of membership of a nation and nothing more"; "that native women and minors were . . . citizens by birth; that women were not, by their sex, prevented from inheriting and transmitting by inheritance, even in states where aliens were incapable of inheriting and of transmitting by inheritance; that if the right of suffrage attached to citizenship, there would have been no occasion for the Fifteenth Amendment, since the Fourteenth Amendment made "all persons born or naturalized in the United States and subject to the jurisdiction thereof" citizens "of the state wherein they reside", without distinction of race, color or previous condition of servitude, and it would therefore have been beyond the power of a state to deny the right of suffrage upon the ground of "race, color, or previous condition of servitude," if the right of suffrage were incident to citizenship. The court determined that suffrage was not "co-extensive with the citizenship of the states, at the time of the

[1] (1875) 88 U. S. 21 Wall., 162, 22 L. ed. 627.

adoption of the constitution of the United States." At that time, "in no state were all citizens permitted to vote. Each state determined for itself who should have that power." The United States constitution made no change in this regard. "So important a change in the condition of citizenship as it actually existed, if intended, would have been expressly declared." If suffrage were an absolute right of citizenship, there would have been no occasion to impose a penalty upon any state if it should deny "the right to vote at any election for . . . the executive and judicial officers of a state, or the members of the legislature thereof . . . to any of the male inhabitants of such state," as is done by the Fourteenth Amendment, for such denial would be beyond its power. This case seems, therefore, sufficiently to settle that the right of suffrage is not one of the privileges and immunities incident to citizenship in a state.[1]

(b) Right to hold public office.

The privileges and immunities of citizens of the several states do not include within their meaning the right to hold office.[2]

Neither do they include:—

2. *Quasi political rights*—such as the right to practice certain professions, and engage in certain occupations, for which the state requires special fitness, or which it requires to be subject to special policing. Thus (A) there are not included such professions as—

(a) Law.

This question was approached in the case of *Bradwell* v. *Illinois*.[3] Mrs. Bradwell was a citizen of Illinois, possessed of all the qualifications required by the laws of that state as pre-requisites to admission to the bar of the state, except that she was a married woman. Upon her application for such admission it was refused her upon that ground. She went upon writ of error to the United States supreme court, claiming that such refusal denied her one of the rights, privileges and immunities of a citizen of the United States, and attempted also to claim that it infringed the "equal

[1] To the like effect are:—U. S. *v.* Anthony (1873), 11 Blatch., 200; Van Valkenburg *v.* Brown (1872), 43 Calif. 43, 13 Am. Rep. 136; U. S. *v.* Petersburg Judges (1874), 1 Hughes, C. C. 493; People *v.* Barber (1888), 55 N. Y. Sup. Ct. 48 Hun, 198; Frieszleben *v.* Shallcross (1890), 9 Houst. (Del.) 1, 8 L. R. A. 337.

[2] See:—People *v.* Loeffler (1898), 175 Ill. 585, 51 N. E. 785; and *dicta* to same effect in Campbell *v.* Morris (1797), 3 Harris and McH., 535-554; Abbott *v.* Bayley (1827), 6 Pick. (Mass.) 89, 92; Austin *v.* State (1847), 10 Mo, 591, 592.

[3] (1873) 83 U. S. 16 Wall., 130, 21 L. ed. 442.

privileges clause." The court, speaking by Mr. Justice Miller, denied the first contention and dismissed the second, as the record showed her to be a citizen of the state against whose laws she complained. But Mr. Justice Bradley, in a separate opinion, concurring in the decision of the court, took occasion to say:—

"It is the prerogative of the legislator to prescribe regulations founded in nature, reason and experience for the due admission of qualified persons to professions and callings demanding special skill and confidence. This fairly belongs to the police power of the state."

This was concurred in by Mr. Justice Field and Mr. Justice Swayne.[1]

The question was squarely presented to the supreme court of Massachusetts in *Robinson's Case*;[2] decided adversely to the contention. So also in *Lockwood's Case*,[3] and *Lockwood's Case* in the supreme court of the United States, (1876), not reported officially, but discussed in 131 Mass. 376, 41 Am. Rep. 246.[4]

(b) Medicine.

The courts almost uniformly agree that regulation of the practice of the profession of medicine is within the police power of the state governments, and consequently that such practice is not a privilege of citizenship, either of the state or of the United States. In several of the cases below cited, the condition of an extended residence within the state was contended to be repugnant to the provisions of the federal constitution now under consideration. None of these cases contain a very satisfactory discussion of the contention, but they all hold that the provision of extended residence is not unconstitutional. It must be said, however, that this holding seems somewhat arbitrary, unless the courts mean to say that "reside," when used in the state statute means "to remain," while when used in the Fourteenth Amendment, it means "to be domiciled." The cases in which the conformity of the statutory provisions to the constitutional clause under consideration has been questioned and been found to exist, are cited below.[5]

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[1] To the like effect is In re Lockwood, (1894), 154 U. S. 116, 38 L. ed. 929.

[2] (1881), 131 Mass. 376, 41 Am. Rep. 239.

[3] (1873), 9 Ct. of Claims, 346, 356.

[4] See also:—Bradwell's Case, (1869), 55 Ill. 535; Goodell's Case (1875), 39 Wis. 232, 20 Am. Rep. 42; In re, Chas. Taylor (1877), 48 Md. 28, 30 Am. R. 451.

[5] Ex-parte Spinney, (1875), 10 Nev. 323; Harding *v.* People (1887), 10 Colo. 387, 15 Pac. 727; State *v.* Greens (1887), 112 Ind. 462, 14 N. E. 352; People *v.* Phippin (1888), 70 Mich. 6, 37 N. W. 888; Craig *v.* Bd. of Med. Ex. (1892), 12 Mont. 203, 29 Pac. 532; State *v.* Carey (1892), 4 Wash. 424, 30 Pac. 729; State *v.* Randolph (1892), 23 Ore. 74, 31 Pac. 201, 37 Am. St. 655, 17 L. R.

The question of the conformity of a similar statutory provision to the Fourteenth Amendment securing rights of citizens of the United States arose in *Dent* v. *West Virginia.*[1]

(c) Dentistry.

The holdings here are similar to those in regard to medicine.[2]

Nor (B) are there included businesses requiring special police regulations, such as—

(a) Liquor selling.

The question of the power of a state to regulate the occupation of liquor selling, and to deny it to some or all of its citizens arose in the case of *Bartemeyer* v. *Iowa.*[3] At the time this case arose, the state of Iowa had a law strictly prohibiting the sale of intoxicating liquors. Under this law Bartemeyer was convicted of such selling, and he carried the case to the United States supreme court, alleging the state law to be repugnant to the federal constitution, and particularly to the Fourteenth Amendment. Mr. Justice Miller delivered the opinion of the court, and in the course of it he said:—

"The argument on the part of the plaintiff in error has taken a very wide range, and is largely composed of the arguments familiar to all, against the right of the states to regulate traffic in intoxicating liquors. So far as this argument deals with a mere question of regulating this traffic, or even its total prohibition, as it may have been affected by anything in the Federal Constitution prior to the recent amendments of that instrument, we do not propose to enter into a discussion. Up to that time it had been considered as falling within the police regulations of the states, left to their judgment, and subject to no other limitations than such as were imposed by the state constitution, or by the general principles supposed to limit all legislative power. It has never been seriously contended that such laws raised any question growing out of the constitution of the United States."[4]

A. 470; Driscoll *v.* Commonwealth (1892), 93 Ky. 393, 20 S. W. 431; People *v.* Hasbrouck (1895), 11 Utah 291, 39 Pac. 918; State *v.* Currans (1901), 111, Wis. 431, 87 N. W. 561. *Contra*, State *v.* Hinman, (1889), 65 N. H. 103.

[1] (1889), 129 U. S. 114, 9 Sup. Ct. Rep. 231, 32 L. ed. 623.

[2] See Wilkins *v.* State (1887), 113 Ind. 514, 16 N. E. 192; Gosnell *v.* State (1889), 52 Ark. 228; State *v.* Vandersluis (1889), 42 Minn. 129, 43 N. W. 789, 6 L. R. A. 119: State *v.* Creditor (1890), 44 Kan. 565, 24 Pac. 346, 21 Am. St. R. 306.

[3] (1874), 85 U. S. 18 Wall. 129, 21 L. ed. 929.

[4] To like effect are:—Beer Co. *v.* Massachusetts (1878), 97 U. S. 25, 24 L. ed. 989; Mugler *v.* Kansas (1887), 123 U. S. 623, 31 L. ed. 205; Crowley *v.* Christensen (1890), 137 U. S. 86, 34 L. ed. 620; In re Hoover (1887), 30 Fed. Rep. 51; Cantini *v.* Tillman (1893), 54 Fed. Rep. 969; State *v.* Mugler (1883), 29 Kan. 252, 44 Am. R. 634; State *v.* Lindgrove (1895), 1 Kan. Ap. 51, 41 Pac. 688; Ex parte Campbell (1887), 74 Cal. 20, 5 Am. St. R. 418; Trageser *v.* Gray (1890), 73 Md. 250, 9 L. R. A. 780.

The cases from the supreme court, discussed above, did not directly involve the construction of the clause of the United States constitution now under consideration. This clause was, however, directly involved in the case of *Kohn* v. *Melcher*.[1] In this case the plaintiff was a citizen of Illinois, and as such sold to the defendant intoxicating liquors at the town of Atlantic, in Iowa. The Iowa statute forbade every person to sell spirituous liquors within the state of Iowa, unless he had a license allowing him so to do, and it provided that no license should be granted to any one not a citizen of Iowa. Persons selling contrary to the provisions of the statute were denied the right to recover for such sale. Kohn, in this case, sued to recover the price of the liquors sold Melcher contrary to the Iowa statute, and alleged that the statute was void, as discriminating between the citizens of Iowa and those of other states, granting privileges and immunities to the former that it denied to the latter. Upon this point, said Judge Shiras, in delivering the opinion of the circuit court, sitting in the western division of the southern district of Iowa:—

"There is no doubt that the result of the statute is to entirely deprive citizens of other states of the right to sell in Iowa intoxicating liquors to be used for mechanical and other legal purposes. It also practically confines the right to sell to a small part of the citizens of the state. Was it the intent of he legislature, in enacting these provisions of the statute, to grant greater privileges to the citizens of the state than are granted to those of other states, in carrying on the business of buying and selling liquors for legal purposes, or were these provisions enacted as safeguards against violations of the law prohibiting sales of liquors to be used as a beverage?

"The difficulty of preventing evasions of the prohibitory law is well known, and it is apparent that the permission to sell for medical and other legal purposes, unless carefully guarded and restricted, might prove to be a ready means for defeating the object and purpose of the statute. The state has the right to adopt all proper police regulations necessary to prevent evasions or violations of the prohibitory statute, and to that end, and for that purpose, has the right to restrict the sale for legal uses to such places, and by such persons, as it may be deemed safe to entrust with the right to sell. . . . . An impartial examination of the several sections of the statute of Iowa, on the subject of the sale of liquors for legal purposes, shows that the restrictions complained of were adopted, not for the purpose of securing an undue advantage to the citizens of the state, but for the purpose of preventing violations of the prohibitory law of the state, and although, in effect, the citizens of other states, as well as the larger part of the citizens of Iowa, are debarred from selling in Iowa, liquors to be resold for legal purposes, and in that sense commerce between the states may be affected, yet this is but an incidental result; and as the intent and purpose of the restric-

[1] (1887) 29 Fed. Rep. 433.

tions, i. e., preventing violations of the prohibitory law, are within the police power of the state, it cannot be held that the sections of the statute under consideration violate any of the provisions of the federal constitution."[1]

(b) Slaughtering.

In the *Slaughter House Cases*,[2] the power of a state to grant exclusive privileges of erecting, maintaining and controlling slaughter houses was drawn in question. The legislature of the state of Louisiana, with the alleged purpose of protecting the health of the people of New Orleans, passed an act creating a corporation and giving it the exclusive power of establishing and erecting within certain territorial limits, comprehending an area of more than 1100 square miles, and including the entire city of New Orleans, one or more stock yards, stock landings and slaughter houses, and imposing upon it the duty of erecting, on or before June 1, 1869, one grand slaughter house of sufficient capacity to slaughter 500 animals per day. The company, after having prepared all the necessary buildings, yards and other conveniences for the purpose, was to have the sole and exclusive privilege of conducting and carrying on the live-stock landing and slaughter-house business within the territorial limits and privilege granted by the act; and it was further enacted that all animals to be slaughtered should be landed at the stock landings and slaughtered at the slaughter-houses of the company and nowhere else. Penalties were enacted for infractions of this provision, and prices fixed for maximum charges of the company for each steamboat, and each animal landed. Similar provisions were enacted concerning slaughtering. The company was compelled to permit any person to slaughter animals in the slaughter houses.

It was contended that this grant of an exclusive privilege of erecting and maintaining slaughter-houses, and of making a charge for their use, was contrary to the federal constitution, in that it abridged privileges and immunities of citizens of the United States. Incidentally the question of privileges and immunities of citizens of a state came under consideration, and upon this Mr. Justice Miller, in delivering the opinion of the supreme court, said:—

"It is not, and cannot be successfully controverted that it is both the right and duty of the legislative body, the supreme power of the state or municipality, to prescribe and determine the localities where the business of slaugh-

[1] To like effect are:—Austin *v.* State (1847), 10 Mo. 591; People *v.* Walling (1884), 53 Mich. 264, 18 N. W. 807; Mette *v.* McGuckin (1885), 18 Neb. 323, 25 N. W. 338; Welsh *v.* State (1890), 126 Ind. 71, 25 N. E. 883, 9 L. R. A. 664.

[2] (1873), 83 U. S. 16 Wall., 36, 21 L. ed. 394.

tering for a great city may be conducted;" that the butcher may reasonably be required to slaughter at a specified place and to pay a reasonable "compensation for the use of the accommodations furnished him at that place." The power so to require "is a part of the police power, which is and must, from its very nature, be incapable of any very exact definition or limitation."

He further said, in response to the question,—"Can any exclusive privileges be granted to any of its citizens, or to a corporation, by the legislature of a state?"

"It may be safely affirmed that the parliament of Great Britain, representing the people in their legislative functions, and the legislative bodies of this country have, from time immemorial to the present day, continued to grant to persons and corporations exclusive privileges, privileges denied to other citizens, privileges which come within any just definition of the word *monopoly* as much as those now under consideration; and that the power to do this has never been questioned or denied."

(c.) Emigrant agency.

In *Williams* v. *Fears*,[1] the plaintiff contended that the Georgia statute which prescribed a tax upon emigrant agents, defined to be "persons engaged in hiring laborers in Georgia to be employed beyond the limits of the state," was void, as being repugnant to the "equal privileges clause," no such tax being levied upon persons engaged in hiring laborers to be employed within the limits of the state. The court disposed of this contention by remarking that in this "there was no discrimination between the citizens of other states and the citizens of Georgia." But from the discussion of the case it may be inferred that had it existed, such discrimination would not have invalidated the statute, the regulation being within the police power of the state. A like regulation had previously been held in Alabama[2] to be repugnant to this clause.

Neither do they include:—

3. *The right to enjoy public property held in common for the benefit of the people of the state*, except so far as such enjoyment is necessary to the enjoyment of the right of migration.

The earliest case relating to such enjoyment is that of *Corfield* v. *Coryell*, already discussed. The first case in the supreme court in which this particular question arose was *McCready* v. *Virginia*,.[3] The statute of Virginia forbade the planting of oysters in any of the waters of that state, by any person not resident therein. McCready offended herein, and was indicted and convicted in the county

[1] (1900), 179 U. S. 270, 45 L. ed. 186, 21 S. Ct. 128, aff. s. c. 110 Ga. 584, 35 S. E. 699.

[2] Joseph *v.* Randolph (1882), 71 Ala. 499, 46 Am. Rep. 347.

[3] (1877), 94 U. S. 391, 24 L. ed. 248.

court of Gloucester county, Virginia. He carried the case to the court of appeals of Virginia, contending that the act under which he was convicted was obnoxious to the "equal privileges clause" of the United States constitution. That court sustained the act,[1] whereupon McCready carried the case upon this contention to the United States supreme court, which court, speaking by Mr. Justice Waite, said:—

"The states own the tide waters themselves, and the fish in them, so far as they are capable of ownership while running. For this purpose the state represents its people, and the ownership is that of the people in their united sovereignty. The title thus held is subject to the paramount right of navigation, the regulation of which, in respect to foreign and interstate commerce, has been granted to the United States. There has been, however, no such grant of power over the fisheries. These remain under the exclusive control of the state, which has, consequently, the right, in its discretion, to appropriate its tide waters and their beds to be used by its people as a common for taking and cultivating fish, so far as it may be done without obstructing navigation. Such an appropriation is, in effect, nothing more than a regulation of the use by the people of their common property. The right which the people of the state thus acquire comes not from their citizenship alone, but from their citizenship and property combined. It is, in fact, a property right, and not a mere privilege or immunity of citizenship.

"We think we may safely hold that the citizens of one state are not invested by this clause of the constitution with any interest in the common property of the citizens of another state. If Virginia had by law provided for the sale of its once vast public domain, and a division of the proceeds among its own people, no one, we venture to say, would contend that the citizens of other states had a constitutional right to the enjoyment of this privilege of Virginia citizenship. Neither if, instead of selling, the state had appropriated the same property to be used as a common by its people for the purposes of agriculture, could the citizens of other states avail themselves of such a privilege. And the reason is obvious; the right thus granted is not a privilege or immunity of general, but of special citizenship. It does not 'belong of right to the citizens of all free governments', but only to the citizens of Virginia, on account of the peculiar circumstances in which they are placed. They, and they alone, owned the property to be sold or used, and they alone had the power to dispose of it as they saw fit. They owned it, not by virtue of citizenship, merely, but of citizenship and domicile united; that is to say, by virtue of a citizenship confined to that particular locality.

"The planting of oysters in the soil covered by water owned in common by the people of the state is not different in principle from that of planting corn upon dry land held in the same way. Both are for the purposes of cultivation and profit; and if the state, in the regulation of its public domain, can grant to its own citizens the exclusive use of dry lands, we can see no reason why it may not do the same thing in respect to such as are covered by water. And as all concede that a state may grant to one of its citizens the exclusive

[1] McCready *v.* Commonwealth (1876), 27 Grattan, 985.

use of a part of the common property, the conclusion would seem to follow, that it might by appropriate legislation, confine the use of the whole to its own people alone."[1]

Nor do they include:—

4. *The right of one citizen to attend the same school as that which another citizen is entitled to attend*, even though the scholastic attainments of the two citizens be equal.

Two cases, *Ward* v. *Flood*,[2] and *Cory* v. *Carter*,[3] were brought to test the right of a state to require negro children to attend separate schools. Both sustained that right. The Fourteenth Amendment was considered in both cases, and also the "equal privileges clause" in the Indiana case, but the discussion of these is practically worthless.

Nor do they include:—

5. *The right to any precise form of process for the protection of substantive rights.* It is sufficient that protection be afforded: and in the *forms* of process provided for such purpose, the state may discriminate between residents and non-residents, so long as the substantive rights of both are protected.

The first case bearing upon this proposition is *Campbell* v. *Morris*.[4] Morris was a citizen of Pennsylvania, and certain of his lands in Maryland had been attached under a statutory provision providing for the attachment of the lands of a debtor in all cases where he was not a resident citizen of Maryland, and if he were a resident citizen, then only when he "shall actually run away, abscond, or fly from justice, or secretly remove himself or herself from his or her place of abode, with the intent to evade the payment of his or her just debts," etc. Morris contended that this denied to him some of the privileges and immunities of citizens of Maryland, inasmuch as their lands were exempt from attachment, except in cases of fraud or abscondence. The court, speaking by Judge Chase, dismissed this contention with very slight respect, saying:—

"It would be a strange complaint for a citizen of Pennsylvania to make, that he was not allowed the same immunities and privileges with a citizen of

[1] To like effect are:—Corfield *v.* Coryell (1825), 4 Wash. C. C. 371; Bennett *v.* Boggs (1830), Baldwin, C. C. 60; In re Eberle (1899), 98 Fed. 295; Dunham *v.* Lamphere (1855), 1 Gray, 268; State *v.* Medbury (1855), 3 R. I. 138; Haney *v.* Compton (1873), 36 N. J. L. 7 Vroom 507; Chambers *v.* Church, (1884), 14 R. I. 398, 51 Am. R. 410; People *v.* Loundes (1892), 130 N. Y. 455, 29 N. E. 751; State *v.* Tower (1892), 84 Me. 444, 24 Atl. 898; Commonwealth *v.* Hilton (1899), 174 Mass. 29, 54 N. E. 362; State *v.* Corson (1901), 65 N. J. L. 502, 50 Atl. 780.

[2] (1874), 48 Cal. 36. [3] (1874), 48 Ind. 327. [4] (1797), 3 Harris & McH., (Md.) 535.

Maryland, which he is informed he may enjoy by conforming to the laws of the state, in appearing and giving bail to the suit commenced against him."

A somewhat similar point arose in *Redd* v. *St. Francis County*.[1] Here the statute required:—

"That all lands belonging to non-residents shall be valued by three householders of the election township within which the lands are situate, to be appointed by the sheriff, and such valuation, provided it is not less than three dollars per acre, shall govern the sheriff in assessing the same," while it is provided that resident property-holders should value their property under oath, etc.

Redd was a non-resident owner of lands in St. Francis county, and sought to have an assessment against him set aside upon the ground that the statute above-mentioned contravened the "equal privileges clause" of the United States constitution. The court, speaking by Mr. Justice Hanly, said:—

"The difference in the two modes devised in the case of residents and non-residents does not, in our judgment, amount to a discrimination in favor of our own citizens, both being alike fair. It is the fact of discrimination in favor our citizens, or the imposition of burdens upon the citizens of other states from which our own citizens are made exempt, which must be the true test to determine the constitutionality of an act, such as we are at present considering. We find no such discrimination in the act in question."

Another somewhat similar case, although not precisely in point, is *Iowa Central Railway Company* v. *Iowa*.[2] Here the plaintiff in error had had its rights determined by a summary process of which it had due notice. It contended that it was entitled to other process, and went to the United States supreme court, claiming that the Iowa court had denied it "protection by due process of law," contrary to the Fourteenth Amendment. The federal court ruled against the plaintiff in error, saying:—

"The Fourteenth Amendment in no way undertakes to control the power of a state to determine by what process legal rights may be asserted, or legal obligations may be enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided. This being the case, it was obviously not a right, privilege or immunity of a citizen of the United States to have a controversy in the state court prosecuted or determined by one form of action instead of by another."[3]

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[1] (1856), 17 Ark., 416.

[2] (1896), 160 U. S. 389, 40 L. ed. 467.

[3] To the same effect as Campbell *v.* Morris, above, are:—Haney *v.* Marshall (1856), 9 Md. 194; Nease *v.* Capehart (1879), 15 W. Va. 299; Marsh *v.* Steele (1879), 9 Neb. 96, 1 N. W. 869, 31 Am. R. 406; Olmstead *v.* Rivers (1879), 9 Neb. 234, 2 N. W. 366; Pyrolusite Co. *v.* Ward

Nor do they include:—

6. *The right to be exempt from paying taxes upon personal property actually situate within the state*, although taxes may have been assessed and paid upon it in another state, under the laws of that state.

This was determined in the case of *Duer* v. *Small*.[1] Duerwas, and for several years had been, a resident and citizen of New Jersey. During all this time he was engaged in the business of banking in the city of New York. Small was receiver of taxes in and for the city and county of New York. The statute of New York provided that all non-residents of the state of New York, doing business therein, should be assessed and taxed on all sums invested in such business, the same as if they were residents of the state. Duer was assessed under this statute, and refused to pay the tax. He alleged in his bill that the statute of the state of New York was in violation of the constitution of the United States, and prayed for an injunction restraining the defendant, and others who might claim authority to act in the premises, from taking any steps for the collection of the said taxes. Judge Ingersoll, after laying down some wholesome doctrine upon the subject of taxation in general, went on to say:—

"If a non-resident does not wish to pay for such security and protection [as is afforded by the state government] he can withdraw his personal property from the state, and thus free himself from such payment. There is no law which compels him to put his property under the protection of the laws of a state of which he is not a citizen or resident. But while he asks and demands protection from the laws, there is no good reason why he should not pay for it—no good reason why he should demand that the property of the resident should pay for it.

"And there is no higher law of the United States which gives a non-resident a right to demand that the property of the resident citizen should pay for the protection afforded by the laws to the property of the non-resident citizen. The equal [ity of] 'privileges and immunities' secured to the citizens of each state,' in the several states, does not demand such a requirement as this."[2]

Neither do they include:—

7. *Rights incident to a status.*

(1884), 73 Ga. 491; Head *v.* Daniels (1887), 38 Kan. 1, 15 Pac. 911; Cummings *v.* Wingo (1889), 31 S. Car. 427, 10 S. E. 107; Holt *v.* Ry. Co. (1895), 81 Md. 219, 31 Atl. 809; Cribbs *v.* Benedict (1897), 64 Ark. 555, 44 S. W. 707; Kilmer *v.* Groome (1897), 19 Pa. Co. Ct. R. 339. *Contra*:— Black *v.* Seal (1883), 6 Houston, (Del.) 541; Caldwell *v.* Armour (1899), 1 Penn. (Del.) 545, 43 Atl. 517.

[1] (1859), 4 Blatchford, 263.

[2] To like effect is Kelley *v.* Rhoads (1898), 9 Wyo. 352, 51 Pac. 593, 39 L. R. A. 594.

In *Bennett* v. *Harms*,[1] Mrs. Bennett had separated from her husband (with whom she had been living in Wisconsin), and had taken up her abode in California, and was there residing at the time of his death. During her absence from Wisconsin her husband had sold and conveyed the farm upon which they had lived in Wisconsin, and in which she had an inchoate dower interest. Shortly thereafter he removed to Illinois and became a resident thereof. Mrs. Bennett had not joined in the deed, nor had she done any act by which to bar herself of her dower. The statute of Wisconsin, which went into effect three days before the death of Mrs. Bennett's husband, provided that "a woman, being an alien, shall not on that account be barred of her dower, but any woman residing out of this state shall be entitled to dower only of lands of her husband, being in this state, of which he died seized." Mrs. Bennett, in the present action, sued to recover dower in the land conveyed by her husband after their separation, and claimed that the distinction between women resident and those non-resident at the time of death of their husbands, contravenes the "equal privileges clause" of the United States constitution. This contention the court refused to allow, declaring that "while the right of dower remains inchoate—a mere expectancy—and until it becomes consummated by the husband's death, it is under the absolute control of the state legislature," etc. This is conformable to the general doctrine that the status of its citizens, and of each and every one of them, is within the control of the state, and not necessarily subject to general laws. If a state may arbitrarily modify the status of one of its citizens, as, e. g., by divorce, it would seem that such status is not an incident of citizenship.[2]

Nor do they include:—

8. *The right to enjoy in that state, by virtue of contracts made without it, presumptions attached by the law of that state to contracts entered into within it.*

This was determined in the case of *Conner* v. *Elliott*,[3] where the facts were stated as follows:—

"Plaintiff in error, though a native-born citizen of Louisiana, was married in the state of Mississippi, while under age, with the consent of her guardian, to a citizen of the latter state, and their domicile during the duration of their marriage was in Mississippi. But while it continued, the husband acquired a

[1] (1881), 51 Wis. 251, 8 N. W. 222.

[2] To like effect is Buffington *v.* Grosvenor (1891), 46 Kan. 730, 27 Pac. 137, 13 L. R. A. 282.

[3] (1856), 18 Howard (U. S.) 591, 15 L. ed. 497.

plantation and other real property in Louisiana. If the marriage had been contracted in Louisiana, the code of that state, then in force, would have superinduced the rights of community. And at the time when the property in question was purchased by the husband, in 1841, the code of 1825, then in force, contained the following articles:—

"Art. 2369. Every marriage contracted in this state superinduces, of right, partnership or community of acquets or gains, if there be no stipulation to the contrary.

"Art. 2370. A marriage contracted out of this state, between persons who afterwards come here to live, is also subjected to the community of *acquets* with respect to such property as is acquired after their arrival."

It was to enforce her claim to such community right in the property in question that Mrs. Conner sued, claiming to be entitled to it under the "equal privileges clause."

Said the court, speaking by Mr. Justice Curtis:—

"It is insisted that as these articles [2369 and 2370, above] gave, to what is termed in the argument a Louisiana widow, the right of marital community, the laws of the state could not constitutionally deny, as it is admitted they did in fact deny, the same rights to all widows, citizens of the United States, though not married in Louisiana, or residing there during the marriage, and while the property in question was acquired.

"In other words, that, as the laws of Louisiana provide that a contract of marriage made in that state, or the residence of persons there in the relation created by marriage, shall give rise to certain rights on the part of each in property acquired within that state, by force of the article of the constitution above recited [Art. IV., Sect. 2, Cl. 1], all citizens of the United States, wherever married and residing, obtain the same rights in property acquired in that state during the marriage . . . According to the express words and clear meaning of this clause, no privileges are secured by it except those which belong to citizenship. Rights, attached by the law to contracts, by reason of the place where such contracts are made or executed, wholly irrespective of the citizenship of the parties to those contracts, cannot be deemed 'privileges of a citizen' within the meaning of the constitution.

"Of that character are the rights now in question. They are incidents, ingrafted by the law of the state on the contract of marriage. And, in obedience to that principle of universal jurisprudence, which requires a contract to be governed by the law of the place where it is made and to be performed, the law of Louisiana undertakes to control these incidents of a contract of marriage made within the state by persons domiciled there; but leaves such contracts made elsewhere to be governed by the laws of the places where they may be entered into. In this there is no departure from any sound principle, and there can be no just cause of complaint.

"The laws of Louisiana affix certain incidents to a contract of marriage, there made, or there partly or wholly executed, not because those who enter into such contracts are citizens of the state, but because they there make or perform the contract. And they refuse to affix these incidents to such contracts, made and executed elsewhere, not because the married persons are not citizens of

Louisiana, but because their contract being made and performed under the laws of some other state or country, it is deemed proper not to interfere, by Louisiana laws, with the relation of married persons out of that state. Whether persons contracting marriage in Louisiana are citizens of that or of some other state, or aliens, the law equally applies to their contract; and so, whether persons married and domiciled elsewhere, be or be not citizens or aliens, the law fails to regulate their rights. The law does not discriminate between citizens of the state and other persons; it discriminates between contracts only. Such discrimination has no connection with the clause in the constitution now in question . . . . The rights asserted in this case, before the supreme court of Louisiana, are not privileges of citizenship."

Nor do they include:—

9. *The right to enjoy within the state a relation, either of status or of property, prohibited by the laws of the state to its own citizens, but enjoyed by the claimant thereof in his own state.*

The contrary of this, absurd as it may seem, was very seriously contended in the great case of *Lemmon* v. *People*.[1] Lemmon had, in November, 1852, brought into the state of New York, in transit from Virginia to Texas, eight slaves. The statutes of New York, then in force, provided that "Every person brought into this state as a slave . . . shall be free." A writ of *habeas corpus* was issued against Lemmon, and the case was litigated through the superior and supreme courts of the state, and finally determined in the court of appeals. Owing to the tension of public sentiment at that time upon the subject of slavery, the ablest of counsel were employed, Mr. Charles O'Conor appearing for Lemmon, and Mr. William M. Evarts for the people. The court, speaking by Judge Denio, concerning the question under consideration, said:—

"In my opinion the meaning is that in a given state, every citizen of every other state shall have the same privileges and immunities—that is, the same rights—which the citizens of that state possess. In the first place, they are not to be subjected to any of the disabilities of alienage. They can hold property by the same titles by which every other citizen may hold it, and by no other. Again, any discriminating legislation which should place them in a worse situation than a proper citizen of the particular state would be unlawful. . . . . Where the laws of the several states differ, a citizen of one state asserting rights in another, must claim them according to the laws of the last-mentioned state, not according to those which obtain in his own. The position that a citizen carries with him into every state into which he may go, the legal institutions of the one in which he was born, can not be supported."[2]

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[1] (1860), 20 N. Y. 562.

[2] To like effect are:—Paul *v.* Virginia, (1868), 75 U. S. 8 Wall., 168, 19 L. ed. 357; Ex parte Edmund Kinney (1879), 3 Hughes C. C. 9; Miller *v.* Miller (1879), 18 Hun, 507.

Nor do they include:—

10. *The right to import into or to enforce within a state, any right or other valuable thing acquired outside that state in contravention of the public policy thereof.*

Substantially this point was determined in the case of *Sweeney* v. *Hunter*.[1] The statute of Pennsylvania provided that if any resident creditor should, for the purpose of evading the exemption law of that state, assign to any person without the state, or send out of the state in any manner whatever, a claim for debt against a resident, he should be liable in an action of debt to the person or persons from which such claim should have been collected, for the full amount of debt, interest, and costs so collected, and should not be entitled to the benefit of the exemption laws of the state. Sweeney owed Hunter a certain sum, and Hunter, in violation of the above-stated statute, assigned the claim to one Smith, of Wheeling, W. Va., who garnisheed the Baltimore & Ohio Ry. Co., Sweeney's employer, and recovered judgment against the said garnishee in the sum of $43, which judgment was, by said garnishee, duly satisfied. Sweeney brought suit under the statute to recover from Hunter the amount collected by Hunter's assignee, Smith. Hunter claimed that the statute contravened the "equal privileges clause" of the federal constitution. Said the court, speaking by Mr. Justice Sterrett:—

"It is difficult to understand why an act, such as that in question, grounded on considerations of public policy and intended to protect laborers in the use and enjoyment of their earnings, by forbidding violations or evasions of an exemption law by our own citizens, can be regarded as obnoxious to the provisions of the constitution, either state or federal. If the defendant, Hunter, for the purpose of evading the exemption law of his own state, had gone in person into a West Virginia court, and there, in his own name, commenced proceedings by attachment, for the purpose of thus enforcing payment of his claim (which he could not have done here), the plaintiff . . . . would have had a remedy in equity to restrain him from prosecuting such attachment against the wages of the [West Virginia] defendant in the hands of his employers. That remedy would have been in the courts of this state by injunction against the attaching creditor, not by an order directed to the West Virginia court. This principle appears to be recognized in *Cole* v. *Cunningham*, 133 U. S. 107, 10 Sup. Ct. 269, 33 L. ed. 538, where the subject is fully and ably discussed by the present chief justice of the supreme court of the United States. . . . . If a state court has the power to thus restrain its citizens and prevent the evasion or nullification of its laws, what is there to prevent the legislature, which can enlarge or limit such jurisdiction, from enacting laws the effect of which will be similar to that of the pro-

[1] (1891), 145 Pa. 363, 22 Atl., 653, 14 L. R. A. 594, 29 Wkl'y Notes Cas. 133.

ceedings by injunction? It is the province of the legislature to provide a remedy for any and every existing evil; and it is certainly competent for it to say what that remedy shall be, whether by injunction, or by the imposition of a fine, or penalty, or both concurrently. . . . We are unable to see wherein it [the act under consideration] can be obnoxious to the constitutional provision that 'The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.' "[1]

Nor do they include:—

11. *The right to the services of common carriers without discrimination as to the territorial origin of the commodities shipped.*

This was decided in the case of *Shipper* v. *Pennsylvania R. R. Co.*[2] This case is a peculiar one. The state of Pennsylvania had imposed a tonnage freight tax, which on account of the federal government's exclusive control of interstate commerce, had fallen exclusively on domestic freight. The railroads of course, so far as possible, added it into the freight tariff and collected it from the shipper. The tax caused much dissatisfaction, and finally the legislature of the state passed a so-called commutation act, by which the tax was removed, and the railroads were required to deduct from their charges for the transportation of domestic freight the full amount of the tonnage duty theretofore chargeable upon such freight. This left local freight rates somewhat lower in proportion than through rates. As the statute required the reduction in tariff to be made only upon domestic freight, through rates were unaffected by the act. The defendant established a rule that on freight from points outside the state reaching its lines within the state, a charge should be made proportional to the charge between the initial and terminal points of transportation. Thus it came about that the railroad charged upon flour transported from Pittsburg to Philadelphia thirty-six cents per hundred pounds, while on flour shipped from Wheeling, W. Va. to Philadelphia via Pittsburg, the proportional part of the charge for the distance from Pittsburg to Philadelphia was fifty-nine cents per hundred pounds. The plaintiffs owned flour mills at Wheeling and shipped their flour by boat to Pittsburg and then demanded of the defendant that it carry the flour from Pittsburg to Philadelphia at the rate it had established for freight originating in Pittsburg, and among other things

[1] Substantially to the same effect are Green *v.* Van Buskirk (1869), 74 U. S. 7 Wall., 139, 19 L. ed. 109; Cole *v.* Cunningham (1890). 133 U. S. 107, 10 Sup. Ct. 269, 33 L. ed. 538; Reynolds *v.* Geary (1857), 26 Conn. 179; but In re Flukes (1900), 157 Mo. 125, 57 S. W. 545, is contra.

[2] (1864), 47 Pa. St., 338.

claimed that the discrimination allowed by the so-called commutation act between freight originating within the state and that originating outside was repugnant to the "equal privileges clause" of the federal constitution. The court held that there was no discrimination between the citizens of Pennsylvania and those of other states; that citizens of Pennsylvania were compelled to pay through freight rates upon freight originating outside the state exactly as were the citizens of other states, and that citizens of other states were given the benefit of local rates upon freight originating within the state exactly as were its own citizens.

Nor, finally, do they include:—

12. *The right to commit crime against the state subject to the penalties therefor prescribed.*

The contrary of this, strange to say, was contended in *Allan* v. *Wyckoff*,[1]. The statute of New Jersey enacted certain regulations concerning the hunting and taking of game and fish within the state, made their violation a crime, and prescribed greater penalties against non-residents coming into the state and violating them than it did against residents violating them. It was contended that this discrimination was repugnant to the United States constitution, article IV. section 2. The court did not discuss the contention but merely declared that the discrimination was not based upon citizenship. It was clearly right to hold the contention bad, whatever may be thought of the reason offered to support the holding.

W. J. MEYERS

ANN ARBOR

(To be continued)

[1] (1886), 48 N. J. L., 29 Vroom, 90.