

## Statement of Facts.

denial of the equal protection of the laws to grant to one man, or set of men, the privilege of following an ordinary calling in a large community, and to deny it to all others, it is difficult to understand what would come within the constitutional prohibition.

Monopolies are the bane of our body politic at the present day. In the eager pursuit of gain they are sought in every direction. They exhibit themselves in corners in the stock market and produce market, and in many other ways. If by legislative enactment they can be carried into the common avocations and callings of life, so as to cut off the right of the citizen to choose his avocation, the right to earn his bread by the trade which he has learned; and if there is no constitutional means of putting a check to such enormity, I can only say that it is time the Constitution was still further amended. In my judgment, the present Constitution is amply sufficient for the protection of the people if it is fairly interpreted and faithfully enforced.

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## EX PARTE: HITZ, Petitioner.

## ORIGINAL.

Argued March 4th, 5th, 1884.—Decided May 5th, 1884.

*Certiorari—Diplomatic privilege.*

A writ of certiorari when applied for by a defendant is not a writ of right but discretionary with the court.

On an application by a person indicted for an offence committed while president of a national bank against the provisions of § 5209 for certiorari to bring up the indictment on the ground that when the alleged offence was committed he was a political agent of a foreign government, the application was refused when it appeared that his own government had requested his resignation prior to the finding of the indictment, although it was not actually given till subsequent thereto, and that the political department of the Government of the United States had refused him the privilege of free entry of goods usually accorded to a diplomatic representative.

This was an application by Mr. John Hitz for a writ of certiorari commanding the Supreme Court of the District of Co-

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lumbia to certify to this court an indictment and the proceedings thereunder against him in that court, on the ground that when the indictment was filed, and when the offences therein charged where committed, he was the diplomatic representative of the Swiss Confederation, duly accredited to and received and recognized by the United States, under the title of Political Agent. The indictment was filed on the 17th of June, 1881.

From the return which was made to the rule to show cause it appeared that the indictment was for an offence against the provisions of § 5209 of the Revised Statutes alleged to have been committed by Mr. Hitz while and as president of the German-American National Bank of Washington. It also appeared that he was for many years the Consul General of the Swiss Confederation within the United States, and that on the 28th of February, 1868, he was accredited to the United States by the same government as Political Agent. On the 30th of May, 1881, he was requested by the Swiss Confederation to resign both these offices, and this he did on the 15th of June. On the 20th of June his resignations were accepted.

*Mr. O. D. Barrett and Mr. Benjamin F. Butler* for petitioner.

*Mr. R. Ross Perry and Mr. A. S. Worthington* opposing.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court. He stated the facts in the foregoing language and continued :

Precisely what the relations of Mr. Hitz to the United States were as Political Agent of the Swiss Confederation we have not been advised, and on application to the Department of State, made on the suggestion of the court by the counsel in this proceeding, we are informed that the records of the department show nothing upon this subject except a letter from him under date of March 30th, 1868, enclosing his letter of credence, and soliciting an interview with the Secretary of State for its formal presentation; the answer of Secretary Seward according such an interview, and fixing the 2d of April as the time; and a letter from Secretary Fish to Mr. Hitz, under date of June 28th, 1870, informing him that he

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(the Secretary) did not find in his relations to the United States any ground for continuing the privilege to him of a free entry of goods imported for his use.

Under these circumstances, as the writ of certiorari, when applied for by a defendant, is not a writ of right, but discretionary with the court (Bac. Ab. Certiorari A), we deny this application, leaving the parties to such remedies as they may be entitled to elsewhere, or under any other form of proceeding.

*Petition dismissed.*

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CITY AND COUNTY OF SAN FRANCISCO & Another  
*v.* SCOTT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Submitted January 18th, 1884.—Decided May 5th, 1884.

*Jurisdiction.*

The decision of the State Courts of California upon the question whether an alcalde in San Francisco after the conquest and before the incorporation of San Francisco, and before the adoption of a State Constitution by California, could make a valid grant of pueblo lands presents no federal question, and is not reviewable here.

The facts are stated by the court in its opinion.

*Mr. William Craig, Mr. Harry I. Thornton, and Mr. J. H. Meredith* for plaintiffs in error.

*Mr. Sidney V. Smith Jr.* for defendant in error.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court. There is no federal question in this case. The right of San Francisco under the treaty of Guadalupe Hidalgo to the lands in dispute as pueblo lands is not denied. Precisely what that right was may not be easy to state. Mr. Justice Field, speaking for the court, said, in *Townsend v. Greely*, 5 Wall. 386, "It was not an indefeasible estate; ownership of the lands in the pueblos could not in strictness be affirmed. It amounted in