

*CHRISTIAN BREITHAUP and HENRY SHULTZ, Defendants below, v.
The BANK OF THE STATE OF GEORGIA and others.

Jurisdiction.

The complainants were stated in the bill, to be citizens of the state of South Carolina; the defendant, the Bank of Georgia, as a body corporate, existing under an act of the legislature; but the citizenship of the individual corporators was not stated; the averment, in the original bill, was that William B. Bullock and Samuel Hale were citizens of Georgia, and residents therein; William B. Bullock was afterwards designated in the bill, as "president of the mother bank, and Samuel Hale, as the president of the branch bank at Augusta, in the state of Georgia." The courts of the United States have no jurisdiction of the case; the record does not show that the defendants were citizens of Georgia, nor are there any distinct allegations, that the stockholders of the bank are citizens of that state.¹

THIS was a bill, filed in the Circuit Court for the District of Georgia, and the case came up, on a certificate of division of opinion, which the judges ordered to be entered upon these points: 1st. Whether the complainants are entitled to relief? 2d. What relief should be decreed to them?

The only question presented for the decision of this court was, whether the circuit court had jurisdiction of the cause. It was alleged, there was no sufficient averment on the record, of the citizenship of the parties. The complainants, Henry Shultz and Christian Breithaupt, were stated to be citizens of the state of South Carolina; the defendant, the bank of the State of Georgia, as a body corporate; but the citizenship of the individual corporators was not stated. The averment, in the original bill, was, that "William B. Bullock and Samuel Hale were citizens of Georgia, residents therein." William B. Bullock was subsequently designated, as "president of the mother bank, and Samuel Hale, as president of the branch bank, at Augusta, in the state of Georgia." There were three amendments to the bill, but there were, in none of them, any further averments. The answer denied the jurisdiction. The defendant's counsel insisted, that the citizenship of the individual corporators should have been alleged; and that the want of jurisdiction was apparent upon the face of the record.

McDuffie, in support of the jurisdiction of the court, contended, that the objection to the jurisdiction was founded on a misapprehension of the decisions of this court. None of those decisions go further than to say, that if, on the face of *the record, it appears that there are parties, [*239 who are not citizens of another state, the courts of the United States will not accept jurisdiction. In the bill, the complainants are said to be citizens of South Carolina; and William B. Bullock, the president of the mother bank, and Samuel Hale, the president of the branch bank, are citizens of the state of Georgia; and there is no ground for the allegation, that other persons, not citizens of the state, are interested. The party who claims the jurisdiction, is not bound to prove that no other persons, but citizens of Georgia, are interested.

The bank exists under an act of incorporation, passed by the state of Georgia, and this court will look at the act; which having a general operation, may be considered as a public act. 1 Bl. Com. 85. If this is done by the court, they cannot say, others than citizens of Georgia, are members of

¹ See Sewing Machine Companies' Case, 28 Wall. 563, 575.

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the corporation. Cases cited, in which the question of jurisdiction has been examined : *Bingham v. Cabot*, 3 Dall. 382 ; 5 Cranch 57 ; 3 *Ibid.* 267 ; 3 Wheat. 591.

The policy of the constitution, in relation to jurisdiction, is to include suits against corporations, although all who are interested are not citizens of the same state. The influence of such corporations, in the state where they exist, makes this appeal to other than state tribunals, expedient. When an action is instituted against trustees, by citizens of another state, would the jurisdiction of the courts of the United States be taken away, by showing that some of those who had a fiduciary interest, were not citizens of the same state with the trustees ? The question must be settled, by adverting to the local usages of Georgia ; and there suits are brought against the individuals who represent the bank.

Berrien and *Wilde*, for the defendant.—The pleadings show that there is no allegation of citizenship in the stockholders of the bank, the owners of its funds ; and the point is fully settled, that all the parties who are sued shall be averred to be citizens of another state, from that of the plaintiff or complainant in the suit. A body corporate, as such, is incapable of citizenship, according to the true meaning of the law giving jurisdiction. This court has decided, that they will go behind the act of incorporation, and ascertain the character of the individual corporators, and if they find them citizens of another state, the suit may be maintained ; but there must be an averment of such citizenship, as to every stockholder. 5 Cranch 57 ; 6 Wheat. 146.

The possession of the fund cannot give the court jurisdiction, as that *240] was the possession of a corporation. No jurisdiction can be obtained, because of the difficulties in suits against the corporation of one state, by citizens of another ; and it is denied, that any such difficulties exist in Georgia.

BY THE COURT.—This is not a case within the jurisdiction of the courts of the United States. The record does not show, that the defendants were citizens of Georgia, nor are there any distinct allegations or averments, that the same was the fact, as to the stockholders in the bank.

THIS cause came on, &c.: On consideration whereof, this court is of opinion, that as the bill does not aver that the corporators of the Bank of the State of Georgia, which bank is defendant in the suit, are citizens of the state of Georgia, the circuit court has no jurisdiction of the cause, and can grant no relief. It is, therefore, ordered to be certified to the circuit court, as the opinion of this court, that, in the present state of the pleadings, it not appearing that the defendants are citizens of the state of Georgia, the complainants are not entitled to relief in that court.