

Bingham v. Cabot.

not affect the right ; in all the states, in some form or other, a remedy is furnished for the fair claims of individuals against the respective governments. The amendment is paramount to all the laws of the Union ; and if any part of the judicial act is in opposition to it, that part must be expunged. There can be no amendment of the constitution, indeed, which may *382] *not, in some respect, be called *ex post facto*; but the moment it is adopted, the power that it gives, or takes away, begins to operate, or ceases to exist.

THE COURT, on the day succeeding the argument, delivered a unanimous opinion, that the amendment being constitutionally adopted, there could not be exercised any jurisdiction, in any case, past or future, in which a state was sued by the citizens of another state, or by citizens or subjects of any foreign state.

BINGHAM, Plaintiff in error, *v. Cabot et al.*

Jurisdiction.

The process and pleadings must set forth the citizenship of the parties, in order to confer jurisdiction on the circuit court.¹

THIS action came again before the court, (a) on a writ of error ; and an objection was taken to the record, that it was not stated, and did not appear in any part of the process and pleadings, that the plaintiffs below, and the defendant, were citizens of different states, so as to give jurisdiction to the federal court. The caption of the suit was—"At the circuit court begun and held at Boston, within and for the Massachusetts district, on Thursday, the first day of June, A. D. 1797, by the honorable Oliver Ellsworth, Esq., Chief Justice, and John Lowell, Esq., district judge—John Cabot *et al. v. William Bingham*:" And the declaration (which was for money had and received to the plaintiff's use) set forth, "that John Cabot, of Beverly, in the district of Massachusetts, merchant, and surviving copartner of Andrew Cabot, late of the same place, merchant, deceased, Moses Brown, Israel Thorndike and Joseph Lee, all of the same place, merchants, Jonathan Jackson, Esq., of Newburyport, Samuel Cabot, of Boston, merchant, George Cabot, of Brooklyn, Esq., Joshua Ward, of Salem, merchant, and Stephen Cleveland, of the same place, merchant, all in our said district of Massachusetts, and Francis Cabot, of Boston *aforesaid, now resident at Philadelphia aforesaid, merchant, in plea of the case, for the said William, at said Boston, on the day of the purchase of this writ, being indebted to the plaintiffs, &c., promised to pay, &c." The defendant pleaded *non assumpsit*, and an issue being thereupon joined and tried, there was a verdict and judgment for the plaintiff, for \$27,224.93 and costs.

Lee, Attorney-General, contended, for the plaintiff in error, that there was not a sufficient allegation on the record, of the citizenship of the parties, to sustain the jurisdiction of the circuit court, which is a limited jurisdiction. Though the constitution declares, that "the citizens of each state shall be

(a) See *ante*, p. 19.

¹ See note to *Emory v. Grenough*, *ante*, p. 369.

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entitled to all privileges and immunities of citizens of the several states," Art. iv., § 2, it contemplates, in the judicial article, the distinction between citizens of different states. A citizen of one state may reside for a term of years in another state, of which he is not a citizen; for citizenship is clearly not co-extensive with inhabitancy. In the present case, neither the plaintiffs, generally, nor any individual of them, nor the defendant, will be found expressly designated as aliens, or as citizens of any other place or state, than that in which the suit was brought. Besides, there is not an entirety of parties, even as to the plaintiffs, and they are not all stated as belonging to the same state. Wherever there is a limited jurisdiction, the facts that bring the suit within the jurisdiction must appear on the record. 9 Mod. 95.

Dexter (of Massachusetts) urged, on the other hand, that sufficient appeared to show, that, by legal intendment, the cause was within the jurisdiction of the court; that though it is difficult to establish a general rule, as to what makes citizenship, yet that the citizenship of a particular state may be changed by a citizen of the United States, without going through the forms and solemnities required in the case of an alien; that, on the principle of the constitution, a citizen of the United States is to be considered more particularly as a citizen of that state in which he has his house and family, is a permanent inhabitant, and is in short, domiciliated; that stating in the declaration, the party to be of a particular place, designates his home, and, of course, his citizenship; and that the description of Francis Cabot (of Boston aforesaid, now resident in Philadelphia, &c.), proves what was intended, by stating the places of abode of the several parties. 2 Danv. Cont. p. 20; 5 Com. Dig. 289; 2 Str. 786, 290; 1 Ld. Raym. 405; 2 Ibid. 1403.

THE COURT were clearly of opinion, that it was necessary to set forth the citizenship (or alienage, where a foreigner was concerned) of the respective parties, in order to bring the **case* within the jurisdiction of the *[*384]* circuit court; and that the record, in the present case, was in that respect defective.

This cause and many others, in the same predicament, were, accordingly, stricken off the docket.

JONES, indorsee, v. LE TOMBE.

Consuls.

A foreign consul is not personally liable on a bill of exchange, drawn on the public treasury of his government, in his official capacity.

Capias in case. This was an action brought, originally, in the supreme court, by John Coffin Jones, a citizen of Massachusetts, as indorsee of James Swan, against the defendant, the consul-general of the French republic, as drawer of a number of protested bills of exchange (for the aggregate amount of 385,964 livres turnois, 3 sols, 8 den., equal to \$70,052.46), corresponding with the following form :