

Statement of the case.

We have no hesitation in saying that the United States, under the circumstances, had the right to make the treaty that was made, without consulting plaintiffs, or incurring any liability to them. The act of Congress which appropriated the money, only followed the treaty in securing its payment to the individual Indians, without deduction for agents. And both the act and the treaty are inconsistent with the payment of any part of the sum thus appropriated to plaintiffs.

The judgment of the Court of Claims, rejecting the demand, is therefore

AFFIRMED.

COWLES v. MERCER COUNTY.

1. A municipal corporation created by one State within its own limits may be sued in the courts of the United States by the citizens of another State.
2. The statutes of a State limiting the jurisdiction of suits against counties to Circuit Courts held within such counties can have no application to courts of the National government.

ERROR to the Circuit Court for the Northern District of Illinois, the case being thus:

A statute of Illinois enacts by one section that, "Each county established in the State shall be a body politic and corporate, by the name and style of 'The County of —'; and by that name may sue and be sued, plead and be impleaded, defend and be defended against, in any court of record, either in law or equity, or other place where justice shall be administered;" and by another, that "All actions, local or transitory, against any county, may be commenced and prosecuted to final judgment and execution in the *Circuit Court of the county against which the action is brought.*"*

And the Supreme Court of Illinois has decided that a county can neither sue or be sued at common law, independent of legislative provisions, and have construed the

* Revised Laws, 1845, §§ 1, 18.

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foregoing sections of the statute to exclude the right to sue any county elsewhere than in the Circuit Court of the county sued.*

In this condition of the State law, Cowles, a citizen of New York, brought suit in the *Circuit Court of the United States* for the Northern District of Illinois, against the supervisors of Mercer County, Illinois (a board authorized to contract for the county), upon certain bonds issued by them on behalf of the county. The defendant, relying on the statute and the interpretation of it by the highest court of the State, moved to dismiss the case for want of jurisdiction. The motion was overruled, and various other defences, already frequently settled in this court as untenable, having been also disallowed, judgment was given for the plaintiff below. The case was now brought here on error by the county.

Mr. Goudy, for the County, plaintiff in error :

So far as the laws of the State of Illinois can control this question, Cowles could not sue in the Federal court. Is there any provision of the Federal Constitution or laws superior to the State rule?

By the Constitution, the judicial power extends to controversies between *citizens* of different States. The right to bring a suit against a corporation has been sustained only upon the theory that the different natural persons who were members of the corporate body were in fact or conclusively presumed to be citizens of the State creating the corporation. And all the cases in which the question of jurisdiction was decided by this court were in regard to private corporations, where there was no limitation to the right to sue and be sued. The question as to whether a municipal or *quasi* corporation can be sued in a Federal court has never been decided by this court.

Admit that where a number of the citizens of a State are incorporated, and no limitations of the liability to sue are

* *Schuyler Co. v. Mercer Co.*, 4 Gilman, 20; *Rock Island Co. v. Steele*, 31 Illinois, 544; *Randolph Co. v. Ralls*, 18 Id. 30.

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made in the charter, the intent is presumable to impress upon the artificial body the same liability that the natural members were under, yet the State has never parted with its power to create and establish a corporate body with such powers and liabilities as it chooses to give. A corporation is the creature of the law-making power, and has such elements, attributes, powers, rights, and liabilities, as the legislature chooses to give. It may be made with the characteristics of a natural person, or it may be made with the least conceivable elements of such a character. Its distinguishing element is perpetuity, but it may consist of one or many natural persons; it may have no right to hold real or personal property; it may be destitute of the right to contract, or to sue or be sued. Is it not competent for the legislative authority to say that a corporation may be created with power to contract which can only be enforced in a court of general jurisdiction holden where it exercises its power? Such a provision is in the nature of a privilege, like that in England where certain classes can only be sued in specified counties, and similar instances in this country. Does the mere creation of a corporation necessarily carry with it the right to make an agreement, and does that subject it to a liability to suit in all courts beyond the power of the legislature to restrain?

It is true that the members of a corporation would be liable to be sued on a cause of action against them as natural persons accrued to the citizen of another State in a Federal court. But a contract of a corporation with limited powers is not the obligation of the individual members; it is the agreement of the artificial person alone.

These observations apply with great force to municipal corporations. For the purpose of better carrying on the local government, the people of the county are made a corporate body, but not with irrevocable powers or vested rights. It is at all times subject to such changes or repeal as the legislative power chooses to make.

It was thought wise to adopt the 11th Amendment to the Constitution of the United States prohibiting all suits *against*

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a State; the same idea doubtless influenced the legislature of Illinois in providing that a body of the people of the State organized solely for local government should only be sued in the principal court of their own county. This doctrine does not impose any hardship on any person. The same statute which made a county a corporation, declared that it could only be sued in the Circuit Court within its own limits.

The CHIEF JUSTICE delivered the opinion of the court.

The record presents but one question which has not been heretofore fully considered and repeatedly adjudicated. That question is, whether the board of supervisors of Mercer County can be sued in the Circuit Court of the United States by citizens of other States than Illinois. It presents but little difficulty.

The board of supervisors is a corporation created by acts of the legislature of Illinois.

It has never been doubted that a corporation, all the members of which reside in the State creating it, is liable to suit upon its contracts by the citizens of other States; but it was for many years much controverted whether an allegation in a declaration that a corporation defendant was incorporated by a State other than that of the plaintiff, and established within its limits, was a sufficient averment of jurisdiction. And in all the cases, prior to 1844, it was held necessary to aver the requisite citizenship of the corporators. Then the whole question underwent a thorough re-examination in the case of *The Louisville, Cincinnati, and Charleston Railroad Company v. Letson* ;* and it was held that a corporation created by the laws of a State, and having its place of business within that State, must, for the purposes of suit, be regarded as a citizen within the meaning of the Constitution giving jurisdiction founded upon citizenship. This decision has been since reaffirmed, and must now be taken as the settled construction of the Constitution.

In the case before us the corporators are all citizens of

* 2 Howard, 497.

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Illinois, and the corporation is liable to suit within the narrowest construction of the Constitution.

But it was argued that counties in Illinois, by the law of their organization, were exempted from suit elsewhere than in the Circuit Courts of the county. And this seems to be the construction given to the statutes concerning counties by the Supreme Court of Illinois. But that court has never decided that a county in Illinois is exempted from liability to suit in National courts. It is unnecessary, therefore, to consider what would be the effect of such a decision. It is enough for this case that we find the board of supervisors to be a corporation authorized to contract for the county. The power to contract with citizens of other States implies liability to suit by citizens of other States, and no statute limitation of suability can defeat a jurisdiction given by the Constitution. We cannot doubt the constitutional right of the defendant in error to bring suit in the Circuit Court of the United States upon the obligations of the County of Mercer against the plaintiff in error. And we find no error in the judgment of that court. It must, therefore, be

AFFIRMED.

NICHOLS *v.* UNITED STATES.

1. Under the act of Congress of February 26, 1845, relative to the recovery of duties paid under protest, a written protest, signed by the party, with a statement of the definite grounds of objection to the duties demanded and paid, is a condition precedent to a right to sue in any court for their recovery.
2. Cases arising under the Revenue Laws, are not within the jurisdiction of the Court of Claims.

APPEAL from the Court of Claims.

An act of Congress of February 26, 1845,* construing a former act relative to duties paid under protest, says:

"Nor shall any action be maintained against any collector, to

* 5 Stat. at Large, 727.