statute was raised, either by the record or the argument. Being satisfied, in that case, that the tax was illegal, and that the mandamus ought to have been granted, we felt bound to reverse the judgment of the State court; and nothing in the present opinion is intended to call that decision in question.

The writ of error in this case must be

DISMISSED.

INSURANCE COMPANY v. FRANCIS.

An averment in a declaration that the defendant is a corporation created by an act of the legislature of the State of New York, located in Aberdeen, Mississippi, and doing business there under the laws of the State, is not an averment that the defendant is a citizen of Mississippi.

THIS cause came up by writ of error to the District Court of the United States for the Southern District of Mississippi.

It came into the said District Court in this wise:

One Francis had brought suit in the Circuit Court of Monroe County, Mississippi, November Term, 1866, against "The Germania Fire Insurance Company of the City of New York," upon a policy of insurance. The company appeared to the suit, and demurred to the declaration. The plaintiff, at August Term, 1867, petitioned for the removal of the cause "to the Circuit Court of the United States, held in or at Oxford, in the Northern District" of Mississippi, averring that the petitioner, the plaintiff, is a citizen of Illinois, and "*that said defendant is a corporation with agents and officers in said State of Mississippi here residing and transacting the business of insurance for which said company was incorporated.*" And thereupon the judge of the Circuit Court of Monroe County ordered "that the case be removed from that court to the District Court of the United States for the Northern District of Mississippi, as prayed for."

This removal was made in pursuance of a statute of March

2, 1867,* which authorizes a transfer from a State court to a Federal court of suits in any State court "in which there is a controversy between *a citizen of the State in which the suit is brought and a citizen of another State*," if the plaintiff "will make and file in such State court an affidavit, stating that he has reason to and does believe that from prejudice or local influence, he will not be able to obtain justice in such State court."

The defendant, then in the District Court, moved to strike the case from the docket for want of jurisdiction.

The motion was overruled, with leave to the plaintiff to file a new declaration in the District Court.

At June Term, 1868, of said District Court, the plaintiff filed a declaration against the defendant as "*The Germania Fire Insurance Company, a corporation located in the City of Aberdeen and State of Mississippi, by its agent, H. D. Spratt, summoned, &c.*"

The defendant then pleaded to the jurisdiction of the District Court, because at the time the suit was brought, and at the time it was removed, the plaintiff was a citizen of the State of Illinois, and the defendant was a corporation created by the laws of New York, having its domicile and principal place of business in New York.

The plaintiff demurred, whereupon it was "ordered by the court that the demurrer of said plaintiff be extended to the declaration, and as to said declaration and the averments as to the said citizenship of said defendant that said demurrer be sustained and the plaintiff have leave to amend the declaration."

Whereupon the plaintiff amended and declared against the defendant as "The Germania Fire Insurance Company, a corporation created by an act of the legislature of the State of New York, located in the city of Aberdeen and State of Mississippi, by its agent H. D. Spratt, and doing business in said city of Aberdeen and State of Mississippi, in the district aforesaid, under and by virtue of the laws of the State of Mississippi, summoned, &c."

* 14 Stat. at Large, 558.

Argument against the jurisdiction.

To this the defendant filed four pleas to the jurisdiction, among them one because the plaintiff was a citizen of Illinois, and the defendant a citizen of New York.

The plaintiff demurred. The demurrer to the plea just mentioned was sustained, and the defendant excepted. The demurrer was not sustained as to one of the other pleas, and the defendant filed pleas to the merits, and the case was tried, and the plaintiff got verdict and judgment. The statutes of Mississippi, it appeared, authorized the location of foreign insurance companies in the State, upon certain conditions specified in it, one of which was that they would engage in writing to be suable there.*

Messrs. Carlisle and McPherson, for the plaintiff in error:

The question is here raised, whether the Federal court acquired jurisdiction by the transfer ordered and made, as hereinbefore stated.

The act of Congress under which the cause was removed from the State to the Federal court authorizes the transfer only when one party is a citizen of the State in which the suit is brought, and the other party is a citizen of a different State.

In the case at bar neither in the declaration nor elsewhere was it made to appear that either party was a citizen of Mississippi. On the contrary, the declaration filed in the District Court averred in express terms that the plaintiff was a citizen of Illinois, and also averred in legal effect that the defendant was a citizen of New York, by averring it was a corporation created by an act of the legislature of New York.†

The averment that the defendant was doing business in Mississippi, under the laws of that State, can have no effect upon the jurisdiction of the Federal courts, which under the Constitution and statutes of the United States depends solely on citizenship.

* See Revised Statutes of Mississippi, Chapter on Insurance.

† Ohio and Mississippi Railroad Co. *v.* Wheeler, 1 Black, 286; Louisville Railroad Co. *v.* Letson, 2 Howard, 497.

Argument in support of the jurisdiction below.

Mr. T. A. Hendricks, with a brief of Messrs. R. N. Bishop and D. W. Voorhees, contra:

The jurisdictional facts in this case are contained in the averments in the petition and declaration. These averments are substantially the same, and present the question whether a corporation with agents and officers residing, located, and doing business in a State under and by virtue of its laws, and suable there, is a citizen of that State, under the act of March 2d, 1867?

Neither of the cases cited on the other side establish a test or criterion for the *locality* of the citizenship of a corporation, nor do they describe a similar state of facts to those existing in this case. In this case the insurance company was "created by the State of New York, and has its principal place of business there." But, in point of fact, it was so created not to exist in New York alone—not, in the words used in Letson's case, "to perform its functions under the authority of that State," but expressly "to perform its functions" in other States, and under their authority, wherever it could get permission. This latter purpose is quite consistent with the former in the case of an insurance company, and at this day the purpose of most insurance companies is to do business in other States. Three of the very latest insurance cases before this court show this,* and the court will judicially notice the fact.

In pursuance of its charter, this company had gone into Mississippi as follows:

(*a*) In the words of the petition, and not denied by the plea, it was "a corporation with agents and officers in said State of Mississippi, here residing and transacting the business of insurance, *for which said company was incorporated.*" This, as disclosed by the record, and as inferable from the nature of an insurance company, was no temporary or incomplete residence. It had there just the same residence for the same length of time and the same character of resi-

* Paul *v.* Virginia, 8 Wallace, 168; Ducat *v.* Chicago, 10 Id. 410; Liverpool Insurance Co. *v.* Massachusetts, Ib. 566.

dence, "by its officers and agents," that it had in New York. Lord Coke says:

"Every corporation and body politic residing in any country siding, city, or town, corporate or having lands or tenements in any shire, *qua propriis manibus et sumptibus possident et habent*, are said to be inhabitants within the purview of the statute."

This corporation had, therefore, the quality of RESIDENCE in Mississippi.

(*b*) It had removed and assumed an existence there "under and by virtue of the laws of Mississippi." That a corporation can have no legal existence beyond the limits of the State incorporating it has been repeatedly decided, and is true if there is no further action on the part of other States. But when a corporation created by one State for the express purpose of transacting its business in such other States as will admit it, by the express statutory permission and authority of another State, sends its officers and agents into such State, or appoints citizens and residents of that State its officers and agents, accepts the laws and conditions annexed by that State to its admission—one of which is that it shall be suable there, and to which it in writing expressly consents, which is what the statutes of Mississippi exact, and which we may assume is what was done by this company—then it would seem both in fact and in law to exist in that State and to be a citizen there for the purpose of suing and being sued, which is the only quality or attribute of citizenship a corporation has ever been held to possess. It has, therefore, the capacity of being sued in that State.

(*c*) It had, of course, assented to the conditions in the statutes of Mississippi, and in return it was authorized and empowered by Mississippi to do business there. Its power "to perform its functions" in the State of Mississippi—to exist there—are, therefore, derived from that State, and it has to that extent at least its INCORPORATION (by which is meant its grant of power) from the State of Mississippi and has that quality of citizenship there.

The act of March 2d, 1867, under which the suit was

removed is a remedial statute and should be liberally construed. It was not intended as a jurisdictional statute; it merely provides for a change of venue on account of "prejudice or local influence." Viewed in this light, the word citizen may be construed as used in the same sense as "resident," "inhabitant," or "person," all of which words have repeatedly been held to include corporations. This view does not violate the constitutional provision which gives jurisdiction "between citizens of different States;" for, under the argument of the plaintiff in error itself, the plaintiff and defendant are citizens of different States.

But in respect to all the pleas to the jurisdiction no question remains, the defendant having filed the general issue and other pleas to the merits, and having gone to trial upon them. In *De Sobry* v. *Nicholson*,* this court held that, "the objection to jurisdiction upon the ground of citizenship, in actions at law can only be made by a plea in abatement. After the general issue it is too late. It cannot be raised at the trial upon the merits," and that the general issue waives the plea in abatement.

Mr. Justice DAVIS delivered the opinion of the court.

The act of Congress of March 2, 1867, which allows a plaintiff, under certain circumstances, to remove his cause from the State to the Federal court, authorizes the transfer only when one party is a citizen of the State in which the suit is brought and the other party is a citizen of a different State. In this case, while it appears on the face of the declaration that the plaintiff is a citizen of Illinois, it does not appear that the defendant is a citizen of Mississippi. This being so, it is not necessary to notice the subsequent pleadings, because if the court can see, on the case made by the plaintiff in his declaration, that the District Court acquired no jurisdiction over it, it is bound to reverse the judgment and direct the District Court to remand the cause to the State court in which it was instituted.†

* 3 Wallace, 420.

† Pollard & Pickett v. Dwight et al., 4 Cranch, 429.

If the declaration had averred the citizenship of the parties to be as the law requires it, the jurisdiction of the District Court would have attached, and we would be required to look further into the record in order to ascertain whether the defendant had raised the question of jurisdiction in season to avail itself of the objection in this court.*

The declaration avers that the plaintiff in error (the defendant in the court below) is a corporation created by an act of the legislature of the State of New York, located in Aberdeen, Mississippi, and doing business there under the laws of the State. This, in legal effect, is an averment that the defendant was a citizen of New York, because a corporation can have no legal existence outside of the sovereignty by which it was created.† Its place of residence is there, and can be nowhere else. Unlike a natural person, it cannot change its domicile at will, and, although it may be permitted to transact business where its charter does not operate, it cannot on that account acquire a residence there.

As, therefore, the declaration is, on its face, bad in not showing that one of the parties to the suit was a citizen of Mississippi, it follows that the transfer of the cause was not authorized by law, and that the District Court had no jurisdiction to try it.

JUDGMENT OF THE DISTRICT COURT REVERSED, and the cause remanded to that court with instructions to transmit it to the Circuit Court of Monroe County for further proceedings

IN CONFORMITY TO LAW AND JUSTICE.

* De Sobry *v.* Nicholson, 3 Wallace, 423.

† Ohio and Mississippi Railroad Co. *v.* Wheeler, 1 Black, 286; Louisville Railroad Co. *v.* Letson, 2 Howard, 497.