

Hope Insurance Co. v. Boardman.

with the laws of Virginia on this subject: for a thing may be *debitum in praesenti*, and yet no cause of action exist against him; he may lie under a present obligation to pay a sum of money, upon some contingency or future event. And with regard to his liability to be sued, when the note becomes due, it may be very correctly affirmed, that it is not due from him, until the insolvency of the maker can be shown. As to the maker, the note is due, when it is made payable; but the principles of the Virginia law add a contingency to the liability of the indorser, so that, in fact, his undertaking is collateral and contingent, and the amount is not legally due from him, until after the day of payment, and provided the maker should prove insolvent.

HOPE INSURANCE COMPANY OF PROVIDENCE *v.* BOARDMAN *et al.*

Citizenship of corporation.

A corporation aggregate cannot be a citizen; and can only litigate in the courts of the United States, in consequence of the character of the individuals who compose the body politic; which character must appear, by proper averments, upon the record.¹

ERROR to the Circuit Court for the district of Rhode Island, in an action upon a policy of insurance. The only question decided in this court was that relative to the jurisdiction of the courts of the United States.

The parties were described in the declaration as follows: "William Henderson Boardman and Pascal Paoli Pope, both of Boston, in the district of Massachusetts, merchants and citizens of the state of Massachusetts, complain of the Hope Insurance Company of Providence, a company legally incorporated by the legislature of the state of Rhode Island and Providence ^{*58]} Plantations, and established at Providence in said district." *The question of jurisdiction was not made in the court below.

Ingersoll, for the plaintiffs in error, contended, that the jurisdiction must appear upon the face of the proceedings, according to the decision in the case of *Bingham v. Cabot*, 3 Dall. 382. And that it does not appear upon this record, that the parties are citizens of different states; a corporation aggregate cannot be a citizen of any state; and here is no averment of citizenship of the individuals who compose the corporation.

Adams, contrâ.—The whole argument against us depends upon the single case of *Bingham v. Cabot*; for although in other cases the same point has been decided, yet the subsequent decisions are all founded upon that case. The effect of that decision has been, to exclude many cases upon nice questions of pleading, which would otherwise have been clearly within the jurisdiction of the courts of the United States. No exception was taken to the jurisdiction, in the court below; and this court would not willingly turn us out of court, after encountering all the risk, expense, delay and labor of

¹ This and its cognate cases have been since in part overruled. It is now held, that a corporation is to be deemed a citizen of the state, by whose laws it was created, for the purposes of federal jurisdiction. *Louisville, Cincinnati and Charleston Railroad Co. v. Letson*, 2 How. 427; *Marshall v. Baltimore and Ohio Railroad*

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16 Id. 314; *Ohio and Mississippi Railroad Co. v. Wheeler*, 1 Black 286; *Paul v. Virginia*, 8 Wall. 177; *Chicago and Northwestern Railway Co. v. Whitton's Administrator*, 13 Id. 270. And no averment to the contrary is admissible, to defeat the jurisdiction. *Ohio and Mississippi Railroad Co. v. Wheeler*, *ut supra*.

Hope Insurance Co. v. Boardman.

a jury trial, upon an exception, which, if taken in the first instance, might have prevented all that risk, expense and delay. In the case of *Abercrombie v. Dupuis* (1 Cr. 343), the present Chief Justice (MARSHALL) intimated a doubt how the question would then have been decided, if it were a new case, and if the court was not bound by the case of *Bingham v. Cabot*. This doubt shows that the court was not then inclined to extend the principle further than that case warrants. At the time the court decided the case of *Bingham v. Cabot*, the jurisdiction of the courts of the United States was an object of jealousy, and there was, probably, a desire on the part of the court, to remove all ground of suspicion, by deciding doubtful cases against the jurisdiction. This circumstance probably induced them to be over scrupulous upon that *subject. But it is as much the duty of this court to exercise jurisdiction, in cases where it is given by the constitution and laws of the United States, as to refuse to assume it where it is not given. [*59]

The person who drew the declaration in the present case seems to have been aware of the decision in the case of *Bingham v. Cabot*, and to have intended to describe the parties in such a manner as to give the court jurisdiction. The defendant is described as "a company legally incorporated by the legislature of the state of Rhode Island and Providence Plantations, and established at Providence in the said district."

The term citizen could not with propriety be applied to a corporation aggregate. It could only be a citizen, by intendment of law. It is only a moral person; but it may be a citizen *quoad hoc*, *i. e.*, in the sense in which the term citizen is used in that part of the constitution which speaks of the jurisdiction of the judicial power of the United States. The term is indeterminate in its signification. It has different meanings in different parts of the constitution. When it says "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states," the term citizens has a meaning different from that in which it is used in describing the jurisdiction of the courts.

To say that all the individual members of a body corporate must be citizens of a certain description, destroys the idea of a body politic. It is the body politic, the moral person, that sues; and not the individuals who compose the corporation. Its powers, its duties and capacities are different from those of the individuals of whom it is composed. It can neither derive benefit from the privileges, nor suffer injuries by the incapacities, of any of those individuals. Thus, the infancy of any or even of all the members of a body corporate does not affect the validity of its acts. Nor does the alienage of the members *prevent the body politic from holding lands. [*60] A majority of the members of the Bank of the United States are aliens.

The objection goes to exclude all corporations aggregate from the federal courts. For if a corporation cannot be a citizen, it cannot be an alien. And as the individual members are constantly changing, by the transfer of stock, it is impossible to ascertain, at any precise moment, who are the individuals who constitute the corporate body; and it would at any time be in the power of a corporation defendant, to evade the jurisdiction of the court, by taking in a new member, who should be of the same state with the plaintiff.

At all events, it is an objection which ought to be pleaded in abatement,

Hope Insurance Co. v. Boardman.

according to the course of the common law, so that the plaintiff may have a better declaration ; and by that means, much expense, time and labor would be saved.

The reason of giving jurisdiction to the courts of the United States in cases between citizens of different states, applies with the greatest force to the case of a powerful moneyed corporation, erected within and under the laws of a particular state. If there was a probability that an individual citizen of a state could influence the state courts in his favor, how much stronger is the probability that they could be influenced in favor of a powerful moneyed institution, which might be composed of the most influential characters in the state. What chance for justice could a plaintiff have against such a powerful association, in the courts of a small state, whose judges, perhaps, were annually elected, or held their offices at the will of the legislature ?

If the jurisdiction of the federal courts is limited by the letter of the constitution, they have no jurisdiction in a case between a citizen of one state and a citizen of another state ; because the constitution speaks of citizens, in the plural, so that there must *be more than one plaintiff, and more than one defendant. So also, there could be no jurisdiction if one of the parties was a woman, because a woman cannot be a citizen ; which is a term applicable only to a male.

It is not necessary that a person should be a citizen to commit treason : it may be committed by an alien.

Judge JAY, as an argument in favor of the suability of the states, urged, that a corporation could, undoubtedly, be sued in the courts of the United States. (a)

THE COURT having, in the case of *The Bank of the United States v. Deveaux* (post, p. 61), decided, that the right of a corporation to litigate in the courts of the United States depended upon the character (as to citizenship) of the members which compose the body corporate, and that a body corporate, as such, cannot be a citizen, within the meaning of the constitution, reversed the judgment, for want of jurisdiction in the court below.

Judgment reversed.

(a) A similar question of jurisdiction being involved in the case of *The Bank of the United States v. Deveaux*, and the counsel in that case expressing a wish to be heard, before this case should be decided, the court agreed to hear both cases at the same time ; the further arguments in this case were consequently blended with those in the other.