WASHINGTON CITY.

THURSDAY MORNING, JUNE 4, 1857.

OFFICIAL.

APPOINTMENTS BY THE PRESIDENT.

Joseph Williams, of Iowa, associate justice of the supreme court of Kansas, in the place of Thomas Cunningham, resigned.

Calvin F. Burns, United States attorney for the eastern district of Missouri, vice Thomas C. Reynolds, resigned.

THE DRED SCOTT DECISION.

For more than a week past we have devoted all our available space to the publication of the opinions of the Supreme Court in the Dred Scott case. And, in compliance with what we have heretofore promised, we shall now proceed to make such comments upon it as our own reasonings, reflections, and judgment have impressed upon us in regard to this truly important subject. This review is not a mere *résumé* of the opinions and reasonings of the supreme judges; but, in many respects, we have followed our own reading and construction of the constitution and the laws, and in applying them to the state of facts, as found in the case under consideration, we have come to the following conclusions.

We shall examine this decision with strict reference to those immutable principles of law which are as deep-rooted, and as distinctly and broadly recognised throughout the civilized world, as those of Christianity, uninfluenced by our wishes, or sympathies, or considerations of a partisan character. Without expressing opinion upon the propriety or policy of slavery as it has existed from the early history of the Jews, when Joseph's brethren sold him into Egyptian bondage, and more recently throughout Africa, Europe, and most of Asia, and now prevails over more than half of the habitable world, we shall consider the facts as they are known, and search for and apply the law as it exists, and give our views of the principles upon which the decision rests.

In much of the Old World slavery has been confined to the white race. In some portions of it, and in Spanish America, it has included the negro, and in much of the latter the Indian; while in the United States it has been limited to the African race. It undeniably had a legal existence in the American colonies before the revolution, and lawfully continues in a portion of the States, with several clear recognitions in the national constitution, as well as in numerous laws of Congress and of different States and in the decisions of courts.

This case involves the law regulating the relative rights and duties of master and slave under the circumstances stated in the record. Scott was a slave in Missouri; was taken by his owner, an officer in the army, to the military post on Rock Island; remained there two years; went to Fort Snelling, in the Territory of Wisconsin, a part of the Louisiana purchase, where he was married to a slave woman; and then returned to Missouri, where they and their children remained in servitude fourteen years, when he sued for freedom in the State court, in which the final decision was against him. He then, before the perfection of final judgment, instituted a suit for the same purpose in the United States circuit court.

The framers of our national constitution distributed its powers in three divisions, the executive, legislative, and judicial, conferring upon the latter very limited jurisdiction. By the judiciary act the circuit courts were invested with jurisdiction in cases "between a citizen of the State where the suit is brought and a citizen of another State." To show that the circuit court had jurisdiction, Scott alleged that he was a citizen of Missouri, and the defendant of another State. The defendant plead that the plaintiff was the descendant of Africans, who had been slaves in this country; to this plea the latter demurred, and it was adjudged bad, and the former pleaded over, and the cause was then, on the agreed facts above stated, decided against the plaintiff upon the merits, and judgment given against him for costs; and thereupon he brought a writ of error to the Supreme Court, where it was held—

1st. That facts stated in the overruled plea showed that the plaintiff was not a citizen, and, consequently, that the circuit court had no jurisdiction.

2d. That not having jurisdiction under the pleadings, and the agreed state of facts not showing citizenship to give it, the circuit court had no authority to render judgment against the plaintiff for costs. The Supreme Court, having full power to correct errors apparent upon the record, after declaring that the circuit court had no jurisdiction, corrected that of rendering a judgment for costs without adequate authority.

Two questions were prominently before the court:

1st. Was the plaintiff free by reason of having been taken to Illinois and Wisconsin?

2d. Was he a citizen entitled to sue in the circuit court?

Opinions were delivered by each of the nine judges, and those of Chief Justice Taney, Justices McLean, Daniels, Curtis, and Campbell extend to all the points argued and determined by the judgment of the court, as given by the Chief Justice.

It was conceded by the counsel, and held by the whole court, that slaves are not citizens.

It was admitted that the plaintiff was originally a lawful slave, and it rested with him to establish his freedom, without doing which the question of his citizenship could not arise upon the evidence, though it might on pleadings. This imposed upon the court the necessity of considering the effect of his sojourn at Rock Island and Fort Snelling, the former being in a free State, and the latter north of the Missouri-compromise line. It was denied that the laws of Illinois deprived the owner of his property rights in the plaintiff, and it was contended that the law establishing the compromise line, if it had such effect, was unconstitutional and void. It is thus apparent that the argument and decision involved the effect and extent of operation of the constitutions and laws of Missouri and Illinois, and of the act of Congress fixing the compromise line, as well as the power of Congress to enact the latter, which was re-enacted in establishing the Territory of Wisconsin.

1. Does taking a slave from a State where he is lawfully held in servitude to one where slavery is prohibited deprive his owner of his property in him, and render him perpetually free; and does his return to the former reinstate him in his original condition?

It is contended that the laws of Missouri could not be carried with the owner, and have effect in Illinois, and consequently that the plaintiff was free on being taken to the latter State. If this is the true principle involved, the defendant's answer would be, that, on returning to Missouri, the laws of Illinois were left behind and not carried thither, and have effect there. If the defendant could not carry the laws of Missouri with him the plaintiff could not those of Illinois or Wisconsin. Upon this principle, the laws of each State would fall from the citizen at its boundaries, to be resumed there upon his return. Ownership of property would depend upon locality, and not upon rights resting upon acquisition of title. In a journey from Texas to Maine and back they might be lost and reinstated many times; the owner performing no act but pursuing a lawful journey.

Upon this principle the ship or carriage we have built or the arms we have constructed, or the Bibles we have printed or bought in New Hampshire, may cease to be ours in Connecticut, become ours again in New York, be lost to us in New Jersey, and restored in Pennsylvania. Collins's steamers might cease to be his in Liverpool by the laws of England, and be restored by those of New York. The title of George Law's gallant boats might be nullified by the laws of Texas, and become his under those of Louisiana. The emigrant might be deprived of his title to his team, and perhaps be deprived of his wife and children, by Mormon or other laws, before finishing his intended journey. The right of an American citizen to his property depends upon no such principle. His title to whatever he owns can only be divested, in the words of the constitution, by "due process of law," by regular judicial proceedings, and not by legislative enactments. If title to property rests solely upon the laws of a State where it has its origin, such laws, in legal effect, create a contract between the owner and the State, that it shall remain his until he legally transfers or abandons his claim; and a statute of that or another State nullifying such title would violate that provision which forbids the States to pass any "law impairing the obligation of contracts." A State which passes a law conferring rights to property, it has ever been held, cannot enact another impairing the obligation or rights thus created. This is the reason why the charters of corporations cannot be taken away by legislation, when the power to do so is not reserved. The title to property lawfully acquired, although its voluntary transmission may be regulated by local rules, rests upon the common law of the world. If it is movable, it continues in the owner, wherever such property goes, whether to China, Japan, Sweden, England, Mexico, or America. Everywhere the title will be valid, even though there may be no law for its protection, or the appropriate tribunals may have no jurisdiction, or be forbidden to extend their aid for such purpose. An English merchant may own his opium in China, although its introduction is forbidden by express law, until it is forfeited under its police laws. A law by Kansas declaring that Connecticut clocks should cease to be the property of the owner on entering that Territory would be a nullity, and the title remain unaffected. The title to every article sent or received by our ships remains perfect everywhere, and we send our ships-of-war to compel all mankind to respect it. The same rule governs upon the western plains and Rocky mountains, even among the hunters and trappers, and is often respected among savages.

The supposition of a different rule has resulted from assigning an illogical and wrong reason for a right and proper act. When an owner becomes fully domiciled with his slave in a free State that act does not divest the former of his property. In a suit for freedom this fact might be proved as evidence, not of the conclusive effect of a State law upon the owner's property, but as tending to show manumission, and, standing by itself, might be deemed conclusive. The natural presumption arising from these facts would be an intention to manumit, but it might be repelled by proof of a transient visit, temporary sojourn, shipwreck, or other repelling circumstances; and certainly proof that the slave returned with the owner to a slave State would be conclusive against the former. It is an error to suppose that the laws of the free States confer freedom upon slaves coming within their limits. They have no power to do so. But they can, and often do, immediately, or at periods more or less remote, refuse the owner the use of their courts and officers to aid in their apprehension or return, and thus, in effect, render them free, so far as it depends upon the laws and agency of the State.

It is conceded by all that the constitution recognises slavery, by providing that "no person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but he shall be delivered up on the claim of the party to whom such labor or service may be due." This not only declares the rights of the owner, but imposes a duty upon the States; how far now complied with their laws and the history of the times will show. The States are nowhere clothed with power to legislate upon the title to property sanctioned and protected by the laws of other States, and acknowledged as such in the constitution. The recognition of the title to slaves by that instrument demonstrates that it did not intend to allow the States to destroy such title, by annulling a contract or otherwise. The assumption that, in respect to title, and the evidence upon which it passes from the owner, there is a radical difference between different kinds of property, all alike recognised by the constitution and laws, can have no foundation in right or law. When Lord Mansfield discharged Somersett, claimed in England as a slave, he, in effect, simply said, there is no law there under which he could be held, controlled, or carried away. There was no law in England at that time, although there had been, recognising and protecting slavery. What he would have held under the old English laws, or our constitution, is unknown. But when the question arose there under a case precisely like Scott's, Lord Stowell held that, on Grace's return to Antigua, where slavery still existed, she was the legal property of her owner; and, on communicating his opinion to Judge Story in 1828, that eminent jurist fully approved of it, saying:

"Upon the fullest consideration which I have been able to give to the subject, I entirely concur in your views. If I had been called upon to pronounce a judgment in a like case I should certainly have arrived at the same result, though I might not have been able to present the reasons which led to it in so striking and convincing a manner. It appears to me that the decision is impregnable. In my native State (Massachusetts) the state of slavery is not recognised as legal; and yet if a slave should come hither and afterwards return to his own home, we should certainly think that the local law would reattach upon him, and his servile character would be reintegrated. I have had occasion to know that your judgment has been extensively read in America, (where questions of this nature are not of unfrequent discussion,) and I have never heard any other opinion but that of approbation of it expressed among the profession of the law."

The rule established by Lord Stowell, and thus sanctioned by New England's great jurist, and approved by the bar, has been acted upon in numerous cases in State tribunals, and in the Supreme Court in every case where the question has arisen. The owner's title to his property is never lost, though his ability to assert it may be suspended. An action upon a note is barred in this District in three years, and the remedy suspended; but, taken to New York, it would be available for six. The District law neither affects the right nor title, although it provides a remedy for only a limited period. Formerly, the States furnished, or allowed, remedies to sojourning owners for different periods; some, like New York, extending to nine months. These exceptions to their general laws did not constitute the basis of the owner's rights, because not derived from them, but gave him remedies for limited times. This is the effect of the State laws referred to.

The Missouri-Compromise act (the Wisconsin act is the same) has this effect only. It says "slavery and involuntary servitude, otherwise than the punishment of crimes, whereof the parties shall have been duly convicted, shall be, and is hereby, forever prohibited." This act, if valid, deprives the owner of the means of controlling his slave by the agency of the law, but is far from saying that he forfeits his title by taking him north of that line. If the slave came without his consent the same section provides a remedy for his compulsory return. There is no attempt in this act to legislate away the owner's title, though it provides no statutory means of protecting it.

It does not declare the effect of coming or returning with a slave. It does not say if the slave comes with his owner he shall be free, or if he returns with him he shall not be a slave. The act has no such effect, as has been attributed to it. It is more limited in its operation than the State enactments, which sometimes declare that slaves coming within their limits shall be free. But neither the act of Congress nor of any State attempts to declare that any laws shall attach to and follow the person, and affect the rights of the owner on leaving their territory. Such a declaration would be idle. A State cannot send its mandates where it has no jurisdiction to enforce them, nor can the slave carry its authority with him.

If the laws of a State attach to and follow the person, those *first* attaching must prevail. Contradictory laws cannot both attach at the same time. But were it otherwise, and the laws of one State displaced those of others and attached themselves, then those last attaching must prevail. In either case it would be those of Missouri, and the plaintiff would be the property of the defendant, and, therefore, the judgment of the court clearly right. The assumption that the owner's consent to the marriage of Scott to Harriet manumitted them both too strongly resembles pettifogging to be seriously considered, and is only to be noticed because Mr. Justice Curtis incautiously adopted it. It is a rule of law, recognised by the tribunals of the world, that the minds of the parties must meet before a contract can be made between them. A cannot acquire, by gift or purchase, the property of B unless B intends to give or sell it. There is no evidence that Dr. Emerson, the then owner, by allowing the marriage, intended to manumit the parties to it; while the acts of all parties conclusively repel any such presumption. If the owner, by consenting to marriages among slaves, manumits them, then it is unquestionable that the mass of the colored race in the southern and middle States are free. If there had been a law at Fort Snelling that consent to marriage should be evidence of manumission, there would be plausibility in the assumption. There being none, it is less rational than to say that the like consent given by a father to the marriage of his minor children would confer the capability of conveying real estate. If Scott and Harriet were incompetent to contract legal matrimony, then the marriage was invalid. It is irrational, as well as illegal, in seeking to avoid this consequence, to deprive an owner of his property against his consent and contrary to his intentions. It is to be regretted that so fallacious an argument finds a place in the published opinion of so learned and able a judge.

Under neither of these assumptions can the plaintiff sustain the position that the defendant was deprived of his property by the actual manumission of Scott and wife by Dr. Emerson. This ground of defence is most ample and conclusive. Indeed, since the decision of the Supreme Court in Strader *vs.* Graham, 10 Howard, and the numerous concurring rulings in several State courts cited by Mr. Justice Nelson, the common opinion of the judiciary and the bar has been in harmony with the views expressed by Judge Story and by the court in this case.

Mr. Justice Curtis rests his opinion on this point principally upon the ground that the plaintiff was taken to Fort Snelling, north of the compromise line, and he insists that the sojourn there manumitted him, apparently not relying upon the effect assumed by others resulting from the laws of Illinois. We have shown that this law has no such provision or effect as is claimed. But if it has, then it is unconstitutional and void. In 1782, at the close of the revolution, a treaty of limits was entered into between the United States, under the Confederation, and Great Britain, by the 3d article of which the latter relinquished all her claims east of the Mississippi. West of the Alleghanies, nearly the whole of the territory thus surrendered was a wilderness, and occupied by savages. The common means of all the States had been expended to expel the British power therefrom and restrain their barbarous allies; and, although the soil was claimed under grants to different States, it was generally considered that these remote territories ought to appertain to the common government, and be devoted to the discharge of the debts of the confederation; and some contended that, in fact, they did belong to it. The arguments in favor of this measure resulted in cessions from the States of Virginia, Massachusetts, Connecticut, New York, and South Carolina, and each relinquished to the confederated government its claim to lands north and west of the Ohio, to which the ordinance of 1787 prohibiting slavery was applied. The new government under the constitution took this territory from the old, with its laws, and immediately recognised the said ordinance as good faith required. North Carolina soon ceded to the new government the present State of Tennessee, and Georgia the territory forming the States of Alabama and Mississippi, subject to the condition that slavery should not be prohibited therein. These seven cessions embraced the whole unsettled territory wrested from the British. In framing the constitution, its authors had this territory alone in view, and authorized Congress "to dispose of, and make all needful rules and regulations respecting, *the* territory and other property belonging to the United States." To show conclusively that they referred alone to the territory acquired by the revolution, and that to which some of the States still had pretensions, they added, "and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular State." This language is exclusively adapted to the territory thus acquired and ceded, and makes no allusion to future acquisitions by war or purchase, and certainly strict constructionists cannot extend it further. Congress could make all needful rules and regulations necessary and proper for the management and sale of the territory thus ceded within our national limits not owned by any State, and it has done so in conformity with the spirit of the constitution and intention of the respective cessions. If it were designed to extend to future conquests or purchases, the intention would have been disclosed. The power to legislate over territory acquired outside of our then limits must be sought elsewhere, and cannot be found in the clause quoted. But, if it were found there, it would not authorize the act in question as attempted to be construed. This law, instead of being a "*needful* rule and regulation," is inconsistent with private rights, depriving persons of property owned and held under the laws of sovereign States. It is not dictated by any imperative necessity. The prohibition of slavery north of the Ohio, and assenting to it at the south, rested upon the necessity of conforming to the conditions, express or implied, under which the territory was acquired. But there was no forfeiture of property under the ordinance applicable to territory north of the Ohio. Washington, Madison, Rutledge, Pinckney, and probably a large portion of those who framed the constitution, were slaveholders. It cannot be pretended that under the words "needful rules and regulations" they designed to clothe Congress with the power to exclude them from going with all their property to any new territory we might acquire. Such a conclusion would convict them of a want of foresight, which has never been attributed to them.

Proper police laws, such as exclude from the Indian country "fire-water," and those which punish crime, are "needful regulations;" while those laws which forfeit the property of the settler, which was recognised and protected by the laws of his State, cannot be needful, and are therefore not constitutional. If this part of the constitution extends over all territories we may acquire, then the whole instrument must attach, so far as applicable. In that case, the clause of the fifth amendment, which provides that no person shall "be deprived of life, liberty, or *property* without due process of law," will apply, and defeat its operation, because it deprives men of their property north of thirty-six thirty without any process of law.

The alleged object of the compromise line was to promote the interest of the slave. How an act which virtually forces his owner to sell, instead of protecting him, is to favor his interest, is not apparent, and is nowhere shown to be needful. The constitution was made to protect property, and not to destroy it. There is no word in it which authorizes Congress to pass laws to restrain persons from going freely to every part of every State and Territory, and taking with them their wives, children, money, goods, chattels, and property of every kind. Nor is that body clothed with authority to define what is meant by property. If Congress can exclude slaves from the Territories, the same power will enable them to exclude women and children, and whatever they choose. The constitution, if it extends to new acquisitions, must go as a shield and protection, and not as a destroyer. Its restraints, and among them the tenth amendment, "the powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively and to the people," must go with it. The power to prohibit people from going to newly-acquired territory with any and all kinds of property is not found in it. Such a power would tend to defeat the very purposes for which territory is acquired—the object being to sell the lands, fill the country with inhabitants, and facilitate the admission of new States.

As to the Louisiana purchase there are obligations, resting in treaty, equally binding with the conditions in the cessions from North Carolina and Georgia. That territory had belonged to Spain and England, and was ceded to us by France. Its early settlements were mostly French. Instead of the north part of it being a wilderness, as alleged, there were settlements at New Madrid, St. Genevieve, St. Louis, and as far north as Dubuque, where lead mines were worked at an early day. For more than fifty years land commissions and courts have been incessantly engaged in questions involving Spanish titles in that territory, many of which have been finally determined in the Supreme Court. The inhabitants there owned and held slaves under the laws then in force. The third article of the treaty provides for the admission of the territory as a State as soon as possible, "with all the rights, advantages, and immunities of citizens of the United States; and, in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, *property*, and the religion which they profess." To hold that the parties to this treaty meant that it should be limited to the identical men then owning property, and no others, would be equivalent to saying that the old settlers should be governed by one law, and the new ones by another. Under such a construction, a father might hold property under the treaty, which, by a law, might become forfeited and lost to his sons in case of his death. Neither Napoleon nor the American negotiators, Livingston and Monroe, intended any such absurdity.

If the treaty did not intend to protect the old residents and all who should come into the Territory, or be born there, until admitted as a State, in the enjoyment of the property they then had, and all of the like and every kind they might acquire, then those who framed and adopted the treaty misunderstood its true import. The treaty being a valid instrument, from the obligations of which we have not been absolved, it still binds the government and the people. Congress had not, in 1820, when it passed the compromise act, power or authority to annul or contravene it. On this ground, also, that act, and all others of a like character applicable to that purchase, are clearly void.

Eminent men have doubted the power of our government to purchase territories and govern them. But more than half a century of acquiescence, and repeated purchases, and universal recognition, must dispel that doubt and put the question at rest, although the section of the constitution conferring the power has not been harmoniously agreed upon. We acquire, and all agree that the acquisition is legal. We govern, but dispute concerning the source of the power under which we act, as well as its extent. We have shown that it was not derived from the power to make needful regulations concerning our revolutionary territory. If it is derived from the necessities of ownership, which there is much reason to believe, it is not a constitutional power. If drawn from necessity, it must be limited to that necessity. Its exercise must, then, be confined to what is actually necessary to preserve, protect, and render available the acquisition. It must go no step beyond. That it is not a matter of necessity to exclude certain kinds of property from acquired territory, where it would be useful to those who would take it there, is too plain to need elucidation or illustration. The necessities of the purchase cannot clothe the purchaser with the power to exclude or forfeit property lawfully held and used in many sovereign States, and which has been in all. Necessity will permit police laws, and those which protect property and punish crime, and facilitate the sale of lands, but not those which deprive men of their legal property or just rights. If the power to acquire property draws after it the power necessary to control and protect, it cannot authorize its destruction or forfeiture. It follows that the Missouri-compromise act has no constitutional or legal ground to sustain it, and it was rightfully held to be null and void for want of power in Congress to enact it.

The next question is, was the plaintiff a citizen of the United States, so as to entitle him to sue in the circuit court?

Neither the constitution nor the laws of Congress define citizenship, and probably no State law or constitution does so. The term "citizen" must mean now precisely what it did when the constitution was framed. That instrument speaks of "natural-born citizens," and those who were "*citizens of the United States* at the time of the adoption of the constitution," and authorizes Congress "to establish a uniform rule of naturalization." The two first are alone eligible to the presidency, while no person can be a senator until he has been nine, or representative until he has been seven, years "a citizen of the United States." It is clear, then, that there is a class of persons who are, under the constitution, "citizens of the United States," one portion of whom are "natural born," and the other adopted or "naturalized." Wherever the word "citizen" occurs in acts of Congress it most clearly refers to one of these classes. Mr. Wirt so held, and no authoritative tribunal has determined otherwise. When the constitution confers upon the federal judiciary jurisdiction in cases "between citizens of different States" it clearly means between citizens of the United States domiciled in different States; and when Congress, acting under this provision, conferred this jurisdiction upon the circuit court, it had citizens of the United States in view. That court has jurisdiction under the judiciary act where "the suit is between a citizen of the State where the suit is brought and a citizen of another State;" or, in other words, where the parties are citizens of the United States, the one residing where the suit is brought and the other in a different State. Wherever the constitution speaks of a citizen, it unquestionably means a citizen of the United States, either natural-born or naturalized. When Congress in legislation uses the expression, unless the contrary clearly appears, it cannot be denied that it bears the same import. The framers of the constitution attached some definite meaning to the word. They would have been astounded if told it might afterwards have as many as there might be States, and perhaps quite contradictory, and each subject to change with the caprice of legislatures.

In Athens the children of Athenians only were citizens, and in Rome only those Romans who were enrolled in the thirty-five tribes, and were capable of the highest dignities.

Bouvier, in his Law Dictionary, says that "in a more extended sense, under the word citizen are included *all white persons born in the United States, and naturalized persons born out of the same*, who have not lost their right as such. This includes men, women, and children." Mr. Wirt held that none but free white persons were citizens of the United States. Such was unquestionably the understanding of the framers of the constitution, and, until its recent reading by "colored lights," such was the understanding of the American people. Kent says: "The better opinion, I should think, was, that the negroes or other slaves born within and under the allegiance of the United States are natural-born subjects, but not citizens." Chief Justice Daggett, of Connecticut, truly said in Crandall's case: "It would be a perversion of terms and the well-known rule of construction to say slaves, free blacks, or Indians were citizens within the meaning of that term, as used in the constitution."

Chief Justice Gibson, one of Pennsylvania's most eminent jurists, in delivering the opinion of the court in Hobbs *vs.* Fogg, laid down the same rule. By the constitution of Pennsylvania *freemen* alone were entitled to vote. Fogg was a free negro; and, on the judges of election refusing his vote, he prosecuted them. On the case going to the supreme court, it was there determined that a negro, whether bond or free, was not a freeman within the meaning of the constitution. The Chief Justice said:

"But, in addition to the interpretation from usage, this antecedent legislation furnishes other proofs that no colored race was party to our social compact. As was justly remarked by President Fox, in the matter of the late contested election, our ancestors settled the province as a community of white men, and the blacks were introduced as a race of slaves, whence an unconquerable prejudice of caste, which has come down to our day, insomuch that a suspicion of taint still has the unjust effect of sinking the subject of it below the common level."

Authorities might be multiplied. The constitution and legislation of every State, except recently in Maine, points to the same conclusion. Kent says:

"In most of the United States there is a distinction in respect to political privileges between free white persons and free colored persons of African blood; and in no part of the country, except in Maine, do the latter, in point of fact, participate equally with the whites in the exercise of civil and political rights." " " "

"The African race, when free, are essentially a degraded caste, of inferior rank and condition in society." " "

"Marriages between them and the whites are forbidden in some of the States where slavery does not exist, and they are prohibited in all the slaveholding States; and, when not absolutely contrary to law, they are revolting and regarded as an offence against public decorum."

In many of the States they are not permitted to be witnesses against white persons, and for many crimes and offences they are punished differently from the whites. A verdict of some ten thousand dollars was recently rendered in this District against a white man by another, whom he had falsely charged with having negro blood in his veins. Notwithstanding what policy may dictate to the struggling partisan, nowhere, nor at any time, do the whites, who frame and control our institutions, treat the blacks as fellow-citizens or equals.

But it is not the present state of things to which we are to look, but to those which existed when the constitution was framed, to determine the true meaning of the word citizen. The colonies had been settled and exclusively governed by white men. They held all the official stations, were the officers and soldiers of the revolution, and the men who supplied the means which the exigency demanded. In every State slavery existed, and those who controlled public affairs were owners. The number of slaves was small, and the free blacks trifling, and they ranking everywhere quite as low as the bondsmen, and subject to restraints and legal disabilities everywhere. Wherever found on the habitable globe, out of Africa, (and extensively there,) negroes were universally slaves, or a servile, degraded caste, nowhere being on an equality with the whites, or having the privileges usually enjoyed by citizens. These things were within the vision of the framers of the constitution, and it would be a slander upon their memories to say that they did not see and appreciate them; and, if they did so, it would be absurd to contend that they considered that this class should be citizens of the United States, ranking with themselves and their constituents. They drew no line of distinction between the slave and his manumitted brother, nor did they empower the States or any tribunal to do so. Those who appreciate the temper and spirit of the delegates from the leading slave States will never believe that they intentionally assented to elevate to citizenship either slaves or their associates of the same race. The constitution, by the word "citizen," intended *free white persons, native-born or naturalized;* and such was the meaning universally accorded to it by the whole country for more than half a century after its adoption. It was so understood in Congress, in enacting the naturalization laws, when it confined their operation to white citizens.

Feeling the force of these considerations, the plaintiff's counsel insisted that the citizenship which confers jurisdiction was that which might be conferred by the several States; and to establish this assumption, reference was made to these words found in the constitution:

"The citizens of each State shall be entitled to all privileges and immunities of citizens of the several States."

This section is declaratory, and confers no power whatever upon the States. It does not authorize them to confer the franchise of a "citizen of the United States." No act was necessary to confer it upon the "natural born," because that is their birthright. Why the national government should reserve the exclusive right of conferring citizenship by naturalization, and leave to the States the right of conferring that franchise on whom they pleased, is wholly unexplained. Its preposterousness has hitherto prevented the attempt. This provision was intended as a declaration that a citizen of the United States should be a citizen in each of the States, and should enjoy the privileges and immunities which *such* citizenship should confer. He would be eligible to the presidency and Senate, and to a seat in the House, and to every position open to a citizen. In relation to those duties, employments, and privileges which Congress commits to, or confers upon, citizens alone, the States are not at liberty to interfere and impose restrictions, or take them away. When Congress says that an American ship shall be commanded by a "citizen" it means a "citizen of the United States," and no State law can confer upon a slave or free negro a citizenship which would authorize him to command such vessel. This section should be construed as if it read "the citizens of the United States in each State shall be entitled to all privileges and immunities of citizens of the United States in the several States." It relates exclusively to citizens of the United States, and not to those whom the several States may declare citizens within their limits. Citizenship of the United States is the same throughout the confederacy, while the citizenship of a State is local, and dependent upon the will of the State itself. If it can confer citizenship, so as to give jurisdiction to the courts, it can do so, for all other purposes, under the constitution. It may confer it upon an Indian, a free black, and even upon a slave, because, if the State has this power, it is unlimited. If it can confer, it may refuse citizenship; and in the latter case it might, by refusing to confer citizenship, deprive the national courts of jurisdiction over persons residing within its limits, when it depends upon citizenship, unless such jurisdiction appertains to citizens of the United States instead of citizens made such under the laws of a State.

"Citizens of the United States" are entitled to those privileges and immunities which the constitution and valid laws of Congress confer. This includes suing in the circuit court in proper cases. Simple citizenship of a State, by itself, confers none; but State constitutions and laws confer such privileges and immunities within their territory as their authors see fit, when not prohibited by the constitution, including voting and being voted for, whether constituted State citizens or not. The largest liberty and greatest privileges may be enjoyed in a State when neither its constitution nor laws contains the word "citizen," and the least liberty and fewest privileges may be allowed in one where both declare every human being in it, white or black, bond or free, to be a citizen. The right to vote and hold office, to marry, hold property and dispose of it by will, or convey it while living, depends, not upon citizenship, but upon the constitution and laws relating to these subjects. Being a citizen of the United States does not confer these privileges, nor can the act of another State declaring a person a citizen affect them. Maine may, by her constitution and laws, declare all persons within her boundaries citizens, including slaves, and confer upon them every privilege and immunity ever enjoyed by man. This will include the right to vote, to marry negroes and slaves, to hold lands and property, and dispose of the same by will, to command ships, and go and come freely, with many others. All these privileges and immunities are conferred, controlled, and taken away at the pleasure of the State. Can a person on leaving Maine carry all, or any one of these with him to Pennsylvania? On arriving in that Commonwealth, his right to vote, to marry, to hold lands and property, and dispose of the same by testament, to command ships and travel freely, would depend wholly upon the laws