

CASES

ARGUED AND ADJUDGED

IN

The Supreme Court

OF

THE UNITED STATES,

OCTOBER TERM, 1874.

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REPORTED BY

JOHN WILLIAM WALLACE.

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1875.



J U D G E S  
OF THE  
SUPREME COURT OF THE UNITED STATES,  
DURING THE TIME OF THESE REPORTS.

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CHIEF JUSTICE.

HON. MORRISON R. WAITE.

ASSOCIATES.

HON. NATHAN CLIFFORD,	HON. NOAH H. SWAYNE,
HON. SAMUEL F. MILLER,	HON. DAVID DAVIS,
HON. STEPHEN J. FIELD,	HON. WILLIAM STRONG,
HON. JOSEPH P. BRADLEY,	HON. WARD HUNT.

ATTORNEY-GENERAL.

HON. GEORGE HENRY WILLIAMS.

SOLICITOR-GENERAL.

HON. SAMUEL FIELD PHILLIPS.

CLERK.

DANIEL WESLEY MIDDLETON, ESQUIRE.

(iii)

## Syllabus.

was equivalent to a special finding of the conveyance to Mrs. Sea, and a judgment notwithstanding in favor of the plaintiff for the value of the remaining houses covered by the policy. But there was no such exception. The words are "exceptions allowed." That is all. There is nothing specific. Everything is general. If the exception amounts to anything it covers the whole record. Such a practice never has been, and ought not to be, sanctioned by this court. Exceptions, to be of any avail, must present distinctly and specifically the ruling objected to.\* A case ought not to be left in such a condition after a trial that the defeated party may hunt through the record, and if he finds an unsuspected error attach it to a general exception and thus obtain a reversal of the judgment upon a point that may never have been brought to the attention of the court below. Such a result might follow if the form of exception here adopted should be allowed. We are not inclined to depart from a rule which has so long been recognized here, and which has been found so beneficial to litigants as well as the court.

JUDGMENT AFFIRMED.

② Who writes the syllabus?

## MINOR v. HAPPERSETT.

1. The word "citizen" is often used to convey the idea of membership in a nation.
2. In that sense, women, if born of citizen parents within the jurisdiction of the United States, have always been considered citizens of the United States, as much so before the adoption of the fourteenth amendment to the Constitution as since.
3. The right of suffrage was not necessarily one of the privileges or immunities of citizenship before the adoption of the fourteenth amendment, and that amendment does not add to these privileges and immunities. It simply furnishes additional guaranty for the protection of such as the citizen already had.
4. At the time of the adoption of that amendment, suffrage was not co-extensive with the citizenship of the States; nor was it at the time of the adoption of the Constitution.

From Page #

?

appears to be a summary, but not direct quotes!

\* Young v. Martin, 8 Wallace, 354.

## Statement of the case.

5. Neither the Constitution nor the fourteenth amendment made all citizens voters.
6. A provision in a State constitution which confines the right of voting to "male citizens of the United States," is no violation of the Federal Constitution. In such a State women have no right to vote.

ERROR to the Supreme Court of Missouri; the case being thus:

The fourteenth amendment to the Constitution of the United States, in its first section, thus ordains:\*

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the laws."

And the constitution of the State of Missouri† thus ordains:

"Every male citizen of the United States shall be entitled to vote."

Under a statute of the State all persons wishing to vote at any election, must previously have been registered in the manner pointed out by the statute, this being a condition precedent to the exercise of the elective franchise.

In this state of things, on the 15th of October, 1872 (one of the days fixed by law for the registration of voters), Mrs. Virginia Minor, a native born, free, white citizen of the United States, and of the State of Missouri, over the age of twenty-one years, wishing to vote for electors for President and Vice-President of the United States, and for a representative in Congress, and for other officers, at the general election held in November, 1872, applied to one Happersett, the registrar of voters, to register her as a lawful voter, which he refused to do, assigning for cause that she was not

similar  
to many  
states  
today  
(2014)

\* See other sections, *infra*, p. 174.

† Article 2, § 18.

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Argument in favor of the woman's right to vote.

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a "male citizen of the United States," but a woman. She thereupon sued him in one of the inferior State courts of Missouri, for wilfully refusing to place her name upon the list of registered voters, by which refusal she was deprived of her right to vote.

The registrar demurred, and the court in which the suit was brought sustained the demurrer, and gave judgment in his favor; a judgment which the Supreme Court affirmed. Mrs. Minor now brought the case here on error.

*Mr. Francis Minor (with whom were Messrs. J. M. Krum and J. B. Henderson), for the plaintiff in error, went into an elaborate argument, partially based on what he deemed true political views, and partially resting on legal and constitutional grounds. These last seemed to be thus resolvable:*

1st. As a citizen of the United States, the plaintiff was entitled to any and all the "privileges and immunities" that belong to such position however defined; and as are held, exercised, and enjoyed by other citizens of the United States.

2d. The elective franchise is a "privilege" of citizenship, in the highest sense of the word. It is the privilege preservative of all rights and privileges; and especially of the right of the citizen to participate in his or her government.

3d. The denial or abridgment of this privilege, if it exist at all, must be sought only in the fundamental charter of government,—the Constitution of the United States. If not found there, no inferior power or jurisdiction can legally claim the right to exercise it.

4th. But the Constitution of the United States, so far from recognizing or permitting any denial or abridgment of the privileges of its citizens, expressly declares that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

5th. It follows that the provisions of the Missouri constitution and registry law before recited, are in conflict with and must yield to the paramount authority of the Constitution of the United States.

*No opposing counsel.*

## Opinion of the court.

The CHIEF JUSTICE delivered the opinion of the court.

(Waite)

The question is presented in this case, whether, since the adoption of the fourteenth amendment, a woman, who is a citizen of the United States and of the State of Missouri, is a voter in that State, notwithstanding the provision of the constitution and laws of the State, which confine the right of suffrage to men alone. We might, perhaps, decide the case upon other grounds, but this question is fairly made. From the opinion we find that it was the only one decided in the court below, and it is the only one which has been argued here. The case was undoubtedly brought to this court for the sole purpose of having that question decided by us, and in view of the evident propriety there is of having it settled, so far as it can be by such a decision, we have concluded to waive all other considerations and proceed at once to its determination.

It is contended that the provisions of the constitution and laws of the State of Missouri which confine the right of suffrage and registration therefor to men, are in violation of the Constitution of the United States, and therefore void. The argument is, that as a woman, born or naturalized in the United States and subject to the jurisdiction thereof, is a citizen of the United States and of the State in which she resides, she has the right of suffrage as one of the privileges and immunities of her citizenship, which the State cannot by its laws or constitution abridge.

Argument →

There is no doubt that women may be citizens. They are persons, and by the fourteenth amendment "all persons born or naturalized in the United States and subject to the jurisdiction thereof" are expressly declared to be "citizens of the United States and of the State wherein they reside." But, in our opinion, it did not need this amendment to give them that position. Before its adoption the Constitution of the United States did not in terms prescribe who should be citizens of the United States or of the several States, yet there were necessarily such citizens without such provision. There cannot be a nation without a people. The very idea of a political community, such as a nation is, implies an

Key

\*

People

(State)

## Opinion of the court.

association of persons for the promotion of their general welfare. Each one of the persons associated becomes a member of the nation formed by the association. He owes it allegiance and is entitled to its protection. Allegiance and protection are, in this connection, reciprocal obligations. The one is a compensation for the other; allegiance for protection and protection for allegiance.

For convenience it has been found necessary to give a name to this membership. The object is to designate by a title the person and the relation he bears to the nation. For this purpose the words "subject," "inhabitant," and "citizen" have been used, and the choice between them is sometimes made to depend upon the form of the government. Citizen is now more commonly employed, however, and as it has been considered better suited to the description of one living under a republican government, it was adopted by nearly all of the States upon their separation from Great Britain, and was afterwards adopted in the Articles of Confederation and in the Constitution of the United States. When used in this sense it is understood as conveying the idea of membership of a nation, and nothing more.

To determine, then, who were citizens of the United States before the adoption of the amendment it is necessary to ascertain what persons originally associated themselves together to form the nation, and what were afterwards admitted to membership.

Looking at the Constitution itself we find that it was ordained and established by "the people of the United States,"\* and then going further back, we find that these were the people of the several States that had before dissolved the political bands which connected them with Great Britain, and assumed a separate and equal station among the powers of the earth,† and that had by Articles of Confederation and Perpetual Union, in which they took the name of "the United States of America," entered into a firm league of

\* Preamble, 1 Stat. at Large, 10.

† Declaration of Independence, Ib. 1.

allegiance  
for protection

Key  
review

'nothing more'

Ⓐ Review definition  
of 'national'!  
Is not 'citizen  
of United States'  
merely a 'national'  
(American in  
such a sense)?



## Opinion of the court.

friendship with each other for their common defence, the security of their liberties and their mutual and general welfare, binding themselves to assist each other against all force offered to or attack made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.\*

Whoever, then, was one of the people of either of these States when the Constitution of the United States was adopted, became *ipso facto* a citizen—a member of the nation created by its adoption. He was one of the persons associating together to form the nation, and was, consequently, one of its original citizens. As to this there has never been a doubt. Disputes have arisen as to whether or not certain persons or certain classes of persons were part of the people at the time, but never as to their citizenship if they were.

Additions might always be made to the citizenship of the United States in two ways: first, by birth, and second, by naturalization. This is apparent from the Constitution itself, for it provides† that “no person except a natural-born citizen, or a citizen of the United States at the time of the adoption of the Constitution, shall be eligible to the office of President,”‡ and that Congress shall have power “to establish a uniform rule of naturalization.” Thus new citizens may be born or they may be created by naturalization.

The Constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that. At common-law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives, or natural-born citizens, as distinguished from aliens or foreigners. Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their

\* Articles of Confederation, § 8, 1 Stat. at Large, 4.

† Article 2, § 1.

‡ Article 1, § 8.

agreed; no disputing

how new citizenship created

citizens, not citizenship

birth right via common law

debate as to birth right if parent(s) not citizens

\*\*

## Opinion of the court.

parents. As to this class there have been doubts, but never as to the first. For the purposes of this case it is not necessary to solve these doubts. It is sufficient for everything we have now to consider that all children born of citizen parents within the jurisdiction are themselves citizens. The words "all children" are certainly as comprehensive, when used in this connection, as "all persons," and if females are included in the last they must be in the first. That they are included in the last is not denied. In fact the whole argument of the plaintiffs proceeds upon that idea.

Under the power to adopt a uniform system of naturalization Congress, as early as 1790, provided "that any alien, being a free white person," might be admitted as a citizen of the United States, and that the children of such persons so naturalized, dwelling within the United States, being under twenty-one years of age at the time of such naturalization, should also be considered citizens of the United States, and that the children of citizens of the United States that might be born beyond the sea, or out of the limits of the United States, should be considered as natural-born citizens.\* These provisions thus enacted have, in substance, been retained in all the naturalization laws adopted since.

In 1855, however, the last provision was somewhat extended, and all persons theretofore born or thereafter to be born out of the limits of the jurisdiction of the United States, whose fathers were, or should be at the time of their birth, citizens of the United States, were declared to be citizens also.†

As early as 1804 it was enacted by Congress that when any alien who had declared his intention to become a citizen in the manner provided by law died before he was actually naturalized, his widow and children should be considered as citizens of the United States, and entitled to all rights and privileges as such upon taking the necessary oath;‡ and in 1855 it was further provided that any woman who might lawfully be naturalized under the existing laws, married, or

\* 1 Stat. at Large, 103.

† 10 Id. 604.

‡ 2 Id. 293.

within the jurisdiction

naturalization laws... not → 4th Amendment

(it is now 1874)

Ⓐ Review if this is verbatim, or not.



Opinion of the court.

proof will be found. Thus, in the pre-emption laws,\* a widow, "being a citizen of the United States," is allowed to make settlement on the public lands and purchase upon the terms specified, and women, "being citizens of the United States," are permitted to avail themselves of the benefit of the homestead law.†

legislative Acts;  
A) how are/might these tie into 1940/1952 Naturaliz. Acts? Repealed? Language used?

Other proof of like character might be found, but certainly more cannot be necessary to establish the fact that sex has never been made one of the elements of citizenship in the United States. In this respect men have never had an advantage over women. The same laws precisely apply to both. The fourteenth amendment did not affect the citizenship of women any more than it did of men. In this particular, therefore, the rights of Mrs. Minor do not depend upon the amendment. She has always been a citizen from her birth, and entitled to all the privileges and immunities of citizenship. The amendment prohibited the State, of which she is a citizen, from abridging any of her privileges and immunities as a citizen of the United States; but it did not confer citizenship on her. That she had before its adoption.

Careful interpretation  
Minor's status!

\*KEY\*  
Agrees with Van Valkenburg!

If the right of suffrage is one of the necessary privileges of a citizen of the United States, then the constitution and laws of Missouri confining it to men are in violation of the Constitution of the United States, as amended, and consequently void. The direct question is, therefore, presented whether all citizens are necessarily voters.

The Constitution does not define the privileges and immunities of citizens. For that definition we must look elsewhere. In this case we need not determine what they are, but only whether suffrage is necessarily one of them.

It certainly is nowhere made so in express terms. The United States has no voters in the States of its own creation. The elective officers of the United States are all elected directly or indirectly by State voters. The members of the House of Representatives are to be chosen by the people of

\*\*KEY\*\*

OK, in terms of 'sex' ->

@ which 'citizen' ->

Pl I of citizens of the United States of America

Singular!

\* 5 Stat. at Large, 455, § 10.

† 12 Id. 392.

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## Opinion of the court.

the States, and the electors in each State must have the qualifications requisite for electors of the most numerous branch of the State legislature.\* Senators are to be chosen by the legislatures of the States, and necessarily the members of the legislature required to make the choice are elected by the voters of the State.† Each State must appoint in such manner, as the legislature thereof may direct, the electors to elect the President and Vice-President.‡ The times, places, and manner of holding elections for Senators and Representatives are to be prescribed in each State by the legislature thereof; but Congress may at any time, by law, make or alter such regulations, except as to the place of choosing Senators.§ It is not necessary to inquire whether this power of supervision thus given to Congress is sufficient to authorize any interference with the State laws prescribing the qualifications of voters, for no such interference has ever been attempted. The power of the State in this particular is certainly supreme until Congress acts.

The amendment did not add to the privileges and immunities of a citizen. It simply furnished an additional guaranty for the protection of such as he already had. No new voters were necessarily made by it. Indirectly it may have had that effect, because it may have increased the number of citizens entitled to suffrage under the constitution and laws of the States, but it operates for this purpose, if at all, through the States and the State laws, and not directly upon the citizen.

It is clear, therefore, we think, that the Constitution has not added the right of suffrage to the privileges and immunities of citizenship as they existed at the time it was adopted. This makes it proper to inquire whether suffrage was coextensive with the citizenship of the States at the time of its adoption. If it was, then it may with force be argued that suffrage was one of the rights which belonged to citizenship, and in the enjoyment of which every citizen must be pro-

\* Constitution, Article 1, § 2.  
 † Ib. Article 2, § 2.

‡ Ib. Article 1, § 3.  
 § Ib. Article 1, § 4.

→ additional to those he already had.

14<sup>th</sup> Amendment

no new voters (increased number of voters though)

additional guaranty!

KEY

Consistent w/ Texas v white, although perhaps debateable if 14<sup>th</sup> created citizen, vs clarified/confirmed who are... I say confirmed per Texas v white!

\* \*

## Opinion of the court.

tected. But if it was not, the contrary may with propriety be assumed.

When the Federal Constitution was adopted, all the States, with the exception of Rhode Island and Connecticut, had constitutions of their own. These two continued to act under their charters from the Crown. Upon an examination of those constitutions we find that in no State were all citizens permitted to vote. Each State determined for itself who should have that power. Thus, in New Hampshire, "every male inhabitant of each town and parish with town privileges, and places unincorporated in the State, of twenty-one years of age and upwards, excepting paupers and persons excused from paying taxes at their own request," were its voters; in Massachusetts "every male inhabitant of twenty-one years of age and upwards, having a freehold estate within the commonwealth of the annual income of three pounds, or any estate of the value of sixty pounds;" in Rhode Island "such as are admitted free of the company and society" of the colony; in Connecticut such persons as had "maturity in years, quiet and peaceable behavior, a civil conversation, and forty shillings freehold or forty pounds personal estate," if so certified by the selectmen; in New York "every male inhabitant of full age who shall have personally resided within one of the counties of the State for six months immediately preceding the day of election . . . if during the time aforesaid he shall have been a freeholder, possessing a freehold of the value of twenty pounds within the county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to the State;" in New Jersey "all inhabitants . . . of full age who are worth fifty pounds, proclamation-money, clear estate in the same, and have resided in the county in which they claim a vote for twelve months immediately preceding the election;" in Pennsylvania "every freeman of the age of twenty-one years, having resided in the State two years next before the election, and within that time paid a State or county tax which shall have been assessed at least six months before the election;" in

any reason  
sometimes  
'Federal' vs  
no use of  
'Federal'?



## Opinion of the court.

Delaware and Virginia "as exercised by law at present;" in Maryland "all freemen above twenty-one years of age having a freehold of fifty acres of land in the county in which they offer to vote and residing therein, and all freemen having property in the State above the value of thirty pounds current money, and having resided in the county in which they offer to vote one whole year next preceding the election;" in North Carolina, for senators, "all freemen of the age of twenty-one years who have been inhabitants of any one county within the State twelve months immediately preceding the day of election, and possessed of a freehold within the same county of fifty acres of land for six months next before and at the day of election," and for members of the house of commons "all freemen of the age of twenty-one years who have been inhabitants in any one county within the State twelve months immediately preceding the day of any election, and shall have paid public taxes;" in South Carolina "every free white man of the age of twenty-one years, being a citizen of the State and having resided therein two years previous to the day of election, and who hath a freehold of fifty acres of land, or a town lot of which he hath been legally seized and possessed at least six months before such election, or (not having such freehold or town lot), hath been a resident within the election district in which he offers to give his vote six months before said election, and hath paid a tax the preceding year of three shillings sterling towards the support of the government;" and in Georgia such "citizens and inhabitants of the State as shall have attained to the age of twenty-one years, and shall have paid tax for the year next preceding the election, and shall have resided six months within the county."

In this condition of the law in respect to suffrage in the several States it cannot for a moment be doubted that if it had been intended to make all citizens of the United States voters, the framers of the Constitution would not have left it to implication. So important a change in the condition of citizenship as it actually existed, if intended, would have been expressly declared.

UNIVERSITY OF CALIFORNIA

The guaranty is of a republican form of government. No particular government is designated as republican, neither is the exact form to be guaranteed, in any manner especially designated. Here, as in other parts of the instrument, we are compelled to resort elsewhere to ascertain what was intended.

define  
republican  
form of  
government!

\* \* \* \* \*

The guaranty necessarily implies a duty on the part of the States themselves to provide such a government. All the States had governments when the Constitution was adopted. In all the people participated to some extent, through their representatives elected in the manner specially provided.

\* Constitution, Article 4, § 4.

† Ib. Article 1, § 10.

‡ Ib. Amendment 5.

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 Statement of the case.
 

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uniform practice long continued can settle the construction of so important an instrument as the Constitution of the United States confessedly is, most certainly it has been done here. Our province is to decide what the law is, not to declare what it should be.

We have given this case the careful consideration its importance demands. If the law is wrong, it ought to be changed; but the power for that is not with us. The arguments addressed to us bearing upon such a view of the subject may perhaps be sufficient to induce those having the power, to make the alteration, but they ought not to be permitted to influence our judgment in determining the present rights of the parties now litigating before us. No argument as to woman's need of suffrage can be considered. We can only act upon her rights as they exist. It is not for us to look at the hardship of withholding. Our duty is at an end if we find it is within the power of a State to withhold.

Being unanimously of the opinion that the Constitution of the United States does not confer the right of suffrage upon any one, and that the constitutions and laws of the several States which commit that important trust to men alone are not necessarily void, we

AFFIRM THE JUDGMENT.

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 MARSH v. WHITMORE.

1. An attorney cannot be charged with negligence when he accepts as a correct exposition of the law a decision of the Supreme Court of his State upon the question of the liability of stockholders of corporations of the State in advance of any decision thereon by this court.
2. Where an attorney sold bonds of a client at public sale, and bought them in himself, at their full value at the time, and the client was aware of the purchase and acquiesced in it for twelve years, it is then too late for the client to attempt to impeach the validity of the sale.

APPEAL from the Circuit Court for the District of Maine.  
On the 12th of March, 1869, Marsh, of Maryland, filed a