41ST CONGRESS, 3d Session. | HOUSE OF REPRESENTATIVES. | REPORT No. 22.

VICTORIA C. WOODHULL.

JANUARY 30, 1871.—Recommitted to the Committee on the Judiciary and ordered to be printed.

Mr. BINGHAM, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom was referred the memorial of Victoria C. Woodhull, having considered the same, make the following report:

The memorialist asks the enactment of a law by Congress which shall secure to citizens of the United States in the several States the right to vote "without regard to sex." Since the adoption of the fourteenth amendment of the Constitution, there is no longer any reason to doubt that 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, for that is the express declaration of the amendment.

The clause of the fourteenth amendment, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," does not, in the opinion of the committee, refer to privileges and immunities of citizens of the United States other than those privileges and immunities embraced in the original text of the Constitution, article 4, section 2. The fourteenth amendment, it is believed, did not add to the privileges or immunities before mentioned, but was deemed necessary for their enforcement as an express limitation upon the powers of the States. It had been judicially determined that the first eight articles of amendment of the Constitution were not limitations on the power of the States, and it was apprehended that the same might be held of the provision of the second section, fourth article.

To remedy this defect of the Constitution, the express limitations upon the States contained in the first section of the fourteenth amendment, together with the grant of power in Congress to enforce them by legislation, were incorporated in the Constitution. The words "citizens of the United States," and "citizens of the States," as employed in the fourteenth amendment, did not change or modify the relations of citizens of the State and nation as they existed under the original Constitution.

Attorney General Bates gave the opinion that the Constitution uses the word "citizen" only to express the political quality of the individual in his relation to the nation; to declare that he is a member of the body politic, and bound to it by the reciprocal obligation of allegiance on the one side and protection on the other. The phrase "a citizen of the United States, without addition or qualification, means neither more nor less than a member of the nation." (Opinion of Attorney General Bates on citizenship.)

The Supreme Court of the United States has ruled that, according to the express words and clear meaning of the second section, fourth article of the Constitution, no privileges are secured by it except those which belong to citizenship. (Conner et al. *vs.* Elliott et al., 18 Howard, 593.)

In Corfield *v.* Coryell, 4 Washington Circuit Court Reports, 380, the court say:

> The inquiry is, what are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature *fundamental*; which belong of right to the citizens of all free governments; and which have at all times been enjoyed by the citizens of the several States which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the Government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the Government may justly prescribe for the general good of the whole; the right of a citizen of one State to pass through or to reside in any other State, for the purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the State; to take, hold, and dispose of property either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the State, may be mentioned as some of the particular privileges and immunities of citizens which are clearly embraced by the general description of privileges deemed to be fundamental; to which may be added the elective franchise, *as regulated and established* by the laws or Constitution of the State in which it is to be exercised. * * * But we cannot accede to the proposition which was insisted on by the counsel, that under this provision of the Constitution (sec. 2, art. 4) the citizens of the several States are permitted to participate in all *the rights* which belong exclusively to the citizens of any other particular State.

The learned Justice Story declared that the intention of the clause ("the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States,") was to confer on the citizens of each State a general citizenship, and communicated all the privileges and immunities which a citizen of the same State would be entitled to under the same circumstances. (Story on the Constitution, vol. 2, p. 605.)

In the case of the Bank of the United States *vs.* Primrose, in the Supreme Court of the United States, Mr. Webster said:

> That this article in the Constitution (art. 4., sec. 2) does not confer on the citizens of each State political rights in every other State, is admitted. A citizen of Pennsylvania cannot go into Virginia and vote at any election in that State, though when he has acquired a residence in Virginia, and is otherwise qualified as is required by the constitution (of Virginia,) he becomes, without formal adoption as a citizen of Virginia, a citizen of that State politically. (Webster's Works, vol. 6, p. 112.)

It must be obvious that Mr. Webster was of opinion that the privileges and immunities of citizens, guaranteed to them in the several States, did not include the privilege of the elective franchise otherwise than as secured by the State constitution. For, after making the statement above quoted, that a citizen of Pennsylvania cannot go into Virginia and vote, Mr. Webster adds, "but for the purposes of trade, commerce, buying and selling, it is evidently not in the power of any State to impose any hinderance or embarassment, &c., upon citizens of other States, or to place them, going there, upon a different footing from her own citizens." (*Ib.*)

The proposition is clear that no citizen of the United States can rightfully vote in any State of this Union who has not the qualifications required by the Constitution of the State in which the right is claimed to be exercised, except as to such conditions in the constitution of such States as deny the right to vote to citizens resident therein "on accout of race, color, or previous condition of servitude."

The adoption of the fifteenth amendment of the Constitution imposing

these three limitations upon the power of the several States, was, by necessary implication, a declaration that the States had the power to regulate by a uniform rule the conditions upon which the elective franchise should be exercised by citizens of the United States resident therein. The limitations specified in the fifteenth amendment exclude the conclusion that a State of this Union, having a government republican in form, may not prescribe conditions upon which alone citizens may vote other than those prohibited. It can hardly be said that a State law which excludes from voting women citizens, minor citizens, and non-resident citizens of the United States, on account of sex, minority, or domicile, is a denial of the right to vote on account of race, color, or previous condition of servitude.

It may be further added that the second section of the fourteenth amendment, by the provision that "when the right to vote at any election for the choice of electors of President and Vice-President of the United States, Representatives in Congress, or executive and judicial officers of the State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, a citizen of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State," implies that the several States may restrict the elective franchise as to other than male citizens. In disposing of this question effect must be given, if possible, to every provision of the Constitution. Article 1, section 2, of the Constitution provides:

> That the House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

This provision has always been construed to vest in the several States the exclusive right to prescribe the qualifications of electors for the most numerous branch of the State legislature, and therefore for members of Congress. And this interpretation is supported by section 4, article 1, of the Constitution, which provides:

> That the time, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations except as to the place of choosing Senators.

Now it is submitted, if it had been intended that Congress should prescribe the qualification of electors, that the grant would have read: The Congress may at any time by law make or alter such regulations, and also prescribe the qualification of electors, &c. The power, on the contrary, is limited exclusively to the time, place, and manner, and does not extend to the qualification of the electors. This power to prescribe the qualification of electors in the several States has always been exercised, and is to-day, by the several States of the Union; and we apprehend, until the Constitution shall be changed, will continue to be so exercised, subject only to the express limitations imposed by the Constitution upon the several States, before noticed. We are of opinion, therefore, that it is not competent for the Congress of the United States to establish by law the right to vote without regard to sex in the several States of this Union, without the consent of the people of such States, and against their constitutions and laws; and that such legislation would be, in our judgment, a violation of the Constitution of the United States, and of the rights reserved to the States respectively by the Constitution. It is undoubtedly the right of the people of the several States so to reform

their constitutions and laws as to secure the equal exercise of the right of suffrage, at all elections held therein under the Constitution of the United States, to all citizens, without regard to sex; and as public opinion creates constitutions and governments in the several States, it is not to be doubted that whenever, in any State, the people are of opinion that such a reform is advisable, it will be made.

If, however, as is claimed in the memorial referred to, the right to vote "is vested by the Constitution in the citizens of the United States without regard to sex," that right can be established in the courts without further legislation.

The suggestion is made that Congress, by a mere declaratory act, shall say that the construction claimed in the memorial is the true construction of the Constitution, or, in other words, that by the Constitution of the United States the right to vote is vested in citizens of the United States "without regard to sex," anything in the constitution and laws of any State to the contrary notwithstanding. In the opinion of the committee, such declaratory act is not authorized by the Constitution nor within the legislative power of Congress. We therefore recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner be not granted, that the memorial be laid on the table, and that the Committee on the Judiciary be discharged from the further consideration of the subject.

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41ST CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 22, Part 2.

VICTORIA C. WOODHULL.

FEBRUARY 1, 1871.—Ordered to be printed.

Mr. LOUGHRIDGE, from the Committee on the Judiciary, submitted the following as the

VIEWS OF THE MINORITY.

In the matter of the memorial of Victoria C. Woodhull, referred by the House to the Committee on the Judiciary, the undersigned, members of the committee, being unable to agree to the report of the committee, present the following as their views upon the subject of the memorial:

The memorialist sets forth that she is a native born citizen of the United States, and a resident thereof; that she is of adult age, and has resided in the State of New York for three years past; that by the Constitution of the United States she is guaranteed the right of suffrage; but that she is, by the laws of the State of New York, denied the exercise of that right; and that by the laws of different States and Territories the privilege of voting is denied to all the female citizens of the United States; and petitions for relief by the enactment of some law to enforce the provisions of the Constitution, by which such right is guaranteed.

The question presented is one of exceeding interest and importance, involving as it does the constitutional rights not only of the memorialist but of more than one half of the citizens of the United States—a question of constitutional law in which the civil and the natural rights of the citizen are involved. Questions of propriety or of expediency have nothing to do with it. The question is not "Would it be expedient to extend the right of suffrage to women," but "Have women citizens that right by the Constitution as it is."

A question of this kind should be met fairly and investigated in that generous and liberal spirit characteristic of the age, and decided upon principles of justice, of right, and of law.

It is claimed by many that to concede to woman the right of suffrage would be an innovation upon the laws of nature, and upon the theory and practice of the world for ages in the past, and especially an innovation upon the common law of England, which was originally the law of this country, and which is the foundation of our legal fabric.

If we were to admit the truth of this, it is yet no argument against the proposition, if the right claimed exists, and is established by the Constitution of the United States. The question is to be decided by the Constitution and the fundamental principles of our Government, and not by the usage and dogmas of the past.

It is a gratifying fact that the world is advancing in political science, and gradually adopting more liberal and rational theories of government.

The establishment of this Government upon the principles of the Declaration of Independence was in itself a great innovation upon the

theories and practice of the world, and opened a new chapter in the history of the human race, and its progress toward perfect civil and political liberty.

But it is not admitted that the universal usage of the past has been in opposition to the exercise of political power by women. The highest positions of civil power have from time to time been filled by women in all ages of the world, and the question of the right of woman to a voice in government is not a new one by any means, but has been agitated, and the right acknowledged and exercised, in governments far less free and liberal than ours.

In the Roman Republic, during its long and glorious career, women occupied a higher position, as to political rights and privileges, than in any other contemporaneous government. In England unmarried women have, by the laws of that country, always been competent to vote and to hold civil offices, if qualified in other respects: at least such is the weight of authority. In "Callis upon Sewers," an old English work, will be found a discussion of the question as to the right of women to hold office in England.

The learned and distinguished author uses the following language:

> And for temporal governments I have observed women to have from time to time been admitted to the highest places; for in ancient Roman histories I find Eudocia and Theodora admitted at several times into the sole government of the empire; and here in England our late famous Queen Elizabeth, whose government was most renowned; and Semiramis governed Syria, and the Queen of the South, which came to visit Solomon, for anything that appears to the contrary, was a sole queen; and to fall a degree lower, we have precedents that King Richard the First and King Henry the Fifth appointed by commissions their mothers to be regents of this realm in their absence in France.
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> But yet I will descend a step lower; and doth not our law temporal and spiritual admit of women to be executrixes and administratrixes? And thereby they have the rule or ordering of great estates, and many times they are guardianesses in chivalry, and have hereby also the government of many great heirs in the kingdom and of their own estates.
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> So by these cases it appeareth that the common law of this kingdom submitted many things to their government; yet the statute of justices of the peace is like to Jethro's counsel to Moses, for there they speak of men to be justices, and thereby seemeth to exclude women; but our statute of sewers is, "Commission of sewers shall be granted by the King to such person and persons as the lords should appoint." So the word persons stands indifferently for either sex. I am of the opinion, for the authorities, reasons, and causes aforesaid, that this honorable countess being put into the commission of the sewers, the same is warrantable by the law; and the ordinances and decrees made by her and the other commissions of sewers are not to be impeached for that cause of her sex.

As it is said by a recent writer:

> Even at present in England the idea of women holding official station is not so strange as in the United States. The Countess of Pembroke had the office of sheriff of Westmoreland and exercised it in person. At the assizes she sat with the judges on the bench. In a reported case it is stated by counsel and assented to by the court that a woman is capable of serving in almost all the offices of the kingdom.

As to the right of women to vote by the common law of England, the authorities are clear. In the English Law Magazine for 1868-'69, vol. 26, p 120, will be found reported the case of the application of *Jane Allen*, who claimed to be entered upon the list of voters of the Parish of St. Giles, under the reform act of 1867, which act provides as follows: Every man shall, in and after the year 1868, be entitled to be registered as a voter, and when registered to vote for a member or members to serve in parliament, who is qualified as follows: 1st. Is of full age and not subject to any legal incapacity, &c., &c.

It was decided by the court that the claimant had the right to be registered and to a vote; that by the English law, the term man, as used in that statute, included women. In that case the common law

of England upon that question was fully and ably reviewed, and we may be excused for quoting at some length:

And as to what has been said of there being no such adjudged cases, I must say that it is perfectly clear that not perhaps in either of three cases reported by Mr. Shaen, but in those of Catharine *vs.* Surry, Coates *vs.* Lyle, and Holt *vs.* Lyle, three cases of somewhat greater antiquity, the right of women freeholders was allowed by the courts. These three cases were decided by the judges in the reign of James I, (A. D. 1612.) Although no printed report of them exists, I find that in the case of Olive *vs.* Ingraham, they were repeatedly cited by the lord chief justice of the King's Bench in the course of four great arguments in that case, the case being reargued three times, (7 Mod., 264,) and the greatest respect was manifested by the whole court for those precedents. Their importance is all the greater when we consider what the matter was upon which King James's judges sitting in Westminster Hall had to decide. It was not simply the case of a mere occupier, inhabitant, or scot or lot voter. Therefore the question did not turn upon the purport of a special custom, or a charter, or a local act of Parliament, or even of the common right in this or that borough. But it was that very matter and question which has been mooted in the dictum of Lord Coke, the freeholder's franchise in the shire, and upon that the decision in each case expressly was, that a feme sole shall vote if she hath a freehold, and that if she be not a feme sole, but a feme covert having freehold, then her husband during her coverture shall vote in her right. These, then, are so many express decisions which at once displace Lord Coke's unsupported assertion and declare the law so as to constrain my judgment. It is sometimes said, when reference is made to precedents of this kind, that they have never been approved by the bar. But that cannot be said of these. Hakewell, the contemporary of Lord Coke and one of the greatest of all parliamentary lawyers then living—for even Selden and Granvil were not greater than Hakewell—left behind him the manuscript to which I have referred, with his comments on those cases.

Sir William Lee, chief justice, in his judgment in the case of Olive *vs.* Ingraham, expressly says that he had perused them, and that they contained the expression of Hakewell's entire approval of the principles upon which they were decided, and of the results deduced; and we have the statement of Lord Chief Justice Lee, who had carefully examined those cases, that in the case of Holt *vs.* Lyle, it was determined that a *feme sole* freeholder may claim a vote for Parliament men; but if married, her husband must vote for her.

In the case of Olive *vs.* Ingraham, Justice Probyn says:

The case of Holt *vs.* Lyle, lately mentioned by my Lord Chief Justice, is a very strong case. "*They who pay ought to choose whom they shall pay.*" And the Lord Chief Justice seemed to have assented to that general proposition as authority for the correlative proposition, that "women, when *sole*, had a right to vote." At all events, there is here the strongest possible evidence that in the reign of James I, the *feme sole*, being a freeholder of a country, or what is the same thing, of a county, of a city, or town or borough, where, of custom, freeholders had the right to vote, not only had, but exercised the parliamentary franchise. If married, she could not vote in respect merely of her freehold, not because of the incapacities of coverture, but for this simple reason, that, by the act of marriage, which is an act of law, the title of the *feme sole* freeholder became vested for life in the husband. The qualification to vote was not personal, but real; consequently, her right to vote became suspended as soon and for as long as she was married. I am bound to consider that the question as to what weight is due to the dictum of my Lord Coke is entirely disposed of by those cases from the reign of James I and George II, and that the authority of the latter is unimpeached by any later authority, as the cases of Rex *vs.* Stubles, and Regina *vs.* Aberavon, abundantly show.

In Austey's Notes on the New Reform Act of 1867, the authorities and precedents upon the right of women to vote in England are examined and summed up, and the author concludes:

It is submitted that the weight of authority is very greatly in favor of the female right of suffrage. Indeed the only authority against it is contained in the short and hasty dictum of Lord Coke, referred to above. It was set down by him in his last and least authoritative institute, and it is certain that he has been followed neither by the great lawyers of his time nor by the judicature. The principles of the law in relation to the suffrage of females will be found in Coates *vs.* Lyle, Holt *vs.* Lyle, Olive *vs.* Ingraham, and The King *vs.* Stubles, cases decided under the strict rules for the construction of statutes.

It cannot be questioned that from time whereof the memory of man

runneth not to the contrary, unmarried women have been by the laws of England competent voters, subject to the freehold qualification which applied alike to men and women. Married women could not vote because they were not freeholders; by the common law their property upon marriage became vested in the husband.

So that it appears that the admission of women to participation in the affairs of government would not be so much of an innovation upon the theories and usage of the past as is by some supposed.

In England the theory was that in property representation, all property should be represented. Here the theory is that of personal representation, which of course, if carried out fully, includes the representation of all property. In England, as we have seen, the owner of the property, whether male or female, was entitled to representation, no distinction being made on account of sex. If the doctrine contended for by the majority of the committee be correct, then this Government is less liberal upon this question than the government of England has been for hundreds of years, for there is in this country a large class of citizens of adult age, and owners in their own right of large amounts of property, and who pay a large proportion of the taxes to support the Government, who are denied any representation whatever, either for themselves or their property—unmarried women, of whom it cannot be said that their interests are represented by their husbands. In their case neither the English nor the American theory of representation is carried out, and this utter denial of representation is justified upon the ground alone that this class of citizens are women.

Surely we cannot be so much less liberal than our English ancestors! Surely the Constitution of this republic does not sanction an injustice so indefensible as that!

By the fourteenth amendment of the Constitution of the United States, what constitutes citizenship of the United States, is for the first time declared, and who are included by the term citizen. Upon this question, before that time, there had been much discussion, judicial, political and general, and no distinct and definite definition of qualification had been settled.

The people of the United States determined this question by the fourteenth amendment to the Constitution, which declares that—

> 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 law.

This amendment, after declaring who are citizens of the United States, and thus fixing but one grade of citizenship, which insures to all citizens alike all the privileges, immunities and rights which accrue to that condition, goes on in the same section and prohibits these privileges and immunities from abridgment by the States.

Whatever these "privileges and immunities" are, they attach to the female citizen equally with the male. It is implied by this amendment that they are inherent, that they belong to citizenship as such, for they are not therein specified or enumerated.

The majority of the committee hold that the privileges guaranteed by the fourteenth amendment do not refer to any other than the privileges embraced in section 2, of article 4, of the original text.

The committee certainly did not duly consider this unjustified statement.

Section 2, of article 4, provides for the privileges of "citizens of the *States*," while the first section of the fourteenth amendment protects the privileges of "*citizens of the United States*." The terms citizens of the *States* and citizens of the *United States* are by no means convertible.

A circuit court of the United States seems to hold a different view of this question from that stated by the committee.

In the case of The Live Stock Association *vs.* Crescent City, (1st Abbott, 396,) Justice Bradley, of the Supreme Court of the United States, delivering the opinion, uses the following language in relation to the 1st clause of the 14th amendment:

> The new prohibition that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" is not identical with the clause in the Constitution which declared that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." It embraces much more.
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> It is possible that those who framed the article were not themselves aware of the far-reaching character of its terms, yet if the amendment does in fact bear a broader meaning, and does extend its protecting shield over those who were never thought of when it was conceived and put in form, and does reach social evils which were never before prohibited by constitutional enactment, it is to be presumed that the American people, in giving it their *imprimatur*, understood what they were doing, and meant to decree what in fact they have decreed.
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> The "privileges and immunities" secured by the original Constitution were only such as each State gave to its own citizens, * * * * * but the fourteenth amendment prohibits any State from abridging the privileges or immunities of citizens of the United States, whether its own citizens or any others. It not merely requires equality of privileges, but it demands that the privileges and immunities of all citizens shall be absolutely unabridged and unimpaired.

In the same opinion, after enumerating some of the "privileges" of the citizens, such as were pertinent to the case on trial, but declining to enumerate all, the court further says:

> These privileges cannot be invaded without sapping the very foundation of republican government. A republican government is not merely a government of the people, but it is a free government. * * * * * It was very ably contended on the part of the defendants that the fourteenth amendment was intended only to secure to all citizens equal capacities before the law. That was at first our view of it. But it does not so read. The language is, "No State shall abridge the privileges or immunities of citizens of the United States." What are the privileges and immunities of citizens of the United States? Are they capacities merely? Are they not also rights?

The court in this case seems to intimate very strongly that the amendment was intended to secure the natural rights of citizens, as well as their equal capacities before the law.

In a case in the supreme court of Georgia, in 1869, the question was before the court whether a negro was competent to hold office in the State of Georgia. The case was ably argued on both sides, Mr. Akerman, the present Attorney General of the United States, being of counsel for the petitioner. Although the point was made and argued fully, that the right to vote and hold office were both included in the privileges and immunities of citizens, and were thus guaranteed by the fourteenth amendment, yet that point was not directly passed upon by the court, the court holding that under the laws and constitution of Georgia the negro citizen had the right claimed. In delivering the opinion, Chief Justice Brown said:

> It is not necessary to the decision of this case to inquire what are the "privileges and immunities" of a citizen, which are guaranteed by the fourteenth amendment to the Constitution of the United States. Whatever they may be, they are protected against all abridgment by legislation. * * Whether the "privileges and immunities" of the citizen embrace political rights, including the right to hold office, I need not now inquire. If they do, that right is guaranteed alike by the Constitution of the United States and of Georgia, and is beyond the control of the legislature.

In the opinion of Justice McKay, among other propositions, he lays down the following:

2d. The rights of the people of this State, white and black, are not granted to them by the constitution thereof; the object and effect of that instrument is not to *give*, but to restrain, deny, regulate, and guarantee rights, and all persons recognized by that constitution as citizens of the State have *equal legal and political rights*, except as *otherwise expressly declared*.

3d. It is the settled and uniform sense of the word "citizen," when used in reference to the citizens of the separate States of the United States, and to their rights as such citizens, that it describes a person entitled to every right, *legal and political*, enjoyed by any person in that State, unless there be some express exception made by positive law covering the particular person or class of persons, whose rights are in question.

In the course of the argument of this case, Mr. Akerman used the following language upon the point, as to whether citizenship carried with it the right to hold office:

"It may be profitable to inquire how the term (citizen) has been understood in Georgia. * * * It will be seen that men whom Georgians have been accustomed to revere believed that citizenship in Georgia carried with it the right to hold office in the absence of positive restrictions."

The majority of the committee having started out with the erroneous hypothesis that the term "privileges of citizens of the United States," as used in the fourteenth amendment, means no more than the term "privileges of citizens," as used in section 2 of article 4, discuss the question thus.

"The right of suffrage was not included in the privileges of citizens as used in section 2, article 4, therefore that right is not included in the privileges of citizens of the United States, as used in the fourteenth amendment."

Their premise being erroneous their whole argument fails. But if they were correct in their premise, we yet claim that their second position is not sustained by the authorities, and is shown to be fallacious by a consideration of the principles of free government.

We claim that, from the very nature of our government, the right of suffrage is a fundamental right of citizenship, not only included in the term "privileges of citizens of the United States," as used in the fourteenth amendment, but also included in the term as used in section 2 of article 4, and in this we claim we are sustained both by the authorities and by reason.

In *Abbott* vs. *Bayley*, (6 *Pick.*, 92,) the supreme court of Massachusetts say:

"The privileges and immunities" secured to the people of each State, in every other State, can be applied only to the case of a removal from one State into another. By such removal they become citizens of the adopted State without naturalization, and have a right to sue and be sued as citizens; and yet this privilege is qualified and not absolute, for they cannot enjoy the right of suffrage or eligibility to office without such *term of residence* as shall be prescribed by the constitution and laws of the State into which they shall remove.

This case fully recognizes the right of suffrage as one of the "privileges of the citizen," subject to the right of the State to *regulate* as to the *term of residence*—the same principle was laid down in Corfield *vs.* Correll.

In the case of *Corfield* vs. *Correll* in the Supreme Court of the United States, Justice Washington, in delivering the opinion of the court, used the following language.

"The privileges and immunities conceded by the Constitution of the United States to citizens in the several States," are to be confined to those which are in their nature fundamental, and belong of right to the citizens of all free governments. Such are the rights of protection of life and liberty, and to acquire and enjoy property, and to pay no higher impositions than other citizens, and to pass through or reside in the State at

pleasure, and to enjoy the elective franchise as regulated and established by the laws or constitution of the State in which it is to be exercised.

And this is cited approvingly by Chancellor Kent. (2 Kent, sec. 72.)

This case is cited by the majority of the committee, as sustaining their view of the law, but we are unable so to understand it. It is for them an exceedingly unfortunate citation.

In that case the court enumerated some of the "privileges of citizens," such as are "*in their nature fundamental and belong of right to the citizens of all free governments*," (mark the language,) and among those rights, place the "right of the elective franchise" in the same category with those great rights of life, *liberty*, and *property*. And yet the committee cite this case to show that this right is *not* a fundamental right of the citizen!

But it is added by the court that the right of the elective franchise, "is to be enjoyed as regulated and established by the State in which it is to be exercised."

These words are supposed to qualify the right, or rather take it out of the list of fundamental rights, where the court had just placed it. The court is made to say by this attempt in the same sentence, "the elective franchise *is* a fundamental right of the citizen, and it is *not* a fundamental right." It is a "fundamental right," provided the State sees fit to grant the right. It is a "fundamental right of the citizen," but it does not exist, unless the laws of the State give it. A singular species of "fundamental rights!" Is there not a clear distinction between the regulation of a right and its destruction? The State may regulate the right, but it may not destroy it.

What is the meaning of "regulate" and "establish?" Webster says: Regulate—to put in good order. Establish—to make stable or firm.

This decision then is, that "the elective franchise is a fundamental right of the citizen of all free governments, to be enjoyed by the citizen, under such laws as the State may enact to regulate the right and make it stable or firm." Chancellor Kent, in the section referred to, in giving the *substance* of this opinion, leaves out the word establish, regarding the word regulate as sufficiently giving the meaning of the court.

This case is, in our opinion, a very strong one against the theory of the majority of the committee.

The committee cite the language of Mr. Webster, as counsel in United States *vs.* Primrose.

We indorse every word in that extract. We do not claim that a citizen of Pennsylvania can go into Virginia and vote in Virginia, being a citizen of Pennsylvania. No person has ever contended for such an absurdity. We claim that when the citizen of the United States becomes a citizen of Virginia, that the State of Virginia has neither right nor power to abridge the privileges of such citizen by denying him entirely the right of suffrage, and thus all political rights. The authorities cited by the majority of the committee do not seem to meet the case—certainly do not sustain their theory.

The case of Cooper *vs.* The Mayor of Savannah, (4 Geo., 72,) involved the question whether a free negro was a citizen of the United States? The court, in the opinion, says:

Free persons of color have never been recognized as citizens of Georgia; they are not entitled to bear arms, vote for members of the legislature, or hold any civil office; they have no political rights, but have personal rights, one of which is personal liberty.

That they could not vote, hold office, &c., was held evidence that they were not regarded as citizens.

In the Supreme Court of the United States, in the case of Scott *vs.*

Sanford, (19 Howard, p. 476,) Mr. Justice Daniel, in delivering his opinion, used the following language as to the rights and qualities of citizenship:

> For who it may be asked is a citizen? What do the character and status of citizens import? Without fear of contradiction, it does not import the condition of being private property, the subject of individual power and ownership. Upon a principle of etymology alone, the term citizen, as derived from *civitas*, conveys the idea of connection or identification with the State or government, and a participation in its functions. But beyond this there is not, it is believed, to be found, in the theories of writers on government, or in any actual experiment heretofore tried, an exposition of the term citizen which has not been understood as conferring the actual possession and enjoyment, or the perfect right of acquisition and enjoyment, of an entire equality of privileges, civil and political.

And in the same case Chief Justice Taney said: "The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing; they both describe the political body, who, according to our republican institutions, form the sovereignty, and who hold the power, and conduct the Government through their representatives. They are what we familiarly call the sovereign people, and every citizen is one of this people, and a constituent member of this sovereignty. (19 Howard, 404.)

In an important case in the Supreme Court of the United States, Chief Justice Jay, in delivering the opinion of the court, said: "At the Revolution the sovereignty devolved on the people, and they are truly the sovereigns of the country, but they are sovereigns without subjects, (unless the African slaves may be so called,) and have none to govern but themselves. The citizens of America are equal as fellow-citizens, and joint tenants of the sovereignty." (Chishol *vs.* Georgia, 2 Dallas, 470.)

In Conner *vs.* Elliott, (18 Howard,) Justice Curtis, in declining to give an enumeration of all the "privileges" of the citizen, said "According to the express words and clear meaning of the clause, no privileges are secured except those that belong to citizenship."

The Supreme Court said, in Corfield *vs.* Coryell, that the elective franchise is such privilege; therefore, according to Justice Curtis, it belongs to citizenship. In a case in the supreme court of Kentucky, (1 Littell's Ky. Reports, p. 333,) the court say:

> No one can, therefore, in the correct sense of the term be a citizen of a State who is not entitled upon the terms prescribed by the institutions of the State to all the rights and privileges conferred by these institutions upon the highest class of society.

Mr. Wirt, when Attorney General of the United States, in an official opinion to be found on p. 508, 1st volume Opinions of Attorneys Generals, came to the conclusion that the negroes were not citizens of the United States, for the reason that they had very few of the "privileges" of citizens, and among the "privileges of citizens" of which they were deprived, that they could not vote at any election.

Webster defines a citizen to be a person, native or naturalized, who has the privilege of voting for public officers, and who is qualified to fill offices in the gift of the people.

Worcester defines the word thus: "An inhabitant of a republic who enjoys the rights of a citizen or freeman, and who has a right to vote for public officers as a citizen of the United States."

Bouvier, in his Law Dictionary, defines the term citizen thus: "One who, under the Constitution and laws of the United States, has a right to vote for Representatives in Congress and other public officers, and who is qualified to fill offices in the gift of the people."

Aristotle defines a "citizen" to be one who is a *partner in the legislative and judicial* power, and who shares in the honors of the state." (Aristotle de Repub., lib. 3, cap. 5, D.)

The essential properties of Athenian citizenship consisted in the share possessed by every citizen in the legislature, in the election of magistrates, and in the courts of justice. (See Smith's Dictionary of Greek Antiquities, p. 289.)

The possession of the *jus suffragii*, at least, if not also of the *jus honorum*, is the principle which governs at this day in defining citizenship in the countries deriving their jurisprudence from the civil law. (Wheaton's International Law, p. 892.)

The Dutch publicist, Thorbecke, says:

What constitutes the distinctive character of our epoch is the development of the right of citizenship. In its most extended as well as its most restricted sense, it includes a great many properties.

The right of citizenship is the right of voting in the government of the local, provincial, or national community of which one is a member. In this last sense the right of citizenship signifies a participation in the right of voting, in the general government as member of the State.

(Rev. & Fr. Etr., tom. v., p. 383.)

In a recent work of some research, written in opposition to female suffrage, the author takes the ground that women are not citizens, and urges that as a reason why they can properly be denied the elective franchise, his theory being that if full citizens they would be entitled to the ballot. He uses the following language:

It is a question about which there may be some diversity of opinion what constitutes citizenship, or who are citizens. In a loose and improper sense the word citizen is sometimes used to denote any inhabitant of the country, but this is not a correct use of the word. Those, and no others, are properly citizens who were parties to the original compact by which the Government was formed, or their successors who are qualified to take part in the affairs of Government by their votes in the election of public officers.

Women and children are represented by their domestic directors or heads in whose wills theirs is supposed to be included. They, as well as others not entitled to vote, are not properly citizens, but are members of the State, fully entitled to the protection of its laws. A citizen, then, is a person entitled to vote in the elections. He is one of those in whom the sovereign power of the State resides. (Jones on Suffrage, p. 48.)

But all such fallacious theories as this are swept away by the fourteenth amendment, which abolishes the theory of different grades of citizenship, or different grades of rights and privileges, and declares all persons born in the country or naturalized in it to be citizens, in the broadest and fullest sense of the term, leaving no room for cavil, and guaranteeing to all citizens the rights and privileges of citizens of the republic.

We think we are justified in saying that the weight of authority sustains us in the view we take of this question. But considering the nature of it, it is a question depending much for its solution upon a consideration of the government under which citizenship is claimed. Citizenship in Turkey or Russia is essentially different in its rights and privileges from citizenship in the United States. In the former, citizenship means no more than the right to the protection of his absolute rights, and the "citizen" is a subject; nothing more. Here, in the language of Chief Justice Jay, there are no subjects. All, native-born and naturalized, are citizens of the highest class; here *all citizens are sovereigns*, each citizen bearing a portion of the supreme sovereignty, and therefore it must necessarily be that the right to a voice in the Government is the right and privilege of a citizen as such, and that which is undefined in the Constitution is undefined because it is self-evident.

Could a State disfranchise and deprive of the right to a vote all citizens who have red hair; or all citizens under six feet in height? All will consent that the States could not make such arbitrary distinctions the ground for denial of political privileges; that it would be a violation of the first article of the fourteenth amendment; that it would

be abridging the privileges of citizens. And yet, the denial of the elective franchise to citizens on account of sex is equally as arbitrary as the distinction on account of stature, or color of hair, or any other physical distinction.

These privileges of the citizen exist independent of the Constitution. They are not derived from the Constitution or the laws, but are the means of asserting and protecting rights that existed before any civil governments were formed—the right of life, liberty, and property. Says Paine, in his Dissertation upon the Principles of Government:

> The right of voting for representatives is the primary right, by which other rights are protected. To take away this right is to reduce man to a state of slavery, for slavery consists in being subject to the will of another; and he that has not a vote in the election of representatives is, in this case. The proposal, therefore, to disfranchise any class of men is as criminal as the proposal to take away property.

In a state of nature, before governments were formed, each person possessed the natural right to defend his liberty, his life, and his property from the aggressions of his fellow-men. When he enters into the free government he does not surrender that right, but agrees to exercise it, not by brute force, but by the ballot, by his individual voice in making the laws that dispose of, control, and regulate those rights.

The right to a voice in the government is but the natural right of protection of one's life, liberty, and property, by personal strength and brute force, so modified as to be exercised in the form of a vote, through the machinery of a free government.

The right of self-protection, it will not be denied, exists in all equally in a state of nature, and the substitute for it exists equally in all the citizens after a free government is formed, for the free government is by all and for all.

The people "ordained and established" the Constitution. Such is the language of the preamble. "We, the people." Can it be said that the people acquire their privileges from the instrument that they themselves establish? Does the creature extend rights, privileges, and immunities to the creator? No; the people retain all the rights which they have not surrendered; and if the people have not given to the Government the power to deprive them of their elective franchise, they possess it by virtue of citizenship.

The true theory of this Government, and of all free governments, was laid down by our fathers in the Declaration of Independence, and declared to be "self-evident." "All men are endowed by their Creator with certain inalienable rights; among these are life, liberty, and the pursuit of happinesss. That to secure these rights governments are instituted among men, deriving all their just powers from the consent of the governed."

Here is the great truth, the vital principle, upon which our Government is founded, and which demonstrates that the right of a voice in the conduct of the Government, and the selection of the rulers, is a right and privilege of all citizens.

Another of the self evident truths laid down in that instrument is:

> That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

How can the people carry out this right without the exercise of the ballot; and is not the ballot then a fundamental right and a privilege of the citizen, not given to him by the Constitution, but inherent, as a necessity, from the very nature of government?

Benjamin Franklin wrote:

That every man of the commonalty, except infants, insane persons, and criminals, is, of common right, and by the laws of God, a freeman, and entitled to the free enjoyment of liberty. *That liberty or freedom consists in having an actual share in the appointment of those who frame the laws,* and who are to be the guardians of every man; life, property, and peace, for the all of one man is as dear to him as the all of another, and the poor man has an *equal* right but *more* need to have representatives in the legislature than the rich one. That they who have no voice nor vote in the electing of representatives *do not enjoy liberty, but are absolutely enslaved to those who have votes and to their representatives;* for to be enslaved is to have governors whom other men have set over us, and be subject to laws made by the representatives of others, without having had representatives of our own to give consent in our behalf.—*Franklin's Works*, vol. 2, p. 372.

James Madison said:

Under every view of the subject it seems indispensable that the mass of the citizens should not be without a voice in making the laws which they are to obey, and in choosing the magistrates who are to administer them.—*Madison Papers*, vol. 3, p. 14.

Taxation without representation is abhorrent to every principle of natural or civil liberty. It was this injustice that drove our fathers into revolution against the mother country.

The very act of taxing exercised over those who are not represented appears to me to be depriving them of one of their most essential rights as freemen, and if continued, seems to be, in effect, an entire disfranchisement of every civil right. For what one civil right is worth a rush after a man's property is subject to be taken from him at pleasure without his consent? If a man is not his *own assessor*, in person or by deputy, his liberty is gone, or he is entirely at the mercy of others.—*Otis's Rights of the Colonies*, p. 58.

Nor are these principles original with the people of this country. Long before they were ever uttered on this continent they were declared by Englishmen. Said Lord Summers, a truly great lawyer of England:

Amongst all the rights and privileges appertaining unto us, that of having a share in the legislation, and being governed by such laws as we ourselves shall cause, is the most fundamental and essential, as well as the most advantageous and beneficial.

Said the learned and profound Hooker:

By the natural law whereunto Almighty God hath made all subject, the lawful power of making laws to command whole politic societies of men, belongeth so properly unto the same entire societies, that for any prince or potentate of what kind soever upon earth to exercise the same of himself, (or themselves,) and not either by express commission immediately received from God, or else by authority derived at the first from their consent upon whose persons they impose laws, it is no better than mere tyranny! Agreeable to the same just privileges of *natural equity*, is that maxim for the English constitution, that "Law to bind all must be assented to by all;" and there can be no legal appearance of assent without some degree of representation.

The great champion of liberty, Granville Sharpe, declared that—

All British subjects, whether in Great Britain, Ireland, or the colonies, are equally *free* by the laws of nature; they certainly are equally entitled to the same natural rights that are essential for their own preservation, because this privilege of "having a share in the legislation" is not merely a *British right*, peculiar to this island, but it is also a natural right, which cannot without the most flagrant and stimulating injustice be withdrawn from any part of the British empire *by any worldly* authority whatsoever.

No tax can be levied without manifest robbery and injustice where this legal and constitutional representation is wanting, because the English law abhors the idea of taking the least property from freemen without their free consent.

It is iniquitous (*iniquum est*, says the maxim) that freemen should not have the *free* disposal of their own effect, and whatever is iniquitous can never be made lawful by any authority on earth, not even by the united authority of king, lords, and commons, for that would be contrary to the eternal laws of God, which are supreme.

In an essay upon the "first principles of government," by Priestly, an English writer of great ability, written over a century since, is the following definition of political liberty:

Political liberty, I would say, consists in power, which the members of the state

reserve to themselves, of arriving at the public offices, or at least of having votes in the nomination of those who fill them.

In countries where every member of the society enjoys an equal power of arriving at the supreme offices, and consequently of directing the strength and sentiments of the whole community, there is a state of the most perfect political liberty.

On the other hand, in countries where a man is excluded from these offices, or from the power of voting for proper persons to fill them, *that man*, whatever be the form of the government, has no share in the government and therefore has no political liberty at all. And since every man retains and can never be deprived of his natural right of relieving himself from all oppression, that is, from everything that has been imposed upon him without his own consent, this must be the only true and proper foundation of all the governments subsisting in the world, and that to which the people who compose them have an inalienable right to bring them back.

It was from these great champions of liberty in England that our forefathers received their inspiration and the principles which they adopted, incorporated into the Declaration of Independence, and made the foundation and framework of our Government. And yet it is claimed that we have a Government which tramples upon these elementary principles of political liberty, in denying to one-half its adult citizens all political liberty, and subjecting them to the tyranny of taxation without representation. It cannot be.

When we desire to construe the Constitution, or to ascertain the powers of the Government and the rights of the citizens, it is legitimate and necessary to recur to those principles and make them the guide in such investigation.

It is an oft-repeated maxim set forth in the bills of rights of many of the State constitutions that "the frequent recurrence to fundamental principles is necessary for the preservation of liberty and good government."

Recurring to those principles, so plain, so natural, so like political axioms, it would seem that to say that one-half the citizens of this republican Government, simply and only on account of their sex, can legally be denied the right to a voice in the Government, the laws of which they are held to obey, and which takes from them their property by taxation, is so flagrantly in opposition to the principles of free government, and the theory of political liberty, that no man could seriously advocate it.

But it is said in opposition to the "citizen's right" of suffrage that at the time of the establishment of the Constitution, women were in all the States denied the right of voting, and that no one claimed at the time that the Constitution of the United States would change their status; that if such a change was intended it would have been explicitly declared in the Constitution or at least carried into practice by those who framed the Constitution, and, therefore, such a construction of it is against what must have been the intention of the framers.

This is a very unsafe rule of construction. As has been said, the Constitution necessarily deals in general principles; these principles are to be carried out to their legitimate conclusion and result by legislation, and we are to judge of the intention of those who established the Constitution by what they say, guided by what they declare on the face of the instrument to be their object.

It is said by Judge Story, in Story on Constitution, "Contemporary construction is properly resorted to to illustrate and confirm the text. * * *It can never abrogate the text; it can never fritter away its obvious sense;* it can never narrow down its true limitations."

It is a well-settled rule that in the construction of the Constitution, the objects for which it was established, being expressed in the instrument, should have great influence; and when words and phrases are used which are capable of different constructions, that construction

should be given which is the most consonant with the declared objects of the instrument.

We go to the preamble to ascertain the objects and purpose of the instrument. Webster defines preamble thus: "The introductory part of a statute, which states the reason and intent of the law."

In the preamble, then, more certainly than in any other way, aside from the language of the instrument, we find the intent.

Judge Story says:

> The importance of examining the preamble for the purpose of expounding the language of a statute has been long felt and universally conceded in all juridical discussion. It is an admitted maxim * * that the preamble is a key to open the mind of the matters as to the mischiefs to be remedied and the objects to be accomplished by the statute. * * It is properly resorted to where doubts or ambiguities arise upon the words of the enacting part, for if they are clear and unambiguous, there seems little room for interpretation, except in cases leading to an obvious absurdity or to a direct overthrow of the intention expressed in the preamble. (Story on the Constitution, sec. 457.)

Try this question by a consideration of the objects for which the Constitution was established, as set forth in the preamble, "to establish justice." Does it establish justice to deprive of all representation or voice in the Government one-half of its adult citizens and compel them to pay taxes to and support a Government in which they have no representation? Is "taxation without representation" justice established?

"To insure domestic tranquillity." Does it insure domestic tranquillity to give all the political power to one class of citizens, and deprive another class of any participation in the government? No. The sure means of tranquillity is to give "equal political rights to all," that all may stand "equal before the law."

"To provide for the common defense." We have seen that the only defense the citizen has against oppression and wrong is by his voice and vote in the selection of the rulers and law-makers. Does it, then, "provide for the common defense," to deny to one-half the adult citizens of the republic that voice and vote?

"To secure the *blessings of liberty* to ourselves and our posterity." As has been already said, *there can be no political liberty to any citizen deprived of a voice in the government.* This is self-evident; it needs no demonstration. Does it, then, "secure the blessings of liberty to ourselves and posterity," to deprive one-half the citizens of adult age of this right and privilege?

Tried by the expressed objects for which the Constitution was established, as declared by the people themselves, this denial to the women citizens of the country of the right and privilege of voting is directly in contravention of these objects, and must, therefore, be contrary to the spirit and letter of the entire instrument.

And according to rule of construction referred to, no "contemporaneous construction, however universal it may be, can be allowed to set aside the expressed objects of the makers, as declared in the instrument." The construction which we claim for the 1st section of the fourteenth amendment is in perfect accord with those expressed objects; and even if there were anything in the original text of the Constitution at variance with the true construction of that section, the amendment must control. Yet we believe that there is nothing in the original text at variance with what we claim to be the true construction of the amendment.

It is claimed by the majority of the committee that the adoption of the fifteenth amendment was by necessary implication a declaration that the States had the power to deny the right of suffrage to citizens for any other reasons than those of race, color, or previous condition of servitude.

We deny that the fundamental rights of the American citizen can be taken away by "implication."

There is no such law for the construction of the Constitution of our country. The law is the reverse—that the fundamental rights of citizens are not to be taken away by implication, and a constitutional provision for the protection of one class can certainly not be used to destroy or impair the same rights in another class.

It is too violent a construction of an amendment, which prohibits States from, or the United States from, abridging the right of a citizen to vote, by reason of race, color, or previous condition of servitude, to say that by implication it conceded to the States the power to deny that right for any other reason. On that theory the States could confine the right of suffrage to a small minority, and make the State government aristocratic, overthrowing their republican form.

The fifteenth article of amendment to the Constitution clearly recognizes the right to vote, as one of the rights of a citizen of the United States. This is the language:

"The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of survitude."

Here is stated, first, the existence of a *right*. Second, its nature. Whose right is it? The right of citizens of the United States. What is the right? The right to vote. And this right of citizens of the United States, States are forbidden to abridge. Can there be a more direct recognition of a right? Can that be *abridged* which does not *exist?* The denial of the power to abridge the right, recognizes the existence of the right. Is it said that this right exists by virtue of State citizenship, and State laws and constitutions? Mark the language "The right of citizens of the *United States* to vote;" not, citizens of *States*. The right is recognized as existing independent of State citizenship.

But it may be said, if the States had no power to abridge the right of suffrage, why the necessity of prohibiting them?

There may not have been a necessity; it may have been done through caution, and because the peculiar condition of the colored citizens at that time rendered it necessary to place their rights beyond doubt or cavil.

It is laid down as a rule of construction by Judge Story that the natural import of a single clause is not to be narrowed so as to exclude implied powers resulting from its character simply because there is another clause which enumerates certain powers which might otherwise be deemed implied powers within its scope, for in such cases we are not to assume that the affirmative specification excludes all other implications. (2d Story on Constitution, sec. 449.)

There are numerous instances in the Constitution where a general power is given to Congress, and afterward a particular power given, which was included in the former; yet the general power is not to be narrowed, because the particular power is given. On this same principle the fact that by the fifteenth amendment the States are specifically forbidden to deny the right of suffrage on account of race, color, or previous condition of servitude, does not narrow the general provision in the fourteenth amendment which guarantees the privileges of all the citizens against abridgment by the States on any account.

The rule of interpretation relied upon by the committee in their construction of the fifteenth amendment is, "that the expression of one thing is the exclusion of another," or the specification of particulars is the exclusion of generals.

Of these maxims Judge Story says:

> They are susceptible of being applied, and often are ingeniously applied, to the subversion of the text and the objects of the instrument. The truth is, in order to ascertain how far an affirmative or negative provision excludes or implies others, we must look to the nature of the provision, the subject-matter, the objects, and the scope of the instrument; these and these only can properly determine the rule of construction. (2 Story, 448)

It is claimed by the committee that the second section of the fourteenth amendment implies that the several States may restrict the right of suffrage as to other than male citizens. We may say of this as we have said of the theory of the committee upon the effect of the fifteenth amendment. It is a proposal to take away from the citizens guarantees of fundamental rights, by implication, which have been previously given in absolute terms.

The first section includes all citizens in its guarantees, and includes all the "privileges and immunities" of citizenship and guards them against abridgment, and under no recognized or reasonable rule of construction can it be claimed that by implication from the provisions of the second section the States may not only abridge but entirely destroy one of the highest privileges of the citizen to one-half of the citizens of the country. What we have said in relation to the committee's construction of the effect of the fifteenth amendment applies equally to this.

The object of the first section of this amendment was to secure all the rights, privileges, and immunities of all the citizens against invasion by the States. The object of the second section was to fix a rule or system of apportionment for Representatives and taxation; and the provision referred to, in relation to the exclusion of males from the right of suffrage, might be regarded as in the nature of a penalty in case of denial of that right to that class. While it, to a certain extent, protected that class of citizens, it left the others where the previous provisions of the Constitution placed them. To protect the colored man more fully than was done by that penalty was the object of the fifteenth amendment.

In no event can it be said to be more than the recognition of an existing fact, that only the male citizens were, by the State laws, allowed to vote, and that existing order of things was recognized in the rule of representation, just as the institution of slavery was recognized in the original Constitution, in the article fixing the basis of representation, by the provision that only three-fifths of all the slaves ("other persons") should be counted. There slavery was recognized as an existing fact, and yet the Constitution never sanctioned slavery, but, on the contrary, had it been carried out according to its true construction, slavery could not have existed under it; so that the recognition of facts in the Constitution must not be held to be a sanction of what is so recognized.

The majority of the committee say that this section implies that the States may deny suffrage to others than male citizens. If it implies anything it implies that the States may deny the franchise to all the citizens. It does not provide that they shall not deny the right to male citizens, but only provides that if they do so deny they shall not have representation for them.

So, according to that argument, by the second section of the fourteenth amendment the power of the States is conceded to entirely take away the right of suffrage, even from that privileged class, the male citizens. And thus this rule of "implication" goes too far, and fritters away all the guarantees of the Constitution of the right of suffrage, the highest of the privileges of the citizen; and herein is demonstrated the reason and safety of the rule that fundamental rights are not to be taken away by implication, but only by express provision.

When the advocates of a privileged class of citizens under the Constitution are driven to implication to sustain the theory of taxation without representation, and American citizenship without political liberty, the cause must be weak indeed.

It is claimed by the majority that by section 2, article 1, the Constitution recognizes the power in States to declare who shall and who shall not exercise the elective franchise. That section reads as follows:

> The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

The first clause of this section declares *who* shall choose the Representatives—mark the language—"Representatives *shall be chosen by the people* of the States," not by the male people, not by certain classes of the people, but by the people; so that the construction sought to be given this section, by which it would recognize the power of the State to disfranchise one-half the citizens, as in direct contravention of the first clause of the section, and of its whole spirit, as well as of the objects of the instrument. The States clearly have no power to nullify the express provisions that the election shall be by the people, by any laws limiting the election to a moiety of the people.

It is true the section recognizes the power in the State to regulate the qualification of the electors; but as we have already said, the power to regulate is a very different thing from the power to destroy.

The two clauses must be taken together, and both considered in connection with the declared purpose and objects of the Constitution.

The Constitution is necessarily confined to the statement of general principles. There are regulations necessary to be made as to the qualifications of voters, as to their proper age, their domicile, the length of residence necessary to entitle the citizen to vote in a given State or place. These particulars could not be provided in the Constitution but are necessarily left to the States, and this section is thus construed as to be in harmony with itself, and with the expressed objects of the framers of the Constitution and the principles of free government.

When the majority of the committee can demonstrate that "the people of the States," and one-half the people of the States, are equivalent terms, or that when the Constitution provides that the Representatives shall be elected by the people, its requirements are met by an election in which less than one-half the adult people are allowed to vote, then it will be admitted that this section, to some extent, sustains them.

The committee say, that if it had been intended that Congress should prescribe the qualifications of electors, the grant would have given Congress that power specifically. We do not claim that Congress has that power; on the contrary, admit that the States have it; but the section of the Constitution *does* prescribe who the electors shall be. That is what we claim—nothing more. They shall be "the people;" their qualifications may be regulated by the States; but to the claim of the majority of the committee that they may be "qualified" out of existence, we cannot assent.

We are told that the acquiescence by the people, since the adoption of the Constitution, in the denial of political rights to women citizens, and the general understanding that such denial was in conformity with the Constitution, should be taken to settle the construction of that instrument.

Any force this argument may have it can only apply to the original text, and not to the fourteenth amendment, which is of but recent date.

But, as a general principle, this theory is fallacious. It would stop all political progress; it would put an end to all original thought, and

put the people under that tyranny with which the friends of liberty have always had to contend—the tyranny of precedent.

From the beginning, our Government has been right in theory, but wrong in practice. The Constitution, had it been carried out in its true spirit, and its principles enforced, would have stricken the chains from every slave in the republic long since. Yet, for all this, it was but a few years since declared, by the highest judicial tribunal of the republic, that, according to the "general understanding," the black man in this country had no rights the white man was bound to respect. General understanding and acquiescence is a very unsafe rule by which to try questions of constitutional law, and precedents are not infallible guides toward liberty and the rights of man.

Without any law to authorize it, slavery existed in England, and was sustained and perpetuated by popular opinion, universal custom, and the acquiescence of all departments of the government as well as by the subjects of its oppression. A few fearless champions of liberty struggled against the universal sentiment, and contended that, by the laws of England slavery could not exist in the kingdom; and though for years unable to obtain a hearing in any British court, the Sommersett case was finally tried in the Court of King's Bench in 1771, Lord Mansfield presiding, wherein that great and good man, after a long and patient hearing, declared that no law of England allowed or approved of slavery, and discharged the negro. And it was then judicially declared that no slave could breathe upon the soil of England, although slavery had up to that time existed for centuries, under the then existing laws. The laws were right, but the practice and public opinion were wrong.

It is said by the majority of the committee that "if the right of female citizens to suffrage is vested by the Constitution, that right can be established in the courts."

We respectfully submit that, with regard to the competency and qualification of electors for members of this House, the courts have no jurisdiction.

This House is the sole judge of the election return and qualification of its own members, (article 1, section 5, of Constitution;) and it is for the House alone to decide upon a contest, who are, and who are not, competent and qualified to vote. The judicial department cannot thus invade the prerogatives of the political department.

And it is therefore perfectly proper, in our opinion, for the House to pass a declaratory resolution, which would be an index to the action of the House, should the question be brought before it by a contest for a seat.

We, therefore, recommend to the House the adoption of the following resolution:

Resolved, by the House of Representatives, That the right of suffrage is one of the inalienable rights of citizens of the United States, subject to regulation by the States, through equal and just laws.

That this right is included in the "priviliges of citizens of the United States," which are guaranteed by section 1 of article 14 of amendments to the Constitution of the United States; and that women citizens, who are otherwise qualified by the laws of the State where they reside, are competent voters for Representatives in Congress.

WM. LOUGHRIDGE.
BENJ. F. BUTLER.