THE STATE *vs.* PENNEY.

Congress, after prescribing a uniform rule of naturalization, may lawfully give State courts jurisdiction in cases arising under it, and such has been the practice.

Unless Congress expressly provide to the contrary, State courts will retain concurrent jurisdiction in all cases where they had jurisdiction over the subject matter before the adoption of the federal constitution if compatible with State obligations.

There is no ground of doubt as to the rightful jurisdiction of the State courts in naturalization cases until extinguished by some act of Congress, and such is the unversal understanding on this point.

The 4th section of the act of Congress of April 14, 1802, (2 *Stat.* 155,) providing that the children of persons duly naturalized being under the age of twenty-one years, and dwelling in the United States at the time of such naturalization, is prospective so as to embrace the children of aliens naturalized after the passage of the act as well as the children of those naturalized before.

The case of *West vs. West,* (8 *Paige* 433,) cited and approved. The naturalization of the father *ipso facto* makes the son a citizen if such son is under twenty-one years of age and dwelling in the United States at the time of the naturalization of his father.

The judgment of a Court of competent judisdiction in a naturalization case is conclusive of its own validity, and closes the door to all inquiry as to whether the requisites of the law have been complied with, for that will be presumed.

On Quo Warranto.

On the 28th July, 1849, the State sued out a writ of *Quo Warranto* against James Penney, requiring him to show by what warrant he exercised the franchise of Sheriff of Sevier county, State of Arkansas; the writ averring that "he was an alien, and not a citizen of the United States at the time of his election to that office."

At the January term, 1850, the defendant, by S. H. Hempstead, his attorney, filed his response showing his elcetion commission and qualification as Sheriff of Sevier county according to law, stated that he had resided in Arkansas more than twenty

years, and had held offices of profit and trust therein; that he was born in Ireland, and that, with his father, Robert Penney, a free white person, he emigrated to the United States in 1824, and was then about eleven years old; that his father was duly naturalized and admitted to citizenship by the Court of Common Pleas of Monroe county, New York, on the 5th April, 1830, and that the defendant also a free white person at that time, under the age of twenty-one years, and was dwelling in the United States, and that thereby he became a citizen of the United States, and, from thence forward, had continued so to be, within the meaning of the act of Congress on that subject, and which is as follows, viz: "That the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the Government of the United States, may have become citizens of any one of the said States under the laws thereof, being under the age of twenty-one years at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States." *Part of sec.* 4, *Act of April* 14, 1802. 2 *U. S. Stat.* 155.

An authenticated copy of the record of the naturalization of Robert Penney was appended to the response, and is as follows, viz:

"MONROE COMMON PLEAS, } ss.

Proceedings before the Judges of the Court of Common Pleas, holden at the court house in and for the county of Monroe, on the 5th day of April of March term, 1830.

Witness, MOSES CHAPIN, *Esq.*, 1*st Judge.*
WILLIAM GROVES, *Clerk.*

MONROE COUNTY. } ss.

Be it remembered, that, on the 5th day of April, 1830, before the said Court of Common Pleas, the said Court being a Court of record, having common law jurisdiction and a seal and clerk,

came Robert Penney, produced to the said Court a certain report and declaration of intention signed by his own proper hand and attested by his oath, in the words and figures following, to wit:

STATE OF NEW YORK, } ss.
MONROE COUNTY. }

Report, by Robert Penney, an alien, made to the Court of Common Pleas, in and for the county, the 3d day of April, 1828: Name, Robert Penney; sex, male; place of birth, Ireland; age, forty-three; nation and allegiance, King of the United Kingdom of Great Britain and Ireland; place whence emigrated, Ireland; condition and occupation, farmer; place of actual residence, Brighton, county of Monroe.

ROBERT PENNEY.

STATE OF NEW YORK, } ss.
MONROE COUNTY. }

I, Robert Penney, do solemnly swear that it is my *bona fide* intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign Prince, Potentate, State, or Sovereignty whatsoever, and particularly to the King of the United Kingdom of Great Britain and Ireland.

ROBERT PENNEY.

Subscribed and sworn in open Court, the 4th day of April, 1828. SIMON STONE, 2*d. Clk.*

Whereupon, such proceedings were had that the said Court was satisfied that the said Robert Penney was a native-born Citizen of the United Kingdom of Great Britain and Ireland; that he was forty-five years old at the time of making this application; and it being further proved, to the satisfaction of this Court, by the oath of James Tweesdale, that the said Robert Penney has resided in the United States uninterruptedly for more than five years, and within the county of Monroe for more than one year next preceding this date, and that during all that time he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well-disposed towards the good order and happiness of the same; and

the said Robert Penney having, in open Court, made solemn oath that he will support the constitution of the United States; that he does absolutely renounce and abjure all allegiance and fidelity to every foreign Prince, Potentate, State and Sovereignty whatever, and particularly to the King of Great Britain and Ireland.

And the said Court being satisfied that the said Robert Penney has, in all things, conformed to the provisions of an act entitled "An act to establish a uniform rule of naturalization, and to repeal the acts heretofore passed on that subject;" therefore, it is considered by the said Court, now here, that the said Robert Penney be and hereby is *admitted* to become a citizen of the United States of America.

Judgment signed April 5, 1830.

M. CHAPIN, 1*st Judge of Monroe Co.*

STATE OF NEW YORK, }
MONROE COUNTY. } ss.

I, John C. Nash, Clerk of the said county, certify that I have compared the aforegoing record of naturalization with the original record on file in this office, and that the same is a correct transcript thereof, and of the whole of such original record.

I, John C. Nash, as Clerk of the County Courts in and for the said county of Monroe, in the State of New York, do hereby further certify that the foregoing three pages contain a true, full, and complete transcript from the record of the proceedings as therein stated as the same now appear on the record of the Court of Common Pleas of said county, now in my office.

In testimony whereof, I have hereunto set my hand, and af-
[LS.] fixed the seal of my office, this 10th day of November, A. D. 1849. JOHN C. NASH, *Clerk.*

I, Patrick G. Buchan, as Judge of the County Courts of the county of Monroe, in the State of New York, and late Judge of the Court of Common Pleas, in and for said county, (which Court is now abolished by the laws of said State,) do hereby certify that John C. Nash, Esquire, is Clerk of the County Courts

of said county, and of the Supreme Court of said State, held in and for said county, and has the custody, care and keeping of all the books, papers, and proceedings of the late Court of Common Pleas, in and for said county, that he is duly commissioned and qualified, that full faith is and ought to be given to all his official acts, that his certificate as above written is in due form of law, and his signature thereto genuine.

Given under my hand and seal, this 10th day of November, A. D. 1849. P. G. BUCHAN. [SEAL.]

I, John C. Nash, as Clerk of the County Courts, and of the Supreme Court of the State of New York, in and for the county of Monroe, and late Clerk of the late Court of Common Pleas, in and for said county of Monroe, having all the books, papers, and proceedings in said Court of Common Pleas in my office, do hereby certify that the Hon. Patrick G. Buchan, whose name appears to the foregoing certificate, is now and was at the time he signed the same, Judge of the said County Courts of said county, duly commissioned and qualified, that full faith and credit is and ought to be given to all his official acts, that his certificate is in due form of law, and his signature thereto genuine.

In testimony whereof, I have hereto set my hand, and affixed the seal of my office, at the city of Rochester, in the [SEAL.] county of Monroe, and State of New York, this 10th day of November, A. D. 1849.

JOHN C. NASH, *Clerk.*"

The response further stated that the defendant was also naturalized, and admitted to citizenship by the Probate Court of Lafayette county, Arkansas, on the 8th day of November, 1848, and a certified copy of the proceeding was attached to the response; but as the Court did not find it necessary to recur to this, nothing further need be said with regard to it.

To this response, the Attorney General filed a demurrer, and insisted: 1st. That the naturalization of Robert Penney did not

conform to the acts of Congress in that behalf, and that his admission to citizenship was of no validity or effect: 2d. That the *4th section* of the act of Congress of the 14th of April, 1802, only embraced parents who had been naturalized and were citizens *at the date* of the act, and whose minor children were *then* dwelling in the United States, and does not operate *prospectively,* and consequently that the naturalization of the father could not confer the right of citizenship on the son: 3d. That power cannot be delegated to State Courts in naturalization cases, and that such power belongs exclusively to the courts of the United States, and consequently that the action of the Court of Common Pleas of Monroe county, New York, on this subject, was null and void, in which demurrer the defendant joined, and the same was argued by the counsel of the parties, and submitted to the Court.

CLENDENIN, *Att. Gen.,* and WATKINS & CURRAN, for the plaintiff. The record of the naturalization of Robert Penney, the father of the defendant, does not conform to the acts of Congress; the report required by the act of Congress of 14th April, 1802, omits to state *the intended place of settlement;* nor does it appear to have been made to *the Court,* but only to the Clerk of a State Court; (2 *U. S. Stat. at large* 154;) nor was the report and declaration proved by the *certificate of the clerk,* (3 *U. S. St. at large* 258;) and, in the words of the act of Congress of 22d March, 1816, the pretended admission of the alien was of "no validity or effect." The judgment of the Court admitting him as a citizen, is not conclusive; and the regularity of the proceedings may be enquired into, because the act of Congress requires that these prerequisites to the judgment shall affirmatively appear, or the judgment shall be of no validity or effect.

By the *4th clause* of the *VIII Sec. of Art.* 1, *Con. U. S.,* the exclusive power is given to Congress "to establish an uniform rule of naturalization." This power, Congress has not vested in a State Court, nor can Congress delegate any of the judicial power of the United States to a State Court. (1 *Wheat.* 304. 5 *Wheat.*

1. 7 *Conn.* 239. 17 *J. R.* 4.) Congress having the exclusive right to legislate upon the subject of naturalization, (*Story's Com. on Con.* 384. 2 *Wheat.* 259,) and having so legislated, no State Court possesses the power to admit aliens to become citizens of the United States.

Conceding that Robert Penney, the father, was legally naturalized, his infant son, the defendant, did not thereby become a citizen, for he was not in the United States at the passage of the act of 1802; the 1st clause of the *4th section* of that act, by its terms, is not prospective, and has reference only to the children of aliens then naturalized. The cases of *Pack vs. Young,* (21 *Wend.* 389,) *Same case,* (26 *Wend.* 613,) *Charles vs. Munson & Brinfield Manufac. Co.,* (17 *Pick.* 70,) were adjudications upon the 2d clause of the *4th section;* but NELSON, C. J., in the case of *Peck vs. Young,* (21 *Wend.* 389,) and the Court, in the case of *Campbell vs. Jordan and wife,* (6 *Cranch* 176. *S. C.* 2 *Pet. Con. R.* 342,) expressly recognize the doctrine that the children of aliens naturalized were citizens because they were dwelling in the United States "at the time when the law passed." And such is the opinion of Chancellor KENT, (2 *Comm.* 51,) though he says there is *color* for the construction that the law may have been intended to be prospective.

S. H. HEMPSTEAD, contra. The naturalization of the parent under the *4th section* of the act of Congress of April 14, 1802, operated *ipso facto,* to confer the right of citizenship on the child if a minor and dwelling in the United States at the time. That the act was prospective, see *Campbell vs. Gordon,* (6 *Cranch* 176,) *Young vs. Peck,* (21 *Wend.* 390,) *Peck vs. Young,* (26 *Wend.* 620, *opinion of Senator* SCOTT, *same case, p.* 628,) *Charles vs. Munson Manuf. Co.,* 17 *Pick.* 70. 2 *Kent* 51.)

The proceedings in relation to the naturalization of Robert Penney, the father of the defendant, correspond in every essential requisite with the act of 1802, (2 *U. S. Stat.* 153;) but if they did not, it is well settled that the judgment of the Court admitting the alien to become a citizen, is conclusive proof that all the

pre-requisites of the law have been complied with, and it need not appear by the record of naturalization. (*Starke vs. Chesapeake Ins. Co.*, 7 *Cranch* 420. 2 *Cond. R.* 556. *Campbell vs. Gordon*, 6 *Cranch* 176. 2 *Cond. R.* 343. 13 *Wend.* 526. 1 *McCord* 187. *Spratt vs. Spratt*, 4 *Pet.* 393.) The act of admission by a Court of competent authority, is conclusive evidence, and we cannot go behind it to inquire whether the conditions of the law have been observed—the ordinary presumption attaching that the Court discharged its duty, and observed the law.

Mr. Justice SCOTT delivered the opinion of the Court.

This proceeding is founded upon a suggestion that the defendant was an alien at the time of his election to the office of sheriff, and the only question is as to the truth of the suggestion.

The defendant relies upon the naturalization of his father during his own minority, both being then, as they had been for a number of years before and ever since, residents of the United States. On the part of the State, it is insisted that the alleged naturalization of the father was irregular and void, and that, even if it were valid, it did not enure to the benefit of the defendant.

The objections pointed out touching the first of these two positions of the State, seem to be predicated upon provisions of the act of Congress of 1816, that had been repealed previously to the admission of the father. And when the proceedings of the Court of Common Pleas of New York, as shown by the transcript, are tested by the laws then actually in force, no substantial defect appears, at least none that go the extent of invalidating the admission; and such as appear are beyond our reach. The authorities cited amply sustaining the position that until reversed, the judgment rendered, as shown by the transcript, is conclusive of its own validity, and closes the door behind it to all inquiry. It was such a Court as was expressly within the act of Congress. Nor was it without jurisdiction because a State Court, and because Congress had exercised their exclusive powers over the subject of naturalization and estab-

lished a uniform rule, as provided by the federal constitution; and thereby the Federal Court had exclusive jurisdiction, as is urged for the State. On the contrary, a very different doctrine seems well established, (1 *Kent's Com.* 395 *to* 404,) and that is, that, unless Congress expressly provide to the contrary, the State courts will retain concurrent jurisdiction in all cases where they had jurisdiction over the subject matter before the adoption of the constitution, if compatible with their State obligations.

But whether the State courts are bound to exercise such concurrent jurisdiction, so permitted to be retained, even when enjoined upon them by act of Congress, is not altogether so well settled. Some strong intimations in the negative have been given by the Judges of the Supreme Court of the United States; and, in some instances, the courts of particular States have refused to exercise this jurisdiction. And even in cases where they have done so, a clear distinction has been taken between that class of cases over which they had exercised original jurisdiction before the adoption of the constitution, and that class created under the federal constitution, as pecuniary penalties for violating an act of Congress, and all crimes and offences against the sovereignty of the United States; all such being new matters of legal cognizance, not before within the jurisdiction of the State courts; and besides this are excluded from the State courts (as well as some other matters of national concern) by the Federal Judiciary Act.

And in all cases where the State courts exercise this concurrent jurisdiction, it is upon condition that the appellant jurisdiction of the Federal Court shall apply; whereby the judicial power of the United States is made to extend to all cases of which the State courts, (not being prohibited by any act of Congress,) in the exercise of their ordinary, original, and rightful jurisdiction, so incidentally take cognizance. And naturalization cases are of this latter class, the several States having had their own naturalization regulations enforceable by their own courts before the adoption of the federal constitution: and the naturalization laws of Congress, so far from prohibiting to them

the exercise of a concurrent jurisdiction in such cases, have in express terms invested them with such. There can be no ground of doubt, then, as to the rightful jurisdiction of the State courts in such cases until extinguished by some act of Congress; and such seems to have been the universal understanding upon this point.

In this case, then, the naturalization of the father being taken as established, the only remaining question is, whether or not his naturalization, under the state of facts admitted by the demurrer, by legal operation, made the defendant a citizen. Besides the authorities cited to this point by the learned counsel for the defendant, which, although strongly persuasive, fall somewhat short of the full length, the case of *West vs. West,* (8 *Paige Ch. R.* 433,) comes fully up, being an express adjudication of the chancellor of the State of New York, that, under the naturalization act of Congress of 1802, the infant children of aliens, though born out of the United States, if dwelling within the United States at the time of the naturalization of their parents, became citizens by such naturalization. And that the provision of the act on this subject is prospective, so as to embrace the children of aliens naturalized after the passage of the act, as well as the children of those who were naturalized before. This conclusion of the chancellor, arrived at after a careful and thorough examination of the various provisions of the several acts of Congress passed prior and subsequent to that of 1802, is sustained by reasoning so satisfactory that we have no hesitancy in adopting it as the true exposition of the law.

These conclusions render it altogether unnecessary for us to examine the other questions discussed by counsel as alternative propositions. And being of opinion that the facts set forth in the defendant's response show a sufficient and legal warrant for the exercise of the office and franchise of sheriff of Sevier county, the demurrer must be overruled.

The plaintiff then filed a replication, denying that Robert Penney was the father of the defendant, as set forth in the response;

but afterwards filed her written admission of the truth of the response as to this fact, and the cause was submitted without argument for final judgment.

Mr. Chief Justice JOHNSON delivered the opinion of the Court.

The fact of the paternity of Robert Penney having been admitted by the Attorney General, the law is clearly in favor of the respondent. It is, therefore, ordered and adjudged that the said James Penney be discharged, and go hence without day, and recover his costs.