

## Aliens: Constitutional Law

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## RECENT DECISIONS

ALIENS—CONSTITUTIONAL LAW.—The plaintiff, an alien unlawfully in the United States, performed services and labor for the defendant. In an action by the plaintiff to recover for these services the defendant, who admits the services were performed, raised the question of the plaintiff's right to maintain the action. Judgment was entered in the plaintiff's favor. On appeal judgment was reversed. Held, the Fourteenth Amendment does not give an alien "unlawfully" within the United States a right to maintain an action for unpaid wages. *Coules v. Pharris*, (Wis., 1933) 250 N.W. 404.

An alien is a "person" within the scope of the Fourteenth Amendment whom the state cannot deprive of life, liberty, or property while within its jurisdiction without due process of law. Nor can the state deny to him the equal protection of its laws. *Yick Wo v. Hopkins*, 118 U.S. 356, 6 Sup. Ct. 1064, 30 L.Ed. 220 (1879); *State v. Montgomery*, 94 Me. 192, 45 Atl. 165 (1900); *Commonwealth v. Hana*, 195 Mass. 262, 81 N.E. 149, 11 L.R.A. (N.S.) 799 (1907). A non-resident alien is not a person within the scope of the Fourteenth Amendment—any protection he gets in the courts of the state is founded on comity. Relief was granted to him in: *Crashley v. Press Publishing Co.*, 197 N.Y. 27, 71 N.E. 258 (1904), (British subject); *Russian Socialist Federated Soviet Rep. v. Cibrario*, 235 N.Y. 255, 139 N.E. 259 (1923), (Russian corporation); *Body v. Loeb et al.*, 106 N.J. Eq. 206, 150 Atl. 226 (1930), (citizen of Australia). But he was denied relief in: *State v. Travelers' Ins. Co.*, 70 Conn. 590, 40 Atl. 465 (1898); *Disconto Gesellschaft v. Umbreit*, 127 Wis. 651, 106 N.W. 821, 15 L.R.A. (N.S.) 1045 (1900), affirmed in 208 U.S. 570, 18 Sup. Ct. 337, 52 L.Ed. 625. There, a citizen of Germany, T, bankrupt and indebted to a German bank, fled to Wisconsin where he became indebted to a citizen of Wisconsin, U. The German bank, discovering T in Wisconsin, attached T's assets. U intervened. Wisconsin held that where permitting a non-resident alien, the German bank, to succeed in its action, deprives its own citizens of relief, it was the duty of the state to protect its own citizens by preventing removal of the debtor's assets. Contra, *Body v. Loeb et al.*, supra.

In the instant case the alien had in fact been living in Wisconsin. The Court said that he was "unlawfully" within the United States. (Query, in what sense was he "unlawfully" here?) The Court felt that it was within its discretion to grant relief or to refuse it, and as a matter of policy it decided to refuse relief. The effect of the decision is that the court tacitly permits the defendant, without responsibility, to acquire the benefits of the plaintiff's labor. Perhaps the court felt justified in refusing to assist the plaintiff to profit by his unlawful presence because general unemployment is at present so great a problem. It is not to be expected that the court would say a non-resident alien like the plaintiff herein has no standing in court against a tort-feasor. See, *Janusis v. Long*, (Mass., 1933) 188 N.E. 228, (personal injuries); *Rodney v. Interborough Rapid Transit Co.*, 267 N.Y.S. 86 (Sup. Ct. 1933), (false imprisonment). It is to be noted, however, that where the alien has been permitted to maintain an action in tort, the tort has been against the alien's person. It seems probable that the Wisconsin court would distinguish torts against property from personal torts, and refuse relief in the case of the former.

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