this result by treating the fraudulent agent who signed the check as "the person making it so payable" whose knowledge of the fiction is required under the N. I. L. and then ruling that since the act of drawing the check is within the apparent scope of the agent's authority the principal is estopped from denying the validity of the check as a bearer instrument.[11] Since it takes the position that the person who must have knowledge of the fiction is the ultimate drawer, the corporation, Missouri denies recovery by imputing the knowledge of the dishonest agent to his principal. This is the reasoning of the instant case.

The court in its opinion fails to distinguish between *knowledge* acquired by an agent while pursuing a course adverse to the interests of his principal, which knowledge will not be imputed to the principal,[12] and the *act* of an agent done within the scope of his authority for the consequences of which the principal will be liable although the act was done to defraud him.[13] It is the latter principle which prevents recovery where an authorized agent makes checks payable to fictitious payees; and hence only under the majority view of who is "the person making it so payable" can section 9(3) of the N. I. L. be applied without doing violence to accepted principles of agency.[14]

In the instant case the requirement of two signatures to give validity to the check does not affect the result under either view, since liability or knowledge need come from only one of several possible sources and once attached remains absolute.[15]

J. J. T.

CONSTITUTIONAL LAW — FEDERAL PRIVILEGES AND IMMUNITIES — STATE TAXATION — COLGATE *v.* HARVEY OVERRULED — [United States].—Kentucky passed a statute[1] imposing upon its residents a tax of fifty cents per hundred dollars on bank deposits held without the state and a tax of ten cents per hundred dollars on those held within the state. Appellant's decedent had

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11. Mueller & Martin v. Liberty Insurance Bank (1920) 187 Ky. 44, 218 S. W. 465; American Hominy Co. v. Millikin Nat'l Bank (D. C. S. D. Ill. 1920) 273 Fed. 550; Phillips v. Mercantile Nat'l Bank (1894) 140 N. Y. 556, 35 N. E. 982, 37 Am. St. Rep. 596, 23 L. R. A. 584; Snyder v. Corn Exch. Nat'l Bank (1908) 221 Pa. 599, 70 Atl. 876, 128 Am. St. Rep. 780.

12. American Nat'l Bank v. Miller (1913) 229 U. S. 517; 1 Restatement, *Agency* (1933) sec. 282.

13. Gleason v. Seaboard Air Line Ry. (1929) 278 U. S. 349.

14. This distinction is recognized by the Kentucky Court in Mueller & Martin v. Liberty Insurance Bank (1920) 187 Ky. 44, 49, 218 S. W. 465; and is followed with some confusion of terms in Los Angeles Inv. Co. v. Home Savings Bank (1919) 180 Cal. 601, 182 Pac. 293, 5 A. L. R. 1193. And see Comment (1924) 24 Col. L. Rev. 671.

15. Goodyear Tire & Rubber Co. v. Wells Fargo Bank & Union Trust Co. (1934) 1 Cal. App. (2d) 694, 37 Pac. (2d) 483; Pennsylvania Co. to the Use of Royal Indemnity Co. v. Federal Res. Bank (D. C. E. D. Pa. 1939) 30 F. Supp. 982. As to the commercial advisability of letting the fraudulent intent of one of several signers determine the character of the instrument, see Brannan, op. cit. supra note 5, at 217.

1. Ky. Carroll's Stats. (Baldwin's Rev. 1936) sec. 4019a-1.

failed to report for taxation deposits in New York banks. The state brought suit against appellant as executor to have these deposits assessed under the statute as omitted property and to recover the amount of the tax, plus interest and penalties. The appellant defended on the grounds, *inter alia*, that the tax would abridge the decedent's privileges and immunities as a citizen of the United States, deprive him of his property and liberty without due process of law, and deny him equal protection of the laws. The Court of Appeals of Kentucky held that there was no abridgment or denial of constitutional right, and the Supreme Court of the United States affirmed its judgment.[2]

The Court in its opinion does not address itself to the due process issue at all, and it disposes of the equal protection of the laws question by pointing to "the broad discretion as to classification possessed by a legislature in the field of taxation"[3] and suggesting that the classification of "the two kinds of deposits may have resulted from the differences in the difficulties and expenses of tax collection."[4]

The Court devotes most attention to the claim, based on *Colgate v. Harvey*,[5] that the Kentucky statute abridged the privileges and immunities of citizens of the United States. In the *Slaughter-House* cases[6] the privileges and immunities clause of the Fourteenth Amendment was strictly construed as embracing only those privileges and immunities which arise out of the relation of citizens of the United States to the federal government as such. Thus it has been held that the right to pass freely from state to state,[7] exemption from race discrimination,[8] protection from violence while in the custody of a United States marshal,[9] the right to vote for Congressmen and the President of the United States,[10] and the right to assemble to petition Congress for the redress of grievances[11] are all privileges of citizens of the United States, and protected from abridgment by the states.

Numerous attempts have been made to secure a more liberal judicial construction of this clause; but such attempts, with the exception of *Colgate v. Harvey*,[12] have invariably failed. Thus the right to trial by jury in state

2. Madden v. Kentucky (1940) 60 S. Ct. 406.
3. Id. at 408.
4. Id. at 409.
5. (1935) 296 U. S. 404.
6. (1873) 16 Wall. 36.
7. Crandall v. Nevada (1867) 6 Wall. 35. This case was decided before the adoption of the Fourteenth Amendment, and is therefore good authority for the view that the privileges and immunities clause established no new national privileges but was merely an additional guarantee of those which already existed.
8. United States v. Reese (1875) 92 U. S. 214; Ex parte Yarbrough (1884) 110 U. S. 651.
9. Logan v. United States (1892) 144 U. S. 263.
10. Ex parte Yarbrough (1884) 110 U. S. 651.
11. United States v. Cruikshank (1875) 92 U. S. 542.
12. (1935) 296 U. S. 404. Mr. Justice Stone, dissenting, points out that, since the Slaughter-House cases, at least 44 cases had been brought to the Court attacking state statutes as infringements of the privileges and immunities clause but that all were declared valid state legislation. The prior cases are collected in note 2 of that opinion at 445-446.

courts,[13] the right of women to practice law,[14] legal proceedings for the punishment of felonies commenced by indictment instead of information,[15] the privilege of voting for presidential electors,[16] and the exemption from self-incrimination[17] are not privileges and immunities of citizens of the United States.

In *Colgate v. Harvey*,[18] decided in 1935, however, the Court departed from this strict construction of privileges and immunities of United States citizenship as distinct from privileges and immunities of state citizenship, in holding that a Vermont statute, taxing incomes received by its residents from loans made outside the state, while exempting altogether income received from loans made within the state, abridged the privileges and immunities of United States citizenship. This decision seemed to be the entering wedge to a broader interpretation of the privileges and immunities clause,[19] as indeed it was. Therefore in view of its closely analogical applicability, the Court, in the instant case, was impelled expressly to overrule *Colgate v. Harvey*.[20] The Court has returned to its former line of reasoning in cases involving the scope of the privileges and immunities clause, and that constitutional clause is again reduced to its former insignificance as a factor limiting state governmental action.

J. W. F.

CONSTITUTIONAL LAW—FOURTEENTH AMENDMENT—DUE PROCESS—CONFESSIONS EXTRACTED BY DURESS—[United States].—Petitioners, four young negroes, were convicted of murder on the evidence of their own confessions and sentenced to be hanged. Prior to the trial, they had been arrested without warrant and held for five days, in fear of mob violence, without friends or counsel. During this time they were subjected to intermittent examination and protracted cross-questioning, each alone in the presence of several white men. These examinations culminated in an all night questioning during which petitioners twice confessed, the first time failing to satisfy the prosecuting attorney. Petitioners contend that confessions obtained under these circumstances are the product of duress and that consequently the use of them in court violates due process. On the state supreme court's refusal to disturb the jury's verdict of "no duress," this appeal is brought to the Supreme Court. *Found*, that these undisputed facts as disclosed by the record show that compulsion was applied. *Held*, that conviction on confessions so obtained violates due process.[1]

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13. Walker v. Sauvinet (1875) 92 U. S. 90.
14. Bradwell v. Illinois (1873) 16 Wall. 130; In re Lockwood (1894) 154 U. S. 116.
15. Maxwell v. Dow (1900) 176 U. S. 581.
16. McPherson v. Blacker (1892) 146 U. S. 1.
17. Twining v. New Jersey (1908) 211 U. S. 78.
18. 296 U. S. 404.
19. See Comment (1936) 1 Mo. L. Rev. 187; Note (1936) 45 Yale L. J. 926; Comment (1936) 36 Col. L. Rev. 669.
20. (1935) 296 U. S. 404.

1. Chambers v. Florida (1940) 60 S. Ct. 472.