Fourteenth Amendment should be construed as securing to insane defendants, not the right to an unconditional discharge after acquittal, but the right not to be permanently deprived of liberty without a judicial trial.[14] The New York statute makes no provision whatever for such a trial and would therefore seem to be unconstitutional.

THE DOMICILE OF PERSONS NON SUI JURIS. — Domicile is a relation between an individual and a particular locality or country. The domicile of origin continues until a domicile of choice is acquired by the act of residence in a particular place coupled with an intention to continue to reside there. Generally it is impossible for a person *non sui juris* to change his domicile; for he has no legal right to an intention of his own. But it is often important to determine to what extent some one else may change his domicile for him. The domicile of a wife is that of her husband, except that in most states she is allowed to acquire a different domicile for the purpose of suing for a divorce.[1] The domicile of an infant follows the father's, because the infant is an integral part of his father's home and cannot legally have a home elsewhere. The father may change it at will, subject to the exercise of the jurisdiction of equity to prevent acts to the prejudice of persons under legal disabilities.[2]

The power of a guardian to change the domicile of his ward presents a more difficult problem. When his father dies an infant's domicile remains that of the father, and neither the mother nor the next of kin has power to change it, since the infant does not bear the same legal relation to them as to his father. But if he in fact lives with his mother, she becomes his natural guardian, and can change his national domicile, so long as she remains unmarried.[3] A legal guardian of the infant's person has been held not to have the same power.[4] Within the state which appointed him the guardian has undoubted power to say where his ward shall make his home, and any place so designated will be regarded as the infant's domicile.[5] As to his ability to affect his ward's domicile in a foreign jurisdiction the authorities are in conflict.[6] The better view appears to be that the powers of the guardian do not extend beyond the boundaries of the state that appointed him.[7] A New York justice of the peace is not a justice of the peace in Massachusetts; nor is a Massachusetts guardian a guardian in

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[14] *In re* Brown, *supra*.

[1] As a married woman is *non sui juris*, and, even in states where most of her disabilities are removed by statute, has no right to live apart from her husband until after the divorce, the general rule is theoretically wrong. She would have adequate protection if equity merely gave her the right to prevent her husband from changing her domicile after cause for divorce. See Yelverton *v.* Yelverton, 1 Sw. & Tr. 574; Maguire *v.* Maguire, 7 Dana (Ky.) 181. *Cf.* 20 HARV. L. REV. 416.

[2] In the case of father and child this jurisdiction is seldom exercised. It is more commonly used in the case of guardian and ward. See School Directors *v.* James, 2 W. & S. (Pa.) 568. As to emancipated minors, see 19 HARV. L. REV. 215.

[3] See Lamar *v.* Micou, 112 U. S. 452. If there is no mother, a grandparent or other next of kin may be the natural guardian. *In re* Benton, 92 Ia. 202.

[4] Daniel *v.* Hill, 52 Ala. 430. As to the powers of a testamentary guardian, see Wood *v.* Wood, 5 Paige (N. Y.) 596; White *v.* Howard, 52 Barb. (N. Y.) 294, 318.

[5] Kirkland *v.* Whately, 4 Allen (Mass.) 462.

[6] Wheeler *v.* Hollis, 19 Tex. 522; Mears *v.* Sinclair, 1 W. Va. 185.

[7] Story, Confl. L., § 499; Rogers *v.* McLean, 31 Barb. (N. Y.) 304, 309, 310. But see State *v.* Lawrence, 86 Minn. 310.

New York. Then, as he is not a guardian in the foreign jurisdiction, he cannot exercise an *animus manendi* for the infant therein. And the infant cannot by himself acquire a domicile of choice in the foreign jurisdiction, because he is under the same disability there as at home. Therefore, if the infant does in fact take up a residence in a new state, his domicile is still in the old.

The case of an insane person is somewhat different. His guardian's powers are restricted in the same way, and consent to a home outside the state does not affect the ward's domicile. But a person over whom a guardian has been appointed for insanity, although not yet adjudged insane, is not under a disability in a foreign state.[8] If, in fact, he has enough intelligence left to have an intention, he can, by moving into the foreign state, acquire a domicile therein.[9] This distinction seems to have been overlooked in a recent case, where an insane ward was allowed to acquire a domicile in a foreign state on the ground that his guardian had consented. *In re Kingsley*, 160 Fed. 275 (Dist. Ct., Vt.). As already pointed out, the guardian's consent is immaterial, since his powers do not extend to the foreign jurisdiction. The real question is whether, as a matter of fact, the incompetent has enough mind left to form an *animus manendi*.[10]

THE CONSTITUTIONAL QUESTION INVOLVED IN THE EXCLUSION OF ALIENS BY THE EXECUTIVE. — Under the Immigration Act of 1903 which denies admission to the United States to aliens who are "afflicted with a loathsome or with a dangerous contagious disease," Congress has enacted that a board of immigration officers shall decide all questions in dispute as to the rights of any alien to enter the United States and that its decision shall be subject to review by the Secretary of Commerce and Labor.[1] A recent case has construed the act to apply to aliens domiciled in the United States returning after a temporary absence abroad. *In the Matter of Hermine Crawford, alias Marie Mayvis*, 40 N. Y. L. J. 419 (Dist. Ct., N. Y., Oct. 28, 1908). The decision is in conflict with the weight of previous authority.[2] It is unquestioned that Congress has power to expel from the United States alien residents as well as immigrants;[3] but in the absence of a clearly expressed intention of Congress to exclude the former the weight of authority seems sound in view of the construction of a former act.[4]

The difficulty in these cases, however, is not in construing the act, but in deciding what branch of the government is entitled to determine the status of the person whose right to enter or remain is in question — whether he is an alien resident, an immigrant, or a citizen. In view of the decisions of the Supreme Court in cases arising under the Chinese Exclusion Acts which hold that the finding of these facts as to citizenship by the executive officers

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[8] Talbot *v.* Chamberlain, 149 Mass. 57.

[9] Talbot *v.* Chamberlain, *supra*. See Concord *v.* Rumney, 45 N. H. 423; Urquhart *v.* Butterfield, 37 Ch. D. 357.

[10] Culver's Appeal, 48 Conn. 165.

[1] U. S. Comp. St. Supp. 1905, p. 274, § 25.

[2] Rogers *v.* U. S., 152 Fed. 346; U. S. *v.* Nokashima, 160 Fed. 842.

[3] Fong Yue Ting *v.* U. S., 149 U. S. 698; U. S. *v.* Turner, 194 U. S. 279.

[4] U. S. Comp. St. 1901, p. 1294; *In re* Panzara, 51 Fed. 275; *In re* Martorelli, 63 Fed. 437; *In re* Ota, 96 Fed. 487.