

See for yourself, A citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution

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The case of *Dred Scott v. Sanford* (60 U.S. 393, 1856) was meant to be a federal question case. However, it became a diversity of citizenship case when Dred Scott's citizenship was challenged. The Supreme Court determined in this case that Dred Scott was a citizen of a State, under the constitution of an individual State, and because of this lacked legal standing to pursue a cause of action in a federal court (circuit court) To wit:

“The question is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution.

It will be observed, that the plea applies to that class of persons only whose ancestors were negroes of the African race, and imported into this country, and sold and held as slaves. The only matter in issue before the court, therefore, is, whether the descendants of such slaves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a State, in the sense in which the word citizen is used in the Constitution of the United States. And this being the only matter in dispute on the pleadings, the court must be understood as speaking in this opinion of that class only, that is, of those persons who are the descendants of Africans who were imported into this country, and sold as slaves.

The question then arises, whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a State should be entitled, embraced the negro African race, at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put in the power of a single State to make him a citizen of the United States, and endue him with the full rights of citizenship in every other State without their consent? Does the Constitution of the United States act upon him whenever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately clothe him with all the privileges of a citizen in every other State, and in its own courts?

The court think the affirmative of these propositions cannot be maintained. And if it

cannot, the plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts.”

“ . . . [W]e must not confound the rights of citizenship which a State may confer within its own limits, and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States. He may have all of the rights and privileges of the citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State. (p. 405):” Dred Scott: 60 U.S. (Howard 19) 393, at 403, 406 (1856).

<http://books.google.com/books?id=-CQ3AAAIAAJ&pg=PA403#v=onepage&q&f=false>

A citizen of a State, under the Constitution of the United States of America, at Article IV, Section 2, Clause 1, can, however, pursue a cause of action in a federal court:

(After the Fourteenth Amendment) **[Footnote 1]**

“*Syllabus*:

The facts, which involved the sufficiency of averments and proof of diverse citizenship to maintain the jurisdiction of the United States Circuit Court, are stated in the opinion of the court.

Opinion:

We come to the contention that the citizenship of Edwards was not averred in the complaint or shown by the record, and hence jurisdiction did not appear.

In answering the question, whether the Circuit Court had jurisdiction of the controversy, we must put ourselves in the place of the Circuit Court of Appeals, and decide the question with reference to the transcript of record in that court.

Had the transcript shown nothing more as to the status of Edwards than the averment of the complaint that he was a ‘resident of the State of Delaware,’ as such an averment would not necessarily have imported that Edwards was a citizen of Delaware, a negative answer would have been impelled by prior decisions. *Mexican Central Ry. Co. v. Duthie*, 189 U.S. 76; *Horne v. George H. Hammond Co.*, 155 U.S. 393; *Denny v. Pironi*, 141 U.S. 121; *Robertson v. Cease*, 97 U.S. 646. The whole record, however, may be looked to, for the purpose of curing a defective averment of citizenship, where jurisdiction in a Federal court is asserted to depend upon diversity of citizenship, and if the requisite

citizenship, is anywhere expressly averred in the record, or facts are therein stated which in legal intentment constitute such allegation, that is sufficient. *Horne v. George H. Hammond Co.*, supra and cases cited.

As this is an action at law, we are bound to assume that the testimony of the plaintiff contained in the certificate of the Circuit Court of Appeals, and recited to have been given on the trial, was preserved in a bill of exceptions, which formed part of the transcript of record filed in the Circuit Court of Appeals. Being a part of the record, and proper to be resorted to in settling a question of the character of that now under consideration, *Robertson v. Cease*, 97 U.S. 648, we come to ascertain what is established by the uncontradicted evidence referred to.

In the first place, it shows that Edwards, prior to his employment on the New York Sun and the New Haven Palladium, was legally domiciled in the State of Delaware. Next, it demonstrates that he had no intention to abandon such domicil, for he testified under oath as follows: ‘One of the reasons I left the New Haven Palladium was, it was too far away from home. I lived in Delaware, and I had to go back and forth. My family are over in Delaware.’ Now, it is elementary that, to effect a change of one’s legal domicil, two things are indispensable: First, residence in a new domicil, and, second, the intention to remain there. The change cannot be made, except *facto et animo*. Both are alike necessary. Either without the other is insufficient. Mere absence from a fixed home, however long continued, cannot work the change. *Mitchell v. United States*, 21 Wall. 350.

As Delaware must, then, be held to have been the legal domicil of Edwards at the time he commenced this action, ***had it appeared that he was a citizen of the United States, it would have resulted, by operation of the Fourteenth Amendment, that Edwards was also a citizen of the State of Delaware.*** *Anderson v. Watt*, 138 U.S. 694. Be this as it may, however, Delaware being the legal domicil of Edwards, it was impossible for him to have been a citizen of another State, District, or Territory, and he must then have been either ***a citizen of Delaware*** or a citizen or subject of a foreign State. In either of these contingencies, the Circuit Court would have had jurisdiction over the controversy. But, in the light of the testimony, we are satisfied that the averment in the complaint, that Edwards was a resident ‘of’ the State of Delaware, was intended to mean, and, reasonably construed, must be interpreted as averring, that ***the plaintiff was a citizen of the State of Delaware.*** *Jones v. Andrews*, 10 Wall. 327, 331; *Express Company v. Kountze*, 8 Wall. 342.” *Sun Printing & Publishing Association v. Edwards*: 194 U.S. 377, at 381 thru 383 (1904).

<http://books.google.com/books?id=tekGAAAYAAJ&pg=PA381#v=onepage&q&f=false>

(After the Fourteenth Amendment)

“By the Constitution, the judicial power of the United States extends to controversies between citizens of a State, ‘and foreign States, citizens or subjects.’ And by statute,

Circuit Courts of the United States have original cognizance of all suits of a civil nature, at common law or in equity, in which there is ‘a controversy between citizens of a State and foreign States, citizens, or subjects.’ 25 Stat. 433, c. 866. . . .

As complainants were citizens of a foreign State and defendant was *a citizen of Nebraska, as affirmatively appeared from the pleadings [Footnote 2]*, no issue of fact arising in that regard, the Circuit Court had jurisdiction.” Hennessey v. Richardson Drug Company: 189 U.S. 25, at 34 (1903).

<http://books.google.com/books?id=KWoUAAAAYAAJ&pg=PA34#v=onepage&q&f=false>

Therefore, there is a citizen of a State (who is not a citizen of the United States), under Article IV, Section 2, Clause 1 of the Constitution of the United States of America.

Footnotes:

1. The Fourteenth Amendment was adopted on July 28, 1868:

“The Fourteenth Amendment which was finally adopted July 28, 1868.” Holden v. Hardy: 169 U.S. 375, at 382 (1918).

<http://books.google.com/books?id=4-sGAAAAYAAJ&pg=PA382#v=onepage&q=&f=false>

“On July 28, 1868, the secretary of state proclaimed that the fourteenth article of amendments to the constitution of the United States had been ratified by three-fourths of the states of the Union.” United States v. Lackey: 99 F. Rep. 952, at 995 (1900).

<http://books.google.com/books?id=Slc4AAAIAAJ&pg=PA955#v=onepage&q=&f=false>

2. A citizen of a State, since the adoption of the Fourteenth Amendment, has to aver that he or she is a citizen of an individual State:

“The bill filed in the Circuit Court by the plaintiff, McQuesten, alleged her to be ‘a citizen of the United States and of the State of Massachusetts, and residing at Turner Falls in said State,’ while the defendants Steigleider and wife were alleged to be ‘citizens of the State of Washington, and residing at the city of Seattle in said State.’ *Statement of the Case, Steigleider v. McQuesten*: 198 U.S. 141 (1905).

“The averment in the bill that the parties were citizens of different States was sufficient to make a prima facie case of jurisdiction so far as it depended on citizenship.” *Opinion, Steigleider v. McQuesten*: 198 U.S. 141, at 142 (1905).

<http://books.google.com/books?id=ceIGAAAAYAAJ&pg=PA141#v=onepage&q&f=false>

Further readings (online), mine

1. “Yes, there were four citizens before the Fourteenth Amendment”, Dan Goodman, 2011.
2. “Problem Not Solved Black Citizens and Black Slaves”, Dan Goodman, 2011.
3. “Citizenship and the Federal Courts after the Fourteenth Amendment”, Dan Goodman, 2010.
4. “Diversity of Citizenship: The Basics”. Dan Goodman, 2012.