

Citizen of a State under Article IV, Section 2, Clause 1 of the Constitution of the United States of America can be a litigant in federal court

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The Fourteenth Amendment was adopted on July 28, 1868. [\[Footnote 1\]](#)

The Fourteenth Amendment created citizenship of the United States. [\[Footnote 2\]](#)
If, one, being a citizen of the United States, wanted to become a citizen of a State,
under Section 1, Clause 1 of the Fourteenth Amendment, then all one had to do was
reside in a State. In this case, one would be a citizen of the United States **AND** a
citizen of a State. [\[Footnote 3\]](#) He or she, would then have privileges and
immunities of a citizen of the United States plus privileges and immunities of a
citizen of a State. [\[Footnote 4\]](#)

The Fourteenth Amendment according to the Supreme Court of the United States,
in the *Slaughterhouse Cases*, changed citizenship under the Constitution. Citizenship
of a State was now to be considered as separate and distinct from citizenship of the
United States. A citizen of a State was to be considered as separate and distinct from
a citizen of the United States:

***“Of the privileges and immunities of the citizen of the United States, and of
the privileges and immunities of the citizen of the State, and what they respective
are, we will presently consider; but we wish to state here that it is only the former
which are placed by this clause (Section 1, Clause 2 of the Fourteenth Amendment)
under the protection of the Federal Constitution, and that the latter, whatever they
may be, are not intended to have any additional protection by this paragraph of the
amendment.”*** *Slaughterhouse Cases*: 83 U.S. (16 Wall.) 36, at 74 (1873).

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In addition:

“In the *Slaughter-house cases*, 16 Wall. 36, the subject of the privileges or
immunities of citizens of the United States, as distinguished from those of a
particular State, was treated by Mr. Justice Miller in delivering the opinion of the
court. He stated ... that ***it was only privileges and immunities of the citizen of***

the United States that were placed by the [Fourteenth] amendment under the protection of the Federal Constitution, and that the privileges and immunities of a citizen of a State, whatever they might be, were not intended to have any additional protection by the paragraph in question, but they must rest for their security and protection where they have heretofore rested. Maxwell v. Dow: 176 U.S. 581, at 587 (1900).

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And:

“... It is, then, to the Fourteenth Amendment that the advocates of the congressional act must resort to find authority for its enactment, and to the first section of that amendment, which is as follows: ‘All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.’

In the first clause of this section, declaring who are citizens of the United States, there is nothing which touches the subject under consideration. The second clause, declaring that ‘no State shall make or enforce any law which will abridge the privileges or immunities of citizens of the United States,’ ***is limited, according to the decision of this court in Slaughter-House Cases, to such privileges and immunities as belong to citizens of the United States, as distinguished from those of citizens of the State.*** Neal v. State of Delaware: 103 U.S. 370, at 406 (1880).

<http://books.google.com/books?id=Y7wGAAAAYAAJ&pg=PA406#v=onepage&q&f=false>

So now there is a citizen of a State and there is a citizen of the United States:

“... There is no inherent right in a citizen to thus sell intoxicating liquors by retail. ***It is not a privilege of a citizen of the State or of a citizen of the United States.***” Crowley v. Christensen: 137 U.S. 86, at 91 (1890).

<http://books.google.com/books?id=htIGAAAAYAAJ&pg=PA91#v=onepage&q&f=false>

“... In the Constitution and laws of the United States, the word ‘citizen’ is generally, if not always, used in a political sense to designate ***one who has the***

rights and privileges of a citizen of a State or of the United States. Baldwin v. Franks: 120 U.S. 678, at 690 (1887). [Footnote 5]

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A citizen of the United States is located at Section 1 of the Fourteenth Amendment. A citizen of a State is to be found at Article IV, Section 2, Clause 1 of the Constitution of the United States of America:

“ . . . There is no inherent right in a citizen to thus sell intoxicating liquors by retail. It is not a privilege of a ***citizen of the State or of a citizen of the United States.***” Crowley v. Christensen: 137 U.S. 86, at 91 (1890).

<http://books.google.com/books?id=htIGAAAAYAAJ&pg=PA91#v=onepage&q&f=false>

“Another objection to the act is that it is in violation of section 2, art. 4, of the constitution of the United States, and of the fourteenth amendment, in that this act discriminates both as to persons and products. Section 2, art. 4, declares that the citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states; and the fourteenth amendment declares that no state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States. But we have seen that the supreme court, in *Crowley v. Christensen*, 137 U.S. 91, 11 Sup. Ct. Rep. 15, has declared that there is no inherent right in a citizen to sell intoxicating liquors by retail. It is not a privilege of ***a citizen of a state or of a citizen of the United States.***” Cantini v. Tillman: 54 Fed. Rep. 969, at 973 (1893).

<http://books.google.com/books?id=Ehg4AAAAIAAJ&pg=PA973#v=onepage&q&f=false>

“The constitutional provision there alluded to did not create those rights, which it called privileges and immunities of citizens of the States. It threw around them in that clause (Article IV, Section 2, Clause 1) no security for the citizen of the State in which they were claimed or exercised. Nor did it profess to control the power of the State governments over the rights of its own citizens.

Its sole purpose was to declare to the several States, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction.”

Slaughterhouse Cases: 83 U.S. (16 Wall.) 36, at 77 (1873). [Footnote 6]

<http://books.google.com/books?id=DkgFAAAAYAAJ&pg=PA77#v=onepage&q&f=false>

A citizen of the United States is to identified his citizenship in a federal court by averring that he or she is a citizen of the United States **AND** a citizen of a State of the Union:

“The courts of the United States have not jurisdiction in cases between citizens of the United States, unless the record expressly states them to be citizens of different states.” Wood v. Wagon: 6 U.S. (2 Cranch) 1 (1804).

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A citizen of a State is to aver that he or she is a citizen of a State of the Union:

“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 Steigleder 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, Steigleder 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, Steigleder v. McQuesten: 198 U.S. 141, at 142 (1905).

[Footnote 6]

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Therefore, a citizen of a State, since the adoption of the Fourteenth Amendment, can be a litigant in federal court.

A citizen of a State, since the adoption of the Fourteenth Amendment, can pursue a cause of action against another citizen of a different State:

“The appellants brought suit in the United States District Court for the Southern District of New York for the purpose of recovering from the Trustee an interest in a trust estate which had been sold, transferred and assigned by Conrad Morris Braker, the beneficiary. ***The complainants were citizens and residents of Pennsylvania. Both defendants were citizens and residents of New York. Notwithstanding the diversity of citizenship,*** the court dismissed the bill on the ground that, as the assignor Braker, a citizen of New York, could not in the United States District Court, have sued Fletcher, Trustee and citizen of the same State, neither could the Complainants, his assignees, sue therein, even though they were residents of the State of Pennsylvania.

The appeal from that decision involves a construction of §24 of the Judicial Code,

which limits the jurisdiction of the United States District Court when suit is brought therein . . . ‘to recover upon any promissory note or other chose in action in favor of any assignee. . . .’” Brown v. Fletcher: 235 U.S. 589, at 594 thru 595 (1914).

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A citizen of a State, since the adoption of the Fourteenth Amendment, can be pursued in a cause of action against a citizen of a foreign State:

“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, 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=KWuUAAAAAYAAJ&pg=PA34#v=onepage&q&f=false>

Thus, a citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution can be a litigant in federal court.

Footnotes:

1. “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-sGAAAAAYAAJ&pg=PA382#v=onepage&q&f=false>

2. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Section 1, Clause 2 of the Fourteenth Amendment, Constitution of the United States of America.

http://www.archives.gov/exhibits/charters/constitution_amendments_11-27.html

3. A citizen of the United States can become also a citizen of a State, under Section 1, Clause 1 of the Fourteenth Amendment. As such, one would be a citizen of the United States **AND** a citizen of a State:

"The question is presented in this case, whether, since the adoption of the fourteenth amendment, a woman, who is a citizen of the United States **AND** the State of Missouri, is a voter in that State, notwithstanding the provision of the constitution and laws of the State, which confine the right of suffrage to men alone. . . .

There is no doubt that women may be citizens. They are persons, and by the fourteenth amendment 'all persons born or naturalized in the United States and subject to the jurisdiction thereof ' are expressly declared to be 'citizens of the United States and of the State wherein they reside.' " Minor v. Happersett: 88 U.S. (21 Wall.) 162, at 165 (1874).

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"The Fourteenth Amendment declares that citizens of the United States are citizens of the state within they reside; therefore the plaintiff was at the time of making her application, a citizen of the United States **AND** a citizen of the State of Illinois.

We do not here mean to say that there may not be a temporary residence in one State, with intent to return to another, which will not create citizenship in the former. But the plaintiff states nothing to take her case out of the definition of citizenship of a State as defined by the first section of the fourteenth amendment." Bradwell v. State of Illinois: 83 U.S. 130, at 138 (1873).

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4. Privileges and immunities of a citizen of a State are in the constitution and laws of a particular State:

"... Whatever may be the scope of section 2 of article IV -- and we need not, in this case enter upon a consideration of the general question -- the Constitution of the United States does not make the privileges and immunities enjoyed by the

citizens of one State under the constitution and laws of that State, the measure of the privileges and immunities to be enjoyed, as of right, by a citizen of another State under its constitution and laws." McKane v. Durston: 153 U.S. 684, at 687 (1894).

<http://books.google.com/books?id=mmkUAAAAYAAJ&pg=PA687#v=onepage&q=&f=false>

5. "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 intendment 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 facta 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=tekGAAAAAYAAJ&pg=PA381#v=onepage&q&f=false>

Also:

"The act was considered in *Johnson v. United States*, 160 U.S. 546, and we there held that a person who was not a citizen of the United States at the time of an alleged appropriation of his property by a tribe of Indians was not entitled to maintain an action in the Court of Claims under the act in question. There was not in that case, however, any assertion that the claimant was a citizen of a State as distinguished from a citizen of the United States. . . . [U]ndoubtedly in a purely technical and abstract sense citizenship of one of the States may not include citizenship of the United States . . . Unquestionably, in the general and common acceptation, ***a citizen of the State is considered as synonymous with citizen of the United States, and the one is therefore treated as expressive of the other. This flows from the fact that the one is normally and usually the other, and where such is not the case, it is purely exceptional and uncommon.***" *United States v. Northwestern Express, Stage & Transportation Company*: 164 U.S. 686, 688 (1897).

<http://books.google.com/books?id=xOQGAAAAAYAAJ&pg=PA688#v=onepage&q=&f=false>

6. There is also the following:

"Two clauses of the United States Constitution are invoked: § 2 of art. 4, which declares that "The citizens of each State shall be entitled to all privileges and

immunities of citizens in the several States,' and part of § 1 of the 14th Amendment: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

A comparison of the statute under review with the other game laws of the State shows that, with regard to hunting game, greater restrictions are placed upon non-residents than upon residents, and that the penalties incurred by the former for violating the restrictions imposed are severer than those incurred by the latter.

The discriminations of the statute are not based upon the fact of citizenship, nor does it appear by the record before us that the prosecutor was a ***citizen either of a sister State or of the United States***. Consequently, § 2 of article 4 and so much of the 14th Amendment as secures the privileges and immunities of the citizen of the Nation are not applicable to the case in hand." Allen v. Wyckoff: 2 Cent 213 (1886).

<http://books.google.com/books?id=sRpLAAAAAYAAJ&pg=PA213#v=onepage&q&f=false>

"2. As applied to ***a citizen of another State, or to a citizen of the United States residing in another State***, a state law forbidding sale of convict-made goods does not violate the privileges and immunities clause[s] of Art. IV, § 2 and the [privileges or immunities clause of the] Fourteenth Amendment of the Federal Constitution, if it applies also and equally to the citizens of the State that enacted it. P. 437." Syllabus, Whitfield v. State of Ohio: 297 U.S. 431 (1936).

"1. The court below proceeded upon the assumption that petitioner was a citizen of the United States; and his status in that regard is not questioned. The effect of the privileges [and] or immunities clause of the Fourteenth Amendment, as applied to the facts of the present case, is to deny the power of Ohio to impose restraints upon ***citizens of the United States resident in Alabama*** in respect of the disposition of goods within Ohio, if like restraints are not imposed upon citizens resident in Ohio. The effect of the similar clause found in the Fourth Article of the Constitution, as applied to these facts, would be the same, since that clause is directed against ***discrimination by a state in favor of its own citizens and against the citizens of other states***. *Slaughter-House Cases*, 16 Wall. 36, 1 Woods 21, 28; *Bradwell v. State*, 16 Wall. 130, 138." Opinion, Whitfield v. State of Ohio: 297 U.S. 431, at 437 (1936).

<http://supreme.justia.com/us/297/431/> (Syllabus)

http://scholar.google.com/scholar_case?case=13866319457277062642 (Opinion)