Diversity of Citizenship and a Citizen of a State who is not a Citizen of the United States

In my work "Diversity of Citizenship includes a Citizen of a State who is not a Citizen of the United States", I showed in the case of *Bible Society v. Grove* (101 U.S. 610, 1879); cited in *Young v. Parker's Administrator* (132 U.S. 267, 1889), that since the adoption of the Fourteenth Amendment and the *Slaughterhouse Cases*, 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, is still recognized in diversity of citizenship suits, in particular in cases which are removed from the state level to the federal level.

In addition to *Bible Society v. Grove* (101 U.S. 610), there is the following case: *Bondurant v. Watson* (103 U.S. 281, 1880):

"On Jan. 30, 1866, Walter E. Bondurant began an action against his uncles, Albert Horace and John Bondurant, in the District Court for the Parish of Tensas, to recover judgment against them for his part of the purchase price of said plantation and to enforce his mortgage and privilege thereon. The court rendered a judgment in his favor for the sum of $37,500, with interest, and ordered, adjudged, and decreed that the authentic act of mortgage, which was the basis of the action, should be, and the same was thereby, rendered executory and ordered to be executed, and that the land described therein should be seized and sold to satisfy said judgment. . . .

Walter E. Bondurant thereupon brought an action in the United States Circuit Court for the District of Louisiana against Augustus C. Watson, Sen., to recover possession of that part of the plantation which had been sold to him by John Bondurant.

He recovered judgment for the land against Watson. That judgment was taken, by writ of error, to the Supreme Court the United States, where it was reversed on the sole ground that there had been no actual seizure of the premise by the sheriff before the sale. See Watson v. Bondurant, 21 Wall. 123.

In the mean time, Walter E. Bondurant died. The judgment in his favor in the District Court for the Parish of Tensas was revived in the name of his widow, Ella F. Bondurant, his testamentary executrix and the tutrix of his minor son. . . .

Thereupon, on Oct. 1875, Mrs. Bondurant filed her petition, verified by her oath, in which she prayed for a removal of the cause to the United States Circuit Court for the District of Louisiana. In her petition, she averred that she was a citizen of the State of Mississippi and was, in her capacity as tutrix and executrix, defendant in a civil suit pending in that court, in which the matter in dispute exceeded, exclusive of costs, the sum of $500, and in which Frank Watson, who was a citizen of Louisiana, was plaintiff. . . . .

. . . [I]t becomes necessary to decide the question of jurisdiction.

On this question, the first contention of Watson, the complainant, is that the petition of Mrs. Bondurant for the removal of the case, which was filed Oct. 18, 1875, does not aver that at the commencement of the suit, which was June 25, 1875, she was a citizen of the State of Mississippi.

Whether, under the act of March 3, 1875, c. 137, to regulate the removal of causes from the State courts, such an averment is necessary, is a question which was expressly reserved by this court in the case of *Insurance Company v. Pechner* (95 U.S. 183), and which it has never decided. We do not find it necessary to decide it now, for the evidence in the record satisfies us that Mrs. Bondurant was a citizen of Mississippi on June 25, 1875, when the proceeding against her was begun by Watson. Whether the petition avers the fact or not is immaterial, provided the fact is shown to exist by any part of the record. *Gold-Washing and Water Company v. Keyes*, 96 U.S. 199; *Briges v. Sperry*, 95 U.S. 401; *Robertson v. Cease*, 97 U.S. 646.

The record shows that her husband, of whose she was the executix, was at the time of his death, and for many years before had been, a citizen of the State of Mississippi, residing at Natchez. She was therefore a citizen of Mississippi at the time of her husband's death, which took place before the filing by Watson of the petition in this case, on June 25, 1875. In October, 1875, she swears that she was then a citizen of Mississippi. . . . .

We think the fact of her citizenship in Mississippi, at the time of the commencement of Watson's suit against her, sufficiently appears by the record, and this supplies the want of an averment of the fact in her petition for the removal of the case." Bondurant v. Watson: 103 U.S. 281, at 282 thru 286 (1880). **[Footnote 1]**

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Too this is the case of *Sun Printing & Publishing Association v. Edwards* (194 U.S. 377, 1904).

"*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 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 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).

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Thus, one who is a citizen of the United States and a citizen of a State (Fourteenth Amendment), as well as one who is a citizen of a State who is not a citizen of the United States (Article IV, Section 2, Clause 1 of the Constitution), has the requisite citizenship, as stated in *Sun Printing & Publishing*, to give a circuit court of the United States jurisdiction in a diversity of citizenship suit.

Footnotes:

1. cited in *Denny v. Pironi* (141 U.S. 121, 1891):

". . . In *Bondurant v. Watson*, 103 U.S. 281, the record showed that the husband of the original defendant, of whose will she was the executrix, was at the time of his death, and for many years before had been a citizen of Mississippi, and the court held that it necessarily followed that the defendant was a citizen of such State at the time of her husband's death, which took place before the filing of the petition in the case, and that as it also appeared that she was a citizen of the same State at the time of the commencement of the suit against her, the jurisdiction should be sustained." Denny v. Pironi: 141 U.S. 121, at 125 (1891).

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