

# Yes there is a citizen of a State and a citizen of the United States

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That there is a citizen of the United States, and a citizen of a State who is not a citizen of the United State is shown in the following case from the Supreme Court of the United States:

“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 domicile, 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 domicile, two things are indispensable: First, residence in a new domicile, 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 domicile 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 domicile 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=tekGAAAAYAAJ&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=xOQGAAAAYAAJ&pg=PA688#v=onepage&q=&f=false>

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**Footnotes:**

**1.** And there is this:

“As a man may be a citizen of a State without being a citizen of the United States, and as Section 1428, Revised Statutes, requires all officers of all United States vessels to be citizens of the United States, all officers of the Naval Militia must be male citizens of the United States as well as of the respective States, Territories, of the District of Columbia, of more than 18 and less than 45 years of age.” General Orders of Navy Department (Series of 1913); Orders remaining in force up to January 29, 1918; General Order No. 153, Page 17, Para 73.

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Too:

"Resident Aliens. (a) For purposes of any provision of this code that requires an applicant for a license or permit to be a United States citizen **OR** Texas citizen, regardless of whether it applies to an individual, a percentage of stockholders of a corporation, or members of a partnership, firm, or association, an individual who is not a United States citizen but who legally resides in the state is treated as a United States citizen **AND** a citizen of Texas. (Added by Acts 1979, 66th Leg., p. 1971, ch. 777, Sec. 18, eff. Aug. 27, 1979.)

Source: Texas Alcoholic Beverage Code; Title 1, Chapter 1, Section 1.07

<http://www.statutes.legis.state.tx.us/>

<http://www.statutes.legis.state.tx.us/Docs/AL/htm/AL.1.htm#1.07>

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