

All You Need To Know About A Citizen of a State Who Is Not A Citizen Of the United States

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Since the Fourteenth Amendment and the *Slaughterhouse Cases*, there is a citizen of the United States, and a citizen of a State who is not a citizen 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 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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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).

[Footnote 1]

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A citizen of the United States is recognized in Section 1, Clause 1 of the Fourteenth Amendment. A citizen of a State who is not a citizen of the United States is recognized 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). **[Footnote 2]**

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“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).

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Privileges and immunities of a citizen of the United States are not the same as privileges and immunities of a citizen of a State:

“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). **[Footnote 3]**

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A citizen of the United States can become also a citizen of a State, under Section 1, Clause 1 of the Fourteenth Amendment:

“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. the State of Illinois: 83 U.S. 130, at 138 (1873). **[Footnote 4]**

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Thus, a citizen of the United States would be also a citizen of a State, and would have privileges and immunities of a citizen of the United States **AND** privileges and immunities of a citizen of a State.

Therefore, in any State of the Union, there are two State citizens, a citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution, and also a citizen of a State (and a citizen of the United States), under Section 1, Clause 1 of the Fourteenth Amendment. **[Footnote 5]**

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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The reason for this is that a citizen of the United States can be a citizen of the United States without being a citizen of a State, as in the case of living overseas (aboard).

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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Thus, a citizen of a State, since the adoption of the Fourteenth Amendment and the *Slaughterhouse Cases*, can be a litigant in federal court.

A citizen of a State, since the adoption of the Fourteenth Amendment and the *Slaughterhouse Cases*, 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). **[Footnote 6]**

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

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

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>

2. “ . . . 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).

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3. It is to be noted that 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).

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4. A citizen of a State who is not a citizen of the United States is also a citizen of the several States under Article IV, Section 2, Clause 1 of the Constitution. See my work “Yes a citizen of a State is also a citizen of the several States under the Constitution.”

5. “The Constitution forbids the abridging of the privileges of a citizen of the United States, but does not forbid the state from abridging the privileges of its own citizens.

The rights which a person has as a citizen of the United States are those which the Constitution and laws of the United States confer upon a citizen as a citizen of the

United States. For instance, a man is a *citizen of a state* by virtue of his being resident there; but, if he moves into another state, he becomes at once a citizen there by operation of the Constitution (Section 1, Clause 1 of the Fourteenth Amendment) making him a citizen there; and needs no special naturalization, which, but for the Constitution, he would need.

On the other hand, the rights and privileges which a *citizen of a state* has are those which pertain to him as a member of society, and which would be his if his state were not a member of the Union. Over these the states have the usual power belonging to government, subject to the proviso that they shall not deny to any person within the jurisdiction (i.e., to their own citizens, the citizens of other states, or aliens) the equal protection of the laws. These powers extend to all objects, which, in the ordinary course of affairs, concern the lives, liberties, privileges, and properties of people, and of the internal order, improvement, and prosperity of the state. *Federalist, No. 45*" *Hopkins v. City of Richmond*: 86 S. E. Rep. 139, at 145; 117 Va. 692; Ann. Cas. 1917D, 1114 (1915), citing the entire opinion of *Town of Ashland v. Coleman*, in its opinion (*per curiam*); overruled on other grounds, *Irvine v. City of Clifton Forge*: 97 S. E. Rep. 310, 310; 124 Va. 781 (1918), citing the Supreme Court of the United States case of *Buchanan v. Warley*, 245 U.S. 60; 38 Sup. Ct. 16, 62 L. Ed. 149.

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Town of Ashland v. Coleman:

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"... It is contended that the 1st section of the Fourteenth Amendment has been violated? That section declares that 'all persons born in the United States are citizens of the United States and the State wherein they reside,' and provides that 'no State shall make or enforce any law which shall abridge the privileges or citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws.' This section, after declaring that all persons born in the United States shall be citizens (1) of the United States and (2) of the State wherein they reside, goes on in the same sentence to provide that no State shall abridge the privileges of citizens of the United States; but does not go on to forbid a State from abridging the privileges of its own citizens. Leaving the matter of abridging the privileges of its own citizens to the discretion of each State, the section proceeds, in regard to the latter, only to provide that no State 'shall deny to any person within its jurisdiction the equal protection of the laws. ...

The rights which a person has a ***citizen of a State*** are those which pertain to him as a member of society, and which would belong to him if his State were not a member of the American Union. Over these the States have the usual powers belonging to government, and these powers ‘extend to all objects, which, in the ordinary course of affairs, concern the lives, liberties, (privileges), and properties of people; and of the internal order, improvement, and prosperity of the State. *Federalist, No. 45. . . .*

On the other hand, the rights which a person has as a citizen of the United States are such as he has by virtue of his State being a member of the American Union under the provisions of our National Constitution. For instance, a man is a ***citizen of a State*** by virtue of his being native and resident there; but, if he emigrates into another State he becomes at once a citizen there by operation of the provision of the Constitution (Section 1, Clause 1 of the Fourteenth Amendment) making him a citizen there; and needs no special naturalization, which, but for the Constitution, he would need to become a citizen.” Ex Parte Edmund Kinney: 3 Hughes 9, at 12 thru 14 (1879) [4th cir ct Va.].

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6. To see that a citizen of a State who is not a citizen of the United States can pursue an action in a diversity of citizenship removed to a federal court, see my work “Diversity of Citizenship includes a Citizen of a State who is not a Citizen of the United States.”