

What effect did the Slaughterhouse Cases have on the case Dred Scott v. Sanford?

©2011 Dan Goodman

The Supreme Court, in the case of *Dred Scott v. Sanford* (60 U.S. 393), held that since the ancestors of a black man, who was made a citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution, were not citizens at the adoption of the Constitution, then their descendants could not be citizens of the United States, under Article IV, Section 2, Clause 1 of the Constitution. Or, in other words, a black man or woman whose ancestors were slaves at the adoption of the Constitution of the United States of America could not under the Constitution be citizens under Article IV, Section 2, Clause 1:

“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, guarantied 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.” Dred Scott: 60 U.S. (Howard 19) 393, at 403, 406 (1856).

<http://books.google.com/books?id=-CQ3AAAAIAAJ&pg=PA403#v=onepage&q&f=false>

In the *Slaughterhouse Cases* (83 U.S. 36) the Supreme Court held that citizenship of a State was separate and distinct from citizenship of the United States; that a citizen of a State was 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).

<http://books.google.com/books?id=DkgFAAAAYAAJ&pg=PA74#v=onepage&q&f=false>

That there is a citizen of the United States, and a citizen of a State who is not a citizen of the United States is shown in the Supreme Court case *Sun Printing & Publishing Association v. Edwards* (194 U.S. 37):

“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=tekGAAAYAAJ&pg=PA381#v=onepage&q&f=false>

The *Slaughterhouse Cases* had no effect on the case of *Dred Scott v. Sanford*. If a black man or woman, whose ancestors were slaves at the adoption of the Constitution, rather than citizens [Footnote 1] or foreigners, is born in a particular State, rather than in the United States (the Fourteenth Amendment) [Footnote 2],

then he or she can be a citizen of that particular State under its constitution, but not a citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution of the United States.

Footnotes:

1. See my work entitled “Problem Not Solved: Black Citizens and Black Slaves” where I show with references to legal authority that before the Fourteenth Amendment, there were black citizens as well as black slaves.

2. A citizen of the United States, under Section 1, Clause 1 of the Fourteenth Amendment, is one who is born in the United States, not a particular State:

”Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within the State to make him a citizen of it.” Slaughterhouse Cases: 83 U.S. (16 Wall.) 36, at 74 (1873).

<http://books.google.com/books?id=DkgFAAAAYAAJ&pg=PA74#v=onepage&q&f=false>

”The language of the Fourteenth Amendment declaring two kinds of citizenship is discriminating. It is: ‘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.’ While it thus establishes national citizenship from the mere circumstance of birth within the territory and jurisdiction of the United States, birth within a state does not establish citizenship thereof. State citizenship is ephemeral. It results only from residence and is gained or lost therewith.” Edwards v. People of the State of California: 314 U.S. 160, 183 (*concurring opinion of Jackson*) (1941).

http://scholar.google.com/scholar_case?case=6778891532287614638

”That all persons resident in this state, born in the United States, or naturalized, or who shall have legally declared their intention to become citizens of the United States, are hereby declared citizens of the State of Alabama, possessing equal civil and political rights.” (Declaration of Rights) Article I, Section 2 Constitution of the State of Alabama of 1875.

Note: This provision is not in the current constitution of the State of Alabama.

http://www.legislature.state.al.us/misc/history/constitutions/1875/1875_1.html

* * * * *