

Two Distinct State Citizens For Purposes Of Diversity Of Citizenship

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In any State of the Union, since the adoption of the Fourteenth Amendment and the *Slaughterhouse Cases*, there are now two distinct state citizens. The first is recognized at Article IV, Section 2, Clause 1 of the Constitution:

“The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”

The next is recognized at Section 1, Clause 1 of the Fourteenth Amendment:

“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.”

The difference between them is a citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution is not a citizen of the United States, but a citizen of the several States:

“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).

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“There can be no doubt that Balk, as a citizen of the State of North Carolina, had the right to sue Harris in Maryland to recover the debt which Harris owed him. Being a citizen of North Carolina, he was entitled to all the ***privileges and immunities of citizens of the several States***, one of which is the right to institute

actions in the courts of another State.” Harris v. Balk: 198 U.S. 215, at 223 (1905).

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“In speaking of the meaning of the phrase ‘**privileges and immunities of citizens of the several States**,’ under section second, article fourth, of the Constitution, it was said by the present Chief Justice, in *Cole v. Cunningham*, 133 U.S. 107, that the intention was ‘to confer on the **citizens of the several States a general citizenship**, and to communicate all the privileges and immunities which the citizens of the same State would be entitled to under the like circumstances, and this includes the right to institute actions.’ “ Maxwell v. Dow: 176 U.S. 581, at 592 (1900).

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Privileges and immunities of a citizen of the United States are located in the Fourteenth Amendment, at Section 1, Clause 2 and arise “out of the nature and essential character of the Federal government, and granted or secured by the Constitution” (*Duncan v. State of Missouri*: 152 U.S. 377, at 382, 1894) or, in other words, “owe their existence to the Federal government, its National character, its Constitution, or its laws” (*Slaughterhouse Cases*: 83 U.S. (16 Wall.) 38, at 79, 1873).

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Privileges and immunities of a citizen of the several States are those described in *Corfield v. Coryell* decided by Mr. Justice Washington in the Circuit Court for the District of Pennsylvania in 1825:

“In the *Slaughter House Cases*, 16 Wall. 36, 76, in defining the privileges and immunities of citizens of the several States, this is quoted from the opinion of Mr. Justice Washington in *Corfield v. Coryell*, 4 Wash. Cir. Ct. 371, 380.” Hodges v. United States: 203 U.S. 1, at 15 (1906).

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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 the several States:

“We think this distinction and its explicit recognition in this amendment of great

weight in this argument, because the next paragraph of this same section (Section 1, Clause 2 of the Fourteenth Amendment), which is the one mainly relied on by the plaintiffs in error, speaks **ONLY** of privileges and immunities of citizens of the United States, and does not speak of those (privileges and immunities) of citizens of the several States.” Slaughterhouse Cases: 83 U.S. (16 Wall.) 36, at 74 (1873).

[Footnote 1]

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Therefore, there are two distinct state citizens:

“Because the ordinance and specifications, under which the paving in this case was done, require the contractor to employ only bona fide resident citizens of the city of New Orleans as laborers on the work, it is contended, on behalf on the plaintiff in error, that thereby ***citizens of the State of Louisiana, and of each and every State and the inhabitants thereof, are deprived of their privileges and immunities under article 4, sec. 2, and under the Fourteenth Amendment to the Constitution of the United States.*** It is said that such an ordinance deprives every person, not a bona fide resident of the city of New Orleans, of the right to labor on the contemplated improvements, and also is prejudicial to the property owners, because, by restricting the number of workmen, the price of the work is increased.

Such questions are of the gravest possible importance, and, if and when actually presented, would demand most careful consideration; but we are not now called upon to determine them.

In so far as the provisions of the city ordinance may be claimed to affect the rights and privileges of citizens of Louisiana and of the other States, the plaintiff in error is in no position to raise the question. It is not alleged, nor does it appear, that he is one of the laborers excluded by the ordinance from employment, or that he occupies any representative relation to them. Apparently he is one of the preferred class of resident citizens of the city of New Orleans.” Chadwick v. Kelley: 187 U.S. 540, at 546 (1903). **[Footnote 2] [Footnote 3]**

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Article III, Section 2 of the Constitution of the United States of America provides that “[t]he judicial Power shall extend to controversies between Citizens of different States.” Jurisdiction then of the courts of the United States is declared to extend to controversies between “citizens of different States.”

A citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution, is considered to be “citizens of different States” under this provision of the Constitution:

“The next inquiry, growing out of this part of the clause, is, who are to be deemed citizens of different States, within the meaning of it. Are all persons born within a State to be always deemed citizens of that State, notwithstanding any change of domicil? Or does their citizenship change with their change of domicil? The answer to this inquiry is equally plain and satisfactory. The Constitution having declared, that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, every person, who is a citizen of one State, and removes into another, with the intention of taking up his residence and inhabitancy there, becomes *ipso facto* a citizen of the State, where he resides; and he then ceases to be a citizen of the State, from which he has removed his residence. Of course, when he gives up his new residence, or domicil, and returns to his native, or other State residence or domicil, he reacquires the character of the latter. What circumstances shall constitute such a change of residence or domicil, is an inquiry, more properly belonging to a treatise upon public or municipal law, than to commentaries upon constitutional law. In general, however, it may be said, that a removal from one State into another, with an intention of residence, or with a design of becoming an inhabitant, constitutes a change of domicil, and of course a change of citizenship. But a person, who is a native citizen of one State, never ceases to be a citizen thereof, until he has acquired a new citizenship elsewhere.” A Familiar Exposition Of The Constitution Of The United States . . . ; Joseph Story, LL. D.; (Boston: Marsh, Capen, Lyon, and Webb); 1840; Section 344, Page 207.

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A citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution, only has to aver that he or she is a citizen of a State of the Union:

“The petition avers, that the plaintiff, Richard Raynal Keene, is a citizen of the state of Maryland; and that James Brown, the defendant, is a citizen or resident of the state of Louisiana, holding his fixed and permanent domicil in the parish of St. Charles. The petition, then, does not aver positively, that the defendant is a citizen of the state of Louisiana, but in the alternative, that he is a citizen or a resident. Consistently with this averment, he may be either.

. . . A citizen of the United States may become a citizen of that state in which he has a fixed and permanent domicil; **but the petition DOES NOT AVER that the plaintiff is a citizen of the United States.** . . .

The decisions of this court require, that the averment of jurisdiction shall be positive, and that the declaration shall state expressly the fact on which jurisdiction depends. It is not sufficient that jurisdiction may be inferred argumentatively from its averments.

The answer of James Brown asserts, that both plaintiff and defendant are citizens of the State of Louisiana.

Without indicating any opinion on the question, whether any admission in the plea can cure an insufficient allegation of jurisdiction in the declaration, we are all of opinion that this answer does not cure the defect of the petition. If the averment of the answer may be looked into, the whole averment must be taken together. It is that both plaintiff and defendant are citizens of Louisiana." Brown v. Keene: 33 U.S. (Peters 8) 112, at 115 thru 116 (1834). {Before the Fourteenth Amendment}

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A citizen of a State, under Section 1, Clause 1 of the Fourteenth Amendment, is to aver that he or she is a citizen of the United States **AND** 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). {After the Fourteenth Amendment}

"*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). {After the Fourteenth Amendment} **[Footnote 4]**

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A citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution, can pursue a cause of action against another citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution:

"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). {After the Fourteenth Amendment}

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Thus, there are two distinct state citizens for purposes of diversity of citizenship.

Footnotes:

1. “ . . . The ***privileges and immunities of citizens of the United States*** protected by the fourteenth amendment, are privileges and immunities arising out of the nature and essential character of the federal Government, and granted or secured by the Constitution.’ *Duncan v. Missouri* (1904) 152 U.S. 377, 14 Sup. Ct. 570, 38 L. Ed. 485; *Slaughter House Cases*, 16 Wall. 36, 21 L. Ed. 394.

The provisions of section 2, art. 4, of the federal Constitution, that citizens of each state shall be entitled to ***privileges and immunities of citizens of the several states***, are held to be synonymous with rights of the citizens. *Corfield v. Coryell*, supra. This section is akin to the provision of section 1 of the fourteenth amendment, as respects privileges and immunities, but the former is held not to make the privileges and immunities (the rights) enjoyed by citizens of the several states the measure of the privileges and immunities (the rights) to be enjoyed as of right, by a citizen of another state, under its Constitution and laws. *McKane v. Durston*, 153 U.S. 684, 14 Sup. Ct. 913, 38 L. Ed. 867. This rule necessarily classifies citizens in their rights to the extent that a citizen of one state when in another state must be governed by the same rules which apply to the citizens of that state as to

matters which are of the domestic concern of the state. *Cole v. Cunningham*, 133 U.S. 107, 10 Sup. Ct. 269, 33 L. Ed. 538; *People v. Gallagher*, 93 N.Y. 438, 45 Am. Rep. 232; *Butchers' Union v. Crescent City, Mo.*, 111 U.S. 746, 4 Sup. Ct. 652, 28 L. Ed. 585; *Ex parte Kinney*, 14 Fed. Cas. 602; *Douglas v. Stephens*, 1 Del. Ch. 465." *Strange v. Board of Commission*: 91 N.E. 242, at 246 (1910).

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2. There is also the following:

"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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3. It is to be noted that privileges and immunities of a citizen of a State are those in the constitution and laws of the individual 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. This can be seen also in the case of *Sun Printing & Publishing Association v. Edwards* (194 U.S. 377, 1904): {After the Fourteenth Amendment}

“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 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 [Footnote 5] 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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5. That is, from the averment of citizenship or other parts of the record.