Blunders of the Supreme Court of the United States

Part 5

The author has written on four blunders of the Supreme Court of the United States. Originally, he decided to write on only two mistakes made by the Supreme Court of the United States. However, the author has reconsidered after writing about the third blunder of the Supreme Court of the United States to not place any limit on the number of blunders he finds with the Supreme Court of the United States. With that said.

The fifth blunder of the Supreme Court of the United States is in the case of *Colgate v. Harvey* (296 U.S. 404, 1935). The blunder occurs at page 427:

" 'Section 2 of Article IV of the Constitution contains the provision, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.'

The Fourteenth Amendment, § 1, provides:

'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. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . .'

Thus, the dual character of our citizenship is made plainly apparent. That is to say, a citizen of the United States is ipso facto and at the same time a citizen of the state in which he resides." Colgate v. Harvey: 296 U.S. 404, at 427 (1935).

http://scholar.google.com/scholar_case?case=3719480264320489813&q

According to this case, a citizen of the United States is a citizen of a State under Article IV, Section 2, Clause 1 of the Constitution. That privileges and immunities of a citizen of the United States are located in the Fourteenth Amendment whereas privileges and immunities of a citizen of the United States, as a citizen of a State, are to be found in Article IV, Section 2, Clause 1 of the Constitution.

However, this is wrong!

A citizen of the United States is a citizen of a State under Section 1, Clause 1 of the Fourteenth Amendment, not Article IV, Section 2, Clause 1 of the Constitution of the United States of America:

"As regards the provision of the Constitution that citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States, the plaintiff in her affidavit has stated very clearly a case to which it is inapplicable.

The protection designed by that clause, as has been repeatedly held, has no application to a citizen of the State whose laws are complained of. If the plaintiff was a citizen of the State of Illinois, that provision of the Constitution gave her no protection against its courts or its legislation.

The plaintiff seems to have seen this difficulty, and attempts to avoid it by stating that she was born in Vermont.

While she remained in Vermont that circumstance made her a citizen of that State. ***But she states, at the same time, that she is a citizen of the United States, and that she is now, and has been for many years past, a resident of Chicago, in the State of Illinois.***

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 1]**

http://books.google.com/books?id=DkgFAAAAYAAJ&pg=PA138#v=onepage&q=&f=false

In addition, privileges and immunities of a citizen of a State are not in Article IV, Section 2, Clause 1 of the Constitution, rather they 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).

http://books.google.com/books?id=mmkUAAAAYAAJ&pg=PA687#v=onepage&q=&f=false

Also, Article IV, Section 2, Clause 1 relates to a citizen of a State, who is not a citizen of the United States:

" . . . 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). **[Footnote 2]**

http://books.google.com/books?id=c04GAAAAYAAJ&pg=PA690#v=onepage&q&f=false

" . . . 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).

http://books.google.com/books?id=htIGAAAAYAAJ&pg=PA91#v=onepage&q&f=false

"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).

http://books.google.com/books?id=Ehg4AAAAIAAJ&pg=PA973#v=onepage&q&f=false

"The constitutional provision there alluded to did not create those rights, which it called privileges and immunities of citizens of the States. It threw around them in that clause (Article IV, Section 2, Clause 1) no security for the citizen of the State in which they were claimed or exercised. Nor did it profess to control the power of the State governments over the rights of its own citizens.

Its sole purpose was to declare to the several States, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the

measure of the rights of citizens of other States within your jurisdiction." Slaugherhouse Cases: 83 U.S. (16 Wall.) 36, at 77 (1873). **[Footnote 3]**

http://books.google.com/books?id=DkgFAAAAYAAJ&pg=PA77#v=onepage&q&f=false

Thus, a citizen of the United States, under Section 1 of the Fourteenth Amendment, can be also a citizen of a State, under Section 1, Clause 1 of the Fourteenth Amendment, by residing in a particular State. Not Article IV, Section 2, Clause 1 of the Constitution of the United States of America. **[Footnote 4]**

Footnotes:

1. This case is next after the *Slaughterhouse Cases* (83 U.S (16 Wall.) 36, 1873) in the bound volumes of the United States Reports (on the Supreme Court of the United States).

2. "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).

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

3. There is also the following:

"Two clauses of the United States Constitution are invoked: § 2 of art. 4, which declares that 'The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States,' and part of § 1 of the 14th Amendment: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

A comparison of the statute under review with the other game laws of the State shows that, with regard to hunting game, greater restrictions are placed upon non-residents than upon residents, and that the penalties incurred by the former for violating the restrictions imposed are severer than those incurred by the latter.

The discriminations of the statute are not based upon the fact of citizenship, nor does it appear by the record before us that the prosecutor was a ***citizen either of a sister State or of the United States***. Consequently, § 2 of article 4 and so much of the 14th Amendment as secures the privileges and immunities of the citizen of the Nation are not applicable to the case in hand." Allen v. Wyckoff: 2 Cent 213 (1886).

http://books.google.com/books?id=sRpLAAAAYAAJ&pg=PA213#v=onepage&q&f=false

"2. As applied to ***a citizen of another State, or to a citizen of the United States residing in another State***, a state law forbidding sale of convict-made goods does not violate the privileges and immunities clause[***s***] of Art. IV, § 2 and the [privileges or immunities clause of the] Fourteenth Amendment of the Federal Constitution, if it applies also and equally to the citizens of the State that enacted it. P. 437." *Syllabus*, Whitfield v. State of Ohio: 297 U.S. 431 (1936).

"1. The court below proceeded upon the assumption that petitioner was a citizen of the United States; and his status in that regard is not questioned. The

effect of the privileges [~~and~~] or immunities clause of the Fourteenth Amendment, as applied to the facts of the present case, is to deny the power of Ohio to impose restraints upon ***citizens of the United States resident in Alabama*** in respect of the disposition of goods within Ohio, if like restraints are not imposed upon citizens resident in Ohio. The effect of the similar clause found in the Fourth Article of the Constitution, as applied to these facts, would be the same, since that clause is directed against ***discrimination by a state in favor of its own citizens and against the citizens of other states***. *Slaughter-House Cases*, 16 Wall. 36, 1 Woods 21, 28; *Bradwell v. State*, 16 Wall. 130, 138." *Opinion*, Whitfield v. State of Ohio: 297 U.S. 431, at 437 (1936).

http://supreme.justia.com/us/297/431/ **(Syllabus)**

http://scholar.google.com/scholar_case?case=13866319457277062642 **(Opinion)**

4. The blunder made in *Colgate v. Harvey*, has been carried forward to other cases from the United States Supreme Court. See *Supreme Court of New Hampshire v. Piper* (470 U.S. 274, 1985), *Supreme Court of Virginia v. Friedman* (487 U.S. 59, 1988).

http://scholar.google.com/scholar_case?case=2926579002341243719&q

http://scholar.google.com/scholar_case?case=13897281859174153973&q

Compare to *Bradwell v. State of Illinois* (83 U.S. (16 Wall.) 130, 1873) (also, at page 139 " . . . Certainly many prominent and distinguished lawyers have been admitted to practice, both in the State and Federal courts, ***who were not citizens of the United States or of any State***."). See also *Saenz v. Roe* (526 U.S. 489, 1999):

"***The second component of the right to travel is, however, expressly protected by the text of the Constitution. The first sentence of Article IV, § 2, provides***:

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

Thus, by virtue of a person's state citizenship, a citizen of one State who travels in other States, intending to return home at the end of his journey, is entitled to enjoy the 'Privileges and Immunities of Citizens in the several States' that he visits. This provision removes 'from the citizens of each State the disabilities of alien age in the other States.' *Paul v. Virginia*, 8 Wall. 168, 180 (1869) ("[W]ithout some provision . . . removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists"). . . .

What is at issue in this case, then, is this third aspect of the right to travel—the right of the newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same State. That right is protected not only by the new arrival's status as a state citizen, but also by her status as a citizen of the United States. That additional source of protection is plainly identified in the opening words 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. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . . . ' " Saenz v. Roe: 526 U.S. 489, at 501 thru 503 (1999).

http://scholar.google.com/scholar_case?case=4721017505990988840&q