Diversity of Citizenship and a

Citizen of the United States

In my work "Diversity of Citizenship and a Citizen of a State who is not a Citizen of the United States", I showed in the cases of *Bondurant v. Watson* (103 U.S. 281, 1880) and *Sun Printing & Publishing Association v. Edwards* (194 U.S. 377, 1904) that one who is a citizen of the United States and a citizen of a State (Fourteenth Amendment), as well as one who is a citizen of a State who is not a citizen of the United States (Article IV, Section 2, Clause 1 of the Constitution), has the requisite citizenship to give a circuit court of the United States jurisdiction in a diversity of citizenship suit.

In my work "Diversity of Citizenship includes a Citizen of a State who is not a Citizen of the United States", I made the following statement:

"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 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). **[Footnote 1]**"

If one is a citizen of the United States, then he or she is to aver that he 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). {Before the Fourteenth Amendment}

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Unless the averment of citizenship shows one to be a citizen of the United States, it will be presumed that one is not a citizen of the United States:

"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 **[Footnote 2]**; ***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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The Fourteenth Amendment did not modify the requirement of one averring that he or she is a citizen of the United States **AND** a citizen of a State:

"In the oral argument before this court, the inquiry arose, whether since the adoption of the Fourteenth Amendment to the Federal Constitution the mere allegation of residence in Illinois did not make such a prima facie case of citizenship in that State as, in the absence of proof, should be deemed sufficient to sustain the jurisdiction of the Circuit Court. That amendment declares that '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 where they reside.' It was suggested that a resident of one of the States is prima facie either a citizen of the United States or an alien, — if a citizen of the United States, and also a resident of one of the States, he is, by the terms of the Fourteenth Amendment, also a citizen of the State wherein he resides, — and if an alien, he was entitled in that capacity to sue in the Federal court, without regard to residence in any particular State. It is not to be denied that there is some force in these suggestions, but they do not convince us that it is either necessary or wise to modify the rules heretofore established by a long line of decisions upon the subject of the jurisdiction of the Federal courts. Those who think

that the Fourteenth Amendment requires some modification of those rules, claim, not that the plaintiff's residence in a particular State necessarily or conclusively proves him to be a citizen of that State, within the meaning of the Constitution, but only that a general allegation of residence, without indicating the character of such residence, whether temporary or permanent, made a prima facie case of right to sue in the Federal courts. ***As the jurisdiction of the Circuit Court is limited in the sense that it has none except that conferred by the Constitution and laws of the United States, the presumption now, as well as before the adoption of the Fourteenth Amendment, is, that a cause is without its jurisdiction unless the contrary affirmatively appears. In cases where jurisdiction depends upon the citizenship of the parties, such citizenship, or the facts which in legal intendment constitute it, should be distinctly and positively averred in the pleadings, or they should appear affirmatively, and with equal distinctness, in other parts of the record.*** And so where jurisdiction depends upon the alienage of one of the parties. In *Brown v. Keene* (8 Pet. 115), Mr. Chief Justice Marshall said: 'The decisions of this court require that the averment of jurisdiction shall be positive, 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.' Here the only fact averred, or appearing from the record, is that Cease was a resident of Illinois; and we are, in effect, asked, in support of the jurisdiction of the court below, to infer argumentatively, from the mere allegation of 'residence,' that, if not an alien, he had a fixed permanent domicile in that State, and was a native or naturalized citizen of the United States, and subject to the jurisdiction thereof. By such argumentative inferences, it is contended that we should ascertain the fact, vital to the jurisdiction of the court, of his citizenship in some State other than that in which the suit was brought. We perceive nothing in either the language or policy of the Fourteenth Amendment which requires or justifies us in holding that the bare averment of the residence of the parties is sufficient, prima facie, to show jurisdiction. The judgment must, therefore, be reversed, upon the ground that it does not affirmatively appear from the record that the defendant in error was entitled to sue in the Circuit Court." Robertson v. Cease: 97 U.S. 646, at 648 thru 650 (1878). {After the Fourteenth Amendment} **[Footnote 3]**

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One who is a citizen of the United States, under the Fourteenth Amendment, is to still 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}

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Otherwise, one who is a citizen of the United States will not be able to pursue an action in diversity of citizenship at the federal level.

Footnotes:

1. "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).

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"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).

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"The first point of inquiry is with respect to the status of appellant. The stipulation of facts states that appellant 'is by trade and occupation a deep-sea diver engaged in sponge fishery, his residence address being at Tarpon Springs, Pinellas

County, Florida,' and that he 'has been engaged in this business for the past several years.' ***Appellant has not asserted or attempted to show that he is not a citizen of the United States, or that he is a citizen of any State other than Florida, or that he is a national of any foreign country. It is also significant that in his brief in this Court, replying to the State's argument that as a citizen of Florida he is not in a position to question the boundaries of the State as defined by its constitution, appellant has not challenged the statement as to his citizenship, while he does contest the legal consequences which the State insists flow from that fact.***

It further appears that upon appellant's arrest for violation of the statute, he sued out a writ of habeas corpus in the District Court of the United States and was released, but this decision was reversed by the Circuit Court of Appeals. *Cunningham v. Skiriotes*, 101 F.2d 635. That court thought that the question of the statute's validity should be determined in orderly procedure by the state court subject to appropriate review by this Court, but the court expressed doubt as to the right of the appellant to raise the question, saying: '***Skiriotes states he is a citizen of the United States resident in Florida, and therefore is a citizen of Florida***. His boat, from which his diving operations were conducted, we may assume was a Florida vessel, carrying Florida law with her, but of course as modified by superior federal law.' *Id.,* pp. 636, 637.

In the light of appellant's statements to the federal court, judicially recited, and upon the present record showing his long residence in Florida and the absence of a claim of any other domicile or of any foreign allegiance, we are justified in assuming that he is a citizen of the United States and of Florida. Certainly appellant has not shown himself entitled to any greater rights than those which a citizen of Florida possesses." Skiriotes v. State of Florida: 313 U.S. 69, at 71 thru 72 (1941).

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2. See my work, "Yes a citizen of the United States cannot be domiciled in a State", where I show that under the Fourteenth Amendment, "resides", does not mean "permanent residence (domicile)" but rather, "bona fide residence", as provided in the *Slaughterhouse Cases*.

3. 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 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*** **[Footnote 4]** ***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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4. That is, from the averment of citizenship or other parts of the record.