Questions and Answers on Citizenship in the United States, More

about the author:

Dan Goodman, an authority on citizenship in the United States, answers questions on citizenship in the United States.

After many years of research, Dan has discovered that in the United States, in addition to a citizen of the United States, there is 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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See his work, "Yes, there is a citizen of a State."

To this, he has found, in addition to a citizen of the United States, a citizen of the several States, who is not a citizen of the United States:

"Williams was arrested upon a warrant charging him with 'the offense of acting as emigrant agent without a license.' He made application to the judge of the superior court of the Ocmulgee circuit for a writ of habeas corpus, alleging that the warrant under which he was arrested charged him with a violation of that provision of the general tax act of 1898 which imposed 'upon each emigrant agent, or employer or employe of such agents, doing business in this state, the sum of five hundred dollars for each county in which such business is conducted.' Acts 1898, p. 24. He further alleged that the law which he was charged with having violated was in conflict with certain provisions of the constitutions of the United States and of the state of Georgia, enumerating in the application the various clauses of which the act was alleged to be violative . . . .

Is the law (the general tax act of 1898) a regulation or restriction of intercourse among the citizens of this state and those of other states? Under this branch of commerce the states are prohibited from passing any law which either restricts the free passage of the ***citizens of the United States*** through the several states, or which undertakes to regulate or restrict free communication between the ***citizens of the several states***. A tax on the right of a citizen to leave the state, or on the right of a citizen of another state to come into the state, is a regulation of interstate commerce, and void. *Crandall v. Nevada*, 6 Wall. 35, 18 L.Ed. 744; *Henderson v. Mayor*, etc., 92 U.S. 259, 23 L.Ed. 543; *People v. Compagnie Generale Transatlantique*, 107 U.S. 59, 2 Sup. Ct. 87, 27 L.Ed. 383; *Passenger Cases*, 7 How. 282, 12 L.Ed. 702. Nor can a state pass a law which attempts to regulate or restrict communication between the ***citizens of different states***. *Telegraph Co. v. Pendleton*, 122 U.S. 347, 7 Sup. Ct. 1126, 30 L.Ed. 1187; *Pensacola Tel. Co. v. W. U. Tel. Co.*, 96 U.S. 1, 24 L.Ed. 708. But the law under consideration in the present case neither regulates nor restricts the right of citizens of this state to leave its territory at will, nor to hold free communication with the citizens of other states." Williams v. Fears: 35 S.E. 699, at 699, 701 (1900).

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Privileges and immunities of a citizen of the several States are not the same as the privileges and immunities of a citizen of the United States. Privileges and immunities of a citizen of the United States 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 (16 Wall.) U.S. 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 1823:

"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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The location for privileges and immunities of a citizen of the United States is Section 1, Clause 2 of the Fourteenth Amendment:

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

The designation for privileges and immunities of a citizen of the several States is Article IV, Section 2, Clause 1 of the Constitution of the United States of America:

"Fortunately we are not without judicial construction of this clause of the Constitution (Article IV, Section 2, Clause 1). The first and leading case of the subject is that of *Corfield v. Coryell*, decided by Mr. Justice Washington in the Circuit Court for the District of Pennsylvania in 1823.

> 'The inquiry,' he says 'is, what are the ***privileges and immunities of citizens of the several States***? . . .

This definition of the privileges and immunities of citizens of the States is adopted in the main by this court in the recent case of *Ward v. The State of Maryland*." Slaughterhouse Cases: 83 (16 Wall.) 36, at 75 thru 76 (1873).

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"Section 1770b has been several times considered by this court, and upheld to the full extent of its terms. It is enacted under the undoubted power of every state to impose conditions in absolute discretion upon granting the privilege of doing business in this state to any foreign corporation. *Paul v. Virginia*, 8 Wall. (U. S.) 168, 19 L. Ed. 357; *Chicago T. & T. Co. v. Bashford*, 120 Wis. 281, 97 N. W. 940. That power is not restrained by section 2, art. 4, of the federal Constitution, providing that the citizens of each state shall be entitled to all the ***privileges and immunities of citizens of the several states***, nor by section 1, Amend. 14, to that Constitution, providing that no state shall make or enforce any law which shall abridge the ***privileges or immunities of citizens of the United States***, because foreign corporations are not **CITIZENS**. *Paul v. Virginia*, supra; *Chicago T. & T. Co. v. Bashford*, supra." Loverin & Browne Company v. Travis: 115 N.W. 829, 831 (1908).

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It is to be noted that privileges and immunities of a citizen of the several States are not the same as privileges and immunities of a citizen of a State. 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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View his work, "Yes there is a citizen of the several States."

And, Dan has shown that a citizen of a State, who is not a citizen of the United States, is also a citizen of the several States:

"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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(Thus, a citizen of the several States, is a citizen of all the several States, generally or a citizen of the several States united.)

-- and is to be recognized as such under international law.

Check his work, "Getting a Passport as a citizen of a State under Article IV, Section 2, Clause 1 of the Constitution of the United States of America."

In answering questions on citizenship in the country of the United States, Dan provides legal authority.

_____

Q. On what date was the Fourteenth Amendment adopted?

A. The Fourteenth Amendment was adopted on July 28, 1868:

"The Fourteenth Amendment which was finally adopted July 28, 1868." Holden v. Hardy: 169 U.S. 375, at 382 (1918).

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"On July 28, 1868, the secretary of state proclaimed that the fourteenth article of amendments to the constitution of the United States had been ratified by three-fourths of the states of the Union." United States v. Lackey: 99 F. Rep. 952, at 995 (1900).

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Q. The several States were sovereign before the adoption of the Fourteenth Amendment. Did the Fourteenth Amendment changed that?

A. Yes, before the Fourteenth Amendment, the several States were sovereign:

"The general government, and the States, although both exist within the same territorial limits, ***are separate and distinct sovereignties***, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the tenth amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the States." Collector v. Day: 78 U.S. (Wall. 11) 113, at 124 (1870).

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No, the Fourteenth Amendment did not change that:

"Notwithstanding the adoption of these three Amendments (the Thirteenth, Fourteenth, and Fifteenth Amendments), the National Government still remains one of enumerated powers, and the Tenth Amendment, which reads, 'the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people,' is not shorn of its vitality." Hodges v. United States: 203 U.S. 1, at 16 (1906).

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The several States are still sovereign:

"If the United States may control the conduct of its citizens upon the high seas, we see no reason why the State of Florida may not likewise govern the conduct of its citizens upon the high seas with respect to matters in which the State has a legitimate interest and where there is no conflict with acts of Congress. ***Save for the powers committed by the Constitution to the Union, the State of Florida has retained the status of a sovereign***. . . . .

. . . When its action does not conflict with federal legislation, the sovereign authority of the State over the conduct of its citizens upon the high seas is analogous to the sovereign authority of the United States over its citizens in like circumstances." Skiriotes v. State of Florida: 313 U.S. 69, at 77, 78 thru 79 (1941).

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"In applying the dual sovereignty doctrine, then, the crucial determination is whether the two entities that seek successively to prosecute a defendant for the same course of conduct can be termed separate sovereigns. . . . Thus, ***the Court has uniformly held that the States are separate sovereigns with respect to the Federal Government.*** . . . .

The States are no less sovereign with respect to each other than they are with respect to the Federal Government. The powers to undertake criminal prosecutions derive from separate and independent sources of power and authority originally belonging to them before admission to the Union and preserved to them by the Tenth Amendment." Heath v State of Alabama: 474 U.S. 82, at 88 thru 89 (1985).

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And there is this:

"A flag is emblematic of the sovereignty of the power which adopts it. The American flag is emblematic of the sovereignty of the United States. Congress, by sections 1791 and 1792 of the Revised Statutes of the United States, has provided as follows: 'The flag of the United States shall be thirteen horizontal stripes, alternate red and white; and the union of the flag shall be thirty-seven stars, white in a blue field. On the admission of a new state into the Union, one star shall be added to the union of the flag; and such addition shall take effect on the fourth day of July then next succeeding said admission.' In *Collector v. Day*, 11 Wall. 113, 20 L. Ed. 122, it was said: 'The general government and the states although both exist within the same territorial limits are separate and distinct sovereignties, acting separately and independently of each other within their respective spheres. The former in its

appropriate sphere is supreme; but the states within the limits of their powers not granted, or, in the language of the tenth amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the states." ***The state of Illinois has never adopted a flag emblematic of its sovereignty***. The flag is the flag of the United States as a sovereignty. The United States acting through its congress, has adopted a flag emblematic of national sovereignty. Presumably, the national flag was adopted for the use of the citizens of the United States. There is a difference between the privileges and immunities belonging to the citizens of the United States as such, and those belonging to the citizens of each state as such. The privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of its constitution, or its laws and treaties made in pursuance thereof; and it is these rights which are placed under the protection of congress by the fourteenth amendment. *People v. Loeffler*, 175 Ill. 585, 51 N. E. 785; *Slaughter-House Cases*, 16 Wall. 36, 21 L. Ed. 394. The right to use or display the flag (of the United States) would seem to be a privilege of a citizen of the United States, rather than the privilege of a citizen of any one of the states." Ruhstrat v. People: 57 N.E. 41, at 45; 185 Ill. 133 (1900).

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Q. Each State has its own citizens? And the United States?

A. Yes, in the *Slaughterhouse Cases*, the Supreme Court held 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).

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In addition:

". . . It is, then, to the Fourteenth Amendment that the advocates of the congressional act must resort to find authority for its enactment, and to the first section of that amendment, which is as follows: '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, 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.'

In the first clause of this section, declaring who are citizens of the United States, there is nothing which touches the subject under consideration. The second clause, declaring that 'no State shall make or enforce any law which will abridge the privileges or immunities of citizens of the United States,***' is limited, according to the decision of this court in Slaughter-House Cases, to such privileges and immunities as belong to citizens of the United States, as distinguished from those of citizens of the State***." Neal v. State of Delaware: 103 U.S. 370, at 406 (1880).

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And:

"Referring to the same provision of the Constitution (that is; the second section of article 4), this court said, in *Slaughter-House Case*, ubi supra, that it 'did not create those rights which it called privileges and immunities of citizens of the States. It threw around them in that clause 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.' " United States v. Harris: 106 U.S. 629, at 643 thru 644 (1882).

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Also:

"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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Q. Are the privileges and immunities in Article IV, Section 2, Clause 1 of the Constitution those of a citizen of a State?

A. Before the Fourteenth Amendment and the *Slaughterhouse Cases*, privileges and immunities under Article IV, Section 2, Clause 1 of the Constitution, were common privileges and immunities of a citizen of a particular State:

"But the privileges and immunities secured to citizens of each State in the several States, by the provision in question (Article IV, Section 2, Clause 1), are those privileges and immunities which are common to the citizens in the latter States under their constitution and laws by virtue of their being citizens." Paul v. State of Virginia: 75 U.S. 168, at 180 (1868).

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However, after the Fourteenth Amendment and the *Slaughterhouse Cases*, privileges and immunities under Article IV, Section 2, Clause 1 of the Constitution are now fundamental privileges and immunities of a citizen of the several States:

"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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The location for privileges and immunities of a citizen of the several States is Article IV, Section 2, Clause 1 of the Constitution of the United States of America:

"Fortunately we are not without judicial construction of this clause of the Constitution (Article IV, Section 2, Clause 1). The first and leading case of the subject is that of *Corfield v. Coryell*, decided by Mr. Justice Washington in the Circuit Court for the District of Pennsylvania in 1823.

> 'The inquiry,' he says 'is, what are the privileges and immunities of citizens of the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are ***fundamental.*** . . . "

This definition of the privileges and immunities of citizens of the States is adopted in the main by this court in the recent case of *Ward v. The State of Maryland*." Slaughterhouse Cases: 83 (16 Wall.) 36, at 75 thru 76 (1873).

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Q. A citizen of a State is recognized in Article IV, Section 2, Clause 1 of the Constitution. Is a citizen of a State also a citizen of the several States?

A. A citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution, is entitled to privileges and immunities of a citizen of the several States:

"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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". . . So, a State may, by rule uniform in its operation as to ***citizens of the several States***, require residence within its limits for a given time before a citizen of another State who becomes a resident thereof shall exercise the right of suffrage or become eligible to office. It has never been supposed that regulations of that character materially interfered with the enjoyment by ***citizens of each State of the privileges and immunities secured by the Constitution to citizens of the several States***. The Constitution forbids only such legislation affecting citizens of the respective States as will substantially or practically put a citizen of one State in a condition of alienage when he is within or when he removes to another State, or when asserting in another State the rights that commonly appertain to those who are part of the political community known as the People of the United States, by and for whom the Government of the Union was ordained and established. Blake v. McClung: 172 US. 239, at 256 thru 257 (1898).

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And as such, is also a citizen of the several States:

"The intention of section 2 of Article 4 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." Cole v. Cunningham: 133 U.S. 107, at 113 thru 114 (1890).

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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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That is, a citizen of all the several States, generally, or a citizen of the several States united.

Q. A citizen of the United States can become a citizen of a State, under Section 1 of the Fourteenth Amendment. And a citizen of a State is recognized under Article IV, Section 2, Clause 1 of the Constitution. Does that mean that there are two state citizens?

A. Yes, there are two state citizens. One is a citizen of the United States, the other is not a citizen of the United States:

"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.

http://books.google.com/books?id=oDY8AAAAIAAJ&pg=PA145#v=onepage&q&f=false

Town of Ashland v. Coleman:

http://books.google.com/books?id=1SoZAAAAYAAJ&pg=PA427#v=onepage&q&f=false

". . . 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.].

http://books.google.com/books?id=pB0TAAAAYAAJ&pg=PA12#v=onepage&q&f=false

"***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.

http://books.google.com/books?id=zYEtAAAAYAAJ&pg=PA17#v=onepage&q&f=false

A citizen of the United States can become also a citizen of a State, under Section 1, Clause 1 of the Fourteenth Amendment. As such, one would be a citizen of the United States **AND** a citizen of a State:

"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).

http://books.google.com/books?id=IEsGAAAAYAAJ&pg=PA165#v=onepage&q&f=false

"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. State of Illinois: 83 U.S. 130, at 138 (1873).

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

Q. A citizen of a State, before the Fourteenth Amendment, was one who was born in a State. Did the Fourteenth Amendment change this?

A. No, a citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution of the United States of America, is one who is born in a particular State:

(Before the Fourteenth Amendment)

"It appears that the plaintiff in error, though ***a native-born citizen of Louisiana***, was married in the State of Mississippi, while under age, with the consent of her guardian, to a citizen of the latter State, and that their domicile, during the duration of their marriage, was in Mississippi." Conner v. Elliott: 59 U.S. (Howard 18) 591, at 592 (1855).

http://books.google.com/books?id=RkcFAAAAYAAJ&pg=PA592#v=onepage&q&f=false

(After the Fourteenth Amendment)

"Joseph A. Iasigi, ***a native born citizen of Massachusetts***, was arrested, February 14, 1897, on a warrant issued by one of the city magistrates of the city of New York, as a fugitive from the justice of the State of Massachusetts." Iasigi v. Van De Carr: 166 U.S. 391, at 392 (1897).

http://books.google.com/books?id=xuUGAAAAYAAJ&pg=PA392#v=onepage&q&f=false

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

"All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they ***reside***. Section 1, Clause 1 of the Fourteenth Amendment of the Constitution.

http://www.archives.gov/exhibits/charters/constitution_transcript.html

"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

Citizenship in a particular State, therefore, is based on residence, not birth:

"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

"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)

And:

"The first count charged the accused with conspiring, in violation of § 19 of the Criminal Code, to injure, oppress, threaten, or intimidate 221 named persons, ***alleged to be citizens of the United States RESIDING in Arizona***, of rights or privileges secured to them by the Constitution or laws of the United States." United States v. Wheeler: 254 U.S. 281, at 292 (1920).

http://books.google.com/books?id=DuoGAAAAYAAJ&pg=PA292#v=onepage&q&f=false

"***The [citizens] of the United States resident within any State*** are subject to two

governments: one State, and the other National. . . . It is the natural consequence of [such] citizenship which owes allegiance to two sovereignties and claims protection from both. The citizen (of the United States) cannot complain, because he has voluntarily submitted himself to such a form of government. He owes allegiance to the two departments, so to speak, and within their respective spheres must pay the penalties which each exacts for disobedience to its laws. In return, he can demand protection from each within its own jurisdiction." Cruishank v. United States: 92 U.S. 542, at 549, 550 thru 551 (1875).

http://books.google.com/books?id=PGwUAAAAYAAJ&pg=RA2-PA549#v=onepage&q&f=false

"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

Q. A State, when making legislation, has to be concerned with its effect on citizens of other States as well as citizens of the United States?

A. Yes:

"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)

". . . The only question to be considered, so far as the law is concerned, is whether its necessary result is the taxation of such property. The proposition is maintained, and is undoubtedly correct, that, before property can be taxed, it must have become identified and incorporated with the general mass of property in the state. Live stock in this state is, in the greater part, maintained by feeding or grazing upon the natural grasses of the soil. In the case of some kinds of live stock, they are largely allowed to roam at will, but over territory more or less confined in extent. With sheep the custom is to keep them in convenient flocks or herds, intrusted to herders, and to direct them from place to place, generally as to a particular herd, in some certain locality, but covering in most cases a rather large and indeterminate territory. They are thus maintained until in proper condition for disposition, shipment, or other purposes of the owner. The only way in which such property becomes identified and incorporated with the other property of the state is by being turned at large or herded, to be maintained by grazing. Whether the purpose is that they shall remain in the state permanently or not, is not a determining factor. Such a purpose does not exist in the case of the greater proportion of all the live stock in the state. The object of a cattle grower is to ship out the state his cattle, as soon as they arrive at the proper age, size, or condition. To some extent that is also the purpose which the sheep owner has in view. When live stock are brought into this state to graze they are here to be maintained. While here for that purpose, they are as fully identified and incorporated with the other property of the state as it is possible for most of our live stock to become. The length of time that such property remains cuts no figure, if the purpose aforesaid is present. No question of interstate commerce is involved in such case which militates against the exercise by the state of its power of taxation. ***Neither, in that event, is a citizen of another state deprived of any of the immunities or privileges of a citizen of this state, nor is the state attempting to make or enforce a law which abridges the rights of a citizen of the United States***. . . . A statute of Washington taxing live stock brought into that state to graze was upheld in all respects, but the question was apparently not presented, nor was it discussed in the opinion of the court whether any provision of the federal constitution was infringed upon. *Wright v. Stinson* (Wash.) 47 Pac. 761." Kelley v. Rhoads: 51 Pac Rep 573, at 596 (1898).

http://books.google.com/books?id=6wsLAAAAYAAJ&pg=PA596#v=onepage&q&f=false

"These statutes (Section 1736 and Section 1737, R. S. 1909) were under

consideration in the case of *Newlin v. Railroad Co*., 222 Mo. 375, 121 S.W. 125, and the court there held that these statutes were founded upon comity, and opened the doors of our courts to causes of action accruing under the laws of sister states. Meaning, of course, that the doors were not opened at the discretion of the court, as was formerly the case, but mandatory, in harmony and in keeping with section 2 of article 4 and section 1 of the fourteenth amendment of the Constitution of the United States, which reads as follows:

> '**Section 2, art. 4. Privileges and immunities of citizens of the several states**. The citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states.'
>
> '**Section 1 of the 14th Amendment. Citizenship—Rights of citizens—Due process of law and equal protection of the laws**. 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, 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.'

By reading these two constitutional provisions together, it will be seen that the latter is much broader, in many particulars, than the former; and this is also true regarding citizenship. By the former nothing was said about citizens of the United States, while the latter in express terms makes all persons born in the United States or naturalized, in pursuance to its authority, citizens not only of the state in which they reside, but also citizens of the United States. The last section also provides that no state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, which of course includes all of the citizens of all of the states, and the Supreme Court of the United States has repeatedly held that the latter clause includes corporations, whenever engaged in interstate commerce, or whenever legally authorized to do business in any such state or states.

That being true, the Supreme Court of the United States, in speaking of the rights of a citizen of Massachusetts to sue in the courts of New York, in the case of *Cole v. Cunningham*, 133 U.S., loc. cit. 113, 114, 10 Sup. Ct. 271, 33 L.Ed. 538, said: 'The intention of section 2 of article 4 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. The fact of the citizenship of Butler and Hayden did not affect their privilege to sue in New York and have the full use and benefit of the courts of that state in the assertion of their legal rights.' That court has also repeatedly held, under the constitutional provisions before mentioned, that

any citizen of the United States or of any state thereof may sue in the courts of any other state, wherever a citizen of such state may do so under the laws thereof. That court, in discussing this question in the case of *International Text-Book Company*, 207 U.S. 9(1), loc. cit. 111, 30 Sup. Ct. 481, 487 (24 L.Ed. 678, 24 L.R.A. [N.S.] 493), used this language: 'This court, held, in *Chambers v. Baltimore & Ohio Railroad Co*., 207 U.S. 142, 148 [28 Sup. Ct., 34, 35 (52 L.Ed. 143)], that a state may, subject to the restrictions of the federal Constitution, "determine the limits of the jurisdiction of its courts, and the character of the controversies which shall be heard in them." But it also said in the same case: "The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the federal Constitution." '

The same question came before this court in the case of *International Text-Book Co. v. Gillespie*, 229 Mo. 397, 129 S.W. 922. There was quoted with approval the foregoing language of the Supreme Court of the United States, and in pursuance thereto held: '(c) That where a foreign corporation has a valid cause against a citizen of this state, it may sue said citizen thereon in the courts of this state, provided a citizen of this state might do the same, notwithstanding the provisions of said section 1025 to the contrary. *Chambers v. Railroad*, 207 U.S. 142, 148 [28 Sup. Ct. 34, 52 L.Ed. 143]; *United Shoe Machinery Co. v. Ramloes*, 210 Mo. 681 [109 S.W. 567].'

The same identical question was decided in the cases of the *United Shoe Machinery Co. v. Ramloes*, 231 Mo. 508, 132 S.W. 1133, and in *Roeder v. Robertson*, 202 Mo. 522, 100 S.W. 1086.

Both the federal courts, and this court in the case cited, and in many more, have uniformly held that, whenever a nonresident or a foreign corporation has a valid cause of action under the laws of this state or under the laws of any other state, he or it may sue thereon in the courts of this state, provided legal service can be had upon the defendant, and provided, further, that a citizen of this state, under its laws, is authorized to sue in our courts on a cause of action similar to the one sued on by said nonresident or foreign corporation; and that, too, despite a statute of the state denying to such corporation such right to sue. Those rulings are based upon the ground that, under the constitutional provisions previously mentioned, all citizens of the United States are entitled to all the privileges and immunities which are granted by the laws of any state to her own citizens, as previously stated; and that any statute of a state which denies such right of such person or corporation to sue in the courts of such state is violative of said constitutional provisions, and are therefore absolutely null and void. That is not only the law as announced by those

courts but it was correctly so announced. ***It would be both unjust and intolerable for one state of the Union to possess the power and authority to enact a valid statute closing the doors of its courts to citizens of the United States, or of other states, and deny to them the right or privilege of suing in the courts thereof, while the citizens of such state enjoy that right or privilege***. To so hold would be not only to nullify the spirit of the provisions of the federal Constitution previously mentioned, but the letter thereof as well.

While, as previously stated, counsel for the petitioner cite some respectable authorities holding that the Legislature and courts of a state possess such power and authority, upon an examination of them it will be seen that they were decided solely upon the principle of comity, and the constitutional provisions mentioned were not considered. Consequently they have no binding effect upon this court.

Having thus seen that the doors of our courts, under the law of comity, the statutes of this state as previously quoted, and the constitutional provisions before mentioned, are ever opened to all citizens of the United States and the citizens of the various states to sue upon any valid transitory cause of action, which might be sued upon in our courts, by a citizen of this state, it only remains for us, in this connection, to ascertain whether or not the cause of action of Mrs. Rawn, the plaintiff in the case against the petitioner, is a valid transitory cause of action, and could a citizen of this state sue in our courts on a similar cause of action." State of Missouri v. Pacific Mutual Life Insurance Company: 143 S.W. 483, at 497 thru 498 (1911).

http://books.google.com/books?id=QZE7AAAAIAAJ&pg=PA497#v=onepage&q&f=false

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