

Questions and Answers on Citizenship in the United States

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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 domicile, for he testified under oath as follows: 'One of the reasons I left the New Haven Palladium was, it was too far away from home. I lived in Delaware, and I had to go back and forth. My family are over in Delaware.' Now, it is elementary that, to effect a change of one's legal domicile, two things are indispensable: First, residence in a new domicile, and, second, the intention to remain there. The change cannot be made, except *facto et animo*. Both are alike necessary. Either without the other is insufficient. Mere absence from a fixed home, however long continued, cannot work the change. *Mitchell v. United States*, 21 Wall. 350.

As Delaware must, then, be held to have been the legal domicile of Edwards at the time he commenced this action, ***had it appeared that he was a citizen of the United States, it would have resulted, by operation of the Fourteenth Amendment, that Edwards was also a citizen of the State of Delaware.*** *Anderson v. Watt*, 138 U.S. 694. Be this as it may, however, Delaware being the legal domicile of Edwards, it was impossible for him to have been a citizen of another State, District, or Territory, and he must then have been either ***a citizen of Delaware*** or a citizen or subject of a foreign State. In either of these contingencies, the Circuit Court would have had jurisdiction over the controversy. But, in the light of the testimony, we are satisfied that the averment in the complaint, that Edwards was a resident 'of the State of Delaware, was intended to mean, and, reasonably construed, must be interpreted as averring, that ***the plaintiff was a citizen of the State of Delaware.*** *Jones v. Andrews*, 10 Wall. 327, 331; *Express Company v. Kountze*, 8 Wall. 342." *Sun Printing & Publishing Association v. Edwards*: 194 U.S. 377, at 381 thru 383 (1904).

<http://books.google.com/books?id=tekGAAAAAYAAJ&pg=PA381#v=onepage&q&f=false>

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).

<http://books.google.com/books?id=DhwLAAAAYAAJ&pg=PA701#v=onepage&q&f=false>

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).

<http://books.google.com/books?id=hjs8AAAAIAAJ&dq=editions%3ALCCN42012503&lr=&pg=PA829#v=onepage&q=&f=false>

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).

<http://books.google.com/books?id=ceIGAAAAYAAI&pg=PA223#v=onepage&q=&f=false>

“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. What are the privileges and immunities of citizenship in the country of the United States?

A. Since the adoption of the Fourteenth Amendment, there are three sets of privileges and immunities in the United States. The three sets of privileges and immunities are: privileges and immunities of a citizen of the United States; privileges and immunities of a citizen of a State, and privileges and immunities of a citizen of the several States.

Privileges and immunities of a citizen of the United States are at 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.”

Privileges and immunities of a citizen of a State are at 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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Privileges and immunities of a citizen of the several States are at Article IV, Section 2, Clause 1 of the Constitution:

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

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Privileges and immunities of a citizen of the United States “owe their existence to the Federal government, its National character, its Constitution, or its laws.” Slaughterhouse Cases: 83 U.S. (16 Wall.) 36, at 79 (1873).

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Privileges and immunities of a citizen of a State are expressed in the constitution and laws of a particular State. *McKane v. Durston*; supra.

Privileges and immunities of a citizen of the several States are those described in *Corfield v. Coryell*:

“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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Q. What is the difference between privileges and immunities under Article IV, Section 2, Clause 1 of the Constitution of the United States of America and the Fourteenth Amendment?

A. The Supreme Court, in the *Slaughterhouse Cases*, held that there are now two citizens under the Constitution of the United States of America, a citizen of the United States, at Section 1 of the Fourteenth Amendment, and also a citizen of the several States, at Article IV, Section 2, Clause 1 of the Constitution:

“We think this distinction and its explicit recognition in this amendment of great weight in this argument, because the next paragraph of this same section (Section 1, Clause 2 of the Fourteenth Amendment), which is the one mainly relied on by the plaintiffs in error, speaks ONLY of privileges and immunities of citizens of the United States, and does not speak of those (privileges and immunities) of citizens of the several States. . . .

The first occurrence of the words ‘privileges and immunities’ in our constitutional history, is to be found in the fourth of the articles of the old Confederation. . . .

In the Constitution of the United States, which superseded the Articles of Confederation, the corresponding provision is found in section two of the fourth article, in the following words: “The citizens of each State shall be entitled to all the privileges and immunities of citizens OF the several States.” *Slaughterhouse Cases*: 83 U.S. (16 Wall.) 36, at 74, 75 (1873).

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

Further:

“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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Therefore, there is a citizen of the United States, under Section 1 of the Fourteenth Amendment and also a citizen of the several States, under Article IV, Section 2, Clause 1 of the Constitution of the United States of America.

Thus, the distinction between the privileges or immunities of the Fourteenth Amendment and the privileges and immunities of Article IV, Section 2, Clause 1 of the Constitution is that privileges and immunities of the Fourteenth Amendment belong to a citizen of the United States whereas privileges and immunities of Article IV, Section 2, Clause 1 of the Constitution (“privileges and immunities of citizens OF the several States [*Slaughterhouse Cases*, supra.]) belong to a citizen of the several States.

It is to be added that privileges and immunities of a citizen of a State are at 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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Q. What are the privileges and immunities of a citizen of the United States under the Fourteenth Amendment?

A. “One of these privileges is conferred by the very article (Fourteenth Amendment) under consideration. It is that a citizen of the United States can, of his own volition, become a citizen of any State of the Union by a bond fide residence therein, with the same rights as other citizens of that State.” *Slaughterhouse Cases*: 83 U.S. (16 Wall.) 36, at 80 (1873).

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“One of these is well described in the case of *Crandall v. Nevada*, 6 Wall. 36. It is said to be the right of the citizen of this great country, protected by implied guarantees of its Constitution, ‘to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its seaports, through which all operations of foreign commerce are conducted, to the subtreasuries, land offices, and courts of justice in the several States. . . .

Another privilege of a citizen of the United States is to demand the care and protection of the Federal government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. Of this there can be no doubt, nor that the right depends upon his character as a citizen of the United States. The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of habeas corpus, are rights of the citizen guaranteed by the Federal Constitution. The right to use the navigable waters of the United States, however, they may penetrate the territory of the several States, all rights secured to our citizens by treaties with foreign nations, are dependent upon citizenship of the United States, and not citizenship of a State. . . . To these may be added the rights secured by the thirteenth and fifteenth articles of amendment, and by the other clause of the fourteenth, next to be considered (“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 its law.”). Slaughterhouse Cases: 83 U.S. (16 Wall.) 36, at 79 thru 80 (1873).

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See also *Maxwell v. Dow*, 176 U.S 581 (1900).

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A citizen of the United States also has common privileges and immunities, when also a citizen of a State, under Section 1, Clause 2 of the Fourteenth Amendment:

“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)

Common privileges and immunities are:

“ . . . [T]hose 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).

<http://books.google.com/books?id=-bwGAAAAYAAJ&pg=PA180#v=onepage&q&f=false>

Q. What are the privileges and immunities given by Justice Washington in *Corfield v. Coryell*?

A. The privileges and immunities which Justice Washington opined in *Corfield v. Coryell*, before the adoption of the Fourteenth Amendment and the *Slaughterhouse Cases*, were fundamental rights belonging to a citizen of any particular State.

However, after the adoption of the Fourteenth Amendment and the *Slaughterhouse Cases*, these fundamental rights now belong to a citizen of the several States, under Article IV, Section 2, Clause 1:

“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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“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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” . . . [W]hat are the privileges and immunities of citizens [of (*Slaughterhouse Cases*)] the several States? . . . They may, however, be all comprehended under the following general heads: protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole.” Corfield v. Coryell: 4 Wash. Cir. Ct. 371, 380 (1825).

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Q. Are privileges and immunities of a citizen of a particular State related to fundamental rights?

A. Before the Fourteenth Amendment and the *Slaughterhouse Cases*, privileges and immunities of a citizen of a particular State included fundamental privileges and immunities, common privileges and immunities, and special privileges and immunities.

Fundamental privileges and immunities were those described in *Corfield v. Coryell*:

“The inquiry, is what are the privileges and immunities of citizens in the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are fundamental.” *Corfield v. Coryell*: 4 Wash. Cir. Ct. 371, 380 (1825).

<http://books.google.com/books?id=CFwPAAAAAYAAJ&pg=PA453#v=onepage&q&f=false>

Common privileges and immunities:

“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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And special privileges and immunities:

“Special privileges enjoyed by citizens in their own States are not secured in other States by this provision (Article IV, Section 2, Clause 1).” Paul v. State of Virginia: 75 U.S. 168, at 180 (1868).

<http://books.google.com/books?id=-bwGAAAAYAAJ&pg=PA180#v=onepage&q&f=false>

See also, McCready v. State of Virginia: 94 U.S. 391, at 395 thru 396 (1876).

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However, after the adoption of the Fourteenth Amendment and the *Slaughterhouse Cases*, fundamental privileges and immunities, under *Corfield v. Coryell*, were transferred from a citizen of a particular State to 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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“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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Therefore, privileges and immunities of a citizen of a particular State have nothing to do with fundamental privileges and immunities described under *Corfield v. Coryell*, since the adoption of the Fourteenth Amendment and the *Slaughterhouse Cases*, since such privileges and immunities now belong to a citizen of the several States.
