Diversity of Citizenship includes a Citizen of a State who is not 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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Also:

"The act was considered in *Johnson v. United States*, 160 U.S. 546, and we there held that a person who was not a citizen of the United States at the time of an alleged appropriation of his property by a tribe of Indians was not entitled to maintain an action in the Court of Claims under the act in question. There was not in that case, however, any assertion that the claimant was a citizen of a State as distinguished from a citizen of the United States. . . . [U]ndoubtedly in a purely technical and abstract sense citizenship of one of the States may not include citizenship of the United States . . . Unquestionably, in the general and common acceptation, ***a citizen of the State is considered as synonymous with citizen of the United States, and the one is therefore treated as expressive of the other. This flows from the fact that the one is normally and usually the other, and where such is not the case, it is purely exceptional and uncommon***." United States v. Northwestern Express, Stage & Transportation Company: 164 U.S. 686, 688 (1897).

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Such a citizen is recognized at Article IV, Section 2, Clause 1 of the Constitution of the United States of America:

" . . . There is no inherent right in a citizen to thus sell intoxicating liquors by retail. It is not a privilege of a ***citizen of the State or of a citizen of the United States***." Crowley v. Christensen: 137 U.S. 86, at 91 (1890).

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"Another objection to the act is that it is in violation of section 2, art. 4, of the constitution of the United States, and of the fourteenth amendment, in that this act discriminates both as to persons and products. Section 2, art. 4, declares that the citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states; and the fourteenth amendment declares that no state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States. But we have seen that the supreme court, in *Crowley v. Christensen*, 137 U.S. 91, 11 Sup. Ct. Rep. 15, has declared that there is no inherent right in a citizen to sell intoxicating liquors by retail. It is not a privilege of ***a citizen of a state or of a citizen of the United States***." Cantini v. Tillman: 54 Fed. Rep. 969, at 973 (1893).

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A citizen of the United States can become also a citizen of a State, under Section 1, Clause 1 of the Fourteenth Amendment. A citizen of the United States is then 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).

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"The Fourteenth Amendment declares that citizens of the United States are citizens of the state within they reside; therefore the plaintiff was at the time of making her application, a citizen of the United States **AND** a citizen of the State of Illinois.

We do not here mean to say that there may not be a temporary residence in one State, with intent to return to another, which will not create citizenship in the former. But the plaintiff states nothing to take her case out of the definition of citizenship of a State as defined by the first section of the fourteenth amendment." Bradwell v. the State of Illinois: 83 U.S. 130, at 138 (1873).

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Since the ratification of the Fourteenth Amendment and the *Slaughterhouse Cases*, a citizen of a State, is still a citizen of a State, or more appropriately a citizen of a State who is not a citizen of the United States. This can be seen in the area of diversity of citizenship.

A general rule for removal in a diversity of citizenship case is that the proper citizenship must exist both when the action is commenced at the state level and when the petition for removal is filed at the federal level. Some authority:

"In *Gibson v. Bruce*, 108 U.S. 561, it was decided that under the act of March 3d, 1875, c. 137, a suit could not be removed on the ground of citizenship unless the requisite citizenship existed both when the suit was begun and when the petition for removal was filed." Houston & Texas Central Railroad Company & Others v. Shirley: 111 U.S. 358, at 360 (1884).

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"The provisions of that act are reproduced in the third subdivision of section 639 of the Revised Statutes, and it was and is essential, in order to such removal, where there are several plaintiffs or several defendants, that all the necessary parties on one side must be citizens of the State where the suit is brought, and all on the other side must be citizens of another State or States, and the ***proper citizenship must exist*** when the action is commenced as well as when the petition for removal is filed. *Sewing Machine Cases*, 18 Wall. 553; *Vannevar v. Bryant*, 21 Wall. 41; ***Bible Society v. Grove***, 101 U.S. 610; *Cambria Iron Company v. Ashburn*, 118 U.S. 54; *Hancock v. Holbrook*, 119 U.S. 586; *Fletcher v. Hamlet*, 116 U.S. 408." Young v. Parker's Administrator: 132 U.S. 267, at 270 thru 271 (1889).

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"2. The case was not removable from the state court, unless it appeared affirmatively in the petition for removal, or elsewhere in the record, that at the commencement of the action, as well as when the removal was asked, Stevens and Mirick were citizens of some other State than the one of which the plaintiff was, at those respective dates, a citizen. *Gibson v. Bruce*, 108 U.S. 561, 562; *Houston & Texas*

Central Railway v. Shirley, 111 U.S. 358, 360; *Mansfield, Coldwater & c. Railway v. Swan*, 111 U.S. 379, 381; *Akers v. Akers*, 117 U.S. 197." Stevens v. Nichols: 130 U.S. 230, at 231 thru 232 (1889).

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A citizen of a State (who is not a citizen of the United States) can be seen in the following case of *Bible Society v. Grove* (101 U.S. 610):

"This was a suit begun on the 6th of March, 1868 **[Footnote 1]**, in a State court, by a part of the heirs-at-law of Jacob E. Grove, to set aside his will. The defendants were the executors of the will, the legatees or devisees, and some of the heirs. The case was tried four times in the State court, and the venue was changed twice. At three of the trials the jury disagreed. At the other a verdict was given for the plaintiffs, which the court set aside. The last trial commenced April 14, 1875, at the January adjourned term of the Circuit Court of Macon County, Missouri, and resulted in a disagreement of the jury. At the next term, beginning on the third Monday in May, the cause was continued.

On the 21st of September, 1875, the American Bible Society, one of the defendants in the suit, a New York corporation, and a legatee under the will, filed its petition for the removal of the cause to the Circuit Court of the United States. The ground of removal is thus stated in the petition: —

'That said John A. Grove and others, plaintiffs as aforesaid, are residents and citizens of the State of Ohio **[Footnote 2]**, and other States other than the State of New York; that none of said plaintiffs reside in or are citizens of the State of New York; that said controversy is wholly between citizens of different States, and can be fully determined as between them; that petitioner is actually interested in said controversy (being the only party whose interests plaintiffs profess to desire to affect in said controversy); that the amount involved in said controversy exceeds $5,000. Petitioner further states that it has reason to believe, and does believe, that from prejudice and local influence it will not be able to obtain justice in said Circuit Court of Macon County aforesaid.' Accompanying the petition was the necessary bond, and an affidavit of the attorney of the petitioner, stating his belief of the facts set forth, and that from local influence and prejudice the petitioner would not be able to obtain justice in the State court. It nowhere appears from the petition or the record that either of the plaintiffs was a citizen of Missouri." Bible Society v. Grove: 101 U.S. 610, at 610 thru 611 (1879).

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The commencement of this case was on March 6, 1868; before the ratification of the Fourteenth Amendment. Citizenship of the United States did not exist separately from citizenship of a State. One who was a citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution, was also a citizen of the United States (for purposes of international law **[Footnote 3]**) entitled to privileges and immunities of citizens in the several States. On September 21, 1875; after the adoption of the Fourteenth Amendment, the petition for removal was filed. The Fourteenth Amendment according to the Supreme Court of the United States, in the *Slaughterhouse Cases*, changed citizenship under the Constitution. Citizenship of a State was now to be considered as separate and distinct from citizenship of the United States. A citizen of a State was to be considered as 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). **[Footnote 4], [Footnote 5]**

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In the case of *Bible Society v. Grove*, the Supreme Court made no comment on the averments on citizenship made on the petition for removal as no longer being in existence; that is, a citizen of a State (who is not a citizen of the United States), but that:

". . . As the plaintiffs are not shown to have been citizens of Missouri, it is clear that the defendants were not entitled to take the case to the courts of the United States ON THIS GROUND." Bible Society v. Grove: 101 U.S. 610, at 612 (1879).

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In addition, *Bible Society v. Grove* (101 U.S. 610) is cited in *Young v. Parker's Administrator* (132 U.S. 267) above.

Therefore, a citizen of a State who is not a citizen of the United States can pursue a diversity of citizenship cause of action. Or, in other words, diversity of citizenship includes a citizen of a State who is not a citizen of the United States.

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Footnotes:

1. 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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2. Plaintiffs in this case, in the petition for removal on September 21, 1875, are averred to as citizens of a State, not citizens of the United States and a State:

"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*, Steigleider v. McQuesten: 198 U.S. 141 (1905).

"***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*, Steigleider v. McQuesten: 198 U.S. 141, at 142 (1905).

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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 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).

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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).

That there is a citizen of the United States and a citizen of a State who is not a citizen of the United States is shown in the following case:

" . . . In the Constitution and laws of the United States, the word 'citizen' is generally, if not always, used in a political sense to designate one who has the rights and privileges of ***a citizen of a State or of the United States***." Baldwin v. Franks: 120 U.S. 678, at 690 (**1887**).

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3. "The intercourse of this country with foreign nations and its policy in regard to them, are placed by the Constitution of the United States in the hands of the government, and its decisions upon these subjects are obligatory upon every citizen of the Union. He is bound to be at war with the nation against which the war-making power has declared war, and equally bound to commit no act of hostility against a nation with which the government is in amity and friendship. This principle is universally acknowledged by the laws of nations. It lies at the foundation of all government, as there could be no social order or peaceful relations between the citizens of different countries without it. It is, however, more emphatically true in relation to citizens of the United States. For as the sovereignty resides in the people, every citizen is a portion of it, and is himself personally bound by the laws which the representatives of the sovereignty may pass, or the treaties into which they may enter, within the scope of their delegated authority. And when that authority has plighted its faith to another nation that there shall be peace and friendship between the citizens of the two countries, every citizen of the United States is equally and personally pledged. The compact is made by the department of the government upon which he himself has agreed to confer the power. It is his own personal compact as a portion of the sovereignty in whose behalf it is made. And he can do no act, nor enter into any agreement to promote or encourage revolt or hostilities against the territories of a country with which our government is pledged by treaty to be at peace, without a breach of his duty as a citizen and the breach of the faith pledged to the foreign nation." Kennett v. Chambers: 55 U.S. (Howard 14) 38, 49 thru 50 (1852).

4. And:

". . . 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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5. It is to be noted that 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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