

Citizenship and Domicile: Before and After the Fourteenth Amendment

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In the case of *Ennis v. Smith* (55 U.S. 400, 1852), the Supreme Court of the United States writes the following on the law of domicil:

“ . . . [I]n a case where the question of domicil was raised, the declarations and letters of a party whose domicil was disputed, were admissible in evidence, especially if made previous to the event which gave rise to the suit. *Throndiike v. Boston*, (1 Metcalf,) and *Kilburn v. Bennett*, (3 Metcalf, 199,) . . .

Kosciusko's domicil of origin was Lithuania, in Poland. The presumption of law is that it was retained, unless the change is proved, and the burden of proving it is upon him who alleges the change. *Somerville v. Somerville*, 5 Vesey, 787; Voet, Pand. tit. 1, 5, N. 99.

But what amount of proof is necessary to change a domicil of origin into a prima facie domicil of choice? It is residence elsewhere, or where a person lives out of the domicil of origin. That repels the presumption of its continuance, and casts upon him who denies the domicil of choice, the burden of disproving it. Where a person lives, is taken prima facie to be his domicil, until other facts establish the contrary. Story's Com. 44, 6 Rule; *Bruce v. Bruce*, 2 Bos. & Pul. 228, Note 239; 3 Ves. 198, 291; Hagg. Consist. 374, 437. It is difficult to lay down any rule under which every instance of residence could be brought, which may make a domicil of choice. But there must be to constitute it actual residence in the place, with the intention that it is to be a principal and permanent residence. That intention may be inferred from the circumstances or condition in which a person may be as to the domicil of his origin, or from the seat of his fortune, his family and pursuits of life. Pothier, Introd. Gen. aux Cout. p. 4; D'Argentie, Cout. Art. 449; Touillier, lib. 1, tit. 3, n. 371; 1 Burge, Com. Confl. Laws, 42, 43. A removal which does not contemplate absence from the former domicil for an indefinite and uncertain time is not a change of it. But when there is a removal, unless it can be shown or inferred from circumstances that it was for some particular purpose, expected to be only of a temporary nature, or in the exercise of some particular profession, office, or calling, it does change the domicil. The result is, that the place of residence is prima facie the domicil, unless there be some motive for that residence not inconsistent with a clearly established intention to retain a permanent residence in another place. . . .

These general principles of jurisprudence in respect to domicil, by which Kosciusko's has been determined, are such as the courts of France would have ruled in this case. . . .

It has been determined that the domicil of General Kosciusko was in France at the time of his death, that he died intestate as to his funds in the United States, and that they were to be distributed according to the law of his domicil." Ennis v. Smith: 55 U.S. (Howard 14) 400, at 422 thru 423, 424, 430 (1852).

<http://books.google.com/books?id=LgAGAAAAYAAJ&pg=PA422#v=onepage&q&f=false>

Before the Fourteenth Amendment, there was only a citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution of the United States of America: **[Footnote 1]**

"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>

Such citizen was a citizen of a particular State, where the domicile of the citizen was located.

"§ 344. The next inquiry, growing out of this part of the clause, is, who are to be deemed citizens of different States, within the meaning of it. Are all persons born within a State to be always deemed citizens of that State, notwithstanding any change of domicil? Or does their citizenship change with their change of domicil? The answer to this inquiry is equally plain and satisfactory. The Constitution having declared, that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, every person, who is a citizen of one State, and removes into another, with the intention of taking up his residence and inhabitancy there, becomes ipso facto a citizen of the State, where he resides; and he then ceases to be a citizen of the State, from which he has removed his residence. Of course, when he gives up his new residence, or domicil, and returns to his native, or other State residence or domicil, he reacquires the character of the latter. What circumstances shall constitute such a change of residence or domicil, is an inquiry, more properly belonging to a treatise upon public or municipal law, than to commentaries upon constitutional law. In general, however, it may be said, that a removal from one State into another, with an intention of residence, or with a design

of becoming an inhabitant, constitutes a change of domicile, and of course a change of citizenship. But a person, who is ***a native citizen of one State, never ceases to be a citizen thereof, until he has acquired a new citizenship elsewhere.*** A Familiar Exposition Of The Constitution Of The United States . . . ; Joseph Story, LL. D.; (Boston: Marsh, Capen, Lyon, and Webb); 1840; Section 344, Page 207.

<http://books.google.com/books?id=Aew9AAAAIAAJ&pg=PA207#v=onepage&q&f=false>

In the *Slaughterhouse Cases* (1873), the Supreme Court decided that because of the Fourteenth Amendment, citizenship of a State was to be 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).

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

In addition:

“In the *Slaughter-house cases*, 16 Wall. 36, the subject of the privileges or immunities of citizens of the United States, as distinguished from those of a particular State, was treated by Mr. Justice Miller in delivering the opinion of the court. He stated . . . that ***it was only privileges and immunities of the citizen of the United States that were placed by the [Fourteenth] amendment under the protection of the Federal Constitution, and that the privileges and immunities of a citizen of a State, whatever they might be, were not intended to have any additional protection by the paragraph in question, but they must rest for their security and protection where they have heretofore rested.*** Maxwell v. Dow: 176 U.S. 581, at 587 (1900).

<http://books.google.com/books?id=8toGAAAAYAAJ&pg=PA587#v=onepage&q&f=false>

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).

<http://books.google.com/books?id=Y7wGAAAAAYAAJ&pg=PA406#v=onepage&q&f=false>

So now there is a citizen of a State and there is a citizen of the United States:

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

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

" . . . 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).

<http://books.google.com/books?id=c04GAAAAAYAAJ&pg=PA690#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:

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

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

In such case then there would be a citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution and also a citizen of the United States **AND** a citizen of a State, under Section 1 of the Fourteenth Amendment:

"The bill filed in the Circuit Court by the plaintiff, McQuesten, alleged her to be 'a citizen of the United States **AND** of the State of Massachusetts, and residing at Turner Falls in said State,' while the defendants Steigleder and wife were alleged to be 'citizens of the State of Washington, and residing at the city of Seattle in said State.' " Statement of the Case, Steigleder v. McQuesten: 198 U.S. 141 (1905).

"The averment in the bill that the parties were citizens of different States was sufficient to make a prima facie case of jurisdiction so far as it depended on citizenship." Opinion, Steigleder v. McQuesten: 198 U.S. 141, at 142 (1905).

<http://books.google.com/books?id=ceIGAAAAYAAJ&pg=PA141#v=onepage&q&f=false>

A citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution, is still a citizen of a particular State where the domicile of the citizen is located:

"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>

“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 domicil of Edwards, it was impossible for him to have been a citizen of another State, District, or Territory, and he must then have been either **a citizen of Delaware** or a citizen or subject of a foreign State. In either of these contingencies, the Circuit Court would have had jurisdiction over the controversy. But, in the light of the testimony, we are satisfied that the averment in the complaint, that Edwards was a resident 'of' the State of Delaware, was intended to mean, and, reasonably construed, must be interpreted as averring, that the plaintiff was a citizen of the State of Delaware. *Jones v. Andrews*, 10 Wall. 327, 331; *Express Company v. Kountze*, 8 Wall. 342." *Sun Printing & Publishing Association v. Edwards*: 194 U.S. 377, at 381 thru 383 (1904).

<http://books.google.com/books?id=tekGAAAYAAJ&pg=PA381#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=DuoGAAAYAAJ&pg=PA292#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

Under the Fourteenth Amendment, a citizen of the United States has the privilege to become a citizen of a particular State, by residing in such State:

“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).

<http://books.google.com/books?id=DkgFAAAAYAAJ&pg=PA80#v=onepage&q&f=false>

However, though a person may have more than one residence, he can only have one domicile:

“ . . . The very meaning of domicil is the technically preeminent headquarters that every person is compelled to have in order that certain rights and duties that have been attached to it by the law may be determined. *Bergner & Engel Brewing Co. v. Dreyfus*, 172 Massachusetts, 154, 157. In its nature it is one, and if any case two are recognized for different purposes it is a doubtful anomaly. Dicey, *Conflict of Laws*, 2d ed. 98.” Williamson v. Osenton: 232 U.S. 619, at 625 (1914).

<http://books.google.com/books?id=2u4GAAAYAAJ&pg=PA625#v=onepage&q&f=false>

A citizen of the United States, under Section 1 of the Fourteenth Amendment, therefore has a domicile in the United States; for example, the District of Columbia. Otherwise, the person is not a citizen of the United States.

Footnotes:

1. This article deals with citizenship under the Constitution of the United States of America, and not with naturalization under the Constitution. Naturalization is covered in the Constitution at Article 1, Section 8, Clause 4 (and recognized in Section 1, Clause 1 of the Fourteenth Amendment).

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