A Citizen of a State is a Citizen of the several States when abroad

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A citizen of a State who is not a citizen of the United States, is a citizen of the several States when abroad. This can be seen in the case of *Hilton v. Guyot* (159 U.S. 113, 1895):

"The present case is not one of a person travelling through or casually found in a foreign country. ***The defendants, although they were not citizens or residents of France, but were citizens and residents of the State of New York, and their principal place of business was in the city of New York, yet had a storehouse and an agent in Paris, and were accustomed to purchase large quantities of goods there, although they did not make sales in France. Under such circumstances, evidence that their sole object in appearing and carrying on the litigation in the French courts was to prevent property, in their storehouse at Paris, belonging to them, and within the jurisdiction, but not in the custody, of those courts, from being taken in satisfaction of any judgment that might be recovered against them.***" Hilton v. Guyot: 159 U.S. 113, at 204 (**1895**). **[Footnote 1]**

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In this case defendants are citizens of the State of New York excising their commercial privileges as citizens of the several States:

"It this were not so, it is easy to perceive how the power of Congress to regulate commerce with foreign nations and among the several States could be practically annulled, and ***the equality of commercial privileges secured by the Federal Constitution TO CITIZENS OF THE SEVERAL STATES be materially abridged and impaired***." Guy v. City of Baltimore: 100 U.S. 434, 439-440 (**1879**); reaffirmed, I.M. Darnell & Son Company v. City of Memphis: 208 U.S. 113, 121 (**1908**). **[Footnote 2]**

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It is to be added that a citizen of a State who is not a citizen of the United States, is considered a citizen of the several States when on the high seas:

"Action to have a certain marriage between plaintiff and defendant declared valid and binding upon the parties. A second amended complaint alleged: That on August 2, 1897, defendant was a minor of the age of 15 years and 10 months, and that her father, one A. C. Thomson, was her natural and only guardian. Plaintiff was of the age of 21 years and 10 months, and ***both plaintiff and defendant were citizens and residents of Los Angeles county, Cal***. On said day plaintiff and defendant, at Long Beach, on the coast of California, boarded a certain fishing and pleasure schooner, of 17 tons burden, called the 'J. Willey,' duly licensed under the laws of the United States, of which W. L. Pierson was captain, and was enrolled as master thereof, and had full charge of said vessel. Said vessel proceeded to a point on the high seas about nine miles from the nearest point from the boundary of the state and of the United States. The parties then and there agreed, in the presence of said Pierson, to become husband and wife, and the said Pierson performed the ceremony of marriage, and, among other things, they promised in his presence to take each other for husband and wife, and he pronounced them husband and wife. Neither party had the consent of the father or mother or guardian of defendant to said marriage. . . .

Appellant contends (1) that the marriage is valid because performed upon the high seas; and (2) that it would have been valid if performed within this state, because there is no law expressly declaring it to be void. Respondent presents the case upon two propositions, claiming (1) that no valid marriage can be contracted in this state, except in compliance with the prescribed forms of the laws of this state, and contract a valid marriage.

Sections 4082, 4290, 722, Rev. St. U.S., are cited by appellant as recognizing marriages at sea and before foreign consuls, and that section 722 declares the common law as to marriage to be in force on the high seas on board American vessels. We have carefully examined the statutes referred to, and do not find that they give the slightest support to appellant's claim. The law of the sea, as it may relate to the marriage of citizens of the United States domiciled in California, cannot be referred to the common law of England, any more than it can to the law of France or Spain, or any other foreign county. ***We can find no law of congress, and none has been pointed out by appellant, in which the general government has undertaken or assumed to legislate generally upon the subject of marriage on the sea. Nor, indeed, can we find in the grant of powers to the general government by the several states, as expressed in the national constitution, any provision by which congress is empowered to declare what shall constitute a valid marriage between citizens of the several states upon the sea***, **[see Note]** either within or without the conventional three-mile limit of the shore of any state;

and clearly does no such power rest in congress to regulate marriages on land, except in the District of Columbia and the territories of the United States, or where is power of exclusive jurisdiction. We must look elsewhere than to the acts of congress for the law governing the case in hand." Norman v. Norman: 54 Pac. Rep. 143, 143 thru 144 (1898).

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(**Note**: " . . . [I]t is certain that the Constitution of the United States confers no power whatever upon the government of the United States to regulate marriage in the States or its dissolution." Andrews v. Andrews: 188 U.S. 14, at 32 (1903).

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Since the defendants appeared and carried on litigation in the courts of France, then they were citizens of the several States and not citizens of the United States. This is because privileges and immunities of citizens of the United States are not the same as citizens of the United States:

"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***." Slaughterhouse Cases: 83 U.S. (16 Wall.) 36, at 74 (1873). **[Footnote 4]**

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It is to be noted that in the Statement of the Case the following appears:

"The first of these two cases was an action at law, brought December 18, 1885, in the Circuit Court of the United States for the Southern District of New York, by Gustave Bertin Guyot, as official liquidator of the firm of Charles Fortin & Co., and by the surviving members of that firm, all aliens and citizens of the Republic of France, against ***Henry Hilton and William Libbey, citizens of the United States and of the State of New York***, and trading as copartners, in the cities of New York and Paris and elsewhere, under the firm name of A. T. Stewart & Co. The action was upon a judgment recovered in a French court at Paris in the Republic of France by the firm

of Charles Fortin & Co., all whose members were French citizens, against ***Hilton and Libbey, trading as copartners as aforesaid, and citizens of the United States and of the State of New York***." (*Statement of the Case*) Hilton v. Guyot: 159 U.S. 113, at 114 (1895).

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As shown, the Supreme Court of the United States identified Hilton and Libbey, in its opinion, as citizens of the State of New York, and not as citizens of the United States and of the State of New York.

The reason they were identified in pleadings as citizens of the United States was probably from the following case of the Supreme Court of the United States:

"Referring to §1307 of Mr. Justice Story's Commentaries on the Constitution, and the cases cited, to which he added *Benton v. Burgot*, 10 S. & R. 240, the learned judge inquired: 'What, then, is the right of a state to exercise authority over the persons of those who belong to another jurisdiction, and who have perhaps not been out of the boundaries of it?' (p. 450) and quoted from Vattel, Burge, and from Mr. Justice Story (Conflict of Laws, c. 14, §539), that ' "no sovereignty can extend its process beyond its own territorial limits to subject other persons or property to its judicial decisions. Every exertion of authority beyond these limits is a mere nullity, and incapable of binding such persons or property in other tribunals," ' and thus continued: ' "Such is the familiar, reasonable, and just principle of the law of nations; and it is scarce supposable that the framers of the Constitution designed to abrogate it between States which were to remain as independent of each other, for all but national purposes, as they were before the revolution. . . . . (page 296)

Publicists concur that domicile generally determines the particular territorial jurisprudence to which every individual is subjected. ***As correctly said by Mr. Wharton, the nationality of our citizens is that of the United States,*** and by the laws of ***the United States*** they are bound in all matters in which ***the United States*** **ARE** (**IS** is not used) **[see Note]** sovereign; but in other matters, their domicile is in the particular State, and that determines the applicatory territorial jurisprudence. A foreign judgment is impeachable for want of personal service within the jurisdiction of the defendant, this being internationally essential to jurisdiction in all cases in which the defendant is not a subject of the State entering judgment; and it is competent for a defendant in an action on a judgment of a sister State, as in an action of a foreign judgment, to set up as a defense, want of jurisdiction, in that he was not an inhabitant of the State rendering the judgment and had not been served with process and did not enter his appearance. Whart. Conflict Laws, §§ 32, 654, 660; Story Conflict Laws, §§ 539, 540, 586.

John Benge was ***a citizen of Maryland*** when he executed this obligation. The subject-matter of the suit against him in Pennsylvania was merely the determination of his personal liability." Grover & Baker Sewing Machine Company v. Radcliffe: 137 U.S. 287, at 296, 297 thru 298 (1890).

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(**Note**: In this case the term, the United States, is expressed in a plural sense, rather than in a singular sense. This usage can be seen in the Constitution of the United States of America at Article III, Section 3, Clause 1, whereat it states:

"Treason against **the United States,** shall consist only in levying War against **THEM**."

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

The term "the United States," as used therein then, refers to the several States united:

"At the time of the formation of the constitution, the States were members of the confederacy united under the style of 'the United States of America,' and upon the express condition that 'each State retains its sovereignty, freedom, and independence.' And the consideration that, under the confederation, 'We, the people of the United States of America,' indubitably signified the people of the several States of the Union, as free, independent and sovereign States, coupled with the fact that the constitution was a continuation of the same Union ("a more perfect Union"), and a mere revision or remodeling of the confederation, is absolutely conclusive that, ***by the term, 'the United States' is meant the several States united*** as independent and sovereign communities; and by the words, 'We, the people of the United States,' is meant the people of the several States as distinct and sovereign communities, and not the people of the whole United States collectively as a nation." Stunt v. Steamboat Ohio: 4 Am. Law. Reg. 49, at 95 (1855), Dis. Ct., Hamilton County, Ohio; and (same wording) Piqua Bank v. Knoup, Treasurer: 6 Ohio 261, at 303 thru 304 (1856).

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http://books.google.com/books?id=UfADAAAAYAAJ&pg=PA303#v=onepage&q&f=false

Thus, a citizen of a State who is not a citizen of the United States, is a citizen of the several States (united), and not a citizen of the United States.

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Footnotes:

1. The following cases on diversity of citizenship show that there is a citizen of the United States, and a citizen of a State who is not a citizen of the United States:

"The petition avers, that the plaintiff, Richard Raynal Keene, is a citizen of the state of Maryland; and that James Brown, the defendant, is a citizen or resident of the state of Louisiana, holding his fixed and permanent domicil in the parish of St. Charles. The petition, then, does not aver positively, that the defendant is a citizen of the state of Louisiana, but in the alternative, that he is a citizen or a resident. Consistently with this averment, he may be either.

" . . . A citizen of the United States may become a citizen of that state in which he has a fixed and permanent domicil; ***but the petition DOES NOT AVER that the plaintiff is a citizen of the United States***. . . .

The decisions of this court require, that the averment of jurisdiction shall be positive, and that the declaration shall state expressly the fact on which jurisdiction depends. It is not sufficient that jurisdiction may be inferred argumentatively from its averments.

The answer of James Brown asserts, that both plaintiff and defendant are citizens of the State of Louisiana.

Without indicating any opinion on the question, whether any admission in the plea can cure an insufficient allegation of jurisdiction in the declaration, we are all of opinion that this answer does not cure the defect of the petition. If the averment of the answer may be looked into, the whole averment must be taken together. It is that both plaintiff and defendant are citizens of Louisiana." Brown v. Keene: 33 U.S. (Peters 8) 112, at 115 thru 116 (1834).

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"*Syllabus*:

The facts, which involved the sufficiency of averments and proof of diverse citizenship to maintain the jurisdiction of the United States Circuit Court, are stated in the opinion of the court.

Opinion:

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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"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).

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And there is the following:

" . . . 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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" . . . 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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2. That there is a citizen of the several States is shown by the following cases from the Supreme Court of the United 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). **[Footnote 3]**

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3. 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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4. "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 objection that the acts abridge the ***privileges and immunities of citizens of the United States***, within the meaning of the [Fourteenth] amendment, is not pressed, and plainly is untenable. As has been pointed out repeatedly, the privileges and immunities referred to in the amendment are only such as owe their existence to the federal government, its national character, its Constitution, or its laws. *Maxwell v. Bugbee,* 250 U.S. 525, 537-538, and cases cited." Owney v. Morgan: 256 U.S. 94, at 112-113 (1921).

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