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JURISDICTION-DIVERSITY OF CITIZENSHIP-CORPORATIONS DOMICILED IN MORE THAN ONE STATE

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JURISDICTION—DIVERSITY OF CITIZENSHIP—CORPORATIONS DOMICILED IN MORE THAN ONE STATE—Plaintiff brought action against defendant railroad in the federal district court for New Jersey district alleging that she was a citizen of New Jersey and that defendant was a corporation and citizen of New York. Defendant moved to dismiss for lack of diversity of citizenship alleging that it was a consolidated corporation of New York and New Jersey. *Held,* action dismissed. Since corporate existence was dependent upon both states, and plain-

tiff was also a citizen of one, diversity did not appear. *Gavin v. Hudson & Manhattan R. Co.*, (D.C. N.J. 1950) 90 F. Supp. 172.

When it is once assumed that a corporation may be a citizen of a state for purposes of conferring jurisdiction on a federal court under the diversity of citizenship clause,[1] it then becomes necessary to determine of which state or states a litigating corporation is a citizen. A corporation chartered by one state only is deemed a citizen of the state of incorporation,[2] and the fact that it enjoys some privileges of domestic corporations in foreign states is not ordinarily sufficient to alter the character of its domicile.[3] Indeed, even if the corporation should subsequently acquire charters from foreign states, it will probably remain a citizen of the state of its creative charter.[4] If a corporation has in its history a merger with a foreign corporation, the question of citizenship will likely turn upon which identity remained intact throughout the merger process.[5] When, as in the instant case, a corporation is the product of the consolidation of corporations of different states pursuant to appropriate legislation, the decisions indicate that the state of citizenship depends upon where suit is brought.[6] The rule has been stated, ". . . [A] corporation chartered by several states must, within the district of either state, be treated as a citizen of that state alone."[7] Disciples of this rule assert that since the corporation owes its existence to state legislation and state legislation can have no extra-territorial effect,[8] it follows that two states cannot create one corporation.[9] When two states make an abortive attempt to do so,

[1] U.S. Const., Art. III, §2; Bank of Augusta v. Earle, 13 Pet. (38 U.S.) 519 (1839); Louisville Ry. Co. v. Letson, 2 How. (43 U.S.) 497 (1844); Marshall v. B. & O. R. Co., 16 How. (57 U.S.) 314 (1853). See Frankfurter, "Distribution of Judicial Power Between United States and State Courts," 13 CORN. L.Q. 499 (1928) and HENDERSON, THE POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW, c. 4 (1918).

[2] Louisville Ry. Co. v. Letson, supra note 1. The same result may be reached by treating the corporation as an association and conclusively presuming the incorporators, stockholders, and representatives to be citizens of the state of incorporation. Marshall v. B. & O. R. Co., supra note 1. See Wormser, "Piercing the Veil of Corporate Entity," 12 COL. L. REV. 496 at 497 (1912).

[3] Martin v. B. & O. R. Co., 151 U.S. 673, 14 S.Ct. 533 (1894); Denver-Chicago Trucking Co. v. Lindeman, (D.C. Iowa 1947) 73 F. Supp. 925; 14 L.R.A. 184 (1892).

[4] Louisville, N.A. & Chi. Ry. Co. v. Louisville Trust Co., 174 U.S. 552, 19 S.Ct. 817 (1899); St. Louis & S.F. Ry. Co. v. James, 161 U.S. 545, 16 S.Ct. 621 (1896); Mo. Ry. Co. v. Castle, 224 U.S. 541, 32 S.Ct. 606 (1912); 44 HARV. L. REV. 1106 (1931). See HENDERSON, THE POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW 73 et seq. (1918).

[5] Royal Palm Soap Co. v. Seaboard A.L. Ry., (5th Cir. 1924) 296 F. 448; BALLANTINE, CORPORATIONS 707 (1946).

[6] Ry. Co. v. Whitton, 13 Wall. (80 U.S.) 270 (1871); Muller v. Dows, 94 U.S. 444 (1876); Patch v. Wabash Ry. Co., 207 U.S. 277, 28 S.Ct. 80 (1907); Boston & Me. Ry. v. Breslin, (1st Cir. 1935) 80 F. (2d) 749, cert. den. 297 U.S. 715, 56 S.Ct. 590 (1935).

[7] MORAWETZ, PRIVATE CORPORATIONS §530 (1882). For a case contra where corporation is plaintiff see Nashua & L. Ry. v. Boston & Me. R., 136 U.S. 356, 10 S.Ct. 1004 (1890).

[8] Bank of Augusta v. Earle, supra note 1.

[9] Nashua & L. Ry. v. Boston & Me. R., supra note 7. ". . . It is impossible to conceive of one joint act, performed simultaneously by two sovereign states which shall bring a

two corporations are created.[10] Thus preliminary to the diversity issue, the court must decide which of the two corporations is the party. The court will presume the party to be the corporation of the state in which the court is sitting if that state is one of the incorporating states.[11] This concept of a separate corporation in each of the incorporating states does not coincide with commercial understanding and is arrived at only by passing through a labyrinth of fiction and presumption.[12] The court in the principal case adopts the view that the legislation of New York and New Jersey created one corporate entity which is a citizen of both states.[13] This reasoning has little precedent[14] but the result the court reaches is harmonious with the weight of authority.[15] However, if the plaintiff had sued in New York, it is supposed that application of the reasoning of this case would preclude a finding of diversity.[16] This decision thus limits the jurisdiction of federal courts and the protection against local prejudice which those courts afford.[17] A third approach has been suggested which treats the problem as one of substantive rather than procedural law. It is said that the pleadings will indicate which of several corporations of like name is the intended party and the inquiry should be directed to whether the claim or liability is justly asserted by or against the particular corporation.[18] A fourth view has been advanced which considers the interstate corporation to be a single corporation and a citizen of

single corporation into being except it be by compact or treaty." Chicago & N. Ry. v. The Auditor General, 53 Mich. 79 at 91, 18 N.W. 586 (1884). But see HENDERSON, THE POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW, c. 2 (1918).

[10] Ohio & M. Ry. Co. v. Wheeler, 66 U.S. 286 (1861).

[11] Ry. Co. v. Whitton, supra note 6; Mo. Pac. Ry. v. Meeh, (8th Cir. 1895) 69 F. 753. Compare Goodwin v. N.Y., N.H. & H.R. Co., (C.C. Mass. 1903) 124 F. 358; St. Louis Ry. v. Indianapolis Ry., 9 Bliss 144, F. Cas. No. 12,237 (1879); Miss. & Tenn. Ry. Co. v. Ayres, 84 Tenn. (16 Lea) 725 (1886); Boston & Me. R. v. Breslin, supra note 6; Union Trust Co. v. Rochester Ry. Co., (C.C. Pa. 1886).

[12] McGovney, "A Supreme Court Fiction," 56 HARV. L. REV. 853 (1943).

[13] This would seem to be the implication of the court's statement that the members are legally presumed citizens of both New York and New Jersey and suit is directed against the members. Contra to this reasoning, it has been said, ". . . it is a brave presumption . . . that all the shareholders of a corporation, formed by the consolidation of several foreign and domestic corporations, are at the same time natural citizens of each of the states in which the consolidation was effected." WILLIAMS, JURISDICTION AND PRACTICE OF FEDERAL COURTS 70 (1917).

[14] See 45 YALE L.J. 105 (1935); Goodwin v. N.Y., N.H. & H.R. Co., supra note 11.

[15] Patch v. Wabash, supra note 6.

[16] New Jersey stockholders would be parties. See Boston & Me. Ry. v. Hurd, (1st Cir. 1901) 108 F. 116, cert. den. 184 U.S. 700, 22 S.Ct. 939 (1901).

[17] ROTTSCHAEFER, CONSTITUTIONAL LAW §221 (1939). But see Frankfurter, "Distribution of Judicial Power Between United States and State Courts," 13 CORN. L.Q. 499 (1928) at 520 where it is said, "The real fear was state legislatures not state courts." Compare HENDERSON, THE POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW 182 (1918).

[18] WILLIAMS, JURISDICTION AND PRACTICE OF FEDERAL COURTS 71 (1917). See Harlan's dissent in St. Louis & S.F. Ry. Co. v. James, supra note 4.

the state of its business headquarters.[19] This latter view seems preferable in that it more nearly conforms to business realities and broadens the base for diversity jurisdiction.

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[19] HENDERSON, THE POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW 193-194 (1918).