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CORPORATIONS - FOREIGN CORPORATIONS - EFFECT OF COMPLYING WITH DOMESTICATION STATUTE

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CORPORATIONS — FOREIGN CORPORATIONS — EFFECT OF COMPLYING WITH DOMESTICATION STATUTE — Decedent was a resident of Nebraska and all his property was located there. By his will he left the residue of his estate to a number of charitable institutions including the Topeka Branch of the Women's Foreign Missionary Society of the Methodist Episcopal Church, a corporation incorporated in Kansas. The Topeka Branch claimed exemption from the Nebraska inheritance tax because it was a domestic charitable corporation, having complied with the Nebraska statute providing, "Any corporation organized under the laws of any other state . . . which has filed . . .

with the secretary of state of this state, a true copy of its charter or articles of association, shall, on filing with the secretary of state a certified copy of a resolution adopted by its board of directors, accepting the provisions of this article, be and become a body corporate of this state."¹ Held, the statutory exemption from the inheritance tax of bequests to charitable institutions extends only to domestic corporations. Compliance with the domestication statute does not make a foreign corporation a domestic one for this purpose. *In re Sautter's Estate*, (Neb. 1942) 5 N.W. (2d) 263.

Three general types of statutes have been enacted by the state legislatures concerning the status of foreign corporations entering to do interstate business. Most common at present is the one providing that on compliance with certain conditions the corporation shall be licensed to do business within the state. The second type provides for the reincorporation of the foreign corporation. The third provides that on compliance with certain requirements the foreign corporation shall become a corporate body of the state. It is this latter type which is generally spoken of as a domestication statute.² The effect of domestication has never been clearly defined. Statements in some of the cases would seem to indicate that the status of a domesticated corporation is no different from that of a foreign corporation merely licensed to do business within the state.³ But sufficient distinctions have been made to show that such statements are inaccurate.⁴ Going to the other extreme, some of the older cases treated domestication as the equivalent of reincorporation.⁵ But at least one significant difference between domestication and reincorporation has become firmly established. A domesticated corporation is not a citizen of the state for the purposes of the jurisdiction of the federal courts under the diversity of citizenship rule, while a corporation which has reincorporated in the state is regarded as a citizen of the state for such purposes.⁶ Apart from this, the problem of determining the

¹ Neb. Comp. Stat. (1929), § 24-222.

² However, some of the decisions speak of qualifying to do business under a statute of the first type as domestication. See *State v. Continental Assur. Co.*, 176 Tenn. 1, 137 S. W. (2d) 277, 138 S. W. (2d) 447 (1940); *Palmer v. McDonald*, 198 Ark. 663, 130 S. W. (2d) 728 (1939).

³ *Blue Ridge Power Co. v. Southern R. R.*, 122 S. C. 222, 115 S. E. 306 (1923). See principal case, 5 N. W. (2d) at 267.

⁴ See *Southwestern Gas & Electric Co. v. Patterson Orchard Co.*, 180 Ark. 148, 20 S. W. (2d) 636 (1929), on power of eminent domain, and *In re Standard Oak Veneer Co.*, (D. C. Tenn. 1909) 173 F. 103, on Tennessee statute giving priority to resident creditors.

⁵ *Ohio & Mississippi R. R. v. Wheeler*, 1 Black. (66 U. S.) 286 (1861); *Uphoff v. Chicago, St. L. & N. O. R. R.*, (C. C. Ky. 1880) 5 F. 545.

⁶ On the rule as to domesticated corporations, see *Southern Ry. v. Allison*, 190 U. S. 326, 23 S. Ct. 713 (1903); and *St. Louis & S. F. Ry. v. James*, 161 U. S. 545, 13 S. Ct. 621 (1896). As to reincorporated corporations, see *Memphis & C. R. R. v. Alabama*, 107 U. S. 581, 2 S. Ct. 432 (1883), and *Railway Express Agency v. Virginia*, 282 U. S. 440, 51 S. Ct. 201 (1931). On this distinction see 23 AM. JUR. 399 (1939). The reasoning on which the distinction is based is that by reincorporation a new legal entity is established, while by domestication the foreign corporation is merely adopted. It is submitted that such reasoning is not very helpful. In *International Union of Mine, Mill, & Smelter Workers v. Tennessee Copper Co.*, (D. C. Tenn.

effect of domestication would seem to be one of state law and thus largely a matter of determining legislative intent.⁷ In most of the cases the courts have taken the natural position that, since the statute says that corporations complying with its provisions shall be a corporate body of the state, the complying corporations should be treated as domestic corporations whenever such treatment is practical.⁸ Thus it has been held that a domesticated corporation was entitled to the priority, given by a Tennessee statute, to resident creditors in the distribution of assets within the state of an insolvent foreign corporation.⁹ Likewise it has generally been held that a domesticated public utility corporation could exercise the power of eminent domain even though the state constitution prohibited the exercise of such power by foreign corporations.¹⁰ This construction of the domestication statutes has also been carried over into the tax field, in cases holding a domesticated corporation subject to a property tax on intangibles when by state law such tax applied only to domestic corporations.¹¹ The authority of these cases would not seem to be weakened by those holding that domesticated corporations are not subject to franchise taxes on local corporations.¹² These decisions are based on the wording of the statutes which purport to tax only corporations organized under the laws of the state, and the domesticated corporations are adopted rather than created. The decision of the Nebraska court in the instant case would seem not only contrary to the prevailing interpretation of domestication statutes, but, perhaps, very near-sighted since it may lose the state more revenue than it gained if the court is to be consistent in dealing with the problem when it arises in the administering of other forms of taxes.

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1940) 31 F. Supp. 1015, it was held that a domesticated corporation might be sued in the state of domestication under the federal statute providing, "no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant." 28 U. S. C. (1940), § 112. Did Congress intend this distinction between "inhabitant" and "citizen"?

⁷ *Vaughn v. Nashville, C. & St. L. Ry.*, 192 Ky. 137, 232 S. W. 411 (1921).

⁸ This idea that the domesticated corporation will be treated as a domestic corporation only so far as is practical is implicit in the often repeated statement that it is a domestic corporation only as to property and acts within the state. See *Adams v. Chattanooga Co.*, 128 Tenn. 505, 161 S. W. 1131 (1913), in which the court said it would not decree the dissolution of a domesticated corporation if all its assets were outside the state, regardless of its authority to do so, because its decree would be unenforceable, but that the dissolution of the domesticated corporation could be decreed, in accordance with the state statute, as to property within the state.

⁹ *New River Lumber Co. v. Glove Wernicke Co.*, 4 Tenn. App. 522 (1927). See also *In re Standard Oak Veneer Co.*, (D. C. Tenn. 1909) 173 F. 103.

¹⁰ *St. Louis & S. F. R. R. v. Foltz*, (C. C. Ark. 1892) 52 F. 627; *Perry v. Folkston Power Co.*, 181 Ga. 527, 183 S. E. 58 (1935); *Southwestern Gas & Elec. Co. v. Patterson Orchard Co.*, 180 Ark. 148, 20 S. W. (2d) 636 (1929).

¹¹ *Railroad Co. v. Vance*, 96 U. S. 450 (1877); *Commonwealth v. United Cigarette Machine Co.*, 119 Va. 447, 89 S. E. 935 (1916).

¹² *Forrester v. Continental Gin Co.*, 67 Ga. App. 119, 19 S. E. (2d) 807 (1942); *Vaughn v. Nashville, C. & St. L. Ry.*, 192 Ky. 137, 232 S. W. 411 (1921).