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# DIVERSITY OF CITIZENSHIP AS APPLIED TO CORPORATIONS

LAWRENCE F. DALY\*

**D**URING the last session of Congress, and for several preceding sessions, the American public has heard vague rumors of certain contemplated changes in the Judicial Code with reference to the removal of causes of action to the federal courts on the basis of the diversity of citizenship of the litigants. On closer study, we find the American Bar Association arrayed against these proposed changes, seemingly not because of any well-weighed conclusions as to the relative merits of these changes but because of the fact that the Association was not given adequate notice. This opposition is no indication that the bill is without merit but is, rather, a protest against the Senate Judiciary Committee's action in attempting so great a change of federal jurisdiction without first having given the Bar Association an opportunity for a hearing of objections. It is interesting to note at this point, that the author of this proposed legislation was also the sponsor of the now notorious Caraway bill, which would have taken from the federal judges the power to weigh and interpret the facts for the jury. This last proposal has met almost unanimous opposition and has been characterized by learned writers as being "utterly vicious."<sup>1</sup> Senator Norris's sponsorship of the Caraway bill has undoubtedly been responsible for much of the unstudied criticism of his proposed amendment for the abolition of the jurisdiction of the federal courts based upon the diversity of citizenship of the litigants.

Although the proposed Norris changes are startling, they are not altogether new for numerous authorities have long urged that the right to sue or be sued in the federal courts be denied to corporations.<sup>2</sup> The federal courts have refused to so deny that right but the theory upon which the court has held the corporation to be a proper party in federal court has not only been varied but too frequently entirely illogical.<sup>3</sup> Since a corporation has an individuality separate from that of the members who compose it, and since it is regarded for many purposes as a distinct person having many of the rights, and being subject to many of the liabilities of natural persons, it is important to determine

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<sup>1</sup> 31 H.L.R. 1011.

<sup>2</sup> Frankfurter, "Distribution of Judicial Power Between U.S. and State Courts." 1928. 13 Corn. L. Quar. 499.

<sup>3</sup> Warren, "New Light on the History of the Federal Judiciary Act of 1789." (1923) 37 H.L.R. 49-89.

the residence or citizenship of corporations. This question has generally arisen in connection with the jurisdiction of suits by and against corporations in the federal courts.

The term "citizen" as it is commonly understood implies membership of a political body, and therefore does not ordinarily include corporations. Accordingly corporations are not citizens of the states of their creation within the meaning of Article IV, Sec. 2 of the Federal Constitution which provides that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states<sup>4</sup> or of the provision of the Fourteenth Amendment that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the U. S."<sup>5</sup> But corporations are regarded as citizens "within the provision of Article III., section 2, conferring jurisdiction on the federal courts of cases between citizens of different states, in such a sense that diversity of citizenship may give the federal courts jurisdiction of the suit.<sup>6</sup> With reference to the construction placed upon the present day attitude of our courts as to the theory of the citizenship of corporations, it is interesting to follow the transitions which have taken place since John Marshall's interpretation in the celebrated case, *Bank of U. S. v. Deveaux*, 5 Cranch 61. In this case Marshall held that a corporation could not come into a federal court except through the actual citizenship of its members. "The changing course of the decisions after this case until such times as the corporations' place in the federal courts was fully established, is significantly co-incident with the economic development of this country."<sup>7</sup> Corporations during the past fifty years have undergone many fundamental changes which have necessitated the modified views of the courts.

The *Deveaux* case established a definition for the term "citizen" and its application as used in the federal courts. The *Bank of Augusta v. Earle* case, 13 Peter (U.S.) 519, was the next important milestone in that series of federal decisions which although departing from the reasoning of the *Deveaux* case managed to arrive at the same conclusion. This was but the beginning of inconsistent judicial legislation

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<sup>4</sup> *U.S. Bank v. Deveaux*, 5 Cranch 61, 3 U.S. (L. Ed.) 38; *Augusta Bank v. Earle*, 13 Pet. 519, 10 U.S. (L. Ed.) 274; *Paul v. Virginia*, 8 Wall. 168, 19 U.S. (L. Ed.) 357.

<sup>5</sup> *Orient Ins. Co. v. Daggs*, 172 U.S. 557, 43 U.S. (L. Ed.) 552.

<sup>6</sup> *Louisville C. & C. R. Co. v. Letson*, 2 How. (U.S.) 497, 11 U.S. (L. Ed.) 353; *Marshall v. Baltimore, & Ohio R. Co.* 16 How. 314. "A corporation can have no legal existence out of the boundaries of the sovereignty by which it was created." (*Bank of Augusta v. Earle*, 13 Pet. (U.S.) 519, 10 U.S. (L. Ed.) 274; *Shaw v. Quincy Mining Co.*, 145 U.S. 444, 36 U.S. (L. Ed.) 768.

<sup>7</sup> See Henderson "Position of Foreign Corporations in American Constitutional Law," 60, 61.

which ultimately resulted in giving corporations the maximum amount of protection from sectional and local prejudice, by virtue of the manipulation of the meaning of the word "citizen." In a case<sup>8</sup> decided thirty-five years after Marshall's decision, the Supreme Court of the United States said: "A corporation created by a state to perform its functions under the authority of that state, and only suable there, though it may have members out of the state, seems to us to be a person, though an artificial one, inhabiting and belonging to that state, and therefore entitled, for the purposes of suing and being sued, to be deemed a citizen of that state." The court in going further said: "We remark, too, that the cases of *Strawbridge v. Curtis*, (3 Cranch [U.S.] 267) and the *Bank v. Deveaux* have never been satisfactory to the bar, and that they were not, especially the last, entirely satisfactory to the court that made them. They have been followed always most reluctantly and with dissatisfaction. \* \* \* We think we may safely assert, that a majority of the members of this court have at all times partaken of the same regret; and that whenever a case has occurred on the circuit, involving the application of the case of the *Bank v. Deveaux*, it was yielded to, because the decision had been made, and not because it was thought to be right."<sup>9</sup>

Strictly speaking, a corporation is not a citizen within the federal Constitution; and it may be of interest to point out here that nowhere in the Constitution is there to be found any grant of express authority for extending the judicial power of the United States to actions against corporations of the different states, unless corporations are to be included in the term "citizen" in the clause giving to the federal government jurisdiction over controversies between citizens of different states. For the purpose of jurisdiction over suits between citizens of different states a corporation "is to be regarded as if it were a citizen of the state where it was created."<sup>10</sup> This result of citizenship was reached in either of two ways—regarding the corporation as "capable of being treated as a citizen of the state, as much as a natural person,"<sup>11</sup> or else through the assumption that for purposes of suit the citizenship of the incorporators is that of the state creating the corporation. Originally this presumption of citizenship followed upon allegation and proof that all of the stockholders were citizens of a certain

<sup>8</sup> *Louisville C & C. R. Co. v. Letson*, supra.

<sup>9</sup> For a history of this controversy see 1 Va. L. Rev. 507; 56 Am. L. Rev. 88.

<sup>10</sup> *Baltimore & O. R. Co. v. Harris*, 12 Wall. (U.S.) 65, 20 U.S. (L. Ed.) 354; *Ohio & M. R. Co. v. Wheeler*, 1 Black (U.S.) 297, 17 U.S. (L. Ed.) 130; *Louisville C. & C. R. Co. v. Letson*, 2 How. (U.S.) 497, 11 U.S. (L. Ed.) 353. See *Bank of U.S. v. Deveaux*, 5 Cranch (U.S.) 61, 3 U.S. (L. Ed.) 38.

<sup>11</sup> *Louisville C. & C. R. Co. v. Letson* (supra); *Doctor v. Harrington*, 196 U.S. 579, 49 U.S. (L. Ed.) 606.

state.<sup>12</sup> Sometime later, however, our present day rule was established, namely that a suit brought by or against a corporation "is regarded as a suit brought by or against the stockholders of the corporation; and, for the purposes of jurisdiction, it is conclusively presumed that the stockholders are citizens of the state which, by its laws, created the corporation."<sup>13</sup> In *Pacific R. R. Co. v. Missouri Pacific R. R. Co.*, (23 Fed. 565) the court said: "Strictly speaking, corporations cannot be citizens; and therefore, in order to hold them amenable to the federal jurisdiction on the ground of citizenship, it has been found necessary to assume, often contrary to the fact, that all of the stockholders are citizens of the state by which the corporation was created. It is only by virtue of this assumption that a corporation can be said to be a citizen of any state. The presumption that all the stockholders are citizens of the state under whose laws they incorporate is a conclusive presumption, and the fact will not be inquired into. The fact may be that not one of the stockholders in a citizen of such state; but if so, it cannot be made to appear. The place of transacting business cuts no figure. The corporation, for judicial purposes, is a citizen of the state by which it was created, even if all its business is transacted elsewhere, and all of its offices and places of business are outside of the state." And in *Thomas v. Ohio State University*, (195 U.S. 207, 49 U.S. [L. Ed.] 160) it was held that this presumption of citizenship of the members of the corporation was "so firmly established that further discussion of it would be both useless and inappropriate."

This presumption, for purposes of federal jurisdiction, that the members of a corporation are citizens of the state which created it, will not however defeat federal jurisdiction on the ground of diversity of citizenship where the controversy has arisen between a corporation and one of its stockholders. There is no legal presumption in such a case that the complainant, merely because of his being a stockholder in the corporation, is a citizen of the same state as the corporation.<sup>14</sup> Mr. Justice McKenna, in *Doctor v. Harrington*, 196 U.S. 579, 49 L. Ed. 606, said: "The reason of the presumption (we will so denominate

<sup>12</sup> *Bank of U.S. v. Deveaux*, supra; *Hope Ins. Co. v. Boardman*, 5 Cranch (U.S.) 57, 3 U.S. (L. Ed.) 36.

<sup>13</sup> *Miller v. Dows*, 94 U.S. 444, U.S. (L. Ed.) 207; *Doctor v. Harrington*, 196 U.S. 579, 49 U.S. (L. Ed.) 606; *Barrow S.S. Co. v. Kane*, 170 U.S. 100, 42 U.S. (L. Ed.) 964; *U.S. v. Northwestern Express, Stage v. Transportation Co.*, 164 U.S. 686, 41 U.S. (L. Ed.) 599; *Shaw v. Quincy Mining Co.* 145 U.S. 444, 36 U.S. (L. Ed.) 768; *National S.S. Co. v. Tugman*, 106 U.S. 118, 27 U.S. (L. Ed.) 87; *Baltimore & O. R. Co. v. Harris*, 12 Wall, (U.S.) 65, 20 U.S. (L. Ed.) 354; *Ohio & M. R. Co. v. Wheeler*, 1 Black (U.S.) 286, 17 U.S. (L. Ed.) 130.

<sup>14</sup> *Hanchett v. Blair*, 100 Fed. 817.

it) was to establish the citizenship of the legal entity for the purpose of jurisdiction in the federal courts. Before its adoption difficulties had been encountered on account of the conditions under which jurisdiction was given to those courts. A corporation is constituted, it is true, of all its stockholders, but it has a legal existence separate from them—rights and obligations separate from them; and may have obligations to them. It can sue and be sued. At first this could be done in the Circuit Court of the United States only when the corporation was composed of citizens of the state which created it. *Bank of the U.S. v. Deveaux*; *Hope Ins. Co. v. Boardman*. But the limitation came to be seen as almost a denial of jurisdiction to or against corporations in the federal courts, and in *Louisville, C. & C. R. Co. v. Letson*, prior cases were reviewed; and this doctrine laid down: "That a corporation created by and doing business in a particular state is to be deemed to all intents and purposes as a persons, although an artificial person, \* \* \* capable as being treated as a citizen of that state, as much as a natural person. \* \* \* The presumption that the citizenship of the corporators should be that of the domicile of the corporation was not then formulated. That came afterwards, and overcame the difficulty and objection that the legal creation, the corporation, could not be a citizen within the meaning of the Constitution. *Marshall v. Baltimore & O. R. Co.*, 16 How. (U.S.) 314. This, then, was its purpose, and to stretch beyond this is to stretch it to wrong. It is one thing to give a corporation a status, and another thing to take away from a citizen the right given him by the Constitution of the United States."

It may readily be seen that in spite of the difference of opinion of the various justices, a majority of them followed, at least in effect, the idea Sir Henry Maine had when he said that law had to be brought in harmony with society, and as corporations were increasing progress demanded that our judicial system reverse itself. A noted writer has this<sup>15</sup> to say concerning this point: "The constitution gave the citizens of each state large rights in other states. It was plain that this grant was never meant to extend to artificial persons. But how avoid the effect of the general rule of hermeneutics that a word occurring more than once in a written instrument shall be taken always in the same sense, unless the context clearly points to a different construction?" What was thought the least dangerous method was adopted. The term "citizen" was given the same meaning whenever found in the Constitution, but at the cost of what has sometimes been stigmatized as a judicial lie.

All of the matters above discussed are now well-settled. Difficult

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<sup>15</sup> Baldwin, *Amer. Law Review*, Vol. XLI, p. 43.

questions are often presented, however, in determining the citizenship of a company incorporated in two or more states, of reorganized corporations, of consolidated and merged corporations, and of domesticated corporations. An eminent legal writer<sup>16</sup> has said that the status of a company incorporated in more than one jurisdiction is an anomaly that deserves more scientific treatment than it has yet received. A corporation being a creature of the law, exists as a distinct entity in the state of its creation or where the law gives it its franchise. "It is very true that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. It exists only in contemplation of law, and by force of the law. \* \* \* It must dwell in the place of its creation, and cannot migrate to another sovereignty. But, although it must live and have its being in that state only, yet it does not by any means follow that its existence there will not be recognized in other places; and its residence in one state creates no insuperable objection to its power of contracting to another.' This statement has been often reaffirmed by this court, with some change of phrase, but always retaining the idea that the legal existence, the home, the domicile, the habitat, the residence, the citizenship of the corporation can only be in the state by which it was created, although it may do business in other states whose laws permit it."<sup>17</sup> While, it is true, a corporation must dwell in the state of its creation, yet different states may each grant charters to the same incorporators for the same general business. These estates may by proper legislation each create a corporation within its boundaries, having the same name, the same powers, the same duties, franchises, and purposes and under one management, so that for all practical purposes they are operated as one corporation. But, since the laws of a state can have no extraterritorial effect, from the very nature of things these states cannot unite to create the same corporation. The actual result of such legislation is to create a separate and distinct corporation in each state<sup>18</sup> and as a citizen of the state the corporation has the protection of and is amenable to the laws of that state.<sup>19</sup> In *Lake Shore & M. S. Ry. Co. v. Eder*, 174 Fed. 944 the court said: "Although for some purposes a body incorporated in several states may be regarded as an entity, it is not so for all. It is likely to

<sup>16</sup> 13 H.L.R. 597.

<sup>17</sup> *Shaw v. Quincy Mining Co.* 145 U.S. 444, 12 Sup. Ct. 935, 36 U.S. (L. Ed.) 768.

<sup>18</sup> *Ohio & M. R. Co. v. Wheeler*, 1 Black (U.S.) 286, 17 U.S. (L. Ed.) 130; *Missouri Pac. Ry. Co. v. Meeh*, 69 Fed. 753, 30 L.R.A. 250; *Miller v. Dows*, 94 U.S. 444, 24 U.S. (L. Ed.) 207; *Nashua & L. R. Corp. v. Boston & L. R. Corp.*, 136 U.S. 356, 34 U.S. (L. Ed.) 363; *Fitzgerald v. Missouri Pac. R. Co.* 45 Fed. 812.

<sup>19</sup> *Covington & Cincinnati Bridge Co. v. Mayer*, 31 Ohio St. 317; *Memphis & C. R. Co. v. Alabama*, 107 U.S. 581, 27 U.S. (L. Ed.) 518

have different attributes in each state arising from different laws which affect it. It might acquire franchise in one state which it does not possess in others. An incorporation by one state of the same individuals is not the adoption of the corporation of another state. These considerations furnish a reason why it is that, where a corporation of a state is sued in its own courts, regard is had to it only as a creation of that state for all purposes of jurisdiction. Business enterprises in which a combination of such corporations may engage, create common rights, and entail joint liabilities. These, however, concern the activities of the corporations, and not their essential character. When the idea is grasped that whenever a corporation is sued in a state by whose laws it has been created and the question of its citizenship is involved, the court will regard the corporation intended as defendant as the one created and existing by the laws of that state, we have the key to the solution of the inquiry. The laws of the state are the mould in which the corporation is cast and continues to exist. It derives its faculties from those laws; and the fact that it may be allowed to exercise those faculties in another state, however freely or with whatever limitations, does not alter its essential character in the state of its creation. It is a citizen of that state and no other, whatever privileges it may there be permitted to enjoy, even though they be identical with those it enjoys at its home." Therefore, where a company is incorporated by two or more states, it will be, under the Constitution and laws of the United States, regarded as two separate and distinct corporations,<sup>20</sup> In the case of *Ohio & M. R. Co. v. Wheeler*,<sup>21</sup> the plaintiff maintained that it was a corporation incorporated by virtue of the laws of the states of Indiana and Ohio and having its principal place of business in Ohio. It sued the defendant in the Circuit Court of the United States for the District of Indiana, describing him as a resident of Indiana. The Supreme Court of the United States denied jurisdiction on the basis of diversity of citizenship and said: "It is true that a corporation by the name and style of the plaintiff appears to have been chartered by the states of Indiana and Ohio, clothed with the same capacities and powers, and intended to accomplish the same objects; and it is spoken of in the laws of the states as one corporate body, exercising the same powers and fulfilling the same duties in both states. Yet it has no legal existence in either state, except by the law of the state; and neither state could confer on it a corporate existence in the other, nor add to nor diminish the powers to be there exercised. \* \* \* The

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<sup>20</sup> *Rece v. Newport News & Mississippi Valley Co.*, 32 W. Va. 164, 9 S.E. 912, 3 L.R.A. 572.

<sup>21</sup> 1 Black (U.S.) 286, 17 U.S. (L. Ed.), 130. Also see article 4 Col. L. Rev. 391, "Corporations of Two States," J. H. Beale, Jr.



president and directors of the Ohio and Mississippi Railroad Company is, therefore, a distinct and separate corporate body in Indiana from the corporate body of the same name in Ohio, and they cannot be joined in a suit as one and the same plaintiff, nor maintain a suit in that character against a citizen of Ohio or Indiana in a Circuit Court of the United States." "The only possible status of a company acting under charters from two states is that it is an association incorporated in and by each of the states; and, when acting as a corporation in either of the states, it acts under the authority of the charter of the state in which it is then acting, and that only, the legislation of the other state having no operation beyond its territorial limits."<sup>22</sup> Therefore even though the corporation is purporting to act as a single corporation it cannot sue in the federal courts on the ground of diversity of citizenship of one of the incorporating states.<sup>23</sup> nor can the company remove to the federal courts a suit brought against it in the court of one of the states in which it was incorporated by a citizen of that state, on the ground that it is a citizen of another state.<sup>24</sup> If the plaintiff is a citizen of state A, and the defendant was incorporated in both state A and state B, there is no diversity of citizenship, because for the purpose of jurisdiction the defendant will be treated as a corporation of state A.<sup>25</sup>

Distinction must be made between chartering corporations and merely granting a license to the corporation to allow that corporation to do business within the state upon compliance with certain conditions. In *Martin v. B. & O. R. R.*, 151 U.S. 673, 38 U.S. (L.Ed.) 311, it was said: "A railroad corporation, created by the laws of one state, may carry on business in another, either by virtue of being created a corporation by the laws of the latter state also, as in *Railroad Co. v. Vance*, 96 U.S. 450; *Memphis & Charleston R. Co. v. Alabama*, 107 U.S. 581; and *Graham v. Boston, Hartford, & Erie Railroad*, 118 U.S. 161; or by virtue of a license, permission or authority granted by the laws of the latter state to act in that state, under its charter from the former state. *Railroad Co. v. Harris*, 12 Wall. 65; *Railroad Co. v. Koontz*, 104 U.S. 6; *Marye v. Baltimore & Ohio Railroad*, 127 U.S. 117. In the first alternative it cannot remove into the Circuit Court

<sup>22</sup> *Quincy Railroad Bridge Co. v. Adams Co.*, 88 Ill. 615. Also *Patch v. Wabash R. Co.* 207, U.S. 277, 52 U.S. (L. Ed.) 204; *Clark v. Bever*, 139 U.S. 96, 35 U.S. (L. Ed.) 88; *Nashua & L. R. Corp. v. Boston & L. R. Corp.* 136 U.S. 356, 34 U.S. (L. Ed.) 363.

<sup>23</sup> *St. Joseph & G. I. R. Co. v. Steele*, 167 U.S. 659, 42 U.S. (L. Ed.) 315; *Missouri Pac. Ry. Co. v. Meeh*, 69 Fed. 753, 30 L.R.A. 250.

<sup>24</sup> *Patch v. Wabash R. Co.* 207 U.S. 277, 52 U.S. (L. Ed.) 204; *Horne v. Boston & M. R.R.*, 18 Fed. 50.

<sup>25</sup> *Consolidation Coal Co. v. Western Maryland Co.* 44 Fed. (2nd) 595.

of the United States a suit brought against it in a court of the latter state by a citizen of that state because it is a citizen of the same state with him. In the second alternative it can remove such a suit because it is a citizen of a different state from the plaintiff." In *Railway Co. v. James*, 161 U.S. 545, the plaintiff, a citizen of Missouri, brought suit against a corporation of the same state in the federal court of Arkansas for injuries received in Missouri. The Supreme Court held that the action must fail for diversity of citizenship, the defendant having been merely "adopted" in Arkansas with the privileges of a domestic corporation but not incorporated as such. Mr. Justice Shiras said: "To fully reconcile all the expressions used in these cases would be no easy task, but we think the following propositions may be deducted from them: There is an indisputable legal presumption that a state corporation, when sued or suing in a federal court, is composed of citizens of the state which created it, and hence such a corporation is itself deemed to come within the provision of the Constitution which confers jurisdiction upon the federal courts in controversies between citizens of different states. It is competent for a railroad corporation organized under the laws of one state, when authorized so to do by the consent of the state which created it, to accept authority from another state to extend its railroad into such state. \* \* \* We are now asked to extend the doctrine of indisputable citizenship so that if a corporation of one state, indisputably taken for the purpose of federal jurisdiction to be composed of citizens of such state, is authorized by the law of another state to do business therein and to be endowed for local purposes with all the powers and privileges of a domestic corporation, such adopted corporation shall be deemed to be composed of citizens of the second state in such a sense as to confer jurisdiction on the federal courts at the suit of a citizen of the state of its original creation. We are unwilling to sanction such an extension of a doctrine which, as heretofore established, went to the very verge of judicial power." The distinction is well illustrated by the case of *Baltimore & O. R. Co. v. Harris*.<sup>26</sup> Here the plaintiff had been incorporated under the laws of Maryland. Later Virginia passed a law in which it was recited: "that the same rights and privileges shall be, and are hereby, granted to the aforesaid company within the territory of Virginia, and the said company shall be subject to the same pains, penalties, and obligations as are imposed by the act;" \* \* \* The court held in this case that the act of Virginia was merely to give a license to the Maryland corporation, and did not in any manner change its status—that it was still a Mary-

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<sup>26</sup> 12 Wall. (U.S.) 65, 20 U.S. (L. Ed.) 354.

land corporation for the purposes of federal jurisdiction.<sup>27</sup> But, it has been held that where a foreign corporation is adopted, the effect may be to create a domestic corporation.<sup>28</sup> Whether or not the effect is merely the granting of a license of the creation of a domestic corporation is one of intention. To make a corporation of one state "a corporation of another state, the language used must imply creation or adoption in such form as to confer the power usually exercised over corporations by the state, or by the Legislature, and such allegiance as a state corporation owes to its creator. The mere grant of privileges or powers to an existing corporation, without more, does not do this, and does not make it a citizen of the state conferring such power."<sup>29</sup>

The effect of a consolidation of several corporations created by the laws of particular jurisdictions is to create a single corporation and to dissolve the companies out of which this corporation was formed.<sup>30</sup> The effect of consolidating corporations of different states is not to create a single corporation in all the states, but to create a corporation in each of the states under whose laws the corporation is formed. For practical purposes the corporations may be under one management, and may have the same powers and the same stockholders, yet in contemplation of law there will be a distinct corporation in each creating state. Therefore, a consolidated corporation, one of the component companies of which was incorporated under the laws of the state in which suit is brought against the consolidated company by a citizen of that state, for purposes of federal jurisdiction will be deemed to be a citizen of that particular state,<sup>31</sup> and when sued as a citizen of one state, the fact that it is at the same time as citizen of another state is immaterial.<sup>32</sup> The

<sup>27</sup> See *Martin v. Baltimore & O. R. Co.* 151 U.S. 673, 38 U.S. (L. Ed.) 311; *Morgan v. East Tennessee & V. R. Co.* (C.C.) 48 Fed. 705; *Pennsylvania R. Co. v. St. Louis A. & T. H. R. Co.*, 118 U.S. 290, 30 U.S. (L. Ed.) 83.

<sup>28</sup> *Memphis & C. R. Co. v. Alabama*, 107 U.S. 581, 27 U.S. (L. Ed.) 518; *Uphoff v. Chicago, St. L. & N. O. R. Co.* (C. C.) 5 Fed. 545; *Missouri Pac. R. Co. v. Meeh*, 69 Fed. 753, 30 L.R.A. 250.

<sup>29</sup> *Pennsylvania R. Co. v. St. Louis, A. & T. H. R. Co.*, 118 U.S. 290, 30 U.S. (L. Ed.) 83. But see *St. Joseph, etc. R. Co. v. Steele*, 167 U.S. 659, 42 U.S. (L. Ed.) 315; *Southern R. Co. v. Allison*, 190 U.S. 326, 47 U.S. (L. Ed.) 1078; *Missouri Pac. R. Co. v. Castle*, 224 U.S. 541, 56 U.S. (L. Ed.) 875.

<sup>30</sup> *Atlantic & Gulf R. Co. v. Georgia*, 98 U.S. 359, 25 U.S. (L. Ed.) 185; *McMahon v. Morrison*, 16 Ind. 79 Am. Dec. 418; *People ex rel. Shipton v. Dunleith & Dubuque Bridge Co.*, 322 Ill. 99, 152 N.E. 526; *People v. New York, C. & St. L. R. Co.*, 129 N.Y. 474, 29 N.E. 959, 15 L.R.A. 82.

<sup>31</sup> *Case v. Atlanta & C. A. R. Co.*, 225 Fed. 862; *Baldwin v. Chicago & N. W. Ry. Co.*, 86 Fed. 167; *Goodwin v. New York, N. H. & H. R. Co.*, 124 Fed. 358.

<sup>32</sup> *Georgia S. etc., R. Co. v. Mercantile Trust. etc. Co.*, 94 Ga. 306, 21 S.E. 701; *Missouri Pac. R. Co. v. Meeh*, 69 Fed. 753, 32 U.S. App. 691, 30 L.R.A. 250.

same principle applies here which applies to suits against a corporation created by different states though not by consolidation.<sup>33</sup> The supreme court of Illinois, in determining the status of the consolidated corporation, said: "The new corporation will \* \* \* become vested with the rights and privileges which the original companies had previously possessed under their respective charters. \* \* \* The new company stood in each state as the original company had previously stood in that state, invested with the same rights and subject to the same liabilities. Unlike a corporation created by a single state, which cannot migrate or legally exist outside of the territorial limits of the state of its creation, the consolidated corporation, having a capital stock which is a unit, and only one set of stockholders who have an interest, by virtue of their ownership of shares of such stock, in all of its property everywhere, and a single board of directors, will have its domicile in each state, and the stockholders, directors and officers can, in the absence of any statutory provision to the contrary, hold meetings and transact corporate business in either of the states, though in its relation to either state the consolidated company will be a separate corporation, governed by the laws of that state." \* \* \*<sup>34</sup> But a citizen of state A may use a consolidated corporation in the federal court of the state in which one of the component part of the consolidated corporation was incorporated, even though a component company was incorporated in the state of the plaintiff.<sup>35</sup> And likewise, of course, a consolidated corporation may sue in the federal courts a citizen of the state in which one of its component parts has been chartered.<sup>36</sup>

"The law upon this subject appears to be this: that the fact that there are railroad corporations created by different states, which have been consolidated under the laws of those states, and the railroad operated by virtue of that consolidation as one entire line of road, will not prevent the corporation from being sued in one of those states as a corporation created by the laws of that state, provided the plaintiff is a citizen of a state other than that of the state which creates the corporation. The only law that operates upon it is the law of its own state. \* \* \* If the defendant corporation, though consolidated with another of a different state, can be sued in the federal court,

<sup>33</sup> *Ohio, etc. R. Co. v. Wheeler*, 1 Black 286, 17 U.S. (L. Ed.) 130, *Memphis, etc. R. Co. v. Alabama*, 107 U.S. 581, 27 U.S. (L. Ed.) 518.

<sup>34</sup> *Graham v. Boston, H. & E. R. Co.*, 118 U.S. 161, 30 U.S. (L. Ed.) 196. See also *Minot v. Philadelphia, Wilmington & Baltimore Railroad Co.* 18 Wall. 206; *Ohio & M. R. Co. v. People*, 123 Ill. 467, 14 N.E. 874.

<sup>35</sup> *Williamson v. Krohn*, 66 Fed. 655; *Muller v. Dows*, 94 U.S. 444, 24 U.S. (L. Ed.) 207.

<sup>36</sup> *Nashua & L. R. Corp. v. Boston & L. R. Corp.*, 136 U.S. 356, 34 (L. Ed.) 363.

in the state of its creation, as a citizen thereof, why can it not sue as a citizen of the state which created it? I can see no difference in the principle. It seems to me that when the plaintiff comes into the federal court, if a corporation of another state, it is clothed with all the attributes of citizenship which the laws of that state confer, and the shareholders of that corporation must be conclusively regarded as citizens of the state which created the corporation, precisely the same as if it were a defendant."<sup>37</sup>

As one looks back over the line of decisions beginning with the early case of *Bank v. Deveaux* and follows the decisions through to the celebrated case of *Patch v. Wabash R. R. Co.*, it is clear that corporations have been given, if not the substance, at least the form, of citizenship. Absurdity after absurdity has followed in the wake of each decision, until the point has finally been reached, following the reasoning of indisputable presumption that the members of a corporation are citizens of the incorporating state, where the stockholders of a corporation of one state later made a corporation of a second state, would be first the citizens of one state and then of another state. In the case of *Patch v. Wabash R. Co.*, it was held that although the corporation was created by the consolidation of corporations of Illinois, Missouri, Indiana, Michigan, and Ohio, that the railroad company when sued in Illinois was for the purpose of jurisdiction a citizen of that state. The rules reached and the reasoning used in reaching the decisions are seemingly artificial. How can it be said that in the furtherance of the business of the consolidated corporation, corporation A in state A is taking no part in the business of corporation B in state B, especially where all of the component part of the consolidated corporation are managed and controlled by the same board of directors? Does not the company make single contracts for the entire concern?

Although mention has been made in the beginning of this article to the proposed Norris bill abolishing the diversity of citizenship, this article holds no brief for or against either side of the issue; the only object is to point out an anomalous situation which has developed what appears to be a *laissez-faire* process of reasoning by the Supreme Court. It would seem that the anomaly has been largely due to the extremely rapid development of consolidated corporations coupled with the absence of legislation defining the limits on the actions of such corporations. It is likely that the next decade will see the enactment of legislation by the states and by Congress which will be precise enough to permit the Supreme Court to take a realistic view of corporation citizenship.

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<sup>37</sup> *St. Louis, A. & T. H. R. Co. v. Indianapolis, St. L. R. Co.* 9 Biss. 144, Fed. Cas. No. 12,237.