Michigan Law Review

Volume 1 | Issue 8

1903

The Right of Foreign Corporations to Hold Land

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THE RIGHT OF FOREIGN CORPORATIONS TO HOLD LAND

FEW questions have been more prolific of litigation than those relating to the legal status of foreign corporations, and the right of foreign corporations to hold land is among the most important of those questions. The statutes of most of the states prescribe certain limitations to the acquisition and holding of land by corporations, foreign and domestic; and the tendency is to place the former upon the same basis as the latter. It is impracticable in this article to discuss those various statutes; the purpose is merely to indicate the reasoning of the courts which is in general applicable in all states.

Perhaps the strongest presentation of the negative side of the question, and decidedly the most radical in its opposition to the right of foreign corporations to hold land, is the dissenting opinion of Justice Campbell in the case of *Thompson* v. *Waters*.[1] The broad question presented in that case was, whether corporations having power under the laws of the state where organized to take and hold lands, had also the right to take and hold lands in foreign states. The court, speaking through Christiancy, J., took the affirmative view, while Campbell, J., dissenting, contended that they had no such right. His opinion is especially valuable for its analysis of what is often vaguely described under the name of comity. Briefly paraphrased, his argument was as follows: Comity cannot, independent of the law of the land, afford legal support to any claim; and when it is said that comity between states requires the recognition and enforcement of foreign laws in certain cases, all that is meant is that in those cases the law of the forum requires the recognition and enforcement of foreign rules of law. It is inaccurate to say that the laws of one state have force in another. The enforcement of rights always depends on the law of the jurisdiction where they are sought to be enforced, although it may be part and parcel of that law, in certain cases, to apply the general rules prevailing in other states in determining what these rights are. If the laws of a state give particular powers to a corporation, those powers, if respected in another state, are so respected because of the laws of the latter. The question in every such case is, do the laws of the latter state recognize and apply those under which the corporation claims. The fact that the laws of Michigan have given corpora-

[1] 25 Mich. 239.

tions organized here the right to hold land in certain cases, does not argue a similar power in foreign corporations. A right of that importance cannot depend on analogy; it must be a pure question of positive law, and where there is no statute expressly conferring the right, the courts cannot recognize it as residing in foreign corporations. The common law supports no such claim. The power to take land in a corporate capacity was regarded at common law as a franchise, and no franchise can exist without grant from the sovereignty. The common law, it is true, has always recognized the right of foreign corporations to deal in personal property, but it does not follow that they have also the right to deal in land, unless the law puts these two rights together, inferring the one from the other. But this the law does not do. On the contrary it recognizes a plain distinction between these two species of property with respect to the acquisition of title, and also with respect to the persons who may acquire it. In no case does our law apply the rules respecting the transfer of land prevailing in another state, when these conflict with our own. The rules of the state only where the land is situated are taken note of. Moreover, the common law excluded aliens altogether from the right to hold lands, and this rule prevailed until changed by statute. While the constitution of the United States has put citizens of the several states on one footing, it has given no such privilege to corporations. A corporation of a state then stands as an English or a French corporation would, so far as regards its rights in another state.

But while Justice Campbell thus took the ground that a foreign corporation could not hold land unless expressly authorized by the statutes of the state where the land was situated, the court, speaking through Justice Christiancy decided in favor of the more liberal view, that unless expressly forbidden by statute, or by the public policy of the state, foreign corporations were capable of holding and conveying title to land. That if they had this power in the state where created, they would have it by virtue of the common law wherever the rules of comity had not been restricted. According to the one view, action by the particular state was necessary to *give* foreign corporations the power to hold land, according to the other, such action was necessary to *divest* them of that power.[1]

[1] In Isle Royale, etc., Corporation *v.* Osmun, 76 Mich. 162, Justice Campbell reiterated with emphasis his views formerly expressed in Thompson *v.* Waters, going so far as to suggest that foreign corporations should not be allowed to transact business in Michigan unless their charters conformed substantially with those of domestic corporations formed for like purposes.

The view that the power of a foreign corporation to take and convey title to land will be presumed unless expressly or by implication forbidden by the local statutes has been very generally adopted.[1] There is often some difficulty however, in determining what amounts to an implied prohibition. It is pretty generally held that no such implication arises from the fact that the local legislature has not provided for the organization of corporations with similar powers.[2] The courts require affirmative action of some sort from which to infer a legislative prohibition. In one case however, the inference was drawn from legislation against perpetuities. In *Carrol* v. *East St. Louis*,[3] the question arose as to whether a foreign corporation created for the sole purpose of buying and selling lands could take title and hold the same in Illinois. The court held that while this was not forbidden by any express enactment, yet it must be regarded as inconsistent with the public policy of Illinois as indicated by its statutes against perpetuities, and by the failure of its legislature to provide for the organization ot domestic corporations with similar powers. It is believed, however, that this case stands alone, and it is doubtful if its doctrine would be adhered to even in Illinois. At any rate subsequent legislation has rendered it obsolete. The Illinois general statutes of 1872, empowered certain corporations to possess and enjoy so much real and personal estate "as shall be necessary to the transaction of their business," section 26 providing that "foreign corporations in this state shall be subject to all liabilities, restrictions and duties imposed on domestic, and no foreign or domestic corporation shall purchase or hold realty in this state except as provided in this act." The supreme court of the United States in the case of *American & Foreign Christian Union* v. *Yount*,[4] held that in view of this and other similar legislation it could not be said that the policy of Illinois was opposed to the holding of realty by foreign corpora-

[1] See note to Lancaster *v.* Amsterdam Improvement Company, 24 L. R. A. 322, citing among other cases: New York Dry Dock *v.* Hicks, 5 McLean (U. S.) 111; Lumbard *v.* Aldrich, 8 N. H. 31, 28 Am. Dec. 381; Lathrope *v.* Commercial Bank of Scioto, 8 Dana, 114, 33 Am. Dec. 481; Tarpey *v.* Deseret Salt Company, 5 Utah 494; Alward *v.* Holmes, 10 Abb. N. C. 96; New Hampshire Land Co. *v.* Tilton, 19 Fed. Rep. 73; Carroll *v.* East St. Louis, 67 Ill. 568, 16 Am. Rep. 632; American & Foreign Christian Union *v.* Yount, 101 U. S. 352; Barnes *v.* Suddard, 117 Ill. 237; Columbus Buggy Company *v.* Graves, 108 Ill. 459; Cowell *v.* Colorado Springs Co. 100 U. S. 55.

[2] Cowell *v.* Colorado Springs Co. 100 U. S. 55; American & Foreign Christian Union *v.* Yount, 101 U. S, 352; 13 A. & E. Ency. 853 (2nd ed); Thompson *v.* Waters, 25 Mich. 214.

[3] 67 Ill. 568.

[4] 101 U. S. 352.

tions. In this case Justice Harlan, who wrote the opinion quoted with approval, the following language from *Cowell* v. *Colorado Springs Co.*[1]

"If the policy of the state or territory does not permit the business of the foreign corporation in its limits or allow the corporation to acquire or hold real property it must be expressed in some affirmative way; it cannot be inferred from the fact that its legislature has made no provisions for the formation of similar corporations, or allows corporations to be formed only by general laws. Telegraph companies did business in several states before their legislatures had created or authorized the creation of similar corporations, and numerous corporations existing by special charter in one state are now engaged without question in business in states where the creation of corporations by special enactment is forbidden."

Continuing, Justice Harlan said:—

"In harmony with the general law of comity obtaining among the states composing the Union, the presumption should be indulged that a corporation of one state, not forbidden by the law of its being may exercise within any other state the general power conferred by its own charter, unless it is prohibited from so doing, either in the direct enactments of the latter state or by its public policy to be deduced from the general course of legislation, or from the settled adjudications of its highest court."

The courts of New York have asserted the right of foreign corporations to hold land, restrained only by the law of their being. In the recent case of *Lancaster* v. *Amsterdam Improvement Co.*[2] the court of appeals held that so far as regards the transaction of any lawful business, foreign corporations stood on practically the same footing as non-resident natural persons. In this case the corporation had been organized by residents of New York, under New Jersey laws, for the express purpose of gaining advantages which were not to be had under the incorporating laws of their own state.[3] The company was authorized to speculate in land and to loan money. In reversing the supreme court, Gray, J., for the court of appeals, said:—

"It seems to me to be very clear upon examination of our laws and by reference to such judicial opinions, that there never was a time in the history

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[1] 100 U. S. 55.

[2] 140 N. Y. 576, 24 L. R. A. 322.

[3] Referring to corporations thus organized Judge Seymour D. Thompson says: "In such a case is the law to be corrupted and perverted in favor of such manipulation, so far as to hold that the citizens of a state can be allowed to acquire a corporate existence, within that state, under, subject to and governed by the laws of another state? To put it in another way, can the citizens of New York be allowed to import the laws of West Virginia governing private corporations, into the state of New York, and make those laws the rules of their own government in dealing with other citizens of New York, and will the courts of New York gravely sanction such frauds upon its own laws"? See 6 Thompson, Corp. 7895.

of the state when a foreign corporation was prevented from entering its boundaries to transact any lawful business which a non-resident natural person might have transacted here. What public policy is invaded, and what public interests are prejudiced, by extending to the foreign corporation for the transaction of its business the privileges and protection of the laws of our own state, even when that business involves the acquisition of and dealing in real property? If we were to consider the question simply in the light of a sound or good policy there are abundant reasons for holding that it is to the public advantage that our borders should be as much open for all lawful purposes to foreign corporations as to natural persons. Their advent and lawful operation cannot but tend to some advancement of our commercial interests and must advantage the commonwealth. It is the policy of the state to encourage the employment of capital here by liberal laws; upon what reasonable ground shall we recognize the natural person who comes here and refuse recognition to the foreign corporation? And how is the matter affected if the capital is employed in dealing in the acquisition and barter of lands, and not in commerce, manufacturing or such like ways? What legal difference is there which the state can recognize, if all the corporators happen to be residents of this state? The corporation is nevertheless a legal entity, endowed by a sister state with capacities and powers, and seeks our state as the field of its activity in the conduct of its business enterprise. Incorporations are as a rule advantageous to private and to public interests. As the business capacities of the general mass of mankind are constantly improving, associations of individuals voluntarily combining their contributions are able to perform works of various characters which no one person is able to accomplish. . . . . In the opinion below it is suggested that if the defendant may legally acquire and convey land in this state at pleasure, there is no limitation upon the amount which a foreign corporation may hold, except in its ability to purchase and pay. . . . . But it is always within the power of the legislature to interfere and to regulate if by the magnitude of the business the public interests are affected and seem unduly threatened."

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