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JURISDICTIONAL CITIZENSHIP OF A CORPORATION INCORPORATED IN TWO STATES.

In *Goodwin v. N. Y., N. H. & H. R. Co.,* 124 Fed. 358, Judge Lowell has decided that, when a corporation is incorporated in two States, a citizen of one of those States cannot sue the corporation in the federal courts of that State, alleging it to be a citizen of the other. This decision is quite in accord with the principles of this branch of the law, which, despite an apparent conflict of authorities, are well established.

Thus the authorities admit of no dispute that a corporation incorporated in two States and sued by a citizen of one in the State courts of that State cannot secure a removal to the federal courts by alleging that it is the creation of the other. *Memphis, etc., R. Co. v. Alabama,* 107 U. S. 581. Nor can it, on the basis of the same allegation, sue a citizen of one State in the federal courts of that State. *Union Trust Co. v. R. Co.,* 1 Black 286.

When two corporations existing in different States are consolidated into one, with a common stock, a single new body is formed. *Keokuk R. Co. v. Missouri,* 152 U. S. 301; *Winn v. Wabash R. Co.,* 118 Fed. 55. The acts of the corporation, in whatever State performed, are the acts of it as a whole. But in each State it derives its corporate life from the legislation of that State. *Paul v. Virginia,* 8 Wall. 181; 2 *Moran., Corp.,* 959. Hence

in each State it is to be regarded as a citizen of that State, and is to be sued by another citizen in the State, and not the federal, courts.

There are exceptions to this rule, however. In *Louisville R. Co. v. Letson,* 2 How. 497, the decision of Chief Justice Marshall in *Bank v. Deveaux,* 5 Cranch 61, that a corporation was not a "citizen" within the meaning of that word as used in the Constitution in defining the jurisdiction of the federal courts, but that the citizenship of the members of the corporation should decide in what court suit should be brought, was substantially overruled; and in *Marshall v. R. Co.,* 16 How. 314, despite two strong dissenting opinions, the doctrine became established, that, for purposes of jurisdiction, the members of a corporation should be conclusively presumed to be citizens of the State which created the corporation. *Muller v. Dows,* 94 U. S. 444. But when a corporation of one State is adopted as an entirety into another, the court refuses to extend this presumption so as to consider the members as also citizens of the second State, and, for jurisdictional purposes, the corporation is still to be regarded as a citizen of the first. *St. Louis, etc., R. Co. v. James,* 161 U. S. 545; *Hollingsworth v. R. Co.,* 86 Fed. 353. This was the principle upon which the Supreme Court affirmed the decision in *Louisville, etc., R. Co. v. Trust Co.,* 75 Fed. 433; *s. c.* 174 U. S. 552; and also that in *St. Louis, etc., R. Co. v. Indianapolis R. Co.,* 9 Biss. 144. And by it the ruling, if not the words, in *Williams v. Ben. Ass'n.,* 47 Fed. 530, and in *Chicago, etc., R. Co. v. R. Co.,* 6 Biss. 219, can be reconciled.

Again, the consolidation of the corporations is not complete and for all purposes; and from this fact arise certain exceptions to the main rule. Thus, in each State, the franchises and privileges of the corporation are those conferred by that State alone, and the laws which govern it are the laws of that State. *Quincy Bridge Co. v. Adams Co.,* 88 Ill. 619; *Chicago, etc., R. Co. v. Auditor-General,* 53 Mich. 79. Hence it may happen that a corporation existent in two States has rights, or is subjected to liabilities, by reason of the statutes of one State, which are not recognized in the other. If then a citizen of the second State desires to enforce such a liability, to compel him to sue in the State courts of his own State would be to refuse him all remedy, and it is proper that he be allowed to reach the corporation in the other State through the federal courts. This is the principle really established by *Railway Co. v. Whitton,* 13 Wall. 270. So, too, there may be a merging of the corporations incomplete in that the old entities still continue to exist. *Central R. R. v. Georgia,* 92 U. S. 665. In such circumstances certain rights and liabilities may pertain to one of these alone. Judge Taft considered this to be the principle established in *Nashua Corp. v. Lowell Corp.,* 136 U. S. 356, and decided the case of *Louisville, etc., R. Co. v. Trust Co.,* 75 Fed. 433, on that basis; although the supreme Court affirmed this decision on other grounds; *supra;* and it is doubtful whether *Nashua Corp. v. Lowell Corp.* really did establish that principle. But in *Phinizy v. R. Co.,* 56 Fed. 273, the corporation was the creation of South

Carolina and Georgia; a receiver had been appointed in South Carolina, and the federal court in Georgia entertained a bill brought by a citizen of South Carolina to have the authority of the receiver extended over the property of the corporation in Georgia. Again, a corporation cannot, by consolidating with that of another State, transfer to the new body its liabilities to third persons. *Bruffet v. R. Co.*, 25 Ill. 353; *N. J., etc., R. Co. v. Strait*, 35 N. J. L. 322; *2 Moran, Corp.*, 809, 954. Hence, upon such a liability, even after consolidation, a suit might be maintained by a citizen of one State against the corporation of the other in the federal courts.

There are three decisions not in accord with the principles set forth above. *Muller v. Dows, supra*, decided, contrary to the ruling of the principal case, that a citizen of one State could sue a corporation incorporated in that State and another, in the federal courts of that other; but this case is based on *Railway Co. v. Whitton, supra*, which was decided under an exception to the main rule, within which it does not itself fall; and it is not within the spirit of *Memphis, etc., R. Co. v. Alabama, supra. Nashua Corp. v. Lowell Corp., supra*, merits the sharp criticism passed upon it by Judge Lowell in the principal case; it is almost impossible to tell just what was held, beyond that, after a consolidating act had been passed by the legislatures of two States, one of the corporations was permitted to sue the other upon a contract made between them, in the federal courts. Perhaps as satisfactory an explanation as any is that the consolidating act was never accepted by the corporations. P. 371. And in *Union Trust Co. v. Rochester R. Co.*, 29 Fed. 609, while a citizen of one of the States in which a corporation was incorporated was permitted to sue the corporation in the federal courts of the other State, yet this decision was based wholly on *Railway Co. v. Whitton, supra*, and *Muller v. Dows, supra*, to which reference is made above.

Hence a consideration of all the cases dealing with this point leads us to the conclusion that the conflict among them is apparent rather than real, and that the courts are rapidly putting the law in this respect upon a firm basis.

THE EFFECT OF BANKRUPTCY PROCEEDINGS ON PROCEEDINGS COMMENCED IN THE STATE COURT.

It is well settled that the federal bankrupt law does not operate to nullify or supersede the insolvent laws of the several States, and that jurisdiction may be exercised under such laws until the jurisdiction of the federal court has been called into exercise. *Reed v. Taylor*, 32 Ia. 209. It is also settled that the power of Congress "to establish uniform laws on the subject of bankruptcies throughout the United States" is not exclusive, and State laws on that subject are valid where they do not conflict with acts of Congress relating thereto. *Ogden v. Saunders*, 12 Wheat. 213; *Appeal of Geery*, 43 Conn. 289. But when Congress acts upon the subject by a bankrupt law all State laws become suspended, as

far as all persons and cases within the purview of the national law are concerned. *In re Reynolds,* Fed. Cas. No. 11,723.

Congress recently passed an amendment to the Bankrupt Act of 1898, making it an act of bankruptcy committed by a corporation "When, because of insolvency, a receiver or trustee has been put in charge of its property under the laws of a State, or Territory, or of the United States." An interesting decision was recently handed down by the Supreme Court of New Jersey, *Singer v. National Bedstead Mfg. Co.,* 55 Atl. 868, in which it is held, where proceedings have been instituted in a State court under a statute entitling creditors and stockholders to the appointment of a receiver, that these proceedings cannot be superseded by a proceeding in the federal courts where no relief could be granted by the Bankrupt Act. The court recognizes the fact that the apparent effect of the amendment is to deprive the State court of jurisdiction in ordinary cases, but contends that under the circumstances of the case the federal court could not originally have assumed jurisdiction, nor can it supersede the State court in its jurisdiction. It bases its contention wholly upon the fact that the relief afforded by the State court could not be given by a bankruptcy court. The peculiarity of the State law is that, besides the usual suit for the sequestration of the assets of the insolvent corporation, the corporation may be placed under a disability by an injunction which will prevent it from exercising its franchises. In other words, "The Bankruptcy Act does not undertake to touch the life of the corporation, or its permanent capacity to exercise its franchises. It deals wholly with the assets of the corporation"; while afterwards, under the State statute, the corporation may be disabled and then dissolved. The question is certainly a difficult one, and will undoubtedly remain unsettled until it is finally decided by the Supreme Court of the United States. In the light of former decisions, it would seem as though, if the bankruptcy courts could afford at least a partial relief, they should supersede the State courts and administer the remedy as provided in the bankrupt act. *In re Railway Co.,* Fed. Cas. No. 5,786.

MARTIAL LAW.

During a period when strikes are prevalent and State interference is frequently required to protect public interests, the subject of Martial Law becomes of vital importance. It is ill-defined and seems to be a creature of necessity and relies thereon for its justification. Blackstone says: "Martial Law is, in fact, no law. It is an expedient resorted to in times of public danger, similar, in its effect, to the appointment of a dictator." Chief Justice Waite defines Martial Law as the law of military necessity in the actual presence of war. It would seem that the broader term, "public danger," used by Blackstone would be more applicable than the word "war." This law is administered by the general of the army, and, in fact, is his will. Of necessity it is arbitrary; but it must be obeyed. *United States v. Diekelman,* 92 U. S. 520, 526. But Martial

Law must not be confused with Military Law. 1 *McArthur, Courts-Martial* (3d ed.), 32. The latter may be proclaimed by a military commander; 1 *Kent, Com.,* 341; or, as in Dorr's Rebellion, by the legislature of the State. *Luther v. Borden,* 7 How. 1, 45. Yet there seems to be no reason why the new summary tribunals should not feel bound, as far as the nature of the case will admit, to govern themselves by principles of justice, the same as those before recognized in the courts. *Commonwealth v. Blodgett,* 12 Met. 56.

The constitution of the United States declares that "no State shall without the consent of Congress . . . engage in war unless actually invaded or in such imminent danger as will not admit of delay." It is thought by some that the true object of the provision of the constitution was to restrain the State authorities from entering into war without the concurrence of the authorities of the United States, even to suppress a rebellion at home. The advocates of this view maintain that it would not prevent the State from using its military power to enforce the decrees of the civil tribunals, and to assist the civil officers in keeping order. They go only to the extent, that, when the law of war is to be set up in the place of civil power, the United States should be called in. This does not seem to be the present tendency, and qualified Martial Law is declared without the intervention of the federal government. Martial Law according to the better opinion may operate to the total suspension of the civil authority; or it may be so regulated that the civil courts go on in their ordinary course. 1 *Bishop, Crim. Law* (5th ed.), sec. 52. This opinion is expressed in entire disregard of the majority view of the court in *Ex parte Milligan,* 71 U. S. 2.

In the case of *Commonwealth ex rel. Wadsworth v. Shortall,* 55 Atl. 952, the Supreme Court of Pennsylvania expressed its concurrence in the dissenting opinion in *Ex parte Milligan, supra;* and agrees that there may be a qualified Martial Law. The question arose in considering a homicide committed by a soldier in protecting a house during the recent coal strike. It was decided that Martial Law by the State is merely an extension of the police power; that while in war a soldier is answerable only to his military superiors, for acts done in domestic territory, even in the suppression of public disorder, he is accountable after the exigency has passed to the laws of the land. In determining the responsibility courts proceed the same as in self-defense and say that the acts must be judged by the appearance of things at the time the deed was done. A soldier should not be deemed guilty of homicide in obeying the order of his superior unless the case is so plain as not to admit of a reasonable doubt. The superior may be liable if an order which it was criminal to give is executed. *Hare, Const. Law,* 920. A justification of Martial Law is to be found in N. A. Rev. 163:549.