

On the basis of this evaluation it is submitted that the court in the principal case rendered a decision which was consistent with the demands of substantial justice, while keeping the development of the law in step with modern economy.

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FEDERAL JURISDICTION—DIVERSITY OF CITIZENSHIP—  
MULTI-STATE CORPORATION

Plaintiff, a citizen of Massachusetts, sued a multi-state corporation, incorporated under the laws of Massachusetts, New York, and New Hampshire, in the Massachusetts Federal District Court, alleging that defendant was a corporation of New York.<sup>1</sup> Defendant pleaded incorporation in Massachusetts, and the court dismissed the case for want of diversity jurisdiction. On appeal, held: affirmed. A citizen of one state cannot sue a corporation, incorporated in that state and another, in the federal courts of that state on the ground of diversity of citizenship.<sup>2</sup>

The citizenship<sup>3</sup> of multi-state corporations, for purposes of determining diversity jurisdiction, is based on three conclusive fictitious presumptions applied by the courts:

- 1) All shareholders of the company are citizens of the state of incorporation.<sup>4</sup>
- 2) There is a separate and distinct corporation in each state of incorporation.<sup>5</sup>
- 3) The corporation involved in the suit is the separate corporation of the state where suit is brought.<sup>6</sup>

Applying these presumptions, the courts find diversity jurisdiction where suit is brought in a state other than that of the individual party<sup>7</sup> (as distinguished from the multi-state corpora-

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1. The \$3,000 minimum, required for diversity jurisdiction pursuant to 28 U.S.C. 1332 (1946), was met.

2. *Seavey v. Boston & Maine R.R.*, 197 F.2d 485 (1st Cir. 1952).

3. Although corporations are not technically citizens under 28 U.S.C. 1332 (1946), the courts refer to the stockholders jointly as the corporation and speak of the citizenship of the corporation. See *McGovney, A Supreme Court Fiction*, 56 HARV. L. REV. 853, 862 (1943).

4. *Muller v. Dows*, 94 U.S. 444 (1876).

5. *Missouri Pacific Ry. v. Meeh*, 69 Fed. 753 (8th Cir. 1895).

6. *Town of Bethel v. Atlantic Coast Line R.R.*, 81 F.2d 60 (4th Cir. 1936), *cert. denied*, 298 U.S. 632 (1936).

7. *E.g.*, *Railway Co.-v. Whitton's Administrator*, 13 Wall. 270 (1871).

tion), but find none where suit is brought in the state of the individual party.<sup>8</sup>

Courts agree that no broad principles of justice are involved in this problem and that the solution lies in merely establishing a uniform rule for future practice.<sup>9</sup> Absent the aforesaid presumptions, there could be no diversity jurisdiction when the company was incorporated in the individual party's state for four reasons. First, in a suit between individuals there is no diversity jurisdiction whenever one party plaintiff is from the same state as any one party defendant.<sup>10</sup> In the absence of presumptions, the same rule should be applied by analogy to multi-state corporations. Second, public policy is against unnecessary extension of federal jurisdiction.<sup>11</sup> Third, the reason for allowing diversity jurisdiction, to give all an equal right to trial free from local prejudice and influence,<sup>12</sup> is missing completely from multi-state corporation cases.<sup>13</sup> Finally, as a matter of pleading and proof, in the absence of the third conclusive presumption, it would be impossible for either party in such a case to deny that

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8. *Patch v. Wabash R.R.* 207 U.S. 277 (1907); *Starke v. New York, Chicago, & St. Louis R.R.*, 180 F.2d 569 (7th Cir. 1950); *Town of Bethel v. Atlantic Coast Line R.R.*, 81 F.2d 60 (4th Cir. 1936), *cert. denied*, 298 U.S. 682 (1936); *Geoffrey v. N.Y., N.H. & H. R.R.*, 16 F.2d 1017 (1st Cir. 1927); *Missouri Pacific Ry. v. Meeh*, 69 Fed. 753 (8th Cir. 1895).

9. *See, e.g., Gavin v. Hudson & Manhattan R.R.*, 185 F.2d 204, 105 (3d Cir. 1950).

10. *Strawbridge v. Curtiss*, 3 Cranch 267 (U.S. 1806).

11. *See Frankfurter, Distribution of Judicial Powers Between United States and State Courts*, 13 CORNELL L. Q. 499 (1928), where it is said:

. . . Can the state tribunals not yet be trusted to mete out justice to non-resident litigants? In any event, is it wise to withdraw from the impulses to reform of state tribunals influential litigants who, in diversity litigation, now avoid state courts? Such litigants and their counsel ought to have every incentive to make state tribunals worthy, and their administration fair and impartial. Moreover, it is politically highly unwise to permit the federal courts to be used as an escape from state tribunals and thus to associate the federal court in the public mind as the resort of powerful litigants. . . .

Certainly the obvious abuses of diversity jurisdiction should be promptly removed by legislation—on plain grounds of policy, and to relieve the over-burdened federal dockets.

*Id.* at 522, 523.

12. In *Dodge v. Woolsey*, 18 How. 331, 354 (U.S. 1855), the court, speaking of the reason for diversity jurisdiction, said, "It is to make the people think and feel, though residing in different states of the Union, that their relations to each other were protected by the strictest justice, administered in courts independent of all local control. . . ."

13. *See Boston & Maine R.R. v. Breslin*, 80 F.2d 749 (1st Cir. 1935), *cert. denied*, 297 U.S. 715 (1936), for an example of why litigants in fact seek entry to the federal courts. They are seeking more than merely a tribunal which is free from local influence.

the corporation is incorporated in the state of the individual's citizenship, as it always is.

The question of citizenship of a multi-state corporation arises only where the company is voluntarily incorporated in two or more states since a corporation doing business in another state under license<sup>14</sup> or compulsory incorporation<sup>15</sup> is considered for jurisdictional purposes a citizen only of the state of voluntary incorporation.<sup>16</sup> By the better view, where the question arises, the answer is unaffected by the state in which the claim arose<sup>17</sup> or by the order<sup>18</sup> or method<sup>19</sup> of incorporation. Whether suit is brought by or against the multi-state corporation makes no difference.<sup>20</sup> Likewise, whether the question of jurisdiction arises

14. *Pennsylvania R.R. v. St. Louis, Alton & Terre Haute R.R.*, 118 U.S. 290 (1886).

15. *Missouri Pacific Ry. v. Castle*, 224 U.S. 541 (1912); *Southern Ry. v. Allison*, 190 U.S. 326 (1903). It has been held unconstitutional for a state to impose on a foreign corporation, as a condition to the right to do business within the state, a restriction upon the corporation's resort to the federal courts on the basis of diversity jurisdiction. *Terral v. Burke Construction Co.*, 257 U.S. 529 (1922).

16. In *Martin's Administrator v. Baltimore & Ohio R.R.*, 151 U.S. 673 (1894), 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, . . . 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. . . . In the first alternative, it cannot remove into the Circuit Court of the United States a suit brought against it in the courts 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.

*Id.* at 677. In *Goodwin v. N.Y., N.H. & H. R.R.*, 124 Fed. 358, 359 (C.C.D. Mass. 1903), it was said referring to the above quotation, that a corporation of the second type may become a corporation of the second state for many purposes and yet remain solely a corporation of the first state for jurisdictional purposes.

17. *E.g.*, *Gavin v. Hudson & Manhattan R.R.*, 185 F.2d 104 (3d Cir. 1950). *But see* *Patch v. Wabash R.R.*, 207 U.S. 277, 283 (1907); *Missouri Pacific Ry. v. Meeh*, 69 Fed. 753, 758 (8th Cir. 1895), for language casting some doubt on the above proposition.

18. *Gavin v. Hudson & Manhattan R.R.* 185 F.2d 104 (3d Cir. 1950); *Missouri Pacific Ry. v. Meeh*, 69 Fed. 753 (8th Cir. 1895). *But see* *Southern Ry. v. Allison*, 190 U.S. 326, 338 (1903); *Nashua & Lowell R.R. v. Boston & Lowell R.R.*, 136 U.S. 356, 372 (1890). In neither of these cases is there a true multi-state corporation according to the court in *Goodwin v. N.Y., N.H. & H. R.R.*, 124 Fed. 358, 360 (C.C.D. Mass. 1903).

19. *See, e.g.*, *Patch v. Wabash R.R.*, 207 U.S. 277, 283 (1907).

20. *Starke v. New York, Chicago & St. Louis R.R.*, 180 F.2d 569 (7th Cir. 1950) (suit against a multi-state corporation); *Town of Bethel v. Atlantic Coast Line R.R.*, 81 F.2d 60 (4th Cir. 1936) (suit by a multi-state corporation).

in an original suit in the federal courts or on petition for removal from a state court is immaterial.<sup>21</sup>

*Gavin v. Hudson & Manhattan R.R.*,<sup>22</sup> a recent case in the Third Circuit, upheld diversity jurisdiction on the same facts that appear in the principal case and is a holding directly in conflict with the principal case. The rationale of that decision was that, since there is diversity jurisdiction in one situation, where suit is brought in a state other than that of the individual party, there should be diversity jurisdiction in a second situation, where suit is brought in the individual's home state. The court did not apply the presumption that corporate citizenship is in the state of suit alone to the second situation, and apparently failed to realize that jurisdiction in the first situation is based solely on that presumption.

The court in the principal case applied the above rules and followed the authoritative language of the United States Supreme Court<sup>23</sup> and the authoritative holdings of some other circuit courts.<sup>24</sup> It reached a sounder decision in refusing to extend diversity jurisdiction to the facts of the present case than did the court in, the *Gavin* case<sup>25</sup> when it made such an extension.

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21. See *Southern Ry. v. Allison*, 190 U.S. 326, 338 (1903). In *Gavin v. Hudson & Manhattan R.R.*, 185 F.2d 104 (3d Cir. 1950), the court intimates that a multi-state corporation is composed of separate legal entities in each state, and either can sue or be sued without the other being joined. This would leave the determination of diversity of citizenship in the hands of the plaintiff, determined by his pleading.

22. 185 F.2d 104 (3d Cir. 1950).

23. In *Memphis & Charleston R.R. v. Alabama*, 107 U.S. 581 (1882), the court said:

The defendant, being a corporation of the State of Alabama, has no existence in this State as a legal entity or person, except under and by force of its incorporation by this State; and, although also incorporated in the State of Tennessee, must, as to all its doings within the State of Alabama, be considered a citizen of Alabama, which cannot sue or be sued by another citizen of Alabama in the courts of the United States.

*Id* at 585.

24. *Starke v. New York, Chicago & St. Louis R.R.* 180 F.2d 569 (7th Cir. 1950); *Geoffrey v. N.Y., N.H. & H. R.R.*, 16 F.2d 1017 (1st Cir. 1927); *Missouri Pacific Ry. v. Meeh*, 69 Fed. 753 (8th Cir. 1895).

25. *Gavin v. Hudson & Manhattan R.R.*, 185 F.2d 104 (3d Cir. 1959).