387. A waiting room for street cars, *Dodge v. North End Improvement Ass'n.* (1915), 189 Mich. 16, 155 N. W. 438; a playground for children, tennis and croquet grounds, *Caulfield v. Berwick* (1915), 27 Cal. A. 493, 150 P. 646, as well as the granting of a license for holding short period race meets, *Neb. City v. Neb. City Speed and Fair Ass'n.* (1922), 107 Neb. 576, 186 N. W. 374. In view of these decisions and especially that concerning the tourist camp, to which an airport may be likened appropriately, the court in the case of *City of Wichita v. Clapp, supra,* was apparently correct in its decision that an airport was a proper park use and of course a public purpose.

Many states have authorized their cities, through statutory enactments, to procure and maintain land for an airport. Laws of Georgia 1927, P. 779; Public Acts, Conn. 1925, ch. 249; Laws of Mass. 1922, ch. 534, par. 57; Laws of Mont. 1927, ch. 20. A section of the Kansas aircraft act reads: "That whenever in the opinion of the governing body in any city in the state of Kansas, the public safety, service and welfare can be advanced thereby, such governing body of such a city may acquire by purchase or lease and maintain a municipal field for aviation purposes and pay the expense of such purchase, lease, or maintenance out of the general funds of the city. Such a field may be used for service of all aircraft and pilots desiring to use the same." R. S. Kan. 1923, 3-110.

The objection that the establishment of an airport may be a public purpose and yet not a municipal function has met with no success, and has given little difficulty to the courts in disposing of it. It may be said that generally local affairs are manageable by local authority and those not so localized in character by the state. *Dysart v. City of St. Louis, supra.* It has even been held that the building of a bridge between two cities was a municipal function. *People v. Kelley* (1879), 76 N. Y. 475; *Haunsler v. St. Louis* (1907), 205 Mo. 656, 103 S. W. 1034. In view of the general tendency to enlarge the scope of the municipality in its power to promote the public welfare and enjoyment, the statutes authorizing municipal airports, and the recent adjudications on the subject, little doubt can be entertained as to the correctness of the decision in *Dysart v. City of St. Louis, supra.* F. E. M., '30.

PUBLIC UTILITIES—REGULATION—POWER TO CONTROL PAYMENTS TO HOLDING COMPANIES.—In a proceeding in the nature of quo warranto, state telephone company *held* ousted of the right to have credit in computation of rates for payments to foreign company under license contract. The evidence showed that the state company, organized under Comp. Laws 1915, sec. 8788-8796, was controlled by, and was a mere instrumentality of, the foreign company. A general judgment of ouster was not required under sec. 13536 et seq. *People ex rel Potter, Atty.-Gen. v. Michigan Bell Telephone Co.,* (Mich., 1929), 224 N. W. 438.

On its face this action was brought to oust the Michigan Bell Telephone Company of its franchise. The main purpose was to oust the license con-

tract between the American Telephone and Telegraph Co. and the Michigan Bell Telephone Co., one of the subsidiary companies of the American Company, and the order of ouster went only to that extent. This procedure was suggested in *re Michigan Bell Teleph. Co.*, P. U. R. 1926 C. 607, 621. The contract provides that the Michigan Company pay 4½ per cent of its gross revenue to the American Company in exchange for the use of certain licenses and the furnishing of various services. For a discussion of this contract see "Problem of Regulation of Payments by Utility to Holding Company" 14 ST. L. LAW REV. 299. The various state commissions have objected to such payments without some showing of reasonableness of the payment or some relation to the cost of the service or the value thereof. *Re New York Teleph. Co.*, P. U. R. 1925 C. 767; *re Michigan Bell Teleph. Co.*, P. U. R. 1926 C. 607; *re Wisconsin Teleph. Co.*, P. U. R. 1927 A. 581. But the Supreme Court has held that where there is nothing to show bad faith or an abuse of discretion, the commission cannot substitute its judgment for that of the board of directors of the utility. *State of Missouri ex rel Southwestern Bell Telephone Co. v. Public Service Commission* (1923), 262 U. S. 216, 31 A. L. R. 80; *City of Houston v. Southwestern Bell Telephone Co.* (1921), 259 U. S. 318. Thus the commissions have not been able to sit in judgment as to the reasonableness of such payments. *Indiana Bell Telephone Co. v. Public Service Commission* (1924), 300 F. 190; *State of Kansas ex rel Hopkins v. Southwestern Bell Telephone Co.* (1924), 115 Kan. 236, 223 P. 771; *Michigan Utility Commission v. Michigan State Teleph. Co.* (1924), 228 Mich. 658, 200 N. W. 749.

The court in the principal case found that the Michigan Company was entirely controlled by the American, which owned practically all the common stock of the former company, so that the Michigan Company became the mere agent or instrumentality of the American Company. On this basis the court disregarded the corporate entity of the Michigan Company and says that it is "no more engaged in conducting and carrying on a telephone business than is the ordinary station agent engaged in conducting and carrying on the railroad business of his employer." Therefore, the court takes the next step and says that the contract can not stand because the American Company can not contract with itself.

This case differs from the Houston case, *supra*, and the Southwestern Bell case, *supra*, in that here the court finds reason to disregard the corporate entity while in the other two cases the question of disregarding the corporate fiction did not come before either the lower courts or the Supreme Court. Nor has the question of the license contract ever been presented to the Supreme Court in this light. The case of *Chesapeake and Potomac Teleph. Co. v. Whitman* (1926), 3 F. (2) 938, comes the closest to presenting the same issue. There the Maryland Commission and the United States District Court both went so far as to hold that the Maryland Company had no will of its own and was entirely controlled by the American Company, but the case was never appealed to the Supreme Court so that court did not have an opportunity to consider the question from this viewpoint.

This case will undoubtedly be taken to the Supreme Court of the United States. What attitude it will take is uncertain. It might very well follow the Southwestern Bell case, *supra*, and hold that this is a contract entered into within the discretion of the board of directors of the Michigan Company. On the other hand it might decide that this is a proper case to disregard the corporate entity. Such a position is strengthened by the fact that the Supreme Court of Michigan has taken that attitude.

R. B. S., '30.