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SHOULD A CORPORATION BE CONSIDERED A CITIZEN UNDER THE PRIVILEGES AND IMMUNITIES CLAUSE OF THE FEDERAL CONSTITUTION?

R. PAUL HOLLAND.

The most superficial glance into the history of corporations reveals the unexpected fact that such things existed in ancient Rome. The product of those ancient days had a striking similarity to the modern corporations. Even to the conception of a separate juristic personality, the ability to own and convey property, and otherwise acting, in law, as a person could, the likeness extends. There is a temptation to trace the modern corporation back to the root. Recent writers are, however, skeptical about this possibility. The better view, apparently, is that the Roman idea had little, if any, influence upon the English development. It is enough for our purposes if we realize that this is a natural and normal mechanism for the purposes of commerce and industry when those activities transcend the power of single individuals and small groups, or where the risk is rather more than men care to brave alone. The 'discovery' could have been made many times since the dawn of civilization.

In the United States we have a development of this idea to an amazing extent. Our adoption of the mechanism, and our laws upon the subject are easily traceable to the mother country, England, before 1776. At the time we became a separate nation there were less than thirty corporations in

* The James F. Brown Prize Thesis, 1928-29. In 1919 the late James F. Brown, of the class of 1873, gave $5,000.00 to the University to be invested by it and the income used as a prize for the best essay, each year on a subject of the individual liberties of the citizen as guaranteed by our constitutions. Any senior or any graduate of any college of the University, within one year after receiving his bachelor's degree, may compete for this prize.


1 SOHRM, INST., p. 186, et seq.

2 BALLANTINE, CORPORATIONS, § 1.
These few were modeled after the English form. They are the direct ancestors of the present generation.

One of the most famous definitions in our law is that given the corporation by Chief Justice Marshall when he said that it was, "An artificial being, invisible, intangible, and existing only in contemplation of law." For more than a hundred years this has stood, almost without question, accepted by text writers and courts alike. Recently the definition has been questioned by eminent authorities. Ballantine says, "A corporation is an association of individuals, or sometimes of individuals and other corporations for some joint enterprise, invested by the law with capacity to sue and be sued, to make contracts, to take, hold, and convey property, and to do other acts like a single individual." The same idea was expressed by Morawetz several years before. The distinction in the way of stating the definition may be clarified by a quotation from Morawetz: "At law this figurative conception (the entity) takes the shape of a dogma, and is often applied rigorously, without regard to its true purpose and meaning." The later view is that the corporate entity theory is a very good formula for working out the rights and duties of the persons making up the corporation but that it should never be so exercised as to deny the proper rights of persons. It should be subject to exception wherever it fails to accomplish justice.

While it is recognized by authorities that corporations could be created in various ways in England in the past it is well settled, and agreed to by all, that there is only one method of creation in the United States. That method is by legislative enactment. All the powers, of every nature, which the corporation has, as a separate entity, are to be

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3 S. W. Bennett, 65 Cent. L. Jour. 217.
4 Dartmouth College Case, 4 Wheat. 518, 4 L. ed. 629 (1819).
5 Ballantine, op cit., supra n. 2, § 2.
6 Morawetz, Private Corporations, 2d ed. § 1, 227.
7 (a) Exercise of royal prerogative, (b) prescriptive right (c) act of Parliament.
found in the charter from the legislative department of the state. Such powers may be set forth therein or necessarily implied as being appropriate, convenient or suitable for carrying into effect the express powers granted. It has been decided that Congress, acting for the Federal government, may create corporations whose purposes are within the constitutional powers granted. Every corporation is held subject to the legislative power creating it, as to its rights and powers, even to the extent that all who deal with it are bound to do so with this fact in mind.

Corporations may be classified into various types. For our purposes we may divide them into public and private, as the first large classes. Of private corporations there are three general classes: (a) religious; (b) eleemosynary; and, (c) civil. We are concerned only with the last named group, primarily, for it is with reference to this group that the difficulty arises. Civil corporations must again be subdivided. The civil corporation may be 'domestic', or one which is the creation of the state in which it is operating. 'Foreign' corporations, the second group, are those created by one state of the United States, the Congress of the United States, or by any other sovereign government. They are foreign as to the state wherein they seek to act if not created by that state. In this paper the word 'state' will be used in the sense of one of the states of the Union. 'Nation' will be used in the sense of the Federal power of the United States. The rights of corporations which are created by other governments than those of the several states, or of the United States, will not be considered. Their importance is slight in comparison with that of the 'foreign' corporation with which we are here concerned.

8 Cook Corporations, 8th ed. §§ 1, 3.
9 McCulloch v. Maryland, 4 Wheat 316, 4 L. ed. 579 (1819); Calif v. Pacific R. Co., 127 U. S. 1, 39, 8 Sup. Ct. 1073 (1887); for interstate commerce see Mercantile Trust Co. v. Texas etc. Ry., 216 Fed. 225 (1908).
11 Cook, op. cit., supra, n. 8, § 7.
The corporation has domicile, residence, and to a certain extent, citizenship. Justice Holmes has defined domicile as, "The one technically pre-eminent headquarters, which, as a result either of fact or fiction, every person is compelled to have in order that by aid of it certain rights and duties which have been attached to it by the law may be determined. It is settled that a corporation has its domicile in the jurisdiction of the state which created it, and as a consequence that it has not a domicile anywhere else."12 The corporation is a resident of the state where created, no matter where the stockholders may reside.13 This has been held to be the case in West Virginia even though our statutes make a distinction between resident and non-resident (so-called) domestic corporations for purposes of taxation.14 The corporation cannot be a resident elsewhere. "It must dwell in the place of its creation, and cannot migrate to another sovereignty."15 The corporation, then, can have no actual legal existence outside of the territorial bounds of the one state which created it. This is not a bar to its action outside the state for it is held that, like any person, it is capable of having an agent do anything within its legal powers.16 This is a moral development of the law for the earliest known English corporations were organized for the express purpose of trading beyond the territorial boundaries of England. It is a bar, however, to the corporation of one state being a domestic corporation of another state. Incorporation in two states results in two corporations, separate and distinct.17 Similarly, the state cannot force the foreign corporation to become domestic by statute.18

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12 Bergner etc. Co. v. Dryfus, 172 Mass. 154, 51 Atl. 531 (1898); see also Bank of Augusta v. Earle, 13 Pet. 519, 10 L. ed. 274 (1839); Beale, Foreign Corporations, § 71.
13 Beale, op. cit., supra n. 12, § 73.
It has been doubted that a corporation can have any actual citizenship, in the ordinary meaning of the word.\textsuperscript{19} It is now held that where practical reasons demand it, and in a very limited sense, the corporation may be regarded as having such. It was once held that the corporation took citizenship from its stockholders for the purpose of the diversity of citizenship requirement for use of the Federal courts.\textsuperscript{20} Every stockholder had to be of a citizenship other than that of the person the corporation was suing. Under this rule the United States Steel Corporation would be denied the use of the Federal courts altogether. So would every corporation having stockholders in every state. The court refused to hold that the corporation had a citizenship, but obviated the difficulty by the round-about way of establishing a conclusive presumption that all the stockholders are citizens of the incorporating state, although, in fact, it sometimes happened that none of them are.\textsuperscript{21} The corporation is usually a 'person' within the meaning of Constitutions and Statutes. It is held a person within the meaning of the due process clause\textsuperscript{22} and is protected in its property rights in a foreign state.\textsuperscript{23} After admission into a state the foreign corporation is fully entitled to the equal protection of the laws of that state, as a person, and may enjoy business rights therein.\textsuperscript{24} The contracts of a foreign corporation, legal when made, cannot be impaired by the state. It is a person within the meaning of this clause for it does not admit of any artificial distinction between corporate and individual contracts.\textsuperscript{25} But the corporation may be compelled by its

\textsuperscript{19} Muller v. Dows, 94 U. S. 444, 24 L. ed. 207 (1877); Bank v. Deveaux, 5 Cranch. 61, 3 L. ed. 38 (1809); see also 41 Am. L. Rev. 38.

\textsuperscript{20} Muller v. Dows, supra, n. 19.

\textsuperscript{21} Louisville, etc. R. v. Letaon, 2 How. 497, 11 L. ed. 353 (1844).

\textsuperscript{22} CONSTITUTION OF THE UNITED STATES, ART. XIV, § 1.

\textsuperscript{23} Railroad Tax Cases, 13 Fed. 722, 747 (1882); Covington, etc. Turnpike Co. v. Sandford, 164 U. S. 578, 17 Sup. Ct. 198 (1896); Chicago, etc. Ry. Co. v. State, 86 Ark. 412, 111 S. W. 456 (1908); Cook, op. cit. supra, n. 8, §§ 696-700.

\textsuperscript{24} Archer v. Balto. Bldg. etc. Ass'n., 45 W Va. 37, 30 S. E. 241 (1898); BALLANTINE, op. cit., supra, n. 2, § 8.

\textsuperscript{25} "No state shall * * pass any law * * impairing the obligation of contract." See also COOLEY, CONSTITUTIONAL LIMITATIONS, 8th ed., p. 1018.
officers, to give evidence against itself. Individual 'persons' may not be compelled to do so. Some writers have formulated a general rule of constitutional interpretation to cover these cases. They say that where 'citizens' is used it has no reference to a corporation, but only to the individual, in the political sense. On the other hand, where 'person' is used in the Constitution or statute it includes the corporation and individual alike unless the corporation is excluded by express terms or necessary implications. No doubt this is a fair general statement of the law. Nevertheless, the distinction appeared forced.

It is necessary that we bear in mind the ordinarily accepted distinctions between corporate existence and individual existence. Individual existence, for the purpose of this discussion, will include partnerships and unincorporated associations as well as private persons. It is usually said, and generally accepted, that the distinctive features of the corporation are these: (a) Creation by the state; (b) limited powers; (c) limited liability of stockholders; (d) district entity before the law from that of the stockholders; (e) relative permanence of the organization; (f) transferability of shares of stock; (g) fixed and definite corporate aims for business purposes. Ballantine, however, points out that almost every feature, except the first, may be conferred upon organizations which are not incorporated bodies. For instance, the unincorporated association may be given the right to sue and be sued in a separate name, as a unit, or may be given the privilege of limited liability. The corporation might be denied some one of more of these features.

From the practical standpoint, there is very little difference in the way the public regards the large individual establishments, the partnership business, and the corporation.

26 BALLANTINE, op. cit., supra, n. 2, § 8; FIFTH AMENDMENT TO THE CONSTITUTION.

27 BALLANTINE, op. cit., supra, n. 2, § 8; Beale, op. cit., supra, n. 12, § 79; CALVERT, CONSTITUTION AND THE COURTS, II, 584, 585.

28 CONYNGTON, BUSINESS LAW, § 308.

For instance, the public buys from Woolworth's without
the faintest idea whether it is incorporated or not. Few
of the people in West Virginia know whether J. P. Morgan's
banking house is a partnership or a corporation. The only
essential difference between the forms of business organi-
ation are those erected by the law, after the parties are in
court. Morawetz very sensibly argues that in spite of
judicial decision the corporation remains an association of
real individual persons. Most of the differences in treat-
ment arise out of the fundamental legal distinction that the
corporation is the creature of the sovereign state, while the
individual is a human, a political being.

The meaning of the privileges and immunities clause, as
it first appeared in the Constitution of 1787, is the subject
of judicial construction and interpretation. Its words are,
"The citizens of each State shall be entitled to all privileges
and immunities of citizens in the several states." The
general course of interpretation of this clause may be seen
by this quotation: "The term is to be confined to those
privileges and immunities of citizens which are in their
nature fundamental, which belong of right to the citizens
of all free governments, and which have at all times been
enjoyed by the citizens of the several states which compose
this Union, from the time of their becoming free, independ-
ent, and sovereign. They may all be comprehended under
the following general heads: Protection by the government;
the enjoyment of life and liberty, with the right to acquire
and possess property of every kind, and to pursue and obtain
happiness and safety, subject, nevertheless, to such restraints
as the government may justly prescribe for the general good
of the whole. The right of the citizen of one state to pass
through or to reside in any other state, for the purposes of
trade, agriculture, professional pursuits, or otherwise; to
claim the benefit of the writ of habeas corpus; to institute
and maintain actions of any kind in the courts of the state;

31 Const. of United States, Art. IV, § 2, par. 1, (italics are ours.)
to take, hold, and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state, may be mentioned as some of the particular privileges and immunities of citizens which are clearly embraced by the general description of privileges deemed to be fundamental; to which may be added the elective franchise as regulated and established by the laws or the constitution of the state in which it is to be exercised. These and many others which might be mentioned, are, strictly speaking, privileges and immunities."

In the famous Slaughter House Cases this definition was approved. The Constitution of the United States contains a second clause bearing words almost similar to the ones already stated. This second clause says that, "No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States." In the Slaughter House Cases this was held to give to the citizens of the States, as such, no new rights. It is the announcement of the theory of dual citizenship. It is explained that the privileges and immunities of citizens of the United States are far different from those of the citizens of the several states, that they are mutually complementary, and in no way conflicting.

With admirable consistency the courts apply the rule that where 'citizen' is used the corporation is excluded. It is well settled that the corporation does not fall within the first privileges and immunities clause. Likewise it does not come within the protecting words of the second. Our

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32. CALVERT, op. cit., supra, n. 27, II, p. 222.
33. 16 Wall. 36-130, 21 L. ed. 394 (1873).
34. CONST. OF UNITED STATES, Art. XIV, § 2.
35. Slaughter House Cases, supra, n. 33; NORTON, CONSTITUTION OF THE UNITED STATES, p. 158.
own West Virginia court denies the foreign corporation rights accorded domestic corporations and says that such corporations take nothing from either clause.\textsuperscript{33} Even the corporations chartered by Congress are not citizens either of the state or the nation under these clauses.\textsuperscript{39} The power under which they are chartered will extend to protect them, however.\textsuperscript{40} This protection is adequate and for this reason corporations chartered by Federal power do not fall within the scope of this paper.

No one would seriously contend that the privileges of voting should be extended to the corporate entity, either that of the state or of another state. The corporation will not need the writ of habeas corpus, nor will it ever be able to 'pass through' a state, physically. Some of the privileges and immunities of citizens, however, should be given the foreign corporation. It does not, and can not, claim the rights inherent in the individual as a political entity. It does not claim those rights as a domestic corporation. It is held that the privileges and immunities\textsuperscript{41} of the citizens of the states do not include anything except the ordinary and usual rights of a citizen of the state.\textsuperscript{42} Trade and commerce, as well as industry, are ordinary rights of citizens. Our immediate problem is to find the extent of the power of the state over the foreign corporation, and to see the effect of the holding that the privileges and immunities clause does not protect such a corporation.

Article IV of the old Articles of Confederation was the forerunner of the privileges and immunities clause of the Constitution, and it also covered the ground now occupied by the commerce clause. Article IV was designed to un-

\textsuperscript{33} Floyd v. Loan \& Investment Co., 49 W. Va. 327, 334, 38 S. E. 653 (1901).
\textsuperscript{39} Mawley v. Hurd, 72 Vt. 122, 47 Atl. 401 (1900).
\textsuperscript{40} McCulloch v. Maryland, supra, n. 9.
\textsuperscript{41} Privileges and immunities are synonymous terms. Magill v. Brown, 16 Fed. Case No. 8952 (1833).
\textsuperscript{42} Paul v. Virginia, supra, n. 36; Corfield v. Coryell, 4 Wash. C. O. 371, 380-2 (1823); \textit{Ex parte Spinney}, 10 Nev. 323 (1875).
trammel commerce and trade between the peoples of the several states. This purpose clearly appears from its words.\textsuperscript{43} On account of the lack of substantial central power it was never successful. It was chiefly to remedy the distressful commercial conditions that the convention was called which resulted in the present strong central powers. The cornerstone of the Constitution is the fundamental proposition that this nation should be one commercially. This end was partially accomplished by the privileges and immunities clause which gave to individuals, and combinations of individuals by contract, the power and right to disregard utterly state lines in the transaction of their business. The corporation is not included in this beneficent protection.

As a second safeguard, the framers of the Constitution saw fit to vest in the government of the Nation the control of commerce between the several states, with foreign nations, and with the Indian tribes.\textsuperscript{44} This is the 'commerce clause'. Under it the Federal government is given control of all interstate commerce, whether done by corporations or not, the power to be exercised if and when Congress chooses. No account is taken, under this clause, to see if the corporation be domestic or foreign to the state seeking to impede its action. It is only necessary that it be engaged in the interstate commerce.\textsuperscript{45} A very limited amount of control over interstate commerce is allowed the state where the proposed regulation is not restriction, and where it serves a proper and useful local purpose.\textsuperscript{46} The regulation must not exceed the limits set by the decisions. The regulation can not be of a national character, if done by the states, even though Congress has not acted, for then it is presumed that such

\begin{itemize}
  \item \textsuperscript{43} "The free inhabitants of each of these states, * * *, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, * * *." 
  \item \textsuperscript{44} Constitution of the United States, Art. I, s. 8, par. 3. 
  \item \textsuperscript{46} \textit{Ex parte Kieffer}, 40 Fed. 399 (1889); Minnesota Rate Cases, 230 U. S. 352, 57 L. ed. 352, 57 L. ed. 1511 (1913), and cases therein cited. 
\end{itemize}
commerce is to be free from regulation. The state may not lay a tax directly burdening interstate commerce, or one so related that it is, in effect, a burden.\(^7\) The state may tax the property of the corporation which is within the state, under ordinary circumstances.\(^8\) For a full discussion of the conflict over such powers the reader is referred to the current legal periodicals.\(^9\) It is enough here to point out that there is a \textit{legal} difference between interstate and intrastate commerce. A certain part of the activity of foreign corporations, that known as intrastate commerce, is free, generally, from any serious control by the state.

It is extremely difficult to draw a line on one side of which all interstate commerce will fall, while on the other all intrastate commerce will be found. The United States Supreme Court has said that, "In determining whether commerce is interstate or intrastate, regard must be had to its essential character."\(^{60}\) No one feature seems to be always determinative. The doctrine of \textit{stare decisis} is not of great help for every case must be decided upon its special facts.\(^{61}\) A few samples may aid one to understand the difficulty. It is obvious that the carriage of freight or passengers across state lines is interstate commerce. No citation of authority is necessary for that. Some of the less apparent cases are these: The purchase, sale and exchange of commodities across state lines is interstate commerce,\(^{62}\) the sale of electric current, delivered at the state line,\(^{63}\) sale of gas or oil piped

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across state lines,4 selling of correspondence school courses by mail,5 buying of goods in another state,6 so also the transmission of intelligence to another state, either by telegram or by newspaper.7 It has been held that the selling of insurance is not interstate commerce.8 Other kinds of intrastate activity are: Production or manufacture, even though intended for interstate commerce,9 gathering goods together for shipment out of the state,10 lending money,11 carrying on a building and loan business,12 mining,13 carrying on brokerage or commission merchant business,14 and, merely maintaining an office in the state.15

We have not divided the field of intrastate commerce into that done by individuals and that done by corporations. It may be done by either. No reasonable basis of division is apparent. We merely point out that interstate business is free from state interference whether carried on by individuals, foreign corporations, or domestic corporations. We may also show that intrastate business is unhampered by improper state regulation or restriction so long as it is done by an individual. This results from his protection by the privileges and immunities clause. It is now our task to show that similar business or industry is subject to the control of the state if done by a foreign corporation, that this power of the state is improperly exercised, and that it results from the exclusion of the corporation from the privileges and immunities clause.

62 Bldg. & Loan Ass'n. v. Norman, 98 Ky. 294, 32 S. W. 352 (1895).
The commerce and industry which is thus unprotected by the Constitution is a substantial amount of the whole body of such activity. A few examples, well known to all, will serve to demonstrate the truth of this. In this field we find the whole body of insurance written by foreign corporations, the chain store, bitterly opposed by every local merchant, in short, every commercial, industrial, or mining corporation, organized by another state, and seeking to do business outside of that state, and whose business does not come within the protection of the commerce clause. The category is large and it increases with the passing of each year for the mechanism of corporate organization is becoming more needed as the nation makes its great commercial and industrial advance. Business, including industry, is no longer local. It is of a national character. Haney writes (1916) that the "corporation is today the dominant form of business organization." He further states that eighty per centum of the products of manufacturing are the products of corporations. Yet the corporations numbered only twenty-six per centum of the total number of establishments. At that time they employed seventy-five per centum of the wage earners. That the corporation is increasingly dominant in industry is shown by the reports and surveys of recent dates. For example, in 1899 there were 207,514 establishments, employing 4,712,763 wage earners and producing goods of the value of $11,406,927,000. Wages paid amounted to a little over two billion dollars. In 1925 the number of establishments producing over $5,000 of goods in one year had decreased to 187,390 but the number of wage earners employed had risen to the total of 8,384,261. In the same manner, the value of the product had increased to $62,712,714,000 and wages amounted to $10,729,969,000. The decreasing number and increasing relative size of the establishments indicate that the individual now chooses to avail

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66 Haney, Business Organization and Combination, (1916).
67 Haney, op. cit., supra, n. 66.
himself of the comparative freedom from risk under the corporate mechanism. To show the domination of the corporation generally we may point to the new incorporations in recent years. In 1907 businesses were organized with authorized capital of two and one-half billion dollars. 1920 showed an increase to almost fifteen billions of new authorized capital. The next five years show the total hovering about the ten billion mark with 1926 somewhat over it. 1927 was a very poor year with only four and one-half billions, but was still about double that of 1907. During 1927, however, the peak year for sales of stocks, bonds, and notes of corporations was reached. Sales were seven billion, three hundred million dollars.

The total assets of those corporations filing returns for capital stock taxes levied by the Federal government were $148,298,000,000 or about five and one-half times the bonded debt of every political jurisdiction in the United States, including the Federal government. Also, that amount is about six billion dollars larger than the total assessed valuation of all the property taxed by the states in 1926. Even with these tremendous figures some fifty thousand corporations made no report of assets. To further show the importance of the corporation in our economic life we may point out that the corporations reporting net incomes for purposes of taxation (about 250,000) reported nine and one-half billion, of which sum $1,170,331,000 was paid the Federal government in taxes. 177,738 corporations reported deficits amounting to about two billions. The income tax yielded approximately $435,776,000 more from corporations than it did from the four million individuals reporting in 1925. These are the corporations which the law still insists on calling 'legal fictions'. Nothing could seem more real. In truth these corporations are but their owners. They are 'facilities' donned for the work of the world. The business

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72 Statistical Abstract of the U. S., p. 188; 198 (1928).
of the corporation should be on terms and equality with that of the individual, and there is no less reason for insisting upon fair treatment of intrastate business of a foreign corporation than for interstate business done by the same organization. To what extent does the actual situation fall short of fair treatment and substantial equality?

It may be said that the corporation generally has the power to act wherever its officers wish. Whether it has the right is another question entirely. The state may actively or passively permit the foreign corporation to do business within the state, if it chooses to admit at all. By passive permission we mean the law of comity among the states. Mr. Justice Harlan put the rule thus: "In harmony with the general law of comity obtaining among the states composing the Union, the presumption should be indulged that the corporation of one state, not forbidden by the law of its being, may exercise within another state the general powers conferred by its own charter, unless 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." This law of comity does not entitle a state to confer the power upon a corporation, by charter, to act in another state. It does not guarantee admission into the other state, for comity is part of the common law and as such is subject to the whim or caprice of every legislature. How seldom the legislatures can refrain from the urge to tamper with this may be seen by reference to a prominent writer upon the subject. Therefore, from the standpoint of protection, this law of comity affords nothing after the legislature acts.

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73 Morawetz, op. cit., supra, n. 6, § 958.
75 Beale, op. cit., supra, n. 12, state statutes relating to the regulation of foreign corporations, §§ 141-196; 511-569; 570-597; 598-650; 651-700; 701-728; 731-738; 741-763; as of 1904.
The basis of the power of the state to control the foreign corporation is that it has projected its business activity into the state in such a manner as to be regarded as 'doing business' in the state. It is elemental law that the state cannot exert control over that which is outside its jurisdiction. Therefore, when a foreign corporation has done an act of intrastate business which is not within the accepted definition of 'doing business' that act, standing alone, is not subject to control by the state. Of course, where the act is done outside the state it is not a doing of business within the state even though it may affect some property within the state. To illustrate, a contract of insurance may be made outside the state and have validity in the state, though it be against the prohibition of the state law.\textsuperscript{76} A conveyance of land may be made in one state of land in another, to a corporation foreign as to the state wherein the land is located. Unless there is a prohibition against the foreign corporation owning land the conveyance will be valid though the corporation has not complied with the entrance requirements exacted by the state.\textsuperscript{77} Where the corporation of another state enters, by agent, and does a single, isolated transaction within the state, without an intention to continue doing business, it is called a "casual act" and is not regarded by the weight of authority as a doing of business within the meaning of the regulatory acts.\textsuperscript{78} To regularly require subjection to admission statutes would be incongruous in such a case.\textsuperscript{79} Some jurisdictions insist upon their view—that this is a doing of business and that it should be subject to regulation. In general it may be stated that there must be a corporate continuity of activity before the foreign corporation falls within the power of the state.

The property of a foreign corporation within the state is protected even though it is not admitted to do business or

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\footnote{Allgayer v. Louisiana, 165 U. S. 578, 41 L. ed. 832 (1897); Goldberry v. Carter, 100 Va. 438, 41 S. E. 858 (1902); but see Palmetto Fire Ins. Co. v. Conn., 272 U. S. 295, 47 Sup. Ct. 88 (1926).}
\footnote{Christian Union v. Yount, supra, n. 74.}
\footnote{Goldberry v. Carter, supra, n. 76.}
\footnote{Cooper Mfg. Co. v. Ferguson, 113 U. S. 727, 735, 28 L. ed. 1137 (1885).}
\end{footnotes}
has been ousted by the state after admission. The courts are open to such a corporation for the protection of property. If the state has contracted with a foreign corporation in admitting it the contract may not be impaired. Where a railroad company had been permitted to build a line into the state the state of Kentucky was held unable to force it to incorporate there after the money was spent. The state may not impair the legal contract made by the foreign corporation with a third person. After admission, the corporation can not be denied the equal protection of the law of the state. It was formerly held that while the state could not make the foreign corporation enter a valid contract obligating it not to remove suits to Federal courts on the ground of diversity of citizenship, as a condition precedent to entrance, the state could, after the corporation had removed a suit, oust it for that reason. The theory was that the contract was void since it denied a Constitutional right to the foreign corporation, but that the power of the state was so exclusive over this subject that it could oust for refusal to forego this right. This doctrine is now overruled. The new rule is that the state may not impose, as a condition upon entrance, that which it might not Constitutionally im-

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80 C. & N. W. Ry. v. Dev. 35 Fed. 866 (1888); 1 L. R. A. 744.
81 BEALE, op. cit., supra, n. 12, § 252.
85 BEALE, op. cit., supra, n. 12, § 126.
87 But the state could never force all corporations to become domestic by a statute declaring them such in order to attain the same end. See Rece v. Newport News Co., supra, n. 14.
pose directly.\textsuperscript{89} Unhappily this protection is only partial and is aimed to reinforce the commerce clause, the due process clause, and the equal protection clause particularly. The general rule still prevails, almost unbroken. The state may impose upon the foreign corporation any conditions or restrictions which it sees fit in the absence of constitutional prohibitions.\textsuperscript{90} Some express prohibition against the state action must be shown by those who would escape its effect.\textsuperscript{91} The privileges and immunities clause does not extend to the foreign corporation.

(Continued in next issue.)


\textsuperscript{91} Ku Klux Klan v. Commonwealth, 138 Va. 500, 122 S. E. 122 (1924).