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AS "CITIZEN" TO HAVE VIOLATION OF CONSTITUTIONAL
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NOTE

CORPORATIONS—MEMBERSHIP CORPORATION MAY SUE AS “CITIZEN” TO HAVE VIOLATION OF CONSTITUTIONAL PROVISION ENJOINED.—The Court of Appeals in a unanimous decision affirmed an order of the Appellate Division granting a membership corporation the right to institute suit as a “citizen.”¹

Plaintiff, a membership corporation (defined by section 2 of the New York Membership Corporation Law as “a corporation not organized for pecuniary profit”), instituted suit to restrain the New York State Conservation Commissioner from letting contracts for the cutting down and clearing away of timber in the State Forest Reserve. The theory of the suit was that the statute giving the Commission the power to let such contracts² is unconstitutional, in that it violates article XIV, § 1 of the State Constitution, which provides that the Forest Preserve be kept forever wild. Section 4 of the same article gives any “citizen” the right to institute suit to enjoin a violation of § 1.

The Commissioner took the position that the plaintiff had no capacity to institute suit, on the theory that a membership corporation is not a “citizen”. He cited two cases³ in support of his position, both of which involved constructions of the Privileges and Immunities clause of the United States Constitution,⁴ to the effect that a corporation is not a citizen of the United States and as such “entitled to all the privileges and immunities of citizens of the several states.”⁵ However, for jurisdictional purposes a corporation is considered to be a citizen of the State under the laws of which it was created; article III, § 2 of the Federal Constitution confers jurisdiction on the federal courts in cases where there is diversity of citizenship between the parties.⁶

To what extent do the courts treat as legal reality the fictitious corporate entity? To what degree is the corporate personality *sui juris*?

“It is called the body corporate,” said Lord Coke, “because the persons composing it are made into one body. . . . It is only in abstracto, and rests only in contemplation of law.”⁷

In the United States the corporate entity was held in the early case of *Bank of the United States v. Deveaux*⁸ to be “certainly not a citizen; and consequently it cannot sue or be sued in the courts of the United States. . . .”⁹ In the leading *Dartmouth College* case,¹⁰ the Court asserted that the body corporate is an artificial legal

¹ Matter of Oneida County Forest Preserve Council v. Wehle, 309 N. Y. 152, 128 N. E. 2d 282 (1955).

² L. 1955, c. 224.

³ Fire Dep't of City of New York v. Stanton, 28 App. Div. 334, 51 N. Y. S. 242 (1st Dept. 1898); Anglo-American Provision Co. v. Davis Provision Co., 169 N. Y. 506, 62 N. E. 587 (1902).

⁴ U. S. CONST. art. IV, § 2; Hemphill v. Orloff, 277 U. S. 537, 48 S. Ct. 577, 72 L. Ed. 978 (1928).

⁵ U. S. CONST. amend. XIV, § 1; Selovar, Bates & Co. v. Walsh, 226 U. S. 112, 33 S. Ct. 69, 57 L. Ed. 146 (1912).

⁶ Doctor v. Harrington, 196 U. S. 579, 25 S. Ct. 355, 49 L. Ed. 606 (1905); Shulthis v. McDougal, 225 U. S. 561, 32 S. Ct. 704, 56 L. Ed. 1205 (1912); Salem Trust Co. v. Manufacturers Finance Co., 264 U. S. 182, 44 S. Ct. 266, 68 L. Ed. 628 (1924); 13 AM. JUR. Corporations, § 12, 13, 14 (1955).

⁷ Quoted in Warner & Ray v. Beers, 23 Wend. 103 (1840).

⁸ Bank of United States v. Deveaux, 5 Cranch 61, 3 L. Ed. 38 (1809).

⁹ *Id.* at 86, 3 L. Ed. 38, 44.

¹⁰ Dartmouth College v. Woodward, 4 Wheat. 518, 4 L. Ed. 629 (1819).

person, a succession of individuals, or an aggregate body considered by the law as a single continuous person, "limited to one peculiar mode of action, and having power only of the kind and degree prescribed by the law which confers them."¹¹

Thus, although the courts were reluctant at this early stage to find the power to litigate implicit in the corporation's charter, or to recognize it as a capable party in contemplation of law, thus enabling it to sue and be sued, the courts nevertheless were explicit in attributing, for other purposes, a legal personality to the corporation.

The *Deveaux* case¹² was decided in 1809 by the highest tribunal of a 20-year-old agrarian democracy. There was yet no American industry in the modern sense. The business corporation had not yet begun to have the economic and social impact on the community which it was later to have while developing and channelling the wealth created by the industrial revolution. Contemporaneous with this increase in corporate influence and importance in the economy (and therefore in the community) came a tendency toward allowing the corporation to appear as a party in the courts of the United States; at first to only a limited and restricted degree, and later to the extent of recognizing its "citizenship" for this single purpose.¹³ At the same time, corporate influence in the state legislatures and courts achieved the same end.¹⁴

However, the courts have generally maintained that a corporation is not a citizen for other than these limited purposes.¹⁵ Obviously, corporations cannot vote, hold office, or perform many of the other functions of the natural citizen of the United States.

In the instant case, the Commissioner contended that, whatever right a private or public corporation might have to sue as a "citizen" on a private cause of action accruing to it, the membership corporation bringing suit in this case was not a juridical person who might appropriately champion constitutional rights in the courts.

However, the Court of Appeals felt that the plaintiff in this case could appropriately seek enforcement of a constitutional provision in the courts, in view of the purpose of the association and the nature of the provision sought to be enforced. In a New York case between parties who bore an analogous relationship, a membership corporation obtained consent to institute suit under article VII, § 7 of the New York State Constitution.¹⁶ The issue as to plaintiff's right to sue was never raised; but although not determinative of the instant case, the former case can be viewed as illustrative of the membership corporation's right to champion its own cause and be regarded as a "juridical person".

The defendant further contended that this corporation had no justiciable interest that made it an appropriate champion of constitutional principles. The cases cited in support of this proposition, however, were not in point, for they merely held, on

¹¹ *Id.* at 576, 4 L. Ed. 629, 644.

¹² See note 8, *supra*.

¹³ *Strawbridge v. Curtiss*, 3 Cranch 267, 2 L. Ed. 435 (1806); *Louisville, C. & C. R. R. Co. v. Letson*, 2 How. 497, 11 L. Ed. 353 (1844); *Home Ins. Co. v. Morse*, 20 Wall. 445, 22 L. Ed. 365 (1874); *Amtorg Trading Corp. v. United States*, 71 F. 2d 524 (1934); *United States v. Northwestern Express Stage & Transp. Co.*, 164 U. S. 686, 17 S. Ct. 206, 51 L. Ed. 599 (1897); *McKinley v. Wheeler*, 130 U. S. 630, 9 S. Ct. 638, 32 L. Ed. 1048 (1889); *Ramsey v. Tacoma Land Co.*, 196 U. S. 360, 25 S. Ct. 286, 49 L. Ed. 513 (1905).

¹⁴ *Green, Corporations as Persons, Citizens and Possessors of Liberty*, 94 U. PA. L. Rev. 202 (1945).

¹⁵ See cases in notes 3 and 4, *supra*.

¹⁶ *Association for Protection of Adirondacks v. McDonald*, 253 N. Y. 234, 170 N. E. 902 (1930).

the particular facts in each case, that the particular corporations involved had no justiciable interest in the controversy.¹⁷

Judge Burke, writing for the Court, summed up by noting the judicial trend toward a more liberal attitude in permitting associations or corporations to champion constitutional rights.¹⁸ This case, by extending to a membership corporation the right (which the New York Constitution gives only to "citizens") to sue to enjoin a violation of a constitutional provision, seems to illustrate a logical progression of the trend in New York.

¹⁷ *Associated Painting Employers of Brooklyn v. Kessler*, 257 App. Div. 986, 13 N. Y. S. 2d 631 (2nd Dept. 1939); *United Cloak & Suit Designers Mut. Aid Ass'n v. Sigman*, 218 App. Div. 367, 218 N. Y. S. 483 (1st Dept. 1926); *Matter of New York State Licensed Bail Agents Ass'n v. Murtagh*, 279 App. Div. 851, *aff'd* 303 N. Y. 1009, 110 N. Y. S. 2d 154 (1st Dept. 1952).

¹⁸ *Pierce v. Society of Sisters*, 268 U. S. 510, 45 S. Ct. 571, 69 L. Ed. 1070 (1925); *Anti-Fascist Comm. v. McGrath*, 341 U. S. 123, 91 S. Ct. 624, 95 L. Ed. 817 (1951).