

## BURGER v. GRAND RAPIDS &amp; I. R. Co.

*(Circuit Court, D. Indiana. 1884.)***1. JURISDICTION OF CIRCUIT COURT—CONSOLIDATED RAILROAD CORPORATION—CITIZENSHIP.**

A railroad corporation composed of two corporations created in the state of Michigan and one created in the state of Indiana, consolidated and merged into a single corporation under the laws of both states, owning and operating a single continuous line of road from a certain point in one state to a point in the other, is a citizen of the state of Indiana as well as of Michigan, and cannot be sued by a citizen of Indiana in the circuit court of the United States for the district of Indiana.

**2. SAME—CAUSE OF ACTION ARISING IN MICHIGAN.**

In such an action the fact that the injury complained of was suffered in Michigan is not material to the question of jurisdiction. *Horns v. Boston & M. R. R. Co.* 18 FED. REP. 50, followed.

Demurrer to Plea in Abatement.

*D. M. Ninde*, for plaintiff.

*A. A. Chapin*, for defendant.

WOODS, J. The plaintiff complains of personal injuries caused by the negligence of the defendant, alleging, among other things, that the defendant is a corporation organized under the laws of Michigan and a citizen of that state; that the injury complained of was received in that state; and that the plaintiff is a citizen and resident of Indiana. The plea in question is to the effect that the defendant is also a corporation organized under the laws of Indiana, and therefore a citizen of that state as well as of Michigan, being a consolidated body under the laws of both states, composed of two corporations created in Michigan and another created in Indiana, and in 1857 consolidated and merged into a single company under the name of "The Grand Rapids & Indiana Railroad Company," which owns and operates a single and continuous line of railroad from Ft. Wayne, Indiana, to Grand Rapids, Michigan. The precise question presented by this plea, I believe, has never been authoritatively decided, though it has sometimes been stated in opinions delivered in analogous cases, and in one instance, at least, an opinion upon it has been expressed. See *Uphoff v. Chicago, St. L. & N. O. R. Co.* 5 FED. REP. 545; *Nashua & L. R. Corp. v. Boston & L. R. Corp.* 8 FED. REP. 458; S. C. 19 FED. REP. 804. In the latter case the plaintiff, being a consolidated company composed of New Hampshire and Massachusetts corporations, brought an action in the federal court in and against another corporation of the latter state, and, in discussing the question of jurisdiction, when the case was first under consideration, NELSON, J., said:

"In this case it seems that the defendant corporation might go into New Hampshire, and there sue the plaintiff as a New Hampshire corporation in the federal court, although it could not bring such suit in the district of Massachusetts against the New Hampshire corporation, because no service upon the New Hampshire corporation as such could be got in this district, if for no other reason. It has been determined by Judge LOWELL that in some cases

non-resident corporations may be served with process from United States courts in other districts than those in which they were chartered, and where they are found to be doing business or domiciled. But this rule would not, we suppose, extend to a case like the present."

In the other case it was decided that such a company, when sued in one of the states in which it had been organized, by a citizen of that state, cannot, by showing its organization in another state, procure a removal of the cause from the state to the federal court; and discussing the question, HAMMOND, J., said:

"It may be a test of the soundness of the judgment here rendered to consider whether, under its operation, it would be competent for this consolidated corporation to ignore its Kentucky existence, and, describing itself as a corporation under the laws of Louisiana, sue a citizen of Kentucky in this court, (sitting in Kentucky,) or whether a citizen of Kentucky, ignoring the Kentucky statutes, might sue it in this court as a Louisiana corporation 'found' within this district; and, if either be admissible, why the same right to choose the capacity in which it shall conduct the litigation does not exist in favor of the right of removal when sued in the state courts."

In other cases besides the *Nashua & L. Corp. v. Boston & L. Corp.*, already cited, it has been held that a corporation organized and consolidated under the laws of two states, describing itself as a corporation of any one of them, and ignoring the statutes of the other, may sue a citizen of the latter in the federal court there sitting. *St. Louis, A. & T. H. R. Co. v. Indianapolis & St. L. R. Co.* 9 Biss. 144; *Chicago & N. W. R. Co. v. Chicago & P. R. Co.* 6 Biss. 219. And in respect to the other phase of the proposed test, the view expressed by Judge NELSON has already been quoted. In the opinion of the supreme court in the case of *Railway Co. v. Whitton*, 13 Wall. 271, 283, followed and reaffirmed in *Muller v. Dows*, 94 U. S. 444, 448, language is used which points to the same conclusion, and, if taken literally, does not admit of a different meaning. The defendant in the case was a consolidated body made up of corporations of Illinois and Wisconsin, and the court said:

"The defendant, therefore, must be regarded for the purposes of this action as a citizen of Wisconsin. But it is said, and here the objection to the jurisdiction arises, that the defendant is also a corporation under the laws of Illinois, and therefore is also a citizen of the same state with the plaintiff. The answer to this position is obvious. In Wisconsin the laws of Illinois have no operation. The defendant is a corporation, and as such a citizen of Wisconsin by the laws of that state. It is not *there* a corporation or a citizen of any other state; being there served it can only be brought into court as a citizen of that state, whatever its *status* or citizenship may be elsewhere."

While at common law a corporation may not migrate, but must dwell in the place of its creation, and cannot be sued elsewhere, yet under the laws of congress and of the states it may exercise its authority in a foreign territory upon such conditions as may be prescribed by the law of the place. "One of these conditions may be that it shall consent to be sued there. If it do business there it will be presumed to have assented, and will be bound accordingly. For