

in any circuit court of the United States without encountering the objection now urged against the jurisdiction of this court; and it would be compelled, in order to enforce the provisions of the telegraph act, to invoke the jurisdiction of a state court, without the privilege of removing the suit, after it was brought, into the circuit court; the right of removal being given, by the act of 1887, only to defendants. (3) A citizen of California can bring suit in this court against a corporation of another state which does business here by agents located in this state and district, if jurisdiction be founded only on the diverse citizenship of the parties; but, according to the defendants' interpretation of the act of congress, this court cannot entertain jurisdiction of a suit brought by the United States, under the authority of an act of congress, against the same corporation, upon a like cause of action. While it is competent for congress to declare what part of the judicial power of the United States, as defined by the constitution, may be exercised by the courts which it establishes, we should not lightly presume that it was intended to produce the results which confessedly follow from the construction placed upon the act of 1887 by the learned counsel for the defendants.

The court is of the opinion that the clause in the first section of the act of 1887, requiring suits to be brought in the district of the residence either of the plaintiff or of the defendant where jurisdiction is founded only on diversity of citizenship, applies only to suits in which the parties, whether natural or artificial persons, are "citizens of different states," and cannot apply to suits brought by the United States. The general government is present everywhere within the territorial limits of the United States, and, under the existing statutes, may invoke the jurisdiction of any circuit court of the United States in respect to any cause of action it may have against a natural or artificial person, subject only to the condition that its suit must be brought in the district of which the defendant is an "inhabitant." The question, therefore, to be determined is whether a corporation created by the laws of another state, but doing business here, and having its agents located within the territorial jurisdiction of this court, may not, within the meaning of the statute, be deemed an "inhabitant" of this state and district.

Numerous cases have been cited by the counsel of defendants as showing that a corporation of one state is an inhabitant only of the state creating it. Upon a careful examination of those cases, the court is of opinion that no one of them determines the precise question now before it. The cases cited in argument establish these principles:

1. While a corporation is domiciled in the state by whose laws it was created, its legal existence in that state may be recognized elsewhere; so that, within the scope of its limited powers, it may make and enforce contracts in other states which are not forbidden by the laws of such states. *Bank v. Earle*, 13 Pet. 519, 588; 589; *Christian Union v. Yount*, 101 U. S. 352, 356. In the latter case, it was said that—

"In harmony with the general law of comity obtaining among the states composing the Union, the presumption should be indulged that a corporation of one state, not forbidden by the law of its being, may exercise within any

other state the general powers conferred by its own charter, unless it is 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."

2. For the purposes of jurisdiction in the courts of the United States, a corporation is to be deemed a citizen of the state creating it, and no averment to the contrary is permitted. *Railroad Co. v. Letson*, 2 How. 497; *Marshall v. Railroad Co.*, 16 How. 314; *Insurance Co. v. French*, 18 How. 404, 408; *Draw-Bridge Co. v. Shepherd*, 20 How. 227; *Railroad Co. v. Wheeler*, 1 Black, 286, 297; *Paul v. Virginia*, 8 Wall. 168; *Railroad Co. v. Harris*, 12 Wall. 65; *Railroad Co. v. Koontz*, 104 U. S. 5, 12; *Goodlett v. Railroad Co.*, 122 U. S. 391, 7 Sup. Ct. Rep. 1254.

3. A corporation of one state, by engaging in business or acquiring property in another state, does not thereby cease to be a citizen of the state creating it, (*Insurance Co. v. Francis*, 11 Wall. 210;) although, while the act of 1875 was in force, it could be "found" in any state where it did business regularly by its agents, process being served upon such agents. *Ex parte Schollenberger*, 96 U. S. 369. In the latter case the court was careful to say that it was unnecessary to inquire whether such a corporation was not also, within the meaning of the act of 1875, an inhabitant of the state in which it did business.

In some of the cases cited there are general expressions upon which much stress is laid by counsel. In *Bank of Augusta v. Earle*, it was said that a corporation must "dwell" in the state of its creation, and cannot "migrate" to another sovereignty; in *Louisville Railroad Co. v. Letson*, that it is an "inhabitant" of the state which brought it into existence; in *Marshall v. B. & O. Railroad Company*, that "its necessary habitat" is there; in *Ex parte Schollenberger*, that a corporation has its "legal home" at the place where it is located by or under its charter; and in *Railroad Co. v. Koontz*, that a corporation, by doing business away from its "legal residence," does not change its citizenship. A case much relied upon is *Insurance Co. v. Francis*. That was a suit brought in a court of Mississippi, by a citizen of Illinois against a New York corporation, doing business, by agents, in the state of Mississippi. The plaintiff sought to remove the case into the circuit court of the United States under the act of 1867, giving jurisdiction where the controversy was "between a citizen of the state in which the suit is brought and a citizen of another state." It was held that the defendant, being a corporation of New York, was a citizen of that state, and consequently the suit could not be removed. "Its place of residence," the court said, "is there, and can be nowhere else. Unlike a natural person, it cannot change its domicile at will; and, although it may be permitted to transact business where its charter does not operate, it cannot on that account acquire a residence there."

Those cases undoubtedly hold that a corporation cannot throw off its allegiance or responsibility to the state which gave it existence, and that its primary, legal domicile or habitation,—that is, its citizenship,—is in such state; consequently, for the purposes of suing and being sued in the courts of the United States, it is to be deemed a citizen of the state

by whose laws it was made an artificial person. But neither those cases, nor any case in the supreme court of the United States, directly decides that a corporation may not, in addition to its primary, legal habitation or home in the state of its creation, acquire a habitation in, or become an inhabitant of, another state, for purposes of business, and of jurisdiction *in personam*.

It is eminently just that the defendants, not corporations of this state, should be regarded as inhabitants of this district for purposes of jurisdiction. Each of them is under a duty, imposed by the constitution of this state, to have and maintain an office or place here for the transaction of its business. By the same instrument it is provided that no foreign corporation shall be allowed to transact business here on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this state; also, that a corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises or the breach occurs, or in the county where the principal place of business of such corporation is situated, subject to the power of the court to change the place of trial as in other cases. Const. Cal. 1879, art. 12, §§ 14-16. The Code of Civil Procedure provides that, in a suit against a corporation formed under the laws of this state, the summons must be served on the president, or other head of the corporation, secretary, cashier, or managing agent thereof; and in a suit against a foreign corporation, doing business and having a managing or business agent, cashier, or secretary within this state, on such agent, cashier, or secretary. Section 411. And by an act approved April 3, 1880, it was provided that every railway corporation, and every corporation organized for the purpose of carrying freight or passengers, which has been or may be created or organized under or by virtue of the laws of any state or territory of the United States, or of any act of congress, may build railways, exercise the right of eminent domain, and do or transact any other business which such corporation might, if it had been created or organized under or by virtue of the laws of this state, having the same rights, privileges, and immunities, and subject to the same penalties, obligations, and burdens, as if they had been created or organized under the laws of California. Laws of 1880, p. 21. It is thus seen that corporations of other states do business here under the license of this state, subject to the implied condition that they may be brought, by service of process upon their agents, before the courts of this jurisdiction; and, in respect to railroad corporations organized under the laws of other states, and doing business here, they become, for most, if not for all, practical purposes, inhabitants of this state.

If it be said that inhabitancy in a state, in its strict legal sense, implies a permanent, fixed residence in that state, the answer is that a corporation of one state, operating, by agents, a railroad or telegraph line in another state, with its consent, or under its license, may be regarded as permanently identified with the business and people of the latter state, and, for the purposes of its business there, to have a fixed residence

within its limits; for it may not unreasonably be assumed that it will exert its powers there during the whole of its corporate existence, or so long as it is profitable to do so. It does there just what it would do if it had received its charter from that state. It seems to the court that a corporation of a state, or a corporation of the United States, holding such close relations with the business and people of another state, may, within a reasonable interpretation of the act of 1887, be deemed an "inhabitant" of the latter state for all purposes of jurisdiction *in personam* by the courts held there; although a corporation is, and, while its corporate existence lasts, must remain, a "citizen" only of the state which gave it life.

It is ordered and adjudged that the pleas and motions to dismiss, so far as they question the jurisdiction of this court to proceed *in personam* against the several defendant corporations, as inhabitants of this district, within the meaning of the above act of congress, be, and the same are hereby, overruled.

**UNITED STATES v. CENTRAL PAC. R. CO. et al.**

(Circuit Court, N. D. California. February 14, 1892.)

**In Equity.** Suit by the United States against the Central Pacific Railroad Company, the Southern Pacific Company, and the Western Union Telegraph Company. Heard on pleas and motions to dismiss. Overruled.

*Atty. Gen. Miller and Charles H. Aldrich*, for the United States.

*Charles H. Tweed, J. Hubley Ashton, and Harvey S. Brown*, for the Central Pacific Railroad Company and the Southern Pacific Company.

*Wager Swayne and Bush Taggart*, for the Western Union Telegraph Company.

**HARLAN**, Circuit Justice. The questions presented in this case do not differ in any material respect from those disposed of in the case of *U. S. v. Railroad Co.*, 49 Fed. Rep. 297. For the reasons given in the opinion in that case, it is ordered and adjudged that the pleas and motions to dismiss, so far as they question the jurisdiction of this court to proceed *in personam* against the several defendant corporations, as inhabitants of this state and district, be, and the same are hereby, overruled.