



"Those who say it cannot be done should not interfere with those of us who are doing it"© - S. Hickman

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### CHAPTER XVIII

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#### The RISE OF RAILROAD AND CORPORATION LAW

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IT is a commonplace to remark that the effect of railroads upon the history of the United States has been profound. As Judge John F. Dillon has well said: "Marshall's judgments and our lines of railways and telegraph have done more than any other visible agencies in making and keeping us one united nation." It is, however, be. cause of the notably marked influence which railroads and the doctrines of law growing out of the problems presented by them, have had upon the development of the American Bar and upon the legal history of the country, that a separate chapter may properly be devoted to this distinctive feature of the middle of the Nineteenth Century. The years 1830 to 1860 witnessed the creation and practical establishment of the law of railroads.

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One other decision of the United States Supreme Court during this period had immense effect on the growth of modern corporate commerce.

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From 1809 to 1844, it had been held by that Court, ever since the decision of Chief Justice Marshall in *Bank of the United States v. Deveaux* (5 Cranch, 61), **that the Federal Courts had no jurisdiction on the ground of diverse citizenship**, in a case where a corporation was a party, unless all the individual stockholders of the corporation were citizens of a State other than that of the other party to the suit. **Such a doctrine of course greatly restricted the rights of a corporation to sue in a Federal Court, and made such suit almost impossible.**

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In 1844, however, in *Louisville R. R. v. Letson* (2 Howard, 497) Chief Justice Taney delivered an opinion, taking the broad ground that a corporation, **although an artificial person, was to be deemed an inhabitant of the State of its incorporation, and to be treated as a citizen of that State for purposes of suit.** Of this case, Judge Story, wrote to Ex-Chancellor Kent, August 31, 1844:

"I equally rejoice, that the Supreme Court has at last come to the conclusion, that a corporation is a citizen, **an artificial citizen, I agree, but still a citizen.** It gets rid of a great anomaly in our jurisprudence. This was always Judge Washington's opinion. I have held the same opinion for very many years, and Mr. Chief Justice Marshall had, before his death, arrived at the conclusion, **that our early decisions were wrong.**"

In 1853, in *Marshall v. Baltimore and Ohio R. R.* (16 Howard, 314) **it was held that there was a conclusive presumption of law that all the shareholders were citizens of the State of incorporation; and this was further strengthened by a decision in 1857, in *Covington Drawbridge Co. v. Shepherd* (20 Howard, 227) that parties were to be held estopped from denying such citizenship.(1)**

These decisions not only opened the door wide to interstate commerce by corporations, but they were of vast importance in breaking down the barriers sought to be erected by the political supporters of the narrow State Rights doctrines, **and in increasing the strength of**

**the Federal power.**

(1) For interesting articles on this subject see A legal Fiction with its Wings Clipped, by S.E. Baldwin, in Amer. Law Review, Vol XL! (1907). Abrogation of Fedral Jurisdiction, by Alfred Russell, Harv. Law Review, Vol VII (1892). Corporate Citizenship a Legal Fiction, by R.M. Benjamin, Albany Law Journal, Vol LXIX (1907)

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