Fraud in the Organization of Corporations under General Laws

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FRAUD IN THE ORGANIZATION OF CORPORATIONS

UNDER GENERAL LAWS

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In many cases which have arisen of late, dealing with the organization of corporations, it has been urged that although the incorporators fully complied with the letter of the incorporating statute they evaded the real spirit of the act. This question has been brought up most frequently in those two classes of corporations, commonly designated as "One Man Companies", and Tramp Corporations", and consequently they have been very largely responsible for this much talked of evasion of the spirit of the corporation laws. As these two classes offer the best examples of this so-called evasion, they will be taken as the basis of this thesis, and will be discussed in turn.
ONE MAN CORPORATIONS.

The growing tendency towards a corporate form of business in every branch of industry has been due primarily to the lightened individual risk upon those persons operating in this manner. The constant endeavor by all classes of concerns, both large and small, to avail themselves of this limited liability has given rise of late to a class of corporations commonly known as "One Man Companies". As was said by Lord Macnaghten, this is a taking nickname but quite misleading.

By a one man company is meant a corporation in which nearly all the stock of the concern is in the hands of one person, the other shareholders acting merely as dummies in order to comply with the statutory requirement as to the number of incorporators. Such a corporation, it has been urged, is a mere scheme to enable a single individual to
carry on business in the name of a corporation with limited liability contrary to the true intent and meaning of the statute.

That the motive of the incorporators in thus organizing a corporation is to enable a single individual to carry on business with limited liability, cannot be denied. Still a corporation is a distinct legal entity, complete and apart from its shareholders, and its validity is not subject to attack because of the motives of the parties in availing themselves of the corporation laws. If, therefore, the validity of a one man corporation which has complied with all the provisions of an incorporating act may be attacked, it must be shown that there was an intention on the part of the legislature to refuse the privileges of the statute to such a company. What the legislature intended can only be determined by the express words of the statute or by reasonable and necessary implication therefrom.
4.

Where, then, a statute provides that a certain number of persons may form a corporation, the only qualification for membership being the ownership of one share of stock, and the words of the act in no way limit the number of shares for which one person may subscribe, it is difficult to discover any intention on the part of the legislature, express or implied, to prevent a one man company from incorporating under the statute.

The question of the validity of a so-called one man company seems to have first been raised in the case of SALOMON V. SALOMON & CO., 1844 L.R.APPEL. CS. 22. In that case the appellant, Aaron Salomon, for some thirty years had carried on business, on his own account, as a leather merchant and wholesale boot manufacturer. The appellant decided to turn his business into a limited company. The respondent company was therefore formed with a capital of 40,000£, divided into 40,000 shares of 1£.
each, for the purpose of purchasing the appellant's business. The business had been a prosperous one, and was solvent at the time the company was formed. The subscribers to the memorandum of association were the appellant, his wife, and five children, each subscribing for one share, and all the terms of the sale being known to and approved by the shareholders. The appellant afterwards had 20,000 shares allotted to him for which he paid £ per share from the money he was to receive for the transfer of his business to the company. No shares other than the 20,000 were ever issued. In addition to the stock the appellant received in payment £10,000 in debentures. The appellant was appointed managing director of the company. Shortly after the company started there came a great depression in the boot and shoe business, and it became necessary to borrow money to carry on the business. Salomon had his debentures for £10,000 cancelled, and fresh
debentures to the same amount were issued to one Broderip with consent of Salomon as beneficial owner, to secure the repayment of a loan of 5000£ with interest at 8 per cent. Default being made in the payment of interest on his debentures, Broderip instituted an action (Reported as BRODERIP V. SALOMON & CO., 30 W.N.38) to enforce his security against the assets of the company.

A liquidation order being made and a liquidator appointed, it was found that after paying Broderip's debt with interest the assets of the company would amount to but £1,005.1. which was claimed by Salomon as the beneficial owner of the debentures. The liquidator lodged a defense in the name of the company, to the debenture suit in which he counterclaimed against Salomon and Broderip, but which counterclaim as amended asked a declaration that the company or its liquidator was entitled to be indemnified by A. Salomon against the whole of the company's unsecured
debts, namely, 7,733\textpounds and that A. Salomon was not entitled to make any claim against the assets until the 7,733\textpounds had been satisfied. Judge Vaughn Williams made an order for a declaration in the terms of the amended counterclaim without making any order on the original counterclaim.

Both parties appealed. The Court of Appeals held that the formation of the company was a mere scheme to enable A. Salomon to carry on business in the name of the company with limited liability contrary to the true intent of the Companies Act of 1862, and dismissed the appeal declining to make any order on the original counterclaim.

(Reported as \textit{Broderip v. Salomon}, 1895, 2 Ch 323.)

From this order the appellant appealed, and the company brought a cross appeal against so much of it as declined to make any order on the original counterclaim. Broderip having been paid dropped out. The House of Lords reversed the decision of the lower court holding that no
intention of the legislature prejudicial to the company could be read into the statute, and that being duly formed under the Companies Act, as soon as it was registered it became a corporate body capable of exercising all the functions of an incorporated company regardless of the fact that nearly all the stock was in the hands of one man and the company virtually under his control.

A distinction must be noticed between cases like Salomon vs. Salomon & Co. where the business purchased by the corporation is solvent at the time and where there is no intention to delay and hinder creditors, and those cases such as Kellogg v. Bank, 46 Pac. Rp. 587 and Folsom & Co. v. Detrick Fertilizer Co., 85 Md. 52, where an insolvent business is transferred to a one man corporation for the purpose of defrauding creditors.

In Kellogg v. Bank, where an insolvent merchant through the instrumentality of a corporation organized and
controlled by himself sought to delay and hinder creditors, the court said, "The incorporation seems to have been little but a paper scheme devised in his own interest. In such case the court was clearly warranted in closely scrutinizing the transaction, and declaring its real purpose, notwithstanding the elaborate fabrications of charters, by-laws, and paper transfers."

The decision reached in the case of Salomon vs. Salomon & Co. was of vital importance not only in determining the status of that large class of similar corporations, but also because the doctrine there laid down might readily be extended to the analogous cases of incorporated partnerships. Suppose for instance that a partnership composed of seven persons becomes incorporated, each partner receiving an amount of stock proportionate to his interest in the original firm. As the corporation is composed entirely of the original partners, the business goes on exactly as before, all the profits going to the same persons
and in the same proportions as previously. The only difference is that the individual liability of the members of the company is no longer unlimited. Had it been held that one man companies were contrary to the true intent and meaning of the statute and therefore evasions of the law, the similar attempts of partnerships to operate with limited liability must likewise have been held to be frauds and evasions of the law.

Salomon v. Salomon & Co. seems to be the only case in which a court has passed upon the question there decided, either in England or America. In all probability the doctrine of that case would be followed if the question should come before our courts. These one man companies are constantly being formed in this country, and have frequently been before our courts, but their validity never seems to have been challenged.

The cases of McElroy v. Minn. Percheron Horse Co.,
II.

71 N.W.652, and Stokes v. New Jersey Pottery Co., 46 N.J.L. 237, are examples of a large group of one man companies that have been organized in the different states.

In MCElroy v. The Horse Co., the defendant corporation was organized by one Paine, five of his relatives, and one of his employes, the statute of Wisconsin requiring seven persons to form a corporation. Paine owned 994 shares of stock and the other incorporators but one share each.

In Stokes v. N.J. Pottery Co., the defendant company was incorporated by one Cook and two relatives, the statute of N.J. requiring but three incorporators. Cook owned the entire capital stock except two shares held by the other incorporators.

In both of these cases, while deciding other points, the court recognized the validity of the corporation although formed by just enough men to comply with the statute
and though under the control of one man.

An argument frequently raised against one man companies is that they are a fraud upon creditors. Creditors may always consult the stock register of the company to determine who are shareholders and the amount of their holdings. In dealing with an individual, creditors make inquiry into the state of his circumstances, and so if they deal with a corporation it is their own fault if they do not inquire into the nature of the articles of incorporation and look through the register of stockholders. If strangers, no misrepresentations being made, choose to deal with a company without inquiry, they have no right to complain when it turns out that the shareholders are under no personal liability, or that practically all the stock is in the hands of one person.

There is a difference between an attempt to create one person a corporation under a statute, and the purchase in good
faith of all the stock by one person after the corporation has been created. The decisions are in harmony in holding that the concentration of the stock of a corporation in the hands of a single owner does not destroy the corporate franchises nor work a dissolution of the corporation.


*Louisville Banking Co v. Eisenman 94 Ky.83.*

Though there is in no state a statute authorizing a single individual to form himself into a corporate body and thus change his status and liabilities in business transactions, the legislature may if, it sees fit, and there are no constitutional restrictions, grant a charter as a private business corporation to one man alone and leave it optional with him whether he will associate other persons with him or have succession without so doing.
Penobscot Boom Corporation v. Lamson 16 Me., 22.

Day v. Stetson, 8 Greenleaf (Me) 365.

In England $1,000,000,000$ are invested in corporations, while it has been estimated that the wealth held by corporations in the United States equals in value four-fifths of the entire property of the country. Even if it were admitted that one man companies are contrary to the true intention of the incorporating statutes, there is a question whether, with such a vast amount of capital invested in corporations, it would be good public policy for the legislature to endeavor to defeat such concerns when thereby they would curtail the facilities for the formation of corporations and embarrass their administration.
It has been said that, "As water naturally flows down hill so capital flows to points where the greatest returns may be secured, and where the corporation laws under which it may act are most favorable to it." Where, therefore, a state is unduly hostile or exacting in its requirements from corporations, it is avoided by business enterprises, and charters are taken out in those states in which the lightest liability is placed upon the stockholders and the lightest taxation upon the corporation. New Jersey and West Virginia are examples of these states which hold out special attractions for the organization of corporations, their laws apparently being framed for the special purpose of allowing corporations of their creation to do business elsewhere. As many of these corporations have no
domicile or fixed place of business in the state where they are created, they have been dubbed "tramp corporations" by those who urge that this form of organization is an evasion and fraud on the law.

In considering this subject it will be necessary to look at,

(I) The right of a corporation to do business outside the state of its creation.

(2) The right of a corporation to do ALL its business outside the state of its creation, where the incorporators are citizens of the state of incorporation.

(3) The right of a corporation to do ALL its business outside the state of its creation, where the incorporators are not citizens of the state of incorporation, but of the state where the business is to be carried on.

I. It is a well settled principle that the laws
of a state can have no binding force outside the territorial limits and jurisdiction of the state enacting them.

As a corporation is a creature of the laws of the state creating it, it cannot migrate into another state and exercise its franchises there without the consent of the legislature of that other state, express or implied.

While a state has the power to exclude foreign corporations from its territory, no such intention will be implied.

On the other hand, by virtue of the comity which obtains between sovereign states, foreign corporations are permitted to exercise their powers within a state, unless such exercise of powers is prohibited by positive law, or is contrary to the public policy of the state, or prejudicial to its interests.

In the case of BANK OF AUGUSTA V. EARLE, 13 PET. 592, Mr. Chief Justice Taney delivering the opinion of the court said, "We think it well settled, that by the law of comity
among nations, a corporation created by one sovereignty is permitted to make contracts in another, and to sue in its courts; and that the same law of comity prevails among the several sovereignties of this Union. The public and well known, and long continued usages of trade; the general acquiescence of the states; the particular legislation of some of them, as well as the legislation of Congress; all concur in proving the truth of this proposition."

And again in CHRISTIAN UNION V. YOUNT, 101 U.S., 356, it was said by Mr. Justice Harlan that, "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 laws 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."

From these decisions, and many others which might be cited, it appears to be well settled that a corporation created in one state may carry on business in another state, provided it is not prohibited from so doing by the latter state, and provided it acts within the scope of the powers granted by its charter,

II. When it is said that a corporation may engage in business beyond the borders of the state of its creation, the question at once suggests itself is there any limit to the extent to which such a business may be carried on outside the state? The courts have not, as a general rule, attempted to fix any such limitation; and there would seem to be no good reason why if a corporation may carry on the greater part of its operations in a sister state,
it may not so conduct its entire business.

In referring to a corporation as carrying on all its business outside the state, only such business is meant as is usually done by the directors or other agents of the concern, and not that business of a corporate nature which must be done by the incorporators, such as the election of officers etc. Unless otherwise provided in the corporation's charter, acts of this corporate character are always required to be performed within the state of incorporation.

Where a corporation is given power by its charter to engage in commercial enterprises outside the state, no prohibition is implied on the right to transact a similar business within the state. If a state refuses to recognize a corporation of its own creation, no rule of comity requires other states to recognize it. This proposition is well illustrated in the case of LAND GRANT CO. V. COM'RS OF
COFFEY COUNTY, 6 KAN., 245, where the state of Pennsylvania empowered the corporation to do business anywhere except in Pennsylvania. In refusing to recognize the corporation the court said, "At the very creation of this supposed corporation its creator spurned it from the land of its birth, as illegitimate and unworthy of a home among its kindred, and sent forth a wanderer on foreign soil. No rule of comity will allow one state to spawn corporations and send them forth into other states to be nurtured, and to do business there, when said first mentioned state will not allow them to do business within its own boundaries."

If, however, a corporation organized to do business outside the state is not restricted from engaging in a similar business at home, if it sees fit, the weight of authority seems to be that it may carry on all its business outside the state of its creation.

The leading case in New York on this point is
MERRICK V. VAN SANTVOORD, 34 N.Y. 208. A corporation was formed in Connecticut by citizens of that state for the purpose of carrying on the business of navigation wholly in New York. In this action brought in New York it was sought to hold the defendant, a member of this corporation, liable as a partner. In delivering the opinion of the court, Judge Porter said, "No law of New York has imposed such liability on the members of foreign corporations, as a condition to the exercise here of rights derived from other governments, and recognized by the rules of general comity.

The theory on which the Supreme Court held the defendant, Van Santvoord, liable was, that he was a member of an absconding corporation; that it had migrated from Connecticut to New York; and that by such migration it had lost its corporate character. In these views we do not concur. A corporation's domicile is the legal juris-
diction of its origin, irrespective of the residence of its officers or the place where its business is transacted. It retains that domicile until it ceases to exist; and its existence continues within the limits assigned for its duration, so long as it complies with the requirements of its charter and with the conditions imposed by the state laws, maintains its corporate succession by elections in the proper jurisdiction, and continues to exercise its franchises under a grant which has neither been impeached or revoked."

The first of a line of Ohio cases laying down a doctrine similar to that of the New York case just cited was HANNA V. INTERNATIONAL PETROLEUM CO., 23 OHIO-ST. 622. The court said in that case speaking of the defendant company, a corporation organized in Pennsylvania by citizens of that state with power to carry on business within or without the state, but which had done all its business in
Ohio, merely maintaining its organization in Pennsylvania,

"The question is simply, whether a corporation authorized by its charter to do business both at home and abroad, and which, after due organization at home commences its foreign business first, has a legal existence as a corporation. We answer that it has. The life of a corporation dates from its organization, and not from the time it begins to do business; and the insertion in its charter of a power to act outside the state of its creation does not invalidate the charter. The company was a legal corporation in Pennsylvania as soon as organized there, and without commencing business there."

In the later case of NEWBURG PETROLEUM CO. v WEARE, 27 OHIO ST. 343, the court said in discussing whether a corporation formed under the laws of New York by citizens of New York and carrying on its business in Ohio was a fraud on the laws of Ohio, "The plaintiff by virtue of
organization in due manner had an actual existence in New York so soon as it was duly organized and a permissive existence in Ohio so soon as it commenced business in Ohio. When Ohio interposes by legislation to prohibit the introduction of this kind of labor and capital into the state, it will be time enough to declare the organization of such companies as the plaintiff a fraud upon our laws and our public policy."

The question again arose in BANK V. LOVEL: 2 CIN. (OHIO) 397. A corporation was organized in Kentucky to do business in Ohio. The plaintiff claimed the corporation ought not to be recognized as it was a fraud upon the laws of Ohio. The Court held that, "If a company keeps an office in the state creating it, and MAY do business there, though very little as compared with the business expected to be done in Ohio, such a body, we think, should be recognized in Ohio as a corporation
of the state creating it. "

In BANK v. HALL, 35 OHIO ST. 158, where a corporation was organized in Kentucky to carry on a coal business in Ohio, it was said by the Court that the right of such a corporation to do business in Ohio had been repeatedly recognized and was well settled.

The Supreme Court of Texas passed upon this question in FRANCO-TEXAN LAND CO v. LAIGLE, 59 TEXAS 339, where a corporation was formed in Texas with power to carry on all its business in New York City and Paris, France. It was said by the court that, "A private corporation whose charter has been granted by one state cannot hold meetings or pass votes, or have any legal existence in another state. It must dwell in the place of its creation and cannot migrate to another sovereignty. This prohibition as to the performance of acts, outside of the state where chartered, refers to acts of a strictly corporate character, such as
must be discharged by the corporators themselves, such as
the original organization, the election of directors etc.
The better opinion is that the mere transaction of such
business as is usually done by the directors or other agents
of the body may be done as well without the state as within it.

In RIO GRANDE CATTLE CO. v. BURNS, 82 TEXAS 50, citi-
zens of Texas organized a corporation in Texas to deal in
cattle in the Republic of Mexico. The Court held that as
the corporate business was transacted in Texas, and the meet-
ings of the corporation were held there, any other business
might be transacted wholly without the state.

This question has several times come before the
Federal Courts. In COWELL v. SPRING CO., 100 U.S. 55, a
corporation was formed in Pennsylvania to deal in land
"in the states and territories west of the Mississippi
River". The court said in deciding that a corporation
could thus carry on all its business outside the state of
incorporation, "By the general comity which, in the absence of positive directions to the contrary, obtains through the states and territories of the United States, corporations created in one state or territory are permitted to carry on any lawful business in another state or territory. If the policy of the state or territory does not permit the business of the foreign corporation within its limits, it must be expressed in some affirmative way."

IN NEW HAMPSHIRE LAND CO. V. TILTON: 19 FED. REPS. 73, the plaintiff was a corporation organized under the general laws of Connecticut for the purpose of dealing in land. It carried on its entire business in New Hampshire. It was held by the court that the plaintiff corporation had the authority to hold and deal in lands in New Hampshire even though it did no business in the state where it was organized.
IN PENNSYLVANIA V. SLOAN, I BRADW. (ILL) 364,
it was said that a corporation of one state "lawfully
may, as they often actually do, remove their officers and
effects into another sovereignty, and there exercise their
functions and franchises." 

Corporations doing all their business outside the
state of their creation have also been recognized and their
legal,

admitted

legality in, MINN. GAS LIGHT CO. V. DENNSOW, 46 MINN.171,
SALTMARSH V. SPALDING, I47 MASS., 324, and WRIGHT V. LEE
2 S.D., 596.

The cases of EMPIRE MILLS V. ALSTON GROCERY CO.,
I5 S.W.RP. 505, and CARROLL V. ST. LOUIS, 67 ILL, 568, are
very frequently cited in opposition to the doctrine as
laid down in the preceding cases. In each of these
cases foreign corporations sought to carry on forms of
business contrary to the policy of the domestic states,
as shown by express legislation, and the courts of the domestic states refused to recognize the corporations. These cases seem to be clearly distinguishable from those previously cited. Where, as here, foreign corporations are in opposition to the public policy of a state, affirmatively expressed, and prejudicial to its interests, the rules of comity place no obligations upon the domestic state to recognize the corporations.

III. We have thus far seen that by the rules of comity the business of a corporation may be extended beyond the boundaries of the incorporating state, and that, by the great weight of authority, a corporation organized by citizens of the state of incorporation may engage in business wholly without the state. The veritable "tramp corporation", and the one most vigorously attacked as a fraud upon the law, that is, the company formed by citizens
of one state under the laws of another state to do business
in the former state, is yet to be considered.

Though persistently urged, there appears to be no
solid ground for making a distinction merely because
the incorporators of a foreign corporation are citizens
of the domestic state. As was said by Judge Peckham
in DEMAREST V. FLACK 128 N.Y. 235, "It seems to me that
every reason which urges upon us the recognition of foreign
corporations organized with the power to do business, and
composed of citizens of the foreign state, is equally po-
tent when the foreign corporation is composed of our own
citizens. It has always been supposed that a state should
at least deal as liberally with its own citizens as with
those of foreign states. If, therefore, we permit for-
gn citizens to come within our limits in the form of a
foreign corporation organized with power to do business
here and recognized by us, why should we not permit our
own citizens to avail themselves of the like privilege?

If we impose terms and conditions upon foreign corporations, as such, doing business here, those same terms and conditions still and equally apply to a foreign corporation when composed of our citizens. Why should they not be placed at least upon an equality with the foreign citizens?"

In the case of DEMAREST V. FLACK, just cited, citizens of New York incorporated a company in West Virginia to operate toboggan slides in New York. The plaintiff was injured on one of these slides and seeks to hold the defendant, a member of the corporation, individually liable as a partner, claiming that this method of incorporation was merely "an evasion of and fraud upon the law."

The court said, "There was no fraud or evasion of the laws of West Virginia in thus becoming incorporated. The formation of corporations thus composed and for the purpose of doing their principal business outside the
limits of that state was contemplated in those laws.

Where a corporation formed under another jurisdiction comes here to do business of a kind which we permit to be done by corporations, and where our laws provide for incorporating individuals for the purpose of doing that business, it is difficult to see how the terms 'evasion' and 'fraud' can be properly applied to acts of our citizens whereby they obtain incorporation in another state."

A similar doctrine was laid down in the subsequent case of LANCASTER v. AMSTERDAM IMPROVEMENT CO., 140 N.Y. 576. The defendant corporation was organized in New Jersey by citizens of New York for the purpose of dealing in real estate in New York. The Court of Appeals, Judge Gray writing the opinion, said, "If our citizens are attracted to other jurisdictions for the purpose of incorporation because of more favorable corporation or taxation laws, I cannot see in that fact that they should
be prevented from employing here the corporate capital in the various channels of trade or manufacture. What legal difference is there, which the state can recognize, if all the incorporators happen to be residents of this state? The corporation is, nevertheless, a legal entity, endowed by a sister state with capacities and powers and seeks our state as the field of its activity in the conduct of its business enterprises."

Although numerous enterprises are constantly acquiring their corporate character from states in which they do not expect to engage in business, and in which none of the incorporators reside, the validity of such corporations has come before the courts on but few occasions.

The question came up in the Federal Courts in the case of THE MOXIE NERVE FOOD CO. v. BAUMBACH, 32 FED. REP. 205.

The plaintiff company was incorporated in Maine by citizens
of Massachusetts to do business in Massachusetts. The court held that the plaintiff company could thus engage in business as it was valid in its creation, and was not operating in Massachusetts contrary to any law of that state.

A similar case came before the Supreme Court of Rhode Island in OAKDALE MFG. CO V. GARST, 18 R.I. 484. Citizens of Rhode Island obtained articles of incorporation in Kentucky to carry on business in Rhode Island. The court said, "While the fact that citizens of Rhode Island go to Kentucky for an act of incorporation is one that naturally excites curiosity, if not suspicion, as to the motives and good faith of the concern, we do not see how we can refuse to recognize it. True the advantages of yearly statements and liability of stockholders, given to creditors under our statute are wanting; but that is a matter for those who deal with the corporation to consider.
We can hardly deny the right of a foreign corporation to do business in this state, when our own statute provides for corporations formed in this state to carry on business out of the state."

The leading case in opposition is HILL v. BEACH, 12 N.J.E.31. Here a corporation validly incorporated in New York was refused recognition by the New Jersey Court on the ground that, "They were not a foreign corporation, for it is perfectly manifest that the organization in New York was a fraud upon the laws of that state." This decision can hardly be reconciled with the generally established doctrine of comity in recognizing foreign corporations, unless something more is shown than the mere fact of incorporation in New York to do business outside the state. The New Jersey Court cannot question the existence of a corporation validly incorporated in New York.

This case was decided in 1860 and is hardly in line with
New Jersey's present liberal ideas on incorporation.

Another case often cited as opposed to the doctrine is MONTGOMERY V. FORBES, 148 MASS. 249. In that case a citizen of Massachusetts attempted to organize a corporation in New Hampshire to do business in Massachusetts. The Massachusetts court refused to recognize the corporation, but solely on the ground that the laws of New Hampshire had never been complied with, and that no corporation had ever come into existence. There was no tribunal in New Hampshire to pass upon the validity of this corporation. If the question ever arose it had to be decided by comparing the incorporation papers with the statute. This the court did and decided that the defendant did not comply with the New Hampshire statute, and that no corporation had ever been formed.

In the cases we have considered the party attacking the tramp corporation has almost invariably designated it
as a "fraud upon the law". By a fraud upon the law is evidently meant a fraud upon the state, referring either to the incorporating state or to the state where the corporation is to carry on business. It will be necessary, therefore, to consider whether such a form of a corporation is a fraud either (a) upon the state of incorporation or (b) upon the state where the business is to be carried on.

(a) The statute frequently provides that a certain number of the incorporators must be residents of the state of incorporation. But where there is no such requirement, the tendency has been throughout all the states to construe the statute as meaning that any persons may obtain incorporation regardless of the place of their residence, or of where the business is to be carried on. Under this construction there is no wrongful use of the statutory privilege, and consequently no fraud upon the incorporating
(b) As incorporation in one state gives no rights outside that state, it is evident that there is no fraud upon the laws of a sister state. It is for this latter state to say whether the corporation shall be admitted, and if so upon what terms. It is this right of a domestic state to regulate foreign corporations by imposing limitations and restrictions upon them, that has rendered harmless those evils that would otherwise result if a foreign corporation could make a domestic state the principal centre of its business operations without being subjected to control from that state.

Thus we see that the whole subject of tramp corporations resolves itself into a question of comity. Whatever the right of the corporation at home may be, the question as to whether it may venture beyond the borders of the state of its creation for the purpose of carrying on
business is one of comity to be determined by the policy
of the state where it seeks to do business.

It is therefore submitted that a foreign corporation may carry on its business entirely or in part without
the state of its incorporation, unless such business is
contrary to the policy of the domestic state affirmatively
expressed; that it is immaterial whether the incorporators
of the foreign corporation are citizens of the foreign state
or the domestic state; and that the so-called tramp corpor-
ations are neither a fraud on or evasion of the laws
of the domestic or foreign state.