

v. *Leonard*, 118 Mass. 502, and many more cases. The fiction that a day has no parts is a figurative recognition of the fact that people do not trouble themselves without reason about a nicer division of time.

Judgment reversed.

RAILWAY EXPRESS AGENCY, INCORPORATED,
v. VIRGINIA.

APPEAL FROM THE SUPREME COURT OF APPEALS OF VIRGINIA.

No. 55. Argued January 19, 1931.—Decided February 2, 1931.

A Delaware corporation, which acquired and conducted, as agent of the railroads, the interstate and intrastate railway express business throughout the country, was created after a provision of the Virginia constitution became effective, forbidding any foreign corporation to carry on the business of a public service company, intrastate, and was therefore denied a certificate of authority.
Held:

1. That the prohibition was not shown to be void as a burden on interstate commerce.

2. That it did not, in violation of the Fourteenth Amendment, deprive the foreign corporation of its right to sue in the federal courts and to remove suits to them on the ground of diversity of citizenship. P. 444.

153 Va. 498, affirmed.

APPEAL from a judgment confirming an order of a state corporation commission denying to a foreign corporation a certificate of authority to do an intrastate business.

Mr. Albert M. Hartung, with whom *Messrs. Wyndham R. Meredith* and *Harry S. Marx* were on the brief, for appellant.

The power of a State to exclude a foreign corporation doing an interstate business is not absolute; it is relative. *Western Union v. Kansas*, 216 U. S. 1, 33, 34; *Pullman Co. v. Kansas*, 216 U. S. 56, 68-70.

Appellant comes directly within the rule laid down in those cases. It is not seeking to transact a new business but has succeeded to one which has been carried on for upwards of fifty years producing large receipts from all the United States, including the State of Virginia—both interstate and intrastate business. Interstate and intrastate shipments are handled by the one organization, with the same personnel, and with one system of supervision, overhead and accounting. Cf. *Western Union v. Kansas*, 216 U. S. 1, 37. The business is necessarily conducted as an entity.

The effect of the decision below would be to deprive the appellant and the public of the benefits of this arrangement and bring about a method of operation wholly impractical and utterly inconvenient.

If the appellant and a Virginia corporation should unite in handling the business by joint equipment, there would be necessary the segregation of the expense of the state and interstate business. This is always difficult and expensive, and, generally impossible of accurate accomplishment. There would be such commingling of state and interstate business that it would be extremely difficult, if not impossible, to determine with respect to some transactions whether the federal or the state laws governed, and whether the federal or the state courts would have jurisdiction. The effect of the Virginia constitutional provision would be substantially to burden interstate commerce, and, therefore, it is void, although the state may not have intended to enact an invalid law. *Ludwig v. Western Union*, 216 U. S. 146, 162; *Pullman Co. v. Kansas*, 216 U. S. 56, 68.

Nor does the suggestion that the appellant organize a subsidiary corporation, and if it so desire then merge with such corporation, lessen or remove the burden upon interstate commerce. The corporation then would be a domestic corporation of the States of Delaware and Virginia,

and be subject to the laws of those States applicable to corporations organized therein. Distinguishing: *Hemp-hill v. Orloff*, 277 U. S. 537; *Pembina Mining Co. v. Pennsylvania*, 125 U. S. 181; *Ashley v. Ryan*, 153 U. S. 436.

The express service is an integral part of the railroad business; the railroad companies are required to furnish that service directly or through an agent. *Express Cases*, 117 U. S. 1. They have chosen to do so through the agency of appellant, with the approval of the Interstate Commerce Commission, which specifically held the acquisition of the control of the appellant to be in the public interest, and that the proposed grouping of carriers and division of earnings provided in the operating contract will be in the interest of better service to the public and economy in operation. The requirement of the Virginia constitution would defeat that purpose and impose an undue burden on a corporation engaged in interstate commerce as the price for handling the intrastate business incidental thereto. *Houston & Texas Ry. v. United States*, 234 U. S. 343.

The business of the appellant is so intermingled that the supreme authority, the Nation, cannot exercise effective control over the interstate commerce without incidental regulation of the intrastate commerce. *Wisconsin Railroad Comm. v. Chicago, B. & Q. R. Co.*, 257 U. S. 588; *Dayton-Goose Creek Ry. v. United States*, 263 U. S. 456, 485; *Western Union v. Kansas*, 216 U. S. 1, 37, 38.

Compliance with the requirement by incorporation of a separate corporation in Virginia, either with or without subsequent merger with the Delaware corporation, necessarily will add to the expense of conducting the interstate business, and, therefore, places an undue burden on interstate commerce. *Colorado v. United States*, 271 U. S. 153.

The decision denies the equal protection of the laws in depriving appellant of its right to institute suits in the federal courts and to remove suits from the state to the federal courts on the ground of diversity of citizenship, and by classification without reasonable basis.

Mr. Collins Denny, Jr., Assistant Attorney General of Virginia, with whom *Messrs. John R. Saunders*, Attorney General, and *Edwin H. Gibson*, Assistant Attorney General, were on the brief, for appellee.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an appeal from a judgment of the Supreme Court of Appeals of Virginia affirming an order of the Corporation Commission that denied to the appellant a certificate of authority to do an intrastate express business in Virginia. 153 Va. 498. The appellant was incorporated in Delaware, in December, 1928, and was given by its charter not only power to engage in international, interstate and intrastate express business, but other most extensive ones to own personal and real property and to engage in other collateral undertakings. Its stock was to be owned by railroad corporations. It has bought the business and assumed the liabilities of the American Railway Express Company, and is an agency of railroads throughout the United States. The appellant's right to do interstate business is not questioned, but it was held by the Supreme Court of Appeals that being a foreign corporation created since the Constitution of the State went into effect in 1902, it was prohibited by that instrument from doing intrastate express business by the plain words of section one hundred and sixty-three. The appellant says that so construed the prohibition is a direct burden upon the interstate commerce which is its principal business, and therefore is void. It also invokes the Fourteenth Amendment for some help.

There is not here, as there was in *Western Union Telegraph Co. v. Kansas*, 216 U. S. 1, and *Pullman Co. v. Kansas*, 216 U. S. 56, a deliberate attempt to use the State's powers as the means for attaining the unconstitutional result of taxing property outside the State. *Western Union Telegraph Co. v. Foster*, 247 U. S. 105, 114. Virginia is not attempting to go beyond its power by indirection or to take anything from anybody. It simply is refusing to grant a foreign corporation a permit to transact local business without taking out a charter from the jurisdiction within which that business must be done. There is no substantial evidence that the refusal would impose a burden on interstate commerce and it is presumed to be constitutional. *O'Gorman & Young, Inc. v. Hartford Fire Insurance Co.*, ante, p. 251. We may add that as suggested by the State Court the difficulties created by the Constitution of Virginia probably will not prove hard to overcome when it is found that they must be met.

The objection based on the Fourteenth Amendment is that the requirement of the Virginia Constitution deprives the appellant of its right to sue in the federal courts and to remove suits to them on the ground of diversity of citizenship. This plainly is inaccurate. The appellant is not deprived of any rights. It can do all that it ever could. If it sees fit to acquire a new personality under the laws of Virginia it cannot complain that the new person has not the same rights as itself. Of course there can be no suggestion here that the clause in the State Constitution was adopted for a sinister end. And, unless it was, the inability of the new State corporation to do all that the appellant could have done is only the legitimate incident of a legitimate act.

Judgment affirmed.