Covenants—Measure of Damages (Morgan Lake Co. v. N.Y., N.H. & H.R. Co., 262 N.Y. 234 (1933))

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requiring it to take out a license,2 yet in the former case there must
be dealings of such a nature as to show an intention of the corpora-
tion to subject itself to the local jurisdiction.3 There is no precise
test of the nature or extent of business that must be done.4 The
facts of each case are controlling.5 Plaintiff here is not amenable
to suit merely because it was selling goods through a subsidiary, nor
is the degree of control of the selling agent important.6 The pres-
ence of the president of the corporation, under the circumstances of
this case, certainly does not bring the corporation under the head of
doing business. A single act by an agent or officer of the corporation,
even if in the course of regular business, does not constitute the
corporation as doing business in the foreign state.7 How much less
would the mere act of entry by the president for the purpose of con-
ferring on litigation show an intention of the corporation to subject
itself to the local jurisdiction?8

J. R. O'D.

Covenants—Measure of Damages.—The Central New Eng-
land Railroad Co., by a covenant in a deed of land, agreed to pay for
all damages caused by sparks, ashes, cinders or coal dust, to ice on a
lake beyond fifty feet on each side of its right of way. This railroad
was later merged with the defendant. Plaintiff seeks damages for
injury to the ice on his property caused by the smoke and the cinders

4 Supra note 2.
5 Supra note 3.
from the defendant’s locomotives during the years 1908 to 1928. 

Held, the covenant was in the nature of party walls and border fences. The evidence of sales price of the damaged ice without showing the reasonable market value thereof is insufficient to warrant recovery for breach of covenant to pay for the damage to ice. Morgan Lake Co. v. N. Y., N. H. & H. R. Co., 262 N. Y. 234, 186 N. E. 685 (1933).

Although deeds contain a provision to the effect that covenants run with the land, such provision in the absence of other legal requirements is insufficient to accomplish such a purpose. But where it is in the nature of a covenant not to injure property, expressed in an affirmative way, by agreeing to repair the injury, or make good the loss by payment of damages, it is a lien upon the property before other incumbrances. Such a covenant by express words attaches to and runs with the land. When a corporation absorbs another, by act of merger and by virtue of such merger it becomes vested with all property and rights of such company. It is also bound by all the obligations of the said company. The possessor corporation assumes the liabilities of the merged corporation in the same manner as if it had itself incurred such liabilities. Actual damages are proved by showing the difference between the value of the article sold, if the same was a good article, and the actual amount received for the article as sold. This represents the actual loss and no more can be recovered. Liability is based upon the actual market value of the damaged goods, and in ascertaining the amount of damages the evidence should be confined to the actual market value of the article sold at the time and place of delivery, nor is the price for which the article sold admissible in the seller’s favor as evidence of its market value.

J. I. G.

4 N. Y. Stock Corp. Law (1923) §85.
5 Ibid.
6 Ibid.
7 Jones v. Morgan, 90 N. Y. 4 (1882).
8 Ibid.
9 Instant case.
10 Instant case.
12 Dana v. Fiedler, 12 N. Y. 40 (1854); Parsons v. Sutton, 66 N. Y. 92 (1876).
13 Williams v. Fitch, 18 N. Y. 546 (1859); Flannigan v. Madden, 81 N. Y. 623 (1880); Matter of Smith, 95 N. Y. 516 (1884); People ex rel. McCarthy v. Mayor, etc., 102 N. Y. 630, 8 N. E. 85 (1886); Latimer v. Burrow, 163 N. Y. 7, 57 N. E. 95 (1900).