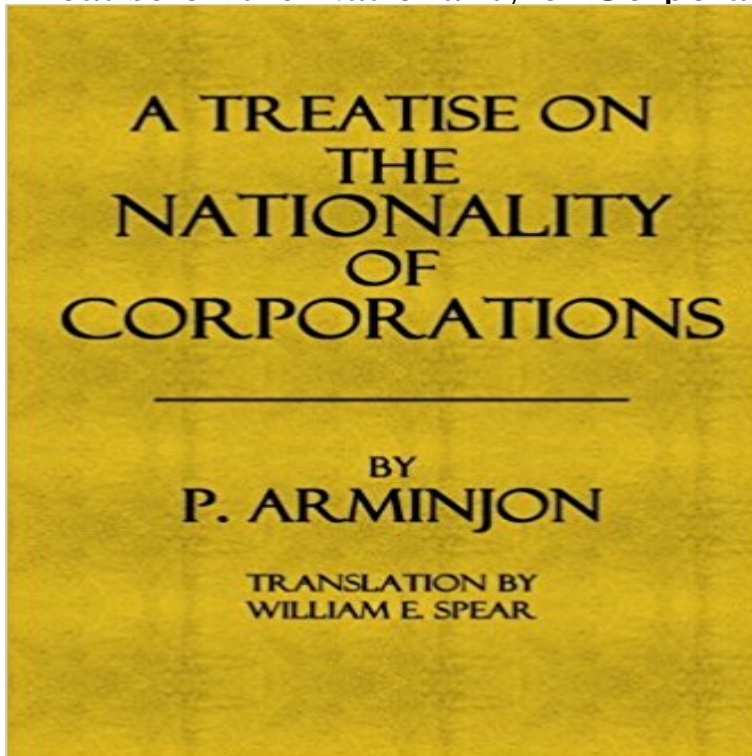


Treatise on the Nationality of Corporations



An excerpt from the beginning: CAN one, except figuratively and for the convenience of language, speak of the nationality of a corporation, an association, or an endowment? Nationality is a voluntary judicial relation; it implies essentially the consciousness of belonging to a collection and of being submitted to the authority that directs it, it imposes obligations, fidelity, devotion, sacrifice, which have for counterpart rights participation in the sovereignty within the limits of the territory, protection beyond its frontiers; both can have for subjects only individuals. M. Laurent puts this idea of the question in his usual clear way: Have fictitious beings a country, a nationality, and, consequently, the thousand and one physical, moral, intellectual circumstances which constitute a nation; do they exercise an influence upon fictitious persons as upon real persons? The question is nonsensical. As Procureur-General Leclerc has very well said, whatever effort of the imagination may be made, it cannot be said that a fictitious being is French, English, German, or Belgian. To attribute subjection to judicial persons, says also M. de Bar, is a nonsense of a kind to create confusion. A nationality in the technical sense of the word cannot be conceded to them, but only a domicile. It might as correctly be spoken of the nationality of all the generative facts of law, such as a will executed in a certain country or a sale concluded in substance and form according to the terms of a certain law. Once completed, have not these acts everywhere themselves, conformably to the law that governs them, a value of their own, a kind of existence independent of the testator or the contracting parties in a word, a nationality? Without doubt, it is often important to determine the law by which a certain corporation is governed, the jurisdiction that takes cognizance of it, the taxes levied upon it. It will then be dealt with from

these different points of view as domestic or foreign, but it must be well understood that these are simply modes of speech. The words nationality, personal statute of an association, of a corporation, or of an endowment designate simply the law by whose terms are governed in principle the formation, the consequences, the dissolution of these artificial persons. It would be better to reserve these expressions for real persons; at least it would be fitting to apply them to things or rights only with circumspection, brevitatis causa, without taking them literally and only to avoid circumlocution. These objections are not destitute of a certain propriety. From all points of view, beginning by that which occupies us, it is necessary to beware of completely assimilating artificial persons and physical persons. At least the nationality of some is not established as that of others and produces results that are not identical. Is it to be said that current language is wrong in using the same expression in the two cases, and must it be reprov'd for confounding one word with another? This would be a purism as rigid as inconvenient. Happily, whatever M. de Bar may say of it, judicial science has no such exigencies. The definition that it gives of nationality proves that the essential conditions of this notion are realized by the association, the corporation, or the endowment as by the individual.

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