In the case under discussion the whole decision hangs on the construction of the word *all*. The majority in their opinion contend that since there is a grant to remove *all* the coal, there is an implied grant to take away the support of the surface, because the destruction of the surface is the natural and inevitable result of such removal from under the surface; contracts of this nature, it is said, should be construed according to their natural and literal meaning without any preconceived assumption of an intention that the right of support should not be disturbed.

This view seems to us to be founded on sound reason although opposed to what has hitherto been a settled rule of law. If the surface owner has agreed to the act, anticipated the injury and received compensation therefor it is not just that, by invoking the aid of an implied assumption in his favor, or the principle of *sic utere tuo ut alienum non laedas,* he should be able to recover a second compensation. His injury is rather *damnum absque injuria.*

THE RIGHT OF A STATE TO CANCEL THE LICENSE OF A FOREIGN CORPORATION, FOR REMOVING SUITS TO A FEDERAL COURT.

It is a well accepted principle that a state may allow a foreign corporation to transact business within its limits subject to any restriction not repugnant to the Federal Constitution.

Whether a state has the right to provide that if a foreign insurance company shall remove a case to the Federal Court which has been commenced in a state court, the license of such company shall be thereupon revoked, was decided affirmatively on May 14th, 1906, by the U. S. Supreme Court, Justices Harlan and Day *dissenting.*

Two cases, *The Security Ins. Co.* and *Traveler's Ins. Co. v. Henry E. Prewitt,* insurance commissioner of Kentucky, were tried together on appeal from the Kntucky Court of Appeals. The former was brought in a lower court to avoid the effect of a revocation of a permit to do business in the state of Kentucky and the latter to enjoin the cancellation of the permit.

In 1874 in the case of *Home Ins. Co. v. Morse,* 87 U. S. 445, it was decided that a statute of the state of Wisconsin requiring a foreign insurance company to agree not to remove any suit for trial into the United States Circuit Courts or Federal Courts was unconstitutional and the agreement void as ousting the jurisdiction given them by the Federal Constitution and statutes of the United States. The point on which this decision turned was that the agreement was exacted as a *condition precedent* to the granting of the license by the state. In a later case, *Doyle v. Continental Ins. Co.,* 94 U. S. 535,

the same view was taken, but as another portion of the same statute was under consideration it was held that the state had the right to revoke the license *after* the company had made the transfer of the suit to the Federal Courts. The distinction to be noted here is between the *condition precedent* held to be unconstitutional and void in the first case and the *right of revocation* which was sustained in the latter case.

Barron v. Burnside, 121 U. S. 186, held an Iowa statute unconstitutional as to a section providing for an agreement not to remove a suit to the Federal Court. Under the particular section an officer of the corporation was arrested for not complying with the statute and, though the highest court of Iowa refused to release him under a writ of *habeas corpus,* its decision was reversed by the U. S. Supreme Court. It is worthy of notice, in this connection, that in the Doyle case the statute, as a whole, was upheld, though certain sections of it were decided to be unconstitutional; while in the Barron case the whole statute was rejected through the invalidity of a material part which was a sub-division of one of the sections. The cases cited, in line with the present decision, all hold that a state may not exact an agreement from a foreign corporation not to remove cases to the Federal Court as a condition precedent to transacting business within the state.

A review of the cases and text-books would indicate that even without such a statute the state can expel the foreign corporations and the motive therefore is not to be inquired into. The Kentucky statute is defended on the ground that it only seeks to place foreign corporations on a level with those of the state of Kentucky. Considering the constitutional questions involved, this statement is rather misleading and no attempt is made to explain it either in the case considered or in any of those coming up from the Kentucky courts.

Justices Day and Harlan dissent emphatically from the majority opinion. By a strained construction of previous decisions it is made to appear that such power of revocation does not exist in the state. It is strongly stated that "under the guise of exercising a privilege belonging to the state every foreign corporation might be deprived of the opportunity of doing business within the borders of another state, except on condition that it strip itself of every protection given it by the Federal Constitution." But the state is not exercising a "privilege" in this matter but an admitted right. If such a thing can be imagined it may indeed bring about such a condition of things as existed in the days before the adoption of the Articles of Federation when commerce between the colonies was carried on under great

difficulties. All discussion of corporations engaged in inter-state commerce has been carefully avoided in all of the decisions.

To maintain that a state cannot say to a corporation: "You may do business here if you won't remove cases to the Federal Courts" and then allow the state to revoke or cancel the license of the corporation for this very thing and without any stipulation previously made seems more like an evasion of the question than a distinction.

The foundation of this last decision, and the only ground upon which it can be sustained, seems to be the right inherent in the state to expel any foreign corporation with or without reason.

POLITICAL CAMPAIGN CONTRIBUTIONS BY INSURANCE COMPANIES.

A question which has been of considerable public interest since the recent insurance investigation in New York arises as to the nature of an insurance company's act in making a contribution to a national campaign fund of a political party. Such act is of course *ultra vires,* but is it illegal in the absence of statutory prohibition?

In a case where the vice-president of an insurance company was sought to be convicted of larceny for participating in such an act, a decision was rendered on *habeas corpus* proceedings which held such a contribution by an insurance company illegal inasmuch as it was against public policy. *People ex rel. Perkins v. Moss, et al.,* 100 N. Y. Supp. 427. The court says: "To permit an artificial creature of the state, unless it be a corporation expressly permitted by law to engage in political matters, by the unauthorized use of its corporate funds to become an active force in a political contest, would be to sanction an infringement upon the rights of the voters who alone . . . may elect, directly or indirectly, officials in advocacy of the principles for which they contend. To encourage the unauthorized use of corporate funds to political purposes might result in the creatures of the state becoming its masters. . . . An unauthorized act of a corporation that affects public interests with such serious and far-reaching consequences is a menace to the state and contrary to pubic policy."

An opposite conclusion, however, was reached on appeal to the Appellate Division, *People v. Moss,* 99 N. Y. Supp. 138, it there being said that such act is neither *malum prohibitum* nor *malum in se;* nor even wrong ethically to the extent of implying criminality inasmuch as "the object could not have been to influence legislation favorable to the interests of the company or to prevent unfriendly legislation, because Congress has no jurisdiction over insurance corporations organized under state laws."