possessed by New York, by virtue of its sovereign power, in the *Gulf Oil* case. *McGoldrick* v. *Berwind-White Co.*, 309 U. S. 33. Nothing requires us to frustrate the legislative policy of free competition in world markets.

The decree below should be reversed.

MR. JUSTICE ROBERTS joins in this opinion.

HANSBERRY ET AL. *v.* LEE ET AL.

CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

No. 29. Argued October 25, 1940.—Decided November 12, 1940.

Numerous owners of lots in a particular area agreed in writing, each severally with each of the others, that their lots should not be sold to or occupied by Negroes, the effectiveness of the agreement being conditioned, however, upon signing by owners of a specified percentage of the lot frontage. In a case in a state court, tried upon an agreed statement of facts, in which it was stipulated (erroneously) that this condition had been complied with, and in which the issue litigated was whether the agreement had ceased to be enforceable in equity by reason of changes in the restricted area, an owner of one of the lots, suing in behalf of himself and of others in like situation, obtained a decree enjoining violation of the agreement by four individuals, who asserted an interest in the restricted land through another signer of the agreement, but who were not treated by the pleadings or decree as representing others or as foreclosing by their defense the rights of others, and whose interest in defeating the contract did not appear to outweigh their interest in sustaining it. *Held:*

1. That others who were privy to the agreement, but not made parties to the litigation, and whose substantial interest was in resisting performance of the agreement, could not be bound by the decree upon the theory that the suit was a class suit in which they were duly represented. Pp. 39, 44.

2. That a decree of the state court in a second, similar suit, adjudging such other persons estopped by the former decree as *res judicata* from defending upon the ground that the condition precedent of the agreement had not been fulfilled, was in violation of the due process clause of the Fourteenth Amendment. Pp. 40, 44.

372 Ill. 369; 24 N. E. 2d 37, reversed.

CERTIORARI, 309 U. S. 652, to review the affirmance of a decree in equity enjoining a violation of an agreement of lot-owners restricting the sale and use of lots in a particular area.

Mr. Earl B. Dickerson, with whom *Messrs. Truman K. Gibson, Jr., C. Francis Stradford, Loring B. Moore,* and *Irvin C. Mollison* were on the brief, for petitioners.

The application of the doctrine of *res judicata* was not due process of law. *Postal Cable Telegraph Co.* v. *Newport,* 247 U. S. 464, 476; *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill,* 281 U. S. 673, 679-682; *Chase National Bank* v. *Norwalk,* 291 U. S. 431; *Windsor* v. *McVeigh,* 93 U. S. 274, 277; *Fayerweather* v. *Ritch,* 195 U. S. 276.

Burke v. *Kleiman,* 277 Ill. App. 519, was not a class or representative suit.

This Court in *Wabash Railroad Co.* v. *Adelbert College,* 208 U. S. 38, 58, has sounded a warning in respect to the doctrine of *res judicata* in representative suits.

The holding of the *Burke* v. *Kleiman* suit to be a representative suit and *res judicata* against the petitioners, deprived the petitioners of the benefit of notice and a real opportunity to defend. *Windsor* v. *McVeigh,* 93 U. S. 274, 277.

A restrictive agreement between 500 or more different property owners owning as many or more different and dissimilar parcels of real estate can not be the subject-matter of a class or representative suit, there being no common *res,* no common subject matter, and no identity of interest among them. In order to bring a representative suit there must be some common right, *res,* title or common subject matter or identical interest in all of the members of the class. See *Smith* v. *Swormstedt,* 16 How. 288, 303; *Wabash Railroad Co.* v. *Adelbert College,* 208 U. S. 38, 57–59; *Christopher* v. *Brusselback,* 302 U. S. 500, 505; *Hale* v. *Hale,* 146 Ill. 227, 258; *Weberpals* v.

Jenny, 300 Ill. 157; *Saunders* v. *Poland Park Co.,* 198 A. 269.

See also: Pomeroy, Equity Jurisprudence, 4th Ed. (1918), Vol. 1, § 268, p. 498. See *Scott* v. *Donald,* 165 U. S. 107, 115–117; *Cutting* v. *Gilbert,* 5 Blatchford 259, 261.

An allegation in a complaint that a plaintiff brings the action on behalf of himself and all others similarly situated does not in itself make an action a class suit. See *Wabash Railroad Co.* v. *Adelbert College,* 208 U. S. 38, 57–59; *Hammer* v. *New York Railway Co.,* 244 U. S. 266, 273.

A representative or class suit if permitted and sustained in a case like this would destroy, essentially, all the personal defenses to which each owner is entitled, namely: forgery of signatures, fraud and trickery in obtaining signatures, signing upon the condition that a certain number of other owners would sign, alteration of the instrument, laches, waiver, abandonment, estoppel, and change in the character of the neighborhood which would render inequitable the enforcement of the purported agreement. Each individual party signatory is entitled to prove as to these, not only in respect to himself but in respect to all other purported parties signatory, by whom and with whom he is sought to be bound. He is entitled to require proof of or to disprove the existence of the agreement.

Mere number of parties does not sustain a representative or class suit. See *Matthews* v. *Rodgers,* 284 U. S. 521, 529–530; *Hale* v. *Allinson,* 188 U. S. 56, 77 *et seq.; St. Louis, Iron Mountain & Southern Ry. Co.* v. *McKnight,* 244 U. S. 368, 375; *Kelley* v. *Gill,* 245 U. S. 116–120.

The proof showed that the condition precedent was not complied with. Consequently, no agreement ever came into effect and there was no class to be represented by any one. The court had no jurisdiction to bind the

petitioners and their privies, who were not parties and not served with summons or process in the first cause. The decree of *Burke* v. *Kleiman* was therefore void and could not be pleaded as *res judicata* against these petitioners. See *Scott* v. *McNeal,* 154 U. S. 34, 48–51; *Galpin* v. *Page,* 18 Wall. 350, 365, 366; *Old Wayne Life Assn.* v. *McDonough,* 204 U. S. 8, 14–18, 22, 23. *Thompson* v. *Whitman,* 18 Wall. 457.

A judgment void for want of jurisdiction may be collaterally attacked at any time and in any court. See *Galpin* v. *Page,* 18 Wall. 350, 366, 367. Presumptions will not be indulged to supply a proper or valid subject-matter or jurisdictional fact where the evidence and record in the case show the contrary. *Galpin* v. *Page, supra,* 266.

Such fraudulent proceedings and decree can not be *res judicata* against any one. *Hatfield* v. *King,* 184 U. S. 162; *Geter* v. *Hewitt,* 22 How. 364; *Lord* v. *Veasie,* 8 How. 251, 253.

The decree entered by the Chancellor in the trial court deprived the petitioners of their rights by the arbitrary seizure of their property by a Master in Chancery. The result of this action was the forceful transfer of the property of one citizen to another. This harsh and oppressive action violated the Fourteenth Amendment. *Chicago, B. & Q. R. Co.* v. *Chicago,* 166 U. S. 226, 236, 237; *Missouri Pacific Railway Co.* v. *Nebraska,* 164 U. S. 403.

The enforcement of the restrictive agreement abridged the rights, privileges and immunities of petitioners as citizens of the United States, in violation of the Fourteenth Amendment.

Mr. McKenzie Shannon, with whom *Messrs. Angus Roy Shannon, William C. Graves,* and *Preston B. Kavanagh* were on the brief, for respondents.

Restrictive covenants such as this are valid and do not offend the federal Constitution. *Corrigan* v. *Buckley,*

299 F. 899; 271 U. S. 323, 330; *Parmalee* v. *Morris,* 218 Mich. 625; *Queensborough Land Co.* v. *Cazeaux,* 136 La. 724; *Los Angeles Investment Co.* v. *Gary,* 181 Cal. 680; *Koehler* v. *Rowland,* 275 Mo. 573; *Burke* v. *Kleiman,* 277 Ill. App. 519; *Lee* v. *Hansberry,* 291 Ill. App. 517.

Petitioners contend that one member of a class may not be sued by representatives of the class to enforce a common right. The reasoning that the interests of the person sued are necessarily in conflict with those of the class would prevent all manner of class suits. Such is not the law of Illinois, which considers all members of a class having common rights needing protection bound by the doctrine of *res judicata* in a proper representative suit. *Groves* v. *Farmers State Bank,* 368 Ill. 35, 47, 49; *Leonard* v. *Bye,* 361 Ill. 185, 190, 192; *Schmidt* v. *Modern Woodmen,* 261 Ill. App. 276, 281; *Greenberg* v. *Chicago,* 256 Ill. 213, 219; *People ex rel. Modern Woodmen* v. *Circuit Court,* 347 Ill. 34, 46; *Hanna* v. *Read,* 102 Ill. 596, 602, 606; *Harding Co.* v. *Harding,* 352 Ill. 417, 426; *Bayer* v. *Block,* 246 Ill. App. 416, 421, 423, 424; *People* v. *Prather,* 343 Ill. 443, 447; *Klus* v. *Ruszel,* 353 Ill. 179, 183.

Res judicata is a question of state law. *Kersh Lake Drainage Dist.* v. *Johnson,* 309 U. S. 485, 491; *Oklahoma Packing Co.* v. *Gas Co.,* 309 U. S. 4, 8; *Union & Planters Bank* v. *Memphis,* 189 U. S. 71, 75; *Covington* v. *First National Bank,* 198 U. S. 100, 109; *Wright* v. *Georgia Railroad & Banking Co.,* 216 U. S. 420, 429.

The decision below was rested upon a point of state law adequate to support it. There was no fraud (except such as can be imputed to the petitioners); and, in the absence of fraud, no federal question for review by this Court is presented.

The opinion of the Supreme Court of Illinois does not mention petitioners' contention that the application of the doctrine in this case denies their rights to due process

of law as citizens of the United States. The contention was forcibly urged below and it can not be assumed to have been ignored. On the contrary, in balancing the equities, the court must have considered that petitioners' own misconduct estopped them from attacking respondents' plea of *res judicata,* and that the decree binding them as members of a class whose rights were represented in the prior suit does not offend the Fourteenth Amendment.

The decree does not offend the Fourteenth Amendment. *Corrigan* v. *Buckley,* 299 F. 899; *Enterprise Irrigation Dist.* v. *Farmers Mutual Canal Co.,* 243 U. S. 157, 166; *Colgate* v. *Harvey,* 296 U. S. 404, 427.

Specific performance was proper. Hansberry was not required to convey his fraudulently acquired title without compensation. He was afforded thirty days in which to comply with the covenant, by conveying to any person other than a Negro for any consideration of his choice.

Cf., *Cornish* v. *O'Donoghue,* 30 F. 2d 983; *Torrey* v. *Wolfes,* 6 F. 2d 702; *Russell* v. *Wallace,* 30 F. 2d 981; *Fox River Co.* v. *Railroad Commission,* 274 U. S. 651, 657.

MR. JUSTICE STONE delivered the opinion of the Court.

The question is whether the Supreme Court of Illinois, by its adjudication that petitioners in this case are bound by a judgment rendered in an earlier litigation to which they were not parties, has deprived them of the due process of law guaranteed by the Fourteenth Amendment.

Respondents brought this suit in the Circuit Court of Cook County, Illinois, to enjoin the breach by petitioners of an agreement restricting the use of land within a described area of the City of Chicago, which was alleged to have been entered into by some five hundred of the landowners. The agreement stipulated that for a specified period no part of the land should be "sold, leased to or permitted to be occupied by any person of the colored

race," and provided that it should not be effective unless signed by the "owners of 95 per centum of the frontage" within the described area. The bill of complaint set up that the owners of 95 per cent of the frontage had signed; that respondents are owners of land within the restricted area who have either signed the agreement or acquired their land from others who did sign; and that petitioners Hansberry, who are Negroes, have, with the alleged aid of the other petitioners and with knowledge of the agreement, acquired and are occupying land in the restricted area formerly belonging to an owner who had signed the agreement.

To the defense that the agreement had never become effective because owners of 95 per cent of the frontage had not signed it, respondents pleaded that that issue was *res judicata* by the decree in an earlier suit. *Burke* v. *Kleiman,* 277 Ill. App. 519. To this petitioners pleaded, by way of rejoinder, that they were not parties to that suit or bound by its decree, and that denial of their right to litigate, in the present suit, the issue of performance of the condition precedent to the validity of the agreement would be a denial of due process of law guaranteed by the Fourteenth Amendment. It does not appear, nor is it contended that any of petitioners is the successor in interest to or in privity with any of the parties in the earlier suit.

The circuit court, after a trial on the merits, found that owners of only about 54 per cent of the frontage had signed the agreement, and that the only support of the judgment in the *Burke* case was a false and fraudulent stipulation of the parties that owners of 95 per cent had signed. But it ruled that the issue of performance of the condition precedent to the validity of the agreement was *res judicata* as alleged and entered a decree for respondents. The Supreme Court of Illinois affirmed. 372 Ill. 369; 24 N. E. 2d 37. We granted certiorari to resolve the constitutional question. 309 U. S. 652.

The Supreme Court of Illinois, upon an examination of the record in *Burke* v. *Kleiman, supra,* found that that suit, in the Superior Court of Cook County, was brought by a landowner in the restricted area to enforce the agreement, which had been signed by her predecessor in title, in behalf of herself and other property owners in like situation, against four named individuals, who had acquired or asserted an interest in a plot of land formerly owned by another signer of the agreement; that, upon stipulation of the parties in that suit that the agreement had been signed by owners of 95 per cent of all the frontage, the court had adjudged that the agreement was in force, that it was a covenant running with the land and binding all the land within the described area in the hands of the parties to the agreement and those claiming under them, including defendants, and had entered its decree restraining the breach of the agreement by the defendants and those claiming under them, and that the appellate court had affirmed the decree. It found that the stipulation was untrue but held, contrary to the trial court, that it was not fraudulent or collusive. It also appears from the record in *Burke* v. *Kleiman* that the case was tried on an agreed statement of facts which raised only a single issue, whether by reason of changes in the restricted area, the agreement had ceased to be enforcible in equity.

From this the Supreme Court of Illinois concluded in the present case that *Burke* v. *Kleiman* was a "class" or "representative" suit, and that in such a suit, "where the remedy is pursued by a plaintiff who has the right to represent the class to which he belongs, other members of the class are bound by the results in the case unless it is reversed or set aside on direct proceedings"; that petitioners in the present suit were members of the class represented by the plaintiffs in the earlier suit and consequently were bound by its decree, which had rendered

the issue of performance of the condition precedent to the restrictive agreement *res judicata,* so far as petitioners are concerned. The court thought that the circumstance that the stipulation in the earlier suit that owners of 95 per cent of the frontage had signed the agreement was contrary to the fact, as found in the present suit, did not militate against this conclusion, since the court in the earlier suit had jurisdiction to determine the fact as between the parties before it, and that its determination, because of the representative character of the suit, even though erroneous, was binding on petitioners until set aside by a direct attack on the first judgment.

State courts are free to attach such descriptive labels to litigations before them as they may choose and to attribute to them such consequences as they think appropriate under state constitutions and laws, subject only to the requirements of the Constitution of the United States. But when the judgment of a state court, ascribing to the judgment of another court the binding force and effect of *res judicata,* is challenged for want of due process it becomes the duty of this Court to examine the course of procedure in both litigations to ascertain whether the litigant whose rights have thus been adjudicated has been afforded such notice and opportunity to be heard as are requisite to the due process which the Constitution prescribes. *Western Life Indemnity Co.* v. *Rupp,* 235 U. S. 261, 273.

It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process. *Pennoyer* v. *Neff,* 95 U. S. 714; 1 Freeman on Judgments (5th ed.), § 407. A judgment rendered in such circumstances is not entitled to the full faith and credit which the Constitution and statute of the United States, R. S. § 905, 28 U. S. C. § 687, pre-

scribe, *Pennoyer* v. *Neff, supra; Lafayette Ins. Co.* v. *French,* 18 How. 404; *Hall* v. *Lanning,* 91 U. S. 160; *Baker* v. *Baker, Eccles & Co.,* 242 U. S. 394; and judicial action enforcing it against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments require. *Postal Telegraph Cable Co.* v. *Newport,* 247 U. S. 464; *Old Wayne Mutual Life Assn.* v. *McDonough,* 204 U. S. 8.

To these general rules there is a recognized exception that, to an extent not precisely defined by judicial opinion, the judgment in a "class" or "representative" suit, to which some members of the class are parties, may bind members of the class or those represented who were not made parties to it. *Smith* v. *Swormstedt,* 16 How. 288; *Royal Arcanum* v. *Green,* 237 U. S. 531; *Hartford Life Ins. Co.* v. *Ibs,* 237 U. S. 662; *Hartford Life Ins. Co.* v. *Barber,* 245 U. S. 146; *Supreme Tribe of Ben-Hur* v. *Cauble,* 255 U. S. 356; cf. *Christopher* v. *Brusselback,* 302 U. S. 500.

The class suit was an invention of equity to enable it to proceed to a decree in suits where the number of those interested in the subject of the litigation is so great that their joinder as parties in conformity to the usual rules of procedure is impracticable. Courts are not infrequently called upon to proceed with causes in which the number of those interested in the litigation is so great as to make difficult or impossible the joinder of all because some are not within the jurisdiction or because their whereabouts is unknown or where if all were made parties to the suit its continued abatement by the death of some would prevent or unduly delay a decree. In such cases where the interests of those not joined are of the same class as the interests of those who are, and where it is considered that the latter fairly represent the former in the prosecution of the litigation of the issues in which all have a common interest, the court will

proceed to a decree. *Brown* v. *Vermuden,* Ch. Cas. 272; *City of London* v. *Richmond,* 2 Vern. 421; *Cockburn* v. *Thompson,* 16 Ves. Jr. 321; *West* v. *Randall,* Fed. Cas. No. 17,424; 2 Mason 181; *Beatty* v. *Kurtz,* 2 Pet. 566; *Smith* v. *Swormstedt, supra; Supreme Tribe of Ben-Hur* v. *Cauble, supra;* Story, Equity Pleading (2d ed.) § 98.

It is evident that the considerations which may induce a court thus to proceed, despite a technical defect of parties, may differ from those which must be taken into account in determining whether the absent parties are bound by the decree or, if it is adjudged that they are, in ascertaining whether such an adjudication satisfies the requirements of due process and of full faith and credit. Nevertheless, there is scope within the framework of the Constitution for holding in appropriate cases that a judgment rendered in a class suit is *res judicata* as to members of the class who are not formal parties to the suit. Here, as elsewhere, the Fourteenth Amendment does not compel state courts or legislatures to adopt any particular rule for establishing the conclusiveness of judgments in class suits; cf. *Brown* v. *New Jersey,* 175 U. S. 172; *Brown* v. *Mississippi,* 297 U. S. 278; *United Gas Public Service Co.* v. *Texas,* 303 U. S. 123; *Avery* v. *Alabama,* 308 U. S. 444, 446, 447, nor does it compel the adoption of the particular rules thought by this Court to be appropriate for the federal courts. With a proper regard for divergent local institutions and interests, cf. *Jackson County* v. *United States,* 308 U. S. 343, 351, this Court is justified in saying that there has been a failure of due process only in those cases where it cannot be said that the procedure adopted, fairly insures the protection of the interests of absent parties who are to be bound by it. *Chicago, B. & Q. R. Co.* v. *Chicago,* 166 U. S. 226, 235.

It is familiar doctrine of the federal courts that members of a class not present as parties to the litigation

may be bound by the judgment where they are in fact adequately represented by parties who are present, or where they actually participate in the conduct of the litigation in which members of the class are present as parties, *Plumb* v. *Goodnow's Administrator,* 123 U. S. 560; *Confectioners' Machinery Co.* v. *Racine Engine & Mach. Co.,* 163 F. 914; 170 F. 1021; *Bryant Electric Co.* v. *Marshall,* 169 F. 426, or where the interest of the members of the class, some of whom are present as parties, is joint, or where for any other reason the relationship between the parties present and those who are absent is such as legally to entitle the former to stand in judgment for the latter. *Smith* v. *Swormstedt, supra;* cf. *Christopher* v. *Brusselback, supra,* 503, 504, and cases cited.

In all such cases, so far as it can be said that the members of the class who are present are, by generally recognized rules of law, entitled to stand in judgment for those who are not, we may assume for present purposes that such procedure affords a protection to the parties who are represented, though absent, which would satisfy the requirements of due process and full faith and credit See *Bernheimer* v. *Converse,* 206 U. S. 516; *Marin* v. *Augedahl,* 247 U. S. 142; *Chandler* v. *Peketz,* 297 U. S. 609. Nor do we find it necessary for the decision of this case to say that, when the only circumstance defining the class is that the determination of the rights of its members turns upon a single issue of fact or law, a state could not constitutionally adopt a procedure whereby some of the members of the class could stand in judgment for all, provided that the procedure were so devised and applied as to insure that those present are of the same class as those absent and that the litigation is so conducted as to insure the full and fair consideration of the common issue. Compare *New England Divisions Case,* 261 U. S. 184, 197; *Taggart* v. *Bremner,* 236 F. 544.

We decide only that the procedure and the course of litigation sustained here by the plea of *res judicata* do not satisfy these requirements.

The restrictive agreement did not purport to create a joint obligation or liability. If valid and effective its promises were the several obligations of the signers and those claiming under them. The promises ran severally to every other signer. It is plain that in such circumstances all those alleged to be bound by the agreement would not constitute a single class in any litigation brought to enforce it. Those who sought to secure its benefits by enforcing it could not be said to be in the same class with or represent those whose interest was in resisting performance, for the agreement by its terms imposes obligations and confers rights on the owner of each plot of land who signs it. If those who thus seek to secure the benefits of the agreement were rightly regarded by the state Supreme Court as constituting a class, it is evident that those signers or their successors who are interested in challenging the validity of the agreement and resisting its performance are not of the same class in the sense that their interests are identical so that any group who had elected to enforce rights conferred by the agreement could be said to be acting in the interest of any others who were free to deny its obligation.

Because of the dual and potentially conflicting interests of those who are putative parties to the agreement in compelling or resisting its performance, it is impossible to say, solely because they are parties to it, that any two of them are of the same class. Nor without more, and with the due regard for the protection of the rights of absent parties which due process exacts, can some be permitted to stand in judgment for all.

It is one thing to say that some members of a class may represent other members in a litigation where the sole and common interest of the class in the litigation, is either to assert a common right or to challenge an

asserted obligation. *Smith* v. *Swormstedt, supra; Supreme Tribe of Ben-Hur* v. *Cauble, supra; Groves* v. *Farmers State Bank,* 368 Ill. 35; 12 N. E. 2d 618. It is quite another to hold that all those who are free alternatively either to assert rights or to challenge them are of a single class, so that any group, merely because it is of the class so constituted, may be deemed adequately to represent any others of the class in litigating their interests in either alternative. Such a selection of representatives for purposes of litigation, whose substantial interests are not necessarily or even probably the same as those whom they are deemed to represent, does not afford that protection to absent parties which due process requires. The doctrine of representation of absent parties in a class suit has not hitherto been thought to go so far. See *Terry* v. *Bank of Cape Fear,* 20 F. 777, 781; *Weidenfeld* v. *Northern Pacific Ry. Co.,* 129 F. 305, 310; *McQuillen* v. *National Cash Register Co.,* 22 F. Supp. 867, 873, aff'd 112 F. 2d 877, 882; *Brenner* v. *Title Guarantee & Trust Co.,* 276 N. Y. 230; 11 N. E. 2d 890; cf. *Wabash R. Co.* v. *Adelbert College,* 208 U. S. 38; *Coe* v. *Armour Fertilizer Works,* 237 U. S. 413. Apart from the opportunities it would afford for the fraudulent and collusive sacrifice of the rights of absent parties, we think that the representation in this case no more satisfies the requirements of due process than a trial by a judicial officer who is in such situation that he may have an interest in the outcome of the litigation in conflict with that of the litigants. *Tumey* v. *Ohio,* 273 U. S. 510.

The plaintiffs in the *Burke* case sought to compel performance of the agreement in behalf of themselves and all others similarly situated. They did not designate the defendants in the suit as a class or seek any injunction or other relief against others than the named defendants, and the decree which was entered did not purport to bind others. In seeking to enforce the agreement the plaintiffs

in that suit were not representing the petitioners here whose substantial interest is in resisting performance. The defendants in the first suit were not treated by the pleadings or decree as representing others or as foreclosing by their defense the rights of others; and, even though nominal defendants, it does not appear that their interest in defeating the contract outweighed their interest in establishing its validity. For a court in this situation to ascribe to either the plaintiffs or defendants the performance of such functions on behalf of petitioners here, is to attribute to them a power that it cannot be said that they had assumed to exercise, and a responsibility which, in view of their dual interests it does not appear that they could rightly discharge.

Reversed.

MR. JUSTICE MCREYNOLDS, MR. JUSTICE ROBERTS and MR. JUSTICE REED concur in the result.

HELVERING, COMMISSIONER OF INTERNAL REVENUE, *v.* NORTHWEST STEEL ROLLING MILLS, INC.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 121. Argued October 23, 1940.—Decided November 12, 1940.

1. Provisions of tax statutes granting exemptions are to be strictly construed. P. 49.
2. Section 26 (c) (1) of the Revenue Act of 1936 allows, in the computation of the tax imposed by § 14 on undistributed profits, a credit for such undistributed earnings as the corporation could not distribute without violating "a provision of a written contract executed by the corporation . . ., which provision expressly deals with the payment of dividends." *Held* that, where the restriction on distribution by the corporation was the result of a prohibition by state law, the credit was not allowable. P. 49.
3. The corporation's charter, taken together with the state law, does not in such case constitute, within the meaning of § 26 (c) (1),