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Article 21

Corporations--When Doing Business in Foreign State--Service of Summons (Consolidated Textile Corp. v. Gregory, 53 S. Ct. 529 (1933))

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behalf.[9] Such rights of derivative character are inherent in the stock and pass on its conveyance.[10] It is only, as in the instant case, where the wrong moves directly that an independent action lies.[11] Plaintiff's action arose when defendants, by acts amounting to a breach of fiduciary duties, decreased his proportionate voting power and corporate control. And the action continues even though he is no longer a stockholder and despite the right of a present stockholder to redress the wrong in a derivative action.[12]

A. A. M.

CORPORATIONS—WHEN DOING BUSINESS IN FOREIGN STATE—SERVICE OF SUMMONS.—Defendant corporation was sued in New York for unpaid interest on its bonds and summary judgment was granted. Its president, in order to withhold final judgment in said action, arranged a conference with the plaintiff in that action, a resident of Wisconsin. While in conference, said president was served with summons and complaint addressed to the corporation to answer action instituted by bondholders for unpaid interest on bonds. Although the company had its principal place of business in New York, it was shown that it sold goods in Milwaukee through a subsidiary corporation. Plaintiff sought a writ in the Supreme Court of Wisconsin to restrain the suit on the ground of lack of jurisdiction. The petition being denied, plaintiff appealed. *Held,* the corporation was not suable in that state, since it was not "doing business" there as required for service of summons. *Consolidated Textile Corp.* v. *Gregory,* — U. S. —, 53 Sup. Ct. 529 (1933).

In order to hold the corporation suable in a foreign state it is necessary to show that the corporation is "doing business" in that state at the time of service of process.[1] Although the degree of business sufficient to subject it to service of process be less than that

[9] Hawes v. Oakland, 104 U. S. 450 (1881); Flynn v. Brooklyn City R. Co., 158 N. Y. 493, 53 N. E. 520 (1899); Witherbee v. Bowles, 201 N. Y. 427, 95 N. E. 27 (1911); Continental Security Co. v. Belmont, 206 N. Y. 7, 99 N. E. 138 (1912).

[10] Hanna v. Lyon, 179 N. Y. 107, 71 N. E. 778 (1904); Thompson v. Stanley, 73 Hun 248, 25 N. Y. Supp. 890 (1893); Fitchett v. Murphy, 46 App. Div. 181, 61 N. Y. Supp. 182 (2d Dept. 1899).

[11] Stokes v. Continental Trust Co., *supra* note 1; Von Au v. Magenheimer, 126 App. Div. 257, 110 N. Y. Supp. 629 (2d Dept. 1908), *aff'd,* 196 N. Y. 510, 89 N. E. 114 (1908); General Rubber Co. v. Benedict, *supra* note 7.

[12] Rothmiller v. Stein, 143 N. Y. 581, 38 N. E. 718 (1894); Von Au v. Magenheimer, *supra* note 11.

[1] International Harvester Co. v. Kentucky, 234 U. S. 579, 34 Sup. Ct. 944 (1914); Scheinman v. Bonwit Teller & Co., 132 Misc. 311, 229 N. Y. Supp. 783 (1928).

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 corporation 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 presence 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 conferring 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 England 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

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[2] Tauza v. Susquehanna Coal Co., 220 N. Y. 259, 115 N. E. 915 (1917).

[3] People's Tobacco Co. v. American Tobacco Co., 246 U. S. 79, 33 Sup. Ct. 233 (1918).

[4] *Supra* note 2.

[5] *Supra* note 3.

[6] Conley v. Mathieson Alkali Works, 190 U. S. 406, 23 Sup. Ct. 728 (1903); Peterson v. Chicago, Rock Island & Pacific Ry. Co., 205 U. S. 364, 27 Sup. Ct. 513 (1907); People's Tobacco Co. v. American Tobacco Co., *supra* note 3; Cannon Mfg. Co. v. Cudahy Packing Co., 267 U. S. 333, 45 Sup. Ct. 250 (1925); Bertha Zinc & Mineral Co. v. Clute, 7 Misc. 123, 27 N. Y. Supp. 342 (1894). In that case it was held that a consignment of goods to factors, which would be more nearly "doing business" than selling goods through a subsidiary, would not subject the defendant corporation to service.

[7] Tauza v. Susquehanna Coal Co., *supra* note 2. Cardozo, *J.*, in saying, that a corporation, to be serviceable, must have been engaged in a continuity of transactions, by implication held that one transaction would be insufficient for service; Pittsburgh & Shawmut Coal v. State, 118 Misc. 50, 192 N. Y. Supp. 310 (1922); Gumbinsky Bros. Co. v. Smalley, 203 App. Div. 661, 197 N. Y. Supp. 530 (1st Dept. 1922), *aff'd*, 235 N. Y. 619, 139 N. E. 758 (1923); Spigel-May-Stern Co. v. Mitchell, 125 Misc. 604, 211 N. Y. Supp. 495 (1925).

[8] Philadelphia & Reading Co. v. McKibbin, 243 U. S. 264, 37 Sup. Ct. 280 (1917); Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U. S. 516, 43 Sup. Ct. 170 (1923); James Dickinson Farm Mortgage Co. v. Harry, 273 U. S. 119, 47 Sup. Ct. 308 (1927); Scheinman v. Bonwit Teller, *supra* note 1.