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Territorial Jurisdiction of the City Court of the City of New York

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apparent soundness. Such an impression is strengthened by what has been hitherto determined to be the law, that the Legislature may not be presumed to have made any innovation upon the common law further than is required by the mischief to be remedied.[20] The purpose of the Highway Law was to cure the remediless plight of a highway traveler injured by a motor vehicle, other than the one in which he might be traveling, through the recklessness of an irresponsible driver to whom the owner had entrusted the vehicle and thereby made the accident possible.[21] But in according this protection, it does not follow that the common law rule of master and servant must be abrogated. The principle was already put in jeopardy by earlier judicial interpretation of the section.[22] There was set in it an entering wedge that might have been the beginning of its destruction. The *Psota* decision was imperative if the rule was to be preserved.

V. J. M.

TERRITORIAL JURISDICTION OF THE CITY COURT OF THE CITY OF NEW YORK.—The new city court act for the city of New York[1] recently has been the subject of judicial construction in the appellate term of the supreme court, first department.[2] The immediate point involved was the validity of section 27 providing for the execution of the court's process and mandates in any part of the state.[3] Service of a summons was made upon the defendant in the city of Albany where he resided and had his place of business. A motion was made to dismiss the complaint on the ground that the said court had no jurisdiction over the person of the defendant and that it had no power to serve its process beyond the city limits. Respondent contended that the provision that the city court should have original jurisdiction concurrent with the supreme court in the class of actions enumerated[4] empowered the city court to issue its process throughout the State. *Held,* Section 27 of the act was unconstitutional so far as it authorized the service of mandates indiscriminately in every part of the State because it transcended the jurisdiction

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[20]Dean v. Metropolitan R. Co., 119 N. Y. 540, 547; 23 N.E. 1054 (1890).

[21]*Supra* note 17, at p. 210.

[22]*Supra* note 12.

[1]N. Y. Laws 1926, ch. 539, enacted under authority of constitutional amendment (art. 6, sec. 15) approved by the people at the general election held Nov. 3rd, 1925, in effect Jan. 1st, 1926.

[2]American Historical Society Inc. *v.* Glenn, 131 Misc. 291 (1928).

[3]N. Y. City Court Act §27, provides that "all process and mandates of the court may be executed in any part of the State."

[4]*Ibid.* §16.

prescribed by the constitution.[5] The three justices comprising the appellate term were unanimous (in separate opinions) that the city court had no jurisdiction to issue a summons outside of the city of New York.

Cases of assaults on the constitutional and jurisdictional limitations of courts are by no means lacking in the law books, but the principal case appears to be the first tested by an appellate tribunal involving the power of the New York City Court under the new act to execute its mandates beyond the city limits. Prior thereto it had been held by one of its own justices that the court could take jurisdiction over the person of a defendant though the summons was served outside of the city[6] and this would seem to follow from section 27, *supra*. The summons is a mandate of the court,[7] and, whereas in the former city court act[8] the legislature was specific in providing for service of the summons,[9] in the new act, section 27 is the only provision which applies to execution of mandates Under the former act it was held that a summons could not be served beyond the confines of the city,[10] the word "city" being construed to mean and apply to the territory within the city of New York as constituted prior to June 6th, 1895.[11] At such time the city consisted of the boroughs of Manhattan and the Bronx. After the consolidation of the greater city the territorial jurisdiction of the court remained the same, the county courts of Kings, Queens and Richmond exercising somewhat similar civil jurisdiction in their respective counties. in cases involving resident litigants.

The city court of New York is purely a creature of statute and had no existence under the common law of the State. It is a court of limited and inferior jurisdiction and it possesss only those powers which are

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[5]*Supra* note 1. The question here decided was constantly discussed in the columns of the New York *Law Journal* prior to the appearance of this decision and evidently was of considerable importance to New York City practitioners.

[6]Liscio *v.* M. S. Const. Corp., N. Y. L. J., Aug. 19, 1927 (opinion Koch, J. Bronx Co.) The court held that section 27 of the act authorized the service of a summons issued out of the city court upon the defendant in Westchester County.

[7]N. Y. Civ. Prac. Act § 218.

[8]L. 1920, ch. 935.

[9]City Court Act, 1920, §37: "A mandate of the court can be executed only within the city of New York, except as follows, etc.," (actions merely for money damages are not within any of the exceptions).

[10]McCann *v.* Gerding, 29 Misc. 283, 60 N. Y. Supp. 467 (1899); Mehrbach *v.* Partridge, 9 Misc. 209, 29 N. Y. Supp. 681 (1894); People *ex rel.* Fireman's Ins. Co. *v.* Justices of the City Court of New York, 11 N. Y. Supp. 773 (1890).

[11]City Court Act, 1920. §37 (7).

conferred upon it by statutory enactment.[12] It has been held that the jurisdiction of a local court of inferior jurisdiction in the absence of express statutory authority to the contrary must be exercised only within the locality and its process cannot be executed outside of it.[13] Under the constitution the legislature may establish inferior local courts of civil and local jurisdiction[14] and the mere fact that in the Supreme Court is vested the general jurisdiction over causes in law and equity[15] does not prohibit the legislature from giving general jurisdiction to other tribunals,[16] but this grant of authority, as heretofore stated, must be express.[17]

The difficulty encountered in the principal case is one not so much for judicial, as for legislative, clarification. Judge Bijur, in the major opinion, criticizes the constitutional amendment increasing the powers of the city court, saying that "it was loosely phrased and ineptly worded and should be interpreted conservatively, and, so far as possible, in harmony with existing practice." The same may be said of the act itself as it presently reads. The draftsman of the act had before him the constitutional amendment which specifically provides that "the city court of the city of New York is continued and from and after * * * it shall have *the same jurisdiction and power throughout the city of New York, * * * as it now possesses within the County of New York and the County of Bronx,*" but despite this and the clarity which characterizes the 1920 act, the present act was drafted so vaguely that undoubtedly there will arise other questions involving the powers of this important court.

The soundness of the decision in the principal case cannot be questioned. The amendment, as the major opinion states, had for its purposes:

1. To give the city court a constitutional status.
2. To extend its territorial jurisdiction over the greater city,

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[12]Seabury's City Court Practice, p. 19.

[13]Geraty *v.* Reid, 78 N. Y. 64 (1879); Baird *v.* Helfer, 12 App. Div. 23, 42 N. Y. Supp. 484 (1896); Ziegler *v.* Corwin, 12 App. Div. 60, 42 N. Y. Supp. 858 (1896). "The jurisdiction as confirmed by the amended article of the constitution, was strictly local in all its aspects; and in the absence of any evidence in the terms of the instrument to change radically the character of the court and the extent of its jurisdiction, an intent to do so will not be inferred." Landers *v.* Staten Island R. R. Co., 53 N. Y. 450 (1873).

[14]N. Y. Const. art. 6, §18.

[15]*Ibid.* §1.

[16]People *ex rel.* Ryan *v.* Greene, 58 N. Y. 295, 301 (1874).

[17]*Supra* note 13.

so that a unified community might have a unified local court of somewhat the same civil jurisdiction as the county court of other counties.

3. To relieve the crowded calendars of the supreme court and facilitate trials of actions involving generally no more than $3,000.

"The amendment was intended to keep intact the jurisdiction of the court but to extend its territorial scope to the limits of the greater city." This is a clear inference to be drawn from the nature of local and inferior courts and from the amendment itself. Before a court can take jurisdiction of a cause, two essential elements must exist: 1—cognizance of the subject matter of the action; 2—jurisdiction over the person of the defendant. If it is to be held that the city court has jurisdiction over a defendant because of personal service made anywhere in the State, then an anomalous as well as unreasonable construction must be indulged. It would be anomalous in the sense that a purely local court would have state wide jurisdiction as to persons while, in other respects, having but limited authority, and unreasonable in that it would compel non-resident defendants to appear before it to answer in actions which, perhaps, not only arose without the city of New York but wherein the plaintiff was also a non-resident. This construction would lend itself admirably to a legal abuse of process. In Landers *v.* Staten Island R. R. Co.[18] an analogous situation arose. The constitution then in force declared that the city court of Brooklyn and the other courts named "are continued with the powers and jurisdiction they now severally have." A summons was served on the defendant outside of the then existing city of Brooklyn, and defendant moved to dismiss on the ground of lack of jurisdiction over its person, since the summons was not served on it within the city limits. The Court granted the motion speaking quite caustically of the legislature's failure to make its meaning clear[19] and stated: "No thought was had to an extension of the territorial jurisdiction of the court, or permitting it to take cognizance of causes of action not originating or situated within the city of Brooklyn, or hauling men and women from distant parts of the state who have never been within the limits of the city, within its power, and subjecting them to its jurisdiction. * * * The authority was to enlarge its jurisdiction as a local court, the city court of Brooklyn, not to create a new court with general jurisdiction throughout the state." There is ample authority

[18] *Supra* note 13.

[19] "This could not have been intended under the constitution; and if that instrument can be so interpreted as to sustain the legislation based upon it, its framers will have no reason to congratulate themselves upon the precision and care with which they have sought to give expression to and clothe their intent with language." Landers *v.* Staten Island R. R. Co., *supra*, at p. 453.

to support the Landers case.[20] The Court looks with disfavor upon requiring distant defendants to come to New York.[21]

A more serious question is presented by the terminology of the amendment which provides that the city court shall have "original jurisdiction concurrent with the supreme court in actions for the recovery of money only, etc." A superficial examination of the act and constitution would tend to support the theory that the court's jurisdiction was now co-extensive with that of the supreme court, subject only to its limited power over the subject matter of the action. Here, also, the inefficient drafting of the amendment and act is responsible. But the construction placed upon this provision in the American Historical Society case seems amply in point and decisive of the question: what was conferred was jurisdiction *similar* to that of the supreme court in like actions limited of course by the local character of the city court itself.

L. L. W.

A SIGNIFICANT MUNICIPAL BUDGET DECISION.—In October, 1927, the Board of Estimate and Apportionment of the City of New York included in the budget an item of $13,000,000.00 "for the 1928 amortization installment on Rapid Transit Corporate Stock—maturing 1929, 1930, 1931."[1]

This action was taken pursuant to formal resolutions[2] previously adopted by the Board of Estimate and Apportionment by virtue of their

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[20]Hoag *v.* Lamont, 60 N. Y. 96 (1875); Wheelock *v.* Lee, 74 N. Y. 497 (1878); Davidsburgh *v.* Knickerbocker Life Ins. Co., 90 N. Y. 529 (1882).

[21]Geraty *v.* Reid, supra note 13.

[1]Greater New York Charter, §206. "——For the redemption of such debt out of said sinking fund there shall be annually included in the budget and paid into the sinking fund of the City of New York herein created, an amount to be estimated and certified by the comptroller, and to be by the ——board of estimate and apportionment inserted in the budget for each year,——"; Sec. 226, "——The said board shall annually ——make a budget of the amounts estimated to be required to pay expenses of—city——. In order to enable said board to make such budget,——the heads of departments—— shall send to the board of estimate and apportionment an estimate in writing——."

[2]October 27, 1927. "Resolved, By the Board of Estimate and Apportionment——pursuant to——requisitions of the Board of Transportation——that the term of the corporate stock thereby authorized, to the extent of Fifty-two million dollars, now unissued, shall be four (4) years from the date of issue——";

Resolved, That the Board of Estimate and Apportionment hereby authorizes the Comptroller of the City of New York to issue and sell, before December