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Corporations--What Constitutes Doing Business--Territorial Jurisdiction

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NOTES & COMMENT

CORPORATIONS—WHAT CONSTITUTES DOING BUSINESS—TERRITORIAL JURISDICTION—In normal times, each year brings with it an extension of the activities of corporations into states other than those of their creation, and as incident thereto, State Courts are called upon to consider and to establish judicially the rights and liabilities of these "outsiders" under an ever-increasing variety of circumstances. Particularly is this so in New York and other centers of commercial activity. Naturally the impracticable theory, once held by the courts, that a corporation could exist only in the state of its creation has been abandoned,¹ and we now find that, in New York, foreign corporations are permitted to use our markets and to resort to our courts upon compliance with specified conditions, that such corporations may acquire property,² may be taxed,³ and, within certain limitations, be sued in our courts.⁴ In this discussion, we shall limit ourselves to a consideration of the State Courts' personal jurisdiction over foreign corporations.

For many years, our courts followed the rule laid down in *Pope v. Terre Haute Car & Mfg. Co.*⁵, and held that service of a summons on a proper representative of a corporation was sufficient to give the court jurisdiction despite the facts that the corporation was not doing business in the State, had no property here and that the person served was here on personal business, presumably upon the theory that notice to a proper representative would reach the corporation because of the relation he bore it.

From the beginning, the Federal Courts held a contrary view.⁶ Matters stood in this way until the Supreme Court, in the case of *Riverside & Dan River Cotton Mills v. Menefee*,⁷ declared "that it is indubitably established that the courts of one State may not without violating the due process clause of the Fourteenth Amendment, render a judgment against a corporation organized under the laws of another State, where such corporation has not come into such State for the purpose of doing business * * * and that the mere fact that an

¹ *St. Clair v. Cox*, 106 U. S. 350 (1882).

² General Corporation Law § 20.

³ Tax Law § 181.

⁴ General Corporation Law §§ 46 & 47, N. Y. Civ. Prac. Act § 229.

⁵ 87 N. Y. 137 (1881).

⁶ *Goldey v. Morning News*, 156 U. S. 518 (1895); *Conley v. Mathieson Alkali Works*, 190 U. S. 406 (1903); *International Harvester Co. v. Kentucky*, 234 U. S. 579 (1914).

⁷ 237 U. S. 189 (1914).

officer of a corporation may temporarily be in the State or even permanently reside therein, if not there for the purpose of transacting business for the corporation * * * affords no basis for acquiring jurisdiction."

The New York Courts yielded to the binding force of this decision in the case of *Bagdon v. Philadelphia & Reading Coal & Iron Co.*,⁸ and later, in *Robert Dollar Co. v. Canadian Car & Foundry Co.*,⁹ definitely changed the New York rule by declaring the Code provision¹⁰ for service upon foreign corporations constitutional only when applied to corporations engaged in business here. There now arose a question with which the courts had not previously been concerned, *i.e.*, what constituted the doing of business within the State sufficient to warrant the service of a summons upon a foreign corporation.

In the first case¹¹ decided by it under these circumstances, the Court of Appeals in a very sound opinion, pointed out a distinction to be observed between cases where registration and taxation statutes were involved and those where the question of the service of process was raised. As to the extent of business necessary in these cases, the Court said, "All that is requisite is that enough be done to enable us to say that the corporation is here. If it is here it may be served."¹² The Court further stated that the fact that the defendant corporation was engaged in interstate commerce was immaterial where the question involved was the proper service of process. The unavoidable broadness of the rule laid down by the Court has permitted our State Courts in later cases to justify under it decisions in all directions.¹³

Now let us examine what has been judicially declared to be "doing business" by the State and Federal Courts, with some reference to the decisions of other jurisdictions.

Isolated Transactions—As a general rule, the performance of a single act will not constitute doing business. Service on the president of a corporation, temporarily in New York for the sole purpose of settling a claim for the wrongful death of plaintiff's decedent was set aside.¹⁴ Service on an agent of a foreign corporation in the State for the sole

⁸ 217 N. Y. 432, 111 N. E. 1075 (1916).

⁹ 220 N. Y. 270, 115 N. E. 711 (1917).

¹⁰ N. Y. Code Civ. Proc. § 432, substantially reenacted in N. Y. Civ. Prac. Act § 229.

¹¹ 220 N. Y. 259, 268, 115 N. E. 915 (1917).

¹² *Tauza v. Susquehanna Coal Co.*, 220 N. Y. 259, 115 N. E. 915 (1917).

¹³ For a more complete discussion of these matters see "An Analysis of Doing Business," by Elcanon Isaacs in 25 Col. L. Rev. 1018.

¹⁴ *Hoyt v. Ogden Portland Cement Co.*, 185 Fed. 889 (N. D. N. Y. 1911).

purpose of voting the corporation's stock at a meeting of a domestic corporation was held invalid.¹⁵ In like manner, service on the president of a foreign corporation who was in New York negotiating a mortgage on corporate property and having an issue of bonds secured by this mortgage listed on the Stock Exchange was set aside.¹⁶ An apparent exception is a case where the execution and delivery of a single bond by a foreign surety company to secure the performance of a contract to be executed within the state was held to be doing business, but there was involved in this case a state statute operative only under special circumstances.¹⁷ In a recent New York case, plaintiff showed that defendant's sales manager had made one sale of lumber here and that defendant's stock was being sold through a resident fiscal agent; here service was held invalid.¹⁸ In a previous New York case, the defendant corporation's contention that there was no continuity of business led the Court to say that where, because of the magnitude of isolated transactions, a corporation saw fit to maintain a soliciting agent in New York, business was being done.¹⁹

Maintenance of An Office—The maintenance of an office in the State does not, of itself, constitute doing business,²⁰ nor is the appearance of a corporation's name on an office door or in the telephone or trade directory, in itself, sufficient.²¹ The fact that the defendant corporation pays rent and offices' expenses in the first instance is not conclusive but when coupled with other activities, the courts have found that business was being done.²² In a rather recent New York case, the defendant corporation's agent had a desk in Grand Central Palace and its letterhead described this as "New York Office," but the agent had no power to close contracts, extend credit or make collections. The Court, with one dissenting, held the corporation amenable to process.²³ Later, in the same Department, the Court held defendant to be doing business when process was served on a person named in the "Official Railway Guide" as an

¹⁵ *Doctor v. Desmond*, 80 N. J. E. 77, 82 Atl. 522 (1912).

¹⁶ *Clews v. Woodstock Iron Co.*, 44 Fed. 31 (S. D. N. Y. 1890).

¹⁷ *Bankers Surety Co. v. Holly*, 219 Fed. 96 (C. C. A. 8th 1915).

¹⁸ *Sunrise Lumber Co. v. Homer D. Biery Co.*, 195 App. Div. 170, 185 N. Y. Supp. 711 (2nd Dept. 1921).

¹⁹ *Interocean Forwarding Co. v. McCormick*, 168 N. Y. Supp. 177 (1917).

²⁰ *Green et al. v. The B. & M.*, 203 N. Y. Supp. 464 (1924).

²¹ *Rosenblatt v. Bridgeport Metal Co.*, 173 N. Y. Supp. 331 (1918).

²² *Herr and Co. v. Rose Bros.*, 200 N. Y. Supp. 397 (1923); *Jones v. Stefco Steel Co.*, 209 N. Y. Supp. 552 (1925).

²³ *Cochran v. Monroe Binder Board Co.*, 197 App. Div. 221, 188 N. Y. Supp. 697 (4th Dept. 1921).

official. Defendent had a freight agent in New York, who solicited business and kept shippers posted as to the progress of goods and, further, the Executive Committee often met in New York.²⁴ Another Department held that business was being done, where the Chairman, who was in active charge of financial matters, had an office here, that the Board of Directors met here and that inspectors to handle crude rubber imports were here.²⁵ But in a very recent case, the Court set aside service upon a Louisiana corporation which maintained a buyer here, listed his office as its New York office and sent buyers here from time to time.²⁶ The dissenting opinion is based upon the previously cited New York cases, while the prevailing opinion seems to follow the Federal rule that a course of buying does not constitute doing business,²⁷ as opposed to the New York rule that a continuous course of buying is doing business.²⁸

Solicitation—The Federal Courts have held that solicitation of orders does not constitute doing business,²⁹ but make a distinction where the solicitors have power to accept payments or in any way bind the corporation by their acts.³⁰ The leading State case³¹ on the matter held that continuous solicitations by a force which had headquarters in the state maintained by the corporation, made the corporation amenable to process. The cases hold that advertising a business is not an introduction of it into a state.³²

Trade Expositions—The Court of Appeals has held that service on a corporation's agent at an automobile show was invalid, this agent maintaining his office at his own expense and not having authority to bind the corporation.³³ The Court did not refer in this case to a previous Appellate Division case where a corporation was held to be doing business at a

²⁴ *Rothenberg v. Western Pacific Rd. Corp.*, 200 N. Y. Supp. 428 (1923).

²⁵ *Stockton v. Goodyear Tire and Rubber Co.*, 208 N. Y. Supp. 209 (1924).

²⁶ *Fair Waist Co. v. Feibelman's*, 213 N. Y. Supp. 193 (1925).

²⁷ *Rosenberg v. Curtis Brown Co.*, 260 U. S. 516 (1923).

²⁸ *Fleischmann Const. Co. v. Blauner's*, 190 App. Div. 95, 179 N. Y. Supp. 193 (1st Dept. 1919).

²⁹ *Peoples Tobacco Co. v. American Tobacco Co.*, 246 U. S. 79 (1918).

³⁰ *International Harvester Co. v. Kentucky*, 234 U. S. 579 (1914).

³¹ *Tauza v. Susquehanna Coal Co.*, 220 N. Y. 259 (1917), followed in *Stollman v. Olmsted*, 203 App. Div. 476, 196 N. Y. Supp. 689 (1st Dept. 1922).

³² *Krakowski v. White Sulphur Springs*, 174 App. Div. 440, 161 N. Y. Supp. 193 (1st Dept. 1916); *Rich v. Chicago, etc. Ry. Co.*, 34 Wash. 14, 74 Pac. 1008 (1904).

³³ *Holzer v. Dodge Bros.*, 233 N. Y. 216, 135 N. E. 268 (1922).

toy-makers fair where its agents had space, distributed catalogs and took orders to be forwarded to the home office for approval.³⁴ In a later case where a similar situation arose, the Appellate Division in the same Department followed the Court of Appeals.³⁵

Miscellaneous—The maintenance of an office for the settlement of claims against a railroad is doing business,³⁶ but not the sale of a through ticket by a connecting carrier.³⁷ Furnishing electric power to residents of a state is doing business.³⁸ The ownership of land, the payment of taxes thereon,³⁹ and the ownership of shares in domestic corporations⁴⁰ do not constitute doing business; nor do the selling of goods by mail to purchasers with the state,⁴¹ nor the bringing of a car of a foreign railroad corporation into the state by others than its servants.⁴² Among those acts which will not subject corporations to liability are included the transfer of its stock, the payment of dividends,⁴³ interest and bonds,⁴⁴ and the transaction of business through a subsidiary domestic corporation, the identity of which is preserved.⁴⁵

The Federal Courts hold that valid service cannot be had on a corporation which has ceased doing business in the state,⁴⁶ but it has been held in New York that in an action based on business done in the State, service is valid although the corporation was not entering into any new contracts but was withdrawing from the State.⁴⁷

At the conclusion of our discussion something in the way of summarization and analysis is naturally expected, but we find ourselves unable to determine what acts a corporation may perform without subjecting itself to the jurisdiction of our Courts. This is due largely to the very nature of the subject and in part to the confusion brought about by divergent decisions of Courts in cases where the facts are practically analogous.

V. J. K.

³⁴ *Bogert & Hopper v. Wilder Mfg. Co.*, 197 App. Div. 773, 189 N. Y. Supp. 444 (1st Dept. 1921).

³⁵ *Brandow v. Murray*, 203 App. Div. 47, 196 N. Y. Supp. 293 (1st Dept. 1922).

³⁶ *St. Louis, etc. Ry. v. Alexander*, 227 U. S. 218 (1913).

³⁷ *P. & R. Ry. Co. v. McKibbin*, 243 U. S. 264 (1917).

³⁸ *Lattu v. Ontario, etc. Power Co.*, 131 Minn. 162, 154 N. W. 950 (1915).

³⁹ *New Mexico v. Baker*, 196 U. S. 432 (1905).

⁴⁰ *Lilienblum v. Wissotzky*, 209 N. Y. Supp. 704 (1925).

⁴¹ *Gottschalk v. Distilling Co.*, 50 Fed. 681 (D. MD., C. C. 1892).

⁴² *Earle v. Chesapeake & Ohio R. Co.*, 127 Fed. 235 (E. D., Pa. 1904).

⁴³ *Pomeroy v. Hocking Valley R. Co.*, 218 N. Y. 530, 113 N. E. 504 (1916).

⁴⁴ *Toledo Rwy. Co. v. Hill*, 244 U. S. 49 (1917).

⁴⁵ *Cannon v. Cudahy*, 267 U. S. 333 (1925).

⁴⁶ *Chipman v. Jeffrey*, 251 U. S. 373 (1920).

⁴⁷ *Smith v. Compania Litografica, etc.*, 201 N. Y. Supp. 65 (1923).