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JURISDICTION OVER CAUSES OF ACTION AGAINST INTERSTATE CARRIERS

By BERNARD C. GAVIT

I.

The question of the jurisdiction of state courts over the person of interstate carriers and of causes of action against them, when measured by the interstate commerce clause of the United States Constitution, has recently received some judicial attention.

The Appellate Court of Ohio in the recent cases of *Iron City Produce Company* and *Albert M. Travis v. American Railway Express Company*¹ has decided that a statute authorizing service of process upon a foreign corporation by the serving of summons upon a managing agent of the corporation doing business in the state, as against an interstate carrier, is an unwarranted interference with interstate commerce and, therefore, void under the commerce clause of the Constitution. In those particular cases, the causes of action arose out of transactions in states other than Ohio, and the plaintiffs were not residents of Ohio. The defendant carrier was not a resident of Ohio, but was actively engaged in business as a common carrier in that State.

The court decided that it was bound by the case of *Davis v. Farmers Co-Operative Equity Company*.² However, a recital of the facts and decision in that case discloses the obvious conclusion that the Davis case was not at all a controlling precedent for the Ohio court.

In the Davis case, the Supreme Court held that a statute authorizing service upon an agent soliciting business for an interstate carrier in Minnesota, construed by the courts of Minnesota as compelling every foreign interstate carrier to submit to suit as a condition for maintaining a soliciting agent within the state, was invalid under the commerce clause where it compelled the submission to jurisdiction over an action which arose outside of that state and where neither of the parties were residents of that state and where the defendant did not, in fact, operate or maintain any portion of its transportation system within the State of Minnesota. The decision is distinctly upon the ground that the State of Minnesota could not compel a foreign corpora-

* See biographical note, p. 140.

¹ 151 N. E. 316.

² 262 U. S. 312, 67 L. Ed. 996, 43 S. Ct. 556.

tion, engaged in interstate commerce, to submit to suits arising outside of the State as a condition precedent to its right to maintain a soliciting agency in the State, it being admitted that the right to maintain the agent was a necessary incident of the interstate commerce carried on by the company, and that there was in fact an actual interference with the business of the company.

The Minnesota statute prohibited the doing of interstate business except upon conditions which the court found were unwarranted in law and in fact, and the statute was, therefore, a direct attempt upon the part of the State to regulate interstate commerce. The legislation could only apply to interstate commerce; and it was itself an interference with the rights of carriers under the commerce clause.

II.

The Ohio statute was quite different in its purpose and its scope. It provided: "When the defendant is a foreign corporation having a managing agent in this state, the service may be upon such agent." It could as well apply to intrastate business as it could to interstate business. It created no direct interference with interstate commerce, and placed no conditions on a carrier as to its right to do business in the state. Whatever interference there was with interstate commerce was brought about by the plaintiffs in bringing the suit in Ohio and attempting to obtain service under the statute. In the Minnesota case the interference with interstate commerce was the result of the attempt on the part of the state to make the carrier submit to all character of suits before giving it the right to do certain business in the state; and the actual suit in question was found as a matter of fact to be an unreasonable burden upon the interstate business of the carrier concerned. In the Ohio cases the interference was not the statute itself, but the act of the parties, and there was no finding that as a matter of fact the action of the parties was an actual interference with interstate business.

There were two cases. In the first one the question had been raised by a motion to quash the service for the reason that the statute was void under the 14th Amendment and the Commerce Clause; in the second the question was raised on a motion challenging the jurisdiction over the cause of action. The court treats the second motion as being similar in effect to the first. But it says in conclusion, "To hold that these actions may be maintained and the service thereon may be made under favor (*sic*) of Section 11290, General Code, would be to come in direct conflict with the decision in the Davis case. We will therefore

follow the decision in that case and hold that, in these cases, Section 11290 is repugnant to the interstate commerce clause of the Constitution of the United States and that the court did not err in quashing the service." There being no showing or finding of actual interference the result of the cases is that a state has either no jurisdiction over a cause of action against an interstate carrier or of the person of the carrier where the cause of action arose in another state and the parties reside elsewhere. That is, the jurisdiction of the State of Ohio over the cause of action, or the person of the defendant, itself unreasonably interferes with interstate commerce.

III.

Both courts sidestep the question as to whether or not the defendants could successfully complain under the 14th Amendment. The authorities, however, are quite conclusive to the effect that they could not.³

This would be particularly true in the Ohio cases, because after all what the defendant was complaining about was the bringing of the suit in Ohio, where the person of the defendant was present, without duress or condition on the part of the State of Ohio. The prohibition of the 14th Amendment is solely against state action.⁴ If a corporation chooses to go into a state, and thereby submits itself to the jurisdiction and processes of the courts of the State, it cannot well complain that an individual uses those processes to its embarrassment. The moving force is not the State, but the individual.⁵

The situation in regard to the Commerce Clause is quite similar. The Commerce Clause gives to the United States and takes away from the State power to regulate interstate commerce. Nobody, for instance, would suppose that the commerce clause itself made stealing from interstate shipments a crime. Individual interference with interstate commerce might be unlawful under proper legislation but it would not be unconstitutional. If an interstate carrier chooses to go into a State to do business and thereby submits itself to the jurisdiction and the processes of the State without duress or condition on the part of the State, it ought not to be able to successfully complain, for constitutional reasons, if an individual uses those processes to its embarrass-

³ See the cases cited in the case of *Davis v. Farmers' Co-Operative Equity Company*, 262 U. S. 312, at pages 317 and 318.

⁴ "Nor shall any state deprive any person of life, liberty or property without due process of law."

⁵ But see, *Hayman v. City of Galveston*, 71 L. Ed. 416.

ment. The moving force is not the state, but the individual. Can it fairly be said that a state by merely allowing an individual to use its courts is thereby regulating interstate commerce?

The Supreme Court, in the Davis case, is very careful to point out that the statute itself, as interpreted and enforced, was an interference with interstate commerce. That is, a state cannot condition its personal jurisdiction over an interstate carrier in a manner calculated to interfere with interstate commerce. The Ohio court decides that a State has no jurisdiction over the person of an interstate carrier within its limits in a suit brought by a non-resident on a cause of action arising elsewhere. That is quite a different proposition.

IV.

It may be well to get the background of the law here involved in order to see just how different it is.

The admitted general rule is, of course, that actions which are of a personal or transitory nature, may be brought and maintained in any jurisdiction in which the defendant may be found;⁶ although it is also true that any state or nation may refuse to exercise its jurisdiction over a transitory cause of action where the cause of action arose elsewhere and where neither of the parties are residents of the state where the action is commenced.⁷

This is particularly true where the cause of action arose under the laws quite dissimilar to the laws of the state where the action is brought.⁸

The Constitution does not compel a state to furnish courts for such a situation.⁹ But the Commerce Clause requires the furnishing of reasonable court facilities for the enforcement of a claim arising out of interstate commerce and against a citizen of the state.¹⁰

Ordinarily, jurisdiction which was accepted as valid under the common law doctrines of conflict of laws, is also valid under the Fourteenth Amendment.¹¹ It would seem that if a situation or legislation were not so unreasonable as to be within the protection of the 14th Amendment, that the same situation and the

⁶ *Massie v. Watts*, 6 Cranch. 148.

⁷ *Gardner v. Thomas* (N. Y.), 14 Johns, Rep. 134; *Burdick v. Freeman*, 120 N. Y. 420.

⁸ *Mexican National Railroad v. Jackson*, 89 Tex. 107.

⁹ *Kenney v. Loyal Order of Moose*, 252 U. S. 411, 64 L. Ed. 638, at p. 640.

¹⁰ *Sioux Remedy Co. v. Cope*, 235 U. S. 197, 59 L. Ed. 193.

¹¹ *Den v. Hoboken Land Co.*, 18 How. 272, 15 L. Ed. 372.

same legislation would not ordinarily be an unwarranted interference with or regulation of interstate commerce. There seems to be some indication by the Supreme Court in the Davis case that there is somewhat of a conflict between that case and the *St. Louis Southwestern Railroad Co. v. Alexander* case,¹² which held that a somewhat similar statute did not deprive a carrier of property without due process of law.

V.

The anomalous part of the present situation and the decision of the Supreme Court in the Davis case is that under the Federal Employers' Liability Act, Congress has recognized the validity and reasonableness of the general rule as to jurisdiction over transitory causes of action as applied to interstate commerce and provides that "Under this Act an action may be brought in a Circuit Court of the United States in the district of the residence of the defendant or in which the cause of action arose or in which the defendant shall be doing business at the time of commencing such action."¹³

This section has been held to authorize the maintenance of a suit in New York on a cause of action which arose under the Act in New Jersey where both the plaintiff and the defendant were citizens of New Jersey and where the defendant was doing business in New York as a foreign corporation under somewhat similar circumstances and statutes as were involved in the Minnesota case.¹⁴

Had the causes of action sued upon in the Ohio cases arisen under the Federal Employers' Liability Act, the decision must have been the exact opposite of what it was, for there was no dispute but what the defendant was doing business in the State.

After all, the result of the Ohio case is that perhaps changing circumstances and conditions now warrant a new doctrine of conflict of laws which in effect creates a new standard for the Fourteenth Amendment and the Commerce Clause; i.e., the courts are now ready to depart from the old rule that a transitory cause of action may be enforced in any jurisdiction where the defendant may be found where in fact there is no real necessity or occasion for the bringing of a suit outside of the domicile of the parties or in the jurisdiction where the cause of action arose.

¹² 227 U. S. 218.

¹³ Section 6, Employers' Liability Act, as amended April 5, 1910, 36 Stat. 391.

¹⁴ *Connelly v. Central Railroad Co. of N. J.*, 238 Fed. 932.

Such a new doctrine would only ingraft on the law of conflict of laws an established rule of equity. There is admitted authority in a court of equity to restrain persons within its jurisdiction from prosecuting suits in its own state or in other states where the institution and prosecution of the suit in the foreign jurisdiction will work wrong or injury to others and where the prosecution of a suit in the foreign jurisdiction is vexatious.¹⁵

The Davis case presented a situation where the plaintiff could well have been restrained by the courts of his own state in maintaining the action in a foreign jurisdiction. Although there are apparently no reported cases in Indiana on the subject, the trial courts of Indiana have on several occasions, to the knowledge of the writer, restrained the prosecution of a suit in Minnesota by an Indiana citizen upon a cause of action arising in this state and against a carrier who was only present in Minnesota under the statute considered in the Davis case.

VI.

The Supreme Court in the Davis case is quite careful to limit its decision to the actual situation in that case and as pointed out above, the decision is clearly upon the point that the state could not compel the foreign carrier to submit to jurisdiction of vexatious lawsuits before it could be admitted to do business in the state. The Ohio decision is quite different and holds that whether or not the suit is in fact vexatious, the courts of Ohio are prohibited by the Commerce Clause from entertaining the suit. It may well be that the decision leaves the courts of Ohio without any jurisdiction over any foreign corporation as the court distinctly holds the statute in its entirety to be void. Whether or not rights under the statute in regard to intrastate business are separable under the statute would be rather questionable.¹⁶

VII.

A little reflection shows that the results of the Ohio case are quite as arbitrary as the former rule. It seems to be admitted by the Supreme Court of the United States and by the Appellate Court of Ohio that if in fact the plaintiff were a citizen of the state, it would then make no difference where the cause of action arose and that the action could be maintained in the state of his residence if the defendant could also be found there under the

¹⁵ 7 R. C. L. 1070, Sec. 108. *Culp v. Wutler*, 69 Ind. App. 668, 122 N. E. 684.

¹⁶ See 6 R. C. L., p. 121, *et seq.*

process statutes of the state; and that if in fact the defendant were a resident of the state, the residence of the plaintiff and the place giving rise to the cause would be immaterial.

There seems to be the further admitted exception that the state where the contract of carriage was executed would also have jurisdiction.¹⁷

There may be two reasons for those exceptions. Either (1) the plaintiff has a property right whose situs is in any one of those three jurisdictions, and the denial of a remedy there would violate the 5th or 14th Amendment; or (2) the commerce clause protects only against unreasonable interference, and to allow a plaintiff to pursue his remedy in any one of those jurisdictions is not an unreasonable interference, although it be a more serious inconvenience than the maintenance of the suit in a state which is a stranger to the transactions and all of the parties.

The final outcome as regards the first reason may ultimately depend on whether the cause of action arises out of interstate commerce as such, and under specific federal legislation on the subject, or whether it arises under the state law. That is, there may well be a distinction between a cause of action in favor of an employee under the Employers' Liability Act or of a shipper under the Carmack Amendment and one arising out of a crossing accident, when Congress or the courts attempt to regulate the venue of the action. If the cause of action is given under valid Federal legislation under the Commerce Clause, then Congress or the courts may reasonably regulate the venue;¹⁸ if the cause of action arises under state law then the plaintiff's right to pursue his remedy where he will might be protected to some extent at least by the 5th and 14th Amendments.

VIII.

The situation is quite confused, but it is submitted that the results of the Ohio case do not add much to the reason of the thing nor assist much as a practical proposition in remedying a bad situation.

Under the Ohio case, if a cause of action arose in Chicago in favor of a citizen of New York and against the Pennsylvania Railroad Company, the action could not be maintained in the United States District Court for the Northern District of Indiana, sitting at Hammond and within twenty miles of the City

¹⁷ *International Harvester Co. v. Commonwealth*, 234 U. S. 579, 58 L. Ed. 1479.

¹⁸ *Eastman Kodak Co. v. So. Photo Co.*, — U. S. —, 71 L. Ed. 423.

of Chicago, but it could be maintained in either New York or Pennsylvania, due to the fact that the plaintiff and defendant were residents of those states, respectively. Actually, of course, the inconvenience of trying the case in New York or Pennsylvania would be several times greater than the inconvenience of trying the case in Indiana.

If the cause of action arose in Chicago in favor of a citizen of New York and was against the Wabash Railway Company, that action could be maintained in Indiana for the reason that the Wabash Railway Company is an Indiana corporation, and it could also be maintained in Illinois and New York.

If the cause of action arose in Chicago in favor of a citizen of New York and was against the New York Central Railroad Company, the suit could be maintained in Illinois, Indiana, Michigan, Ohio, Pennsylvania and New York, for the reason that the New York Central Railroad Company is domesticated in each state through which it passes and is a citizen of each of those states. (Provided, of course, in each instance that it was not a cause of action under the Employers' Liability Act.)

IX.

One hesitates to suggest any additional federal legislation, but in view of the confusion which is certain to arise from the two cases discussed in this paper, it would seem that the only rational and certain method of settling the problem is some federal legislation as to the venue of actions against interstate carriers.¹⁹

¹⁹ Since this article was written there have been at least three cases decided which have some bearing on the points discussed. They are the following: a. *Hoffman v. State of Missouri*, 71 L. Ed. 598. This was a suit in Missouri against a Missouri Corporation, by a citizen of Kansas upon a cause of action arising in Kansas under the Federal Employers' Liability Act. The Supreme Court of the United States held that the action could be there maintained, Missouri being the state of residence of the defendant. Strangely enough the opinion does not cite the provision of the Act giving venue in just such a case to the State of Missouri, but says that the case of *Davis v. Farmers Co-op. Co.* did not apply, and that the defendant was not immune from suit merely because of inconvenience;

b. *National Liberty Insurance Co. v. Trattner* (Ark.), 292 S. W. 677. This was a suit in Arkansas by a citizen of Missouri against a Missouri corporation on a claim arising on Missouri under a contract executed there. The corporation was doing business in Arkansas as a foreign corporation. The local statute provided for service, and jurisdiction as to contracts made and business done in the state. The court construed the statute as giving jurisdiction solely over local business, but recognized the general principle that a transitory action may be sued where ever the defendant

might be found, saying however, that comity did not require it to take jurisdiction over entirely foreign transactions and parties. The effect of the decision is that the State will not exercise its jurisdiction over a transitory cause of action unless some necessity for doing so appears;

c. *Murman v. Wabash Ry. Co.*, 221 N. Y. S. 332. This was a suit in New York by a non-resident on a cause of action arising under the Federal Employers' Liability Act in Michigan and against an Indiana Corporation doing business in New York under exactly the same circumstances as were involved in the *Davis v. Farmers' Co-op. Co.* case, *supra*. The Court held that the defendant was doing business in New York within the meaning of the New York statutes, and that under Sec. 6 of the Employers' Liability Act the venue was properly laid in that state. On principle the case is directly contrary to the Ohio cases.

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