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Foreign Corporations-Jurisdiction Resulting from Business Done within State

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FOREIGN CORPORATIONS—JURISDICTION RESULTING FROM BUSINESS DONE WITHIN STATE—Respondent purchased a through coupon ticket at the office of the Louisville & Nashville Railroad Company in New Orleans, which entitled him to passage over the line of the Louisville & Nashville from New Orleans to Montgomery, Ala., over the Atlanta & West Point R. R. from Montgomery to Atlanta, Ga., and thence to Washington over the line of the Southern Railway Co., petitioner. The train was made up by the Louisville & Nashville in New Orleans and was operated under an agreement among the three carriers concerned, which was not offered in evidence. But it appeared that the cars composing the train were furnished by the three carriers on the basis of their respective mileage; that each furnished locomotive power and train crews over its own line; and that each, while in possession of the train, was in exclusive control of it.

Respondent took passage in New Orleans on a car of the Southern and proceeded in it on his journey until, while on the line of the Southern in *Virginia*, he was injured, due to alleged negligence of petitioner.

The Southern was a Virginia corporation, which had complied with the Louisiana statute by designating an agent to accept service of process within that state.

A tort action was brought by the respondent in the District Court for the Eastern District of Louisiana. Process against petitioner was accordingly served upon its agent in Louisiana. The Southern, appearing specially before answer, excepted to the jurisdiction on the ground that the cause of action, which was transitory, arose outside of Louisiana and not out of any business done within that state. The exception was overruled. Certiorari to the United States Supreme Court, October 15, 1928.

The Supreme Court (although reversing the decision of the District Court upon other grounds) upheld its position in overruling the petitioner's exception to its jurisdiction. The grounds for the Supreme Court's decision were (1) Petitioner was sufficiently present within the state of Louisiana for the purpose of being sued upon a cause of action arising within the state. (2) This cause of action was one connected with a *contract* for transportation, as evidenced by the ticket sold to respondent in New Orleans, by petitioner's agent, the Louisville and Nashville Ry. Co. "It was out of this action within the state that the present obligation of the Southern arose, although the alleged breach of it occurred elsewhere." *Louisville & Nashville R. R. Co. v. Chatters; Southern Ry. Co. et al. v. Same*, 49 Supreme Court Reporter, 329, April 15, 1929.

If the liability of a railway carrier of passengers for a negligent injury to a passenger may be considered to be of a dual nature, i. e., a liability in tort, and a liability for breach of the contract of carriage, then the position

which the Supreme Court took upon this point must have been a correct one. There is substantial authority for this proposition, the cases seeming to grant to the injured plaintiff an election between remedies for breach of contract and for tort. On this point, in general, see: 15 Encyc. Pleading and Practice, 1121; 5 R. C. L., Sec. 702.

A significant feature of the case is the fact that the Court apparently concedes that a foreign corporation, legally "doing business" in a state, and legally present there, is nevertheless amenable only to suit growing out of business done within that jurisdiction. Had the action been on the contract liability, then clearly it could be said to be one arising out of business done in the State of Louisiana, for the contract was entered into in that state.

Quoting the opinion: "A foreign corporation is amenable to suit to enforce a personal liability if it is doing business within the jurisdiction in such manner and to such extent as to warrant the inference that it is present there. Even when present and amenable to suit it may not, unless it has consented, be sued on transitory causes of action arising elsewhere *which are unconnected with any corporate action by it within the jurisdiction.*" (Italics ours.) The court then proceeds to bring the case within this rule by holding that the cause of action was, in fact, one connected with business done within the jurisdiction. It was plain that the corporation itself was present within the state, doing business there. If the Supreme Court had not believed that this in itself was insufficient, but that the cause of action must have arisen from corporate action within the jurisdiction, then it would have been unnecessary for it to go to the extent it did to show that the business was done within the state.

That the case is perhaps an innovation in the law as to jurisdiction over foreign corporations may be indicated by the following reference from the American Law Institute restatement of the law of Conflict of Laws, published in 1926: "Special Note—It has not yet been settled by the Supreme Court of the United States whether, when a corporation does intrastate business in a state it subjects itself to the jurisdiction of the state as to causes of action not arising out of the business done within the state, so that the state can exercise through its courts jurisdiction over it by serving an agent of the corporation." *Am. Law Inst. Restatement* No. 2, p. 83. The Restatement, however, adopts the rule requiring that the suit arise out of such local transaction, and has furnished considerable authority in point.

The principal case states the rule a little more broadly, i. e., jurisdiction extends to all causes of action *connected with* business done in the state, regardless of whether or not the cause of action *arises out of* the business done, in the technical sense.

It is submitted that such a rule would tend to eliminate much of the inconvenience and expense which now result from the practice of serving a corporation in some states where the plaintiff believes he will be more fortunate at the hands of the courts and juries, and requiring parties and witnesses to attend the trial from points sometimes at a great distance from the site of the tribunal so chosen.

C. W. W.