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## Jurisdiction over a Foreign Corporation-Constitutional Limitations on Exercise of Jurisdiction

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JURISDICTION OVER A FOREIGN CORPORATION—CONSTITUTIONAL LIMITATIONS ON EXERCISE OF JURISDICTION.—The plaintiff, a foreign corporation, which had not complied with the statutes permitting it to do business within this state, brought an action in the Delaware Superior Court upon six notes of five hundred dollars each which were executed in Missouri and payable in Massachusetts. The defendant was a foreign corporation engaged in the traveling show business, and it had not complied with the statutes permitting it to do business within this state, but at the time this action was commenced it was giving exhibitions in Muncie, Indiana. The general manager of the defendant corporation was served with process and the defendant corporation's property was attached. The defendant filed a plea in abatement questioning the jurisdiction of the court, and from a decree abating the action the plaintiff appealed. *Held*, that the court did have jurisdiction *quasi in rem* by attachment of the defendant's tangible property within the jurisdiction of the court.<sup>1</sup>

This is the first time that either the Supreme or the Appellate Court of this state has been called upon to pass upon this identical question, and it seems that this question has not yet been settled by the Supreme Court of the United States.<sup>2</sup>

In the opinion the court used the word jurisdiction in three different ways: first, general jurisdiction in the international sense meaning the power of the state to create rights which under the common law will be recognized as valid in other states;<sup>3</sup> second, jurisdiction over the defendant meaning the power to render a valid personal judgment against the defendant; and third, jurisdiction *in rem* meaning the power to create a valid judgment to the extent of property attached under the statute.<sup>4</sup> It is important and much confusion may be avoided if the meaning of the word jurisdiction, as used at a particular time, is kept in mind.

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<sup>10</sup> *Robinson v. Harner* (1911), 176 Ind. 226, 95 N. E. 561; *Guthrie v. Carpenter* (1904), 162 Ind. 417, 70 N. E. 486; *Loomis v. Donovan* (1861) 17 Ind. 198; *Rigsbee v. Bowder* (1861), 17 Ind. 167; *Billingsley v. Stratton* (1858) 11 Ind. 396; *Rhodes v. Thomas* (1851), 2 Ind. 638.

<sup>11</sup> (1911) 22 N. D. 168, 133 N. W. 97.

<sup>1</sup> *Dodgem Corp v. D. D. Murphy Shows Inc.*, App. Court of Ind., December 23, 1932, 183 N. E. 699.

<sup>2</sup> American Law Institute, Restatement of the Law of Conflict of Laws, proposed final draft No. 1, Sec. 97, special note p. 135.

<sup>3</sup> *Supra*, Sec. 43.

<sup>4</sup> Burns' Ann. St. 1926, Sec. 981.

Under the dual form of government in the United States, a State has jurisdiction in the international sense over property and persons both natural<sup>5</sup> and corporate within its territorial limits; subject however, to certain constitutional limitations upon the exercise of that jurisdiction. The Constitution narrows the limits of the State's legal activity, even though the State may have jurisdiction in the international (common law) sense. It does not in some instances have power to act under the Constitution because the Constitution limits the exercise of the common law jurisdiction of the State.

In this case in order to see whether the trial court had power to act, it was necessary to determine first whether the State had jurisdiction in the common law sense; and next, if the State had power to act under the Constitution of the United States, i. e., whether the State could exercise its common law jurisdiction without violating the Constitution. If the State could not constitutionally exercise its common law jurisdiction, the court could not have power to act even under the attachment statutes, but if the Constitution permitted the State to exercise its common law jurisdiction, then under the statutes,<sup>6</sup> the Delaware Superior court had jurisdiction. Thus the Appellate court of Indiana decided certain constitutional law points in order to decide the ultimate question involved. But the Appellate court has limitations on its jurisdiction to decide constitutional questions.<sup>7</sup> The court said "a corporation not being a citizen within the meaning of the fourteenth amendment of the Federal Constitution cannot invoke the benefit of the provisions which are inserted for the protection of natural persons." If the point the court was attempting to decide was whether or not a corporation was a citizen within the meaning of the privileges and immunities of the Constitution, this statement is correct;<sup>8</sup> but if any constitutional question was presented, it was under the due process clause of the fourteenth amendment, and under this clause a corporation is, of course, protected.<sup>9</sup>

Does the due process clause prevent a State from exercising jurisdiction over a foreign corporation on a transitory cause of action arising outside the territorial limits of the State? It has been held that as a condition precedent to the right to do business within a State, a foreign corporation may be compelled by compliance with the State statute to consent to jurisdiction of the State on causes of action arising in another state.<sup>10</sup> In the *Pennsylvania Fire Ins. Co.* case, the defendant consented to jurisdiction by compliance with the statute. But it has been held under a similar statute providing for service of process upon a State officer, that soliciting business within the State without complying with the statute did not amount to consent, and therefore the State did not have power to act.<sup>11</sup> It will be noticed that in these cases it was assumed that there

<sup>5</sup> *Fisher v. Fielding* (1895), 67 Conn. 91, 34 Atl. 714.

<sup>6</sup> Burns' Ann. St. 1926, Sec. 931 and Sec. 1430.

<sup>7</sup> Burns' Ann. St. 1926, Sec. 1156.

<sup>8</sup> *Paul v. Virginia* (1869), 8 Wallace 168.

<sup>9</sup> *Western Union v. Kansas ex rel. Coleman* (1910) 216 U. S. 31.

<sup>10</sup> *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Min. and Milling Co.* (1917), 243 U. S. 93, 37 Sup. Ct. Rep. 344, 61 L. Ed. 610.

<sup>11</sup> *Old Wayne Mut. Life Ins. Ass'n. v. McDonough* (1906), 204 U. S. 8, 51 L. Ed. 345.

was jurisdiction of the subject matter, and when by consent the court acquired jurisdiction over the person of the defendant, the court could render a valid judgment and not violate the due process clause of the Constitution. Thus it would seem that the State has jurisdiction over the subject even though the action is transitory and arose outside the territorial limits of the state. Whether or not an action is transitory is a question to be decided by the forum.<sup>12</sup>

But, it has been held that a State cannot render a valid judgment upon a cause of action arising outside of the State, although, the defendant has a soliciting agent within the State, when the defendant is engaged in interstate commerce; even though, the cause of action is otherwise of a transitory nature, for permitting a State to exercise jurisdiction would be a burden upon interstate commerce.<sup>13</sup> Here the court took judicial notice of the fact that the carrier would be required to spend money in defending the action, and that was the burden upon interstate commerce. The burden of expenses in defending an action will be as great if the defendant has property temporarily within the State, subject to attachment, even though the defendant is not engaged in interstate commerce.

The test under the interstate commerce clause and under the due process clause seems to be one of reasonableness, and it has been suggested that since the test is the same under both clauses it should be applied in the same way, so that a violation of one would also be a violation of the other. If there is a violation of the commerce clause there is a taking of property without due process of law.<sup>14</sup> There may be a time when the Supreme Court will hold that it is unconstitutional for a State to exercise jurisdiction over a foreign corporation on a cause of action arising outside of the state; and that an attempt to exercise that jurisdiction would, because of the expenses in defending the action, be a taking of property without due process of law. On the other hand, however, the court may hold that the State can exercise jurisdiction over foreign corporations and causes of actions arising outside the territorial limits of the State. There is a statement in one case contrary to this last proposition even when service of process was upon an agent.<sup>15</sup>

If the state cannot acquire jurisdiction by service of process upon an agent, it cannot acquire jurisdiction *quasi in rem* by the attachment of property that happens to be within its territorial limits.<sup>16</sup> A proceeding *quasi in rem* has been defined as one against a person in respect to property, as distinguished from one against property or a person only.<sup>17</sup>

C. A. R.

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<sup>12</sup> *Peyton v. Desmond* (1904) 129 Fed. 1.

<sup>13</sup> *Davis v. The Farmers Co-operative Eq. Co.* (1923), 262 U. S. 312.

<sup>14</sup> Gavit, B. C., "The Commerce Clause," p. 48.

<sup>15</sup> *Louisville and N. R. Co. v. Chatters* (1929), 279 U. S. 320, 49 Sup. Ct. Rep. 329, 73 L. Ed. 711. "A foreign corporation is amenable to suit to enforce a personal liability if it is doing business within the jurisdiction in such a manner and to such an 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."

<sup>16</sup> *Santa Fe Ry Co. v. Wells et al* (1924), 265 U. S. 101.

<sup>17</sup> 3 Freeman, Judgments (5th Ed.) Sec. 1522.