

TAUZA v. SUSQUEHANNA COAL COMPANY

New York Court of Appeals, 1917.
220 N.Y. 259, 115 N.E. 915.

CARDOZO, J.

The plaintiff, a resident of this state, has brought suit against the Susquehanna Coal Company, a Pennsylvania corporation. The defendant's principal office is in Philadelphia; but it has a branch office in New York, which is in charge of one Peterson. Peterson's duties are described by the defendant as those of a sales agent. He has eight salesmen under him, who are subject to his orders. A suite of offices is maintained in the Equitable Building in the city of New York, and there the sales agent and his subordinates make their headquarters. The sign on the door is "Susquehanna Coal Company, Walter Peterson, sales agent." The offices contain eleven desks and other suitable equipment. In addition to the salesmen there are other employees, presumably stenographers and clerks. The salesmen meet daily and receive instructions from their superior. All sales in New York are subject, however, to confirmation by the home office in Philadelphia. The duty of Peterson and his subordinates is to procure orders which are not binding until approved. All payments are made by customers to the treasurer in Philadelphia; the salesmen are without authority to receive or endorse checks. A bank account in the name of the company is kept in New York, and is subject to Peterson's control, but the payments made from it are for the salaries of employees, and for petty cash disbursements incidental to the maintenance of the office. The defendant's coal yards are in Pennsylvania, and from there its shipments are made. They are made in response to orders transmitted from customers in New York. They are made, not on isolated occasions, but as part of an established course of business. In brief, the defendant maintains an office in this state under the direction of a sales agent, with eight salesmen, and with clerical assistants, and through these agencies systematically and regularly solicits and obtains orders which result in continuous shipments from Pennsylvania to New York.

To do these things is to do business within this state in such a sense and in such a degree as to subject the corporation doing them to the jurisdiction of our courts. The decision of the Supreme Court in *International Harvester Co. v. Kentucky* is precisely applicable. There sales agents in Kentucky solicited orders subject to approval of a general agent in the home state. They did this, not casually and occasionally, but systematically and regularly. Unlike the defendant's salesmen, they did not have an office to give to their activities a fixed and local habitation. The finding was that travelers negotiating sales were not to have any headquarters or place of business in that state, though they were permitted to reside there. Yet because their activities were systematic and regular, the corporation was held to have been brought within Kentucky, and, therefore, to be subject to the process of the Kentucky courts. "Here," said the court, "was a continuous course of business in the solicitation of orders which were sent to another State and in response to which the machines of the Harvester Company were delivered within the State of Kentucky. This was a course of business, not a single transaction." That case goes farther than we need to go to sustain the service here. It distinguishes *Green v. Chicago, B. & Q. Ry. Co.* where an agent in Pennsylvania solicited orders for railroad tickets which were sold, delivered and used in Illinois. The orders did not result in a continuous course of shipments from Illinois to Pennsylvania. The activities of the ticket agent in Pennsylvania brought nothing into that state. In the case at bar, as in the *International Harvester* case, there has been a steady course of shipments from one state into the other. The business done in New York may be interstate business, but business it surely is.

The defendant refers to cases in which corporations, whose situation was not unlike the defendant's, have been held not to be doing business in this state within the meaning of section 15 of the General Corporation Law and kindred statutes. But activities insufficient to make out the transaction of business, within the meaning of those statutes, may yet be suffi-

cient to bring the corporation within the state so as to render it amenable to process. In construing statutes which license foreign corporations to do business within our borders we are to avoid unlawful interference by the state with interstate commerce. The question in such cases is not merely whether the corporation is here, but whether its activities are so related to interstate commerce that it may, by a denial of a license, be prevented from being here. "A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score." But the problem which now faces us is a different one. It is not a problem of statutory construction. It is one of jurisdiction, of private international law. We are to say, not whether the business is such that the corporation may be prevented from being here, but whether its business is such that it is here. If in fact it is here, if it is here, not occasionally or casually, but with a fair measure of permanence and continuity, then, whether its business is interstate or local, it is within the jurisdiction of our courts. To hold that a state cannot burden interstate commerce, or pass laws which regulate it, "is a long way from holding that the ordinary process of the courts may not reach corporations carrying on business within the state which is wholly of an interstate commerce character." The nature and extent of business contemplated by licensing statutes is one thing. The nature and extent of business requisite to satisfy the rules of private international law may be quite another thing * * *. Unless a foreign corporation is engaged in business within the state, it is not brought within the state by the presence of its agents. But there is no precise test of the nature or extent of the business that must be done. 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.

We hold, then, that the defendant corporation is engaged in business within this state. We hold further that the jurisdiction does not fail because the cause of action sued upon has no relation in its origin to the business here transacted. That in principle was our ruling in *Bagdon v. Phila. & Reading C. & I. Co.*. We applied it there to a case where service had been made on an agent designated by the corporation under section 16 of the General Corporation Law. It applies, however, with equal force to a case where service has been made upon an officer or managing agent. The essential thing is that the corporation shall have come into the state. When once it is here, it may be served; and the validity of the service is independent of the origin of the cause of action. It is not necessary to show that express authority to accept service was given to the defendant's agent. His appointment to act as agent within the state carried with it implied authority to exercise the powers which under our laws attach to his position. When a foreign corporation comes into this state, the legislature, by virtue of its control over the law of remedies, may define the agents of the corporation on whom process may be served. If the persons named are true agents, and if their positions are such as to lead to a just presumption that notice to them will be notice to the principal, the corporation must submit. The corporation is here; it is here in the person of an agent of its own selection; and service upon him is service upon his principal.

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Order affirmed.