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### Jurisdiction Over Foreign Corporations

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basis of the theory by which such an action in deceit is permissible at all, yet works out a theory of equitable estoppel because the infant was of the age of discretion.

A recent Illinois case<sup>14</sup> seems to furnish the answer, however, when it remarks that while estoppel in pais has no application to an infant, the infant *is* liable in an action in deceit and that to save a *circuity of action* an infant of years of discretion should be estopped from proceeding to regain possession of an estate when he by his conduct induced the other to purchase it.

That, it would seem, is the burden of the principal case, when it refuses to follow the rule of the New York cases which deny an action to an infant who takes the initiative in an effort to recover what he has given without restoring what he has received, yet permits the adult to set off against *recovery* by the infant what the adult has lost through the infant's misrepresentation. If one dissolves the form and avoids the circuity of action, what is the result, if not that of denying a recovery *unless* the infant makes good what he enjoyed?

Massachusetts is at least consistent, for it denies the right even to recoup in such a situation.<sup>15</sup>

So, in conclusion, might it not be said that the temper of the law affecting infant's right of disaffirmance is gradually changing and that the fiction of the necessity of protection of infants, regardless of age, is becoming now narrowed down to the actual necessities of each individual case, extending the protection only in those cases where infancy was taken advantage of by the adult, and denying the protection with equal rigor, where it was used by the infant to take advantage of the adult?

ELMER M. LEESMAN.

JURISDICTION OVER FOREIGN CORPORATIONS.—[United States] In an opinion delivered by Mr. Justice Brandeis on January 10th of this year the Supreme Court of the United States holds: (1) That a state court could not acquire jurisdiction of a foreign corporation, not doing business in the state, by service of process on one of its chief officers, while temporarily in the state on business for the corporation; (2) that after a plea to the jurisdiction overruled on demurrer, a plea in bar and trial on the merits did not waive the objection.<sup>1</sup>

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have entrapped third persons into purchasing it from others, or into advancing money upon it."

The court then proceeds to work out a theory of estopped of the infant in this case by estoppel in equity, because the infant here was of "years of discretion." This was a case where the infant, then nineteen years of age, conveyed property to her father to enable him to borrow money on it.

14. *Keal v. Rhudderck* 317 Ill. 240, 119 N. E. 240.

15. *Raymond v. General Motorcycle Co.* 230 Mass. 54.

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1. *James-Dickinson Mortgage Co. v. Harry* (1927) 47 Sup. Ct. Rep. 308.

This appears to be the first case settling the precise point on jurisdiction, though the previous cases left little room for doubt as to the holding when the question should arise.

It had been held that where a foreign corporation did no business in the state and had no officers or agents therein, jurisdiction could not be obtained by service of process on a public officer in accordance with a local statute.<sup>2</sup> It had also been held that when a foreign corporation was not doing business in the state, jurisdiction could not be obtained by service of process on its president while temporarily or casually in the state for his own business or pleasure.<sup>3</sup> The case<sup>4</sup> which comes nearest to the point involved a claim that the president of the company was in the state on business for the corporation, but that fact was not affirmatively found. In the principal case the fact that the president was in the state on business for the corporation was admitted in the pleadings. The reasoning of the *Rosenberg* case goes on the ground that since the corporation, though making purchases, etc., in the state, was not technically doing business therein, it was not subject to its process.

"Visits on such business, even if occurring at regular intervals, would not warrant the inference that *the corporation was present* within the jurisdiction of the state. . . . And as it was not found there, the fact that the alleged cause of action arose in New York is immaterial."

To speak of the corporation being present is to use a mere figure of speech. In a strict sense a corporation cannot be present in foreign territory. The state which conferred certain powers on a group of natural persons to act as a unit and to hold property and transact business under a given name, etc., can of course exercise control over this fictitious person. And when its activities extend sufficiently into foreign territory, sound policy demands that the foreign state be able to enforce claims against it.

If such an organization does nothing whatever in a foreign state, there is no conceivable reason why that state should have power to exercise control over it, merely because it may be able to lay hands on the individuals who carry on its activities elsewhere.

If, for example, a New York corporation did nothing in New Jersey, there is no policy which would make it socially desirable for the courts of New Jersey to attempt to deal with it, though every one of its officers might live in New Jersey and commute back and forth every day.

If the corporation extends its activities to a considerable extent the policy is everywhere recognized that it is desirable that it should be subject to the jurisdiction of the state where such business is done.

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2. *Minnesota Assn. v. Benn* (1923) 261 U. S. 140.

3. *Goldey v. Morning News* (1894) 156 U. S. 518; *Philadelphia & Reading Ry. Co. v. McKibben* (1917) 243 U. S. 264; *Bank of North America v. Whitney Natl. Bank* (1923) 261 U. S. 171.

4. *Rosenberg Bros. v. Curtis Brown Co.* (1922) 260 U. S. 516.

But it may do a good many things in foreign territory before the necessity for foreign control is recognized.

It may advertise its business,<sup>5</sup> and possibly even solicit business by agents,<sup>6</sup> without creating sufficient reason for local control.

It may buy supplies and stock for its business.<sup>7</sup>

It may deposit money in a local bank, and receive payment of demands due it at such bank.<sup>8</sup> Where the line should be drawn is a difficult problem, the solution of which is beyond the scope of this note.

But when it is conceded in a given case that the thing being done by the foreign corporation is not of sufficient importance to justify local control, then it seems clear that the fact that the corporate officer or agent is there for the purpose of such a transaction gives no additional reason for the exercise of local jurisdiction.

On the second proposition, that the subsequent plea and trial on the merits did not waive the objection properly made and saved, the case follows the well settled federal rule.<sup>9</sup>

On this general question there is a curious inconsistency in the Illinois decisions.

When the objection is taken by plea in abatement they follow the federal rule.<sup>10</sup>

But when the objection is taken by motion as in *Harkness v. Hyde*, a subsequent plea in bar operates as a submission to the jurisdiction.<sup>11</sup>

It is difficult to see the reason for this distinction.

E. W. HINTON.

LOCOMOTIVE BOILER INSPECTION ACT—INTERSTATE COMMERCE AND STATE POLICE REGULATION—CONSTITUTIONAL LAW—INDUSTRIAL INJURIES.—[United States] The movement toward federalism in American public law has again been given impetus at the hands of the United States Supreme Court, this time with respect to how far Congress may legislate concerning equipment of locomotives which may use the interstate rail highways of the nation. In *Napier v. Atlantic Coast Line Ry.*<sup>1</sup> three separate actions were brought to enjoin the enforcement of two state laws imposing requirements upon interstate rail carriers relative to equipment of locomotives within the state, the contention being that Congress having legislated with respect to the subject matter, even though not having passed specific rules, as a consequence such state statutes

5. *Philadelphia & Reading Ry. Co. v. McKibben* (1917) 243 U. S. 264.

6. *Minnesota Assn. v. Bess* (1923) 261 U. S. 140; *Thurman v. Ry.* (1906) 151 N. E. 63; *Shambe v. D. and H. R. R. Co.* (Pa. 1927) 135 Atl. 755.

7. *Rosenberg v. Curtis Brown Co.* (1922) 260 U. S. 516.

8. *Bank of North America v. Whitney Natl. Bank* (1923) 261 U. S. 171.

9. *Harkness v. Hyde* (1878) 98 U. S. 476.

10. *Delaney v. Clement* (1841) 4 Ill. 476; *Grand Lodge v. Cramer* (1896) 164 Ill. 9.

11. *Eddleman v. Traction Co.* (1905) 217 Ill. 409.

1. 47 Sup. Ct. Rep. 207.