1929

Receiverships, Process, Foreign Corporations

Ernst W. Puttkammer

the *Mix* case the action had been brought in the federal court in Missouri it could have been maintained.[14] The objection that there was an interference with interstate commerce is obviously met by the answer that Congress expressly has given legislative sanction to it.

Does not the same answer apply to an action in the state courts, in a state where the defendant is doing business? Sec. 6 gives the federal courts and the state courts concurrent, i. e., equal, jurisdiction. If the first portion of the section be construed to be a regulation of the venue of actions in the federal courts and therefore inapplicable to the jurisdiction of state courts, still by other valid federal legislation all the federal district courts are given jurisdiction.[15] The competent courts of all states therefore have jurisdiction, because all federal district courts have jurisdiction.

If the first portion of the section be construed to be a regulation of the jurisdiction of the federal courts, then jurisdiction of the state courts is limited to those states where the parties are residents, or where the action accrued, or the carrier is doing business.

In either event it would seem that the Supreme Court could not re-regulate the jurisdiction of the federal and state courts, but would be forced to accept the regulation of Congress to the effect that any competent federal or state court in a state where the carrier was doing business has jurisdiction.

BERNARD C. GAVIT.

RECEIVERSHIPS—PROCESS—FOREIGN CORPORATIONS.—[New York] In an action begun in New York by a Vermont citizen against a Vermont corporation for negligence occurring in Vermont and causing death there the summons was served upon a director residing in New York. The defendant had been placed in the hands of receivers in Vermont and the receivership had been extended to New York under U. S. Jud. Code sec. 56, after the cause of action arose but before the service of process. The defendant having moved to set aside the service, *held,* the motion should be granted. *Gaboury* v. *Central Vermont Ry. Co.*[1]

The efficiency of post-receivership service of process in suits arising out of pre-receivership business has but rarely come before the courts. In the instant case, the court (Cardozo, C. J.) rested its decision on two grounds: (1) that a foreign corporation which has been placed in receivership is in the same position as if it had

against removal of causes to the federal courts, if begun in the state courts, was given unquestioned effect.

14. There can be no question but what the railroad company was "doing business" in Missouri within the meaning of sec. 6. It may have been doing interstate business exclusively, but the act makes no distinction between interstate and intrastate business. It requires merely that the defendant be "doing business" in the district.

15. See supra, notes 10 and 12.

1. (1929) 250 N. Y. 233, 165 N. E. 275.

withdrawn from the state, since "presence within the state imports the use of corporate power by corporate representatives" (p. 237); and (2) that the order appointing receivers, having enjoined the officers, directors and agents of the company from interfering with the receivers' possession, had shorn the directors of their representative capacity. Both grounds seem sound, although the latter only comes within the purview of authority.[2] On the other hand, had the receivership not been extended to the form, the former ground might not have been available.[3]

The decision might also have been placed on the ground that service upon a resident director of a foreign corporation is valid only when the cause of action arose within the state.[4]

The case affords another manifestation of the growing consciousness of the courts that their traditional willingness to enforce foreign law through comity and to recognize rights founded upon it has begun to be availed of as an instrument of oppression, for it has given encouragement to a practice on the part of attorneys in personal injury cases to sue in that forum which has the greatest capacity of causing inconvenience to the defendant, in order thereby to add an element of nuisance value as an incentive toward settlement. Suffice it to say that where the defendant upon whom is thus imposed the hardship of trial in an inconvenient forum, is engaged in interstate commerce, the practice has been condemned as a burden on such commerce.[5]

For an extended exposition of the evil and the remedy, see an able article by Paxton Blair, "The Doctrine of Forum Non Conveniens in Anglo-American Law."[6]

E. W. PUTTKAMMER.

SALES—STATUTE OF FRAUDS—CONDITIONAL PAYMENT—RESTITUTION.—[Illinois] In *Illinois-Indiana Fair Association* v. *Phillips*[1] the court held (*a*) that an agreement to purchase shares of stock of a corporation was within the Statute of Frauds relating to the sales of goods or choses in action (sec. 4 Uniform Sales Act); (*b*) that a promissory note given for the stock by the buyer was

2. In re *Hudson River Electric Power Co.* (1909) 173 Fed. 934; s. c. (1910) 183 Fed. 701; *Barker* v. *Southern Building and Loan Assn.* (1910) 181 Fed. 636; *Grasselli Chemical Co.* v. *Aetna Explosives Co.* (1918) 252 Fed. 456; *City of Rochester* v. *Bronson* (1871) 41 How. (N. Y.) 78; *Schipper Bros. Coal Mining Co.* v. *Economy Domestic Coal Co.* (1923) 277 Pa. St. 356, 121 Atl. 193; *Hawes* "Jurisdiction of Courts" sec. 235.

3. *Howard* v. *Chesapeake & Ohio Ry. Co.* (1897) 11 App. D. C. 300; *Sigua Iron Co.* v. *Brown* (1902) 171 N. Y. 488, 64 N. E. 194.

4. *Pennsylvania Lumbermen's Mutual Fire Ins. Co.* v. *Meyer* (1905) 197 U. S. 407; *St. Louis-Southwestern Ry. Co.* v. *Alexander* (1913) 227 U. S. 218. And see *Takacs* v. *Phila. & Reading Ry. Co.* (1915) 228 Fed. 728.

5. *Davis* v. *Farmers' Cooperative Equity Co.* (1923) 262 U. S. 312, 43 Sup. Ct. Rep. 556; *Michigan Central R. R. Co.* v. *Mix* (1929) 278 U. S. 492, 49 Sup. Ct. Rep. 207.

6. 29 Col. Law Rev. 1.

1. (1927) 328 Ill. 368.