January 1939

Conflicts—Foreign Corporations—"Doing Business" for Purposes of Process

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Recommended Citation
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Comment on Recent Decisions

Involving the competency of his testimony. Quite commonly, appellate courts sustain the rulings of the trial judge charging or refusing to charge on the issue of the decoy's being an accomplice under the facts presented, and uphold verdicts based upon the conclusion that he was not. Whether the feigned accomplice possesses a public or official status is immaterial. However, it has been said that no criminal intent is imputable even though public authorities are not consulted.

On the other hand, where a private detective induced a larceny, the intent to deprive the owner temporarily of possession in order to secure a reward was sufficient for conviction. It has been held that the testimony of a prosecuting attorney, who contrived to be bribed so as to entrap the offeror of the bribe, was that of an accomplice. In Dever v. State and State v. Brownlee, the informant witness was characterized an accomplice though the initial proposition looking to the offense came from the accused. Both have since been distinguished, the Dever case because the ruling of complicity applied the test of intent, while the statement in the Brownlee case has been declared dictum. In a number of cases, participation of the feigned accomplice in the crime, while not held criminal, has nevertheless provoked severe judicial criticism.

The instant case, in emphasizing the element of intent of one who pleads the defense of deception, seems to accord with the prevailing opinion. Criminal responsibility does not attach to participation without criminal intent.

V. K.

Conflicts---Foreign Corporations---"Doing Business" for Purposes of Process---[Federal].—A foreign corporation having no property, place of business, or agent in Minnesota received orders from plaintiff company by mail, telephone, or telegraph at its Washington, D. C. office. Service of sum-

12. (1892) 84 Iowa 473, 51 N. W. 25.
mons was made in Minnesota upon defendant's president, who had entered the state to discuss certain grievances with plaintiff company. He had made two previous trips into the state at plaintiff's request. Held, that defendant corporation was not amenable to suit in Minnesota, there being no "doing of business" sufficient to sustain the service of summons.

The quantum of activity required before a foreign corporation will be regarded as "doing business" varies according to whether the jurisdictional issue affects matters of licensing, taxation, or service of process. The instant case is concerned with the extent of activity requisite to sustain service of process.

 Obviously a foreign corporation which has neither property, place of business, nor agent in the state, and whose products or activities do not enter into the state, is not "doing business" for purposes of service of process. Moreover certain single or isolated acts of the corporation have been regarded as not affording a sufficient basis for jurisdiction. Among the acts thus held not to constitute "doing business" for purposes of process are the sale of goods within a state under a buyer-seller relationship, the presence of an official to adjust a claim or purchase goods, the mere solicitation of orders, designation of an agent to pay bond coupons, the

4. For a discussion of "doing business," see Stimson, Jurisdiction over Foreign Corporations (1933) 18 ST. LOUIS LAW REVIEW 195; Comment (1936) 10 Tulane L. Rev. 639; Comment (1938) 38 Col. L. Rev. 340; Comment (1938) 10 So. Calif. L. Rev. 85; Note (1937) 23 Va. L. Rev. 307; Comment (1938) 1 Mo. L. Rev. 349.
9. Boardman v. S. S. McClure Co. (C. C. D. Minn. 1903) 123 Fed. 614; Bauch v. Weber Flour Mills Co. (1922) 210 Mo. App. 666, 238 S. W. 481. In Peebles v. Chrysler Corp. (D. C. W. D. Mo. 1932) 87 F. (2d) 867, the test was whether the agent was not only soliciting business, but also concluding business transactions within the state. Commercial Inv. Trust Corp. v. Stuart (Miss. 1939) 187 So. 204, held that sending of agent into state to solicit reserve title contracts to be purchased outside the state was not "doing business" for the service of process.
10. Toledo Railways & Light Co. v. Hill (1917) 244 U. S. 49.
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bringing of suit, the sale of travellers' checks through a domestic bank, and the residence of an official within the state.

The courts have also refused to find a doing of business for purposes of process in various combinations of acts or factors. Thus, where a manufacturer's drummer solicited orders for its product from retailers for the jobbers, and the corporation owned stock in companies owning shares in a third company carrying on business within the state, the facts were insufficient to make out a doing of business for purposes of process. Similarly, a corporation which purchased bank stock, borrowed money, and frequently bought supplies within the state was held not to be "doing business" within the jurisdiction.

The borderline is approached in those cases wherein at least three or more distinct acts or factors are involved. Many courts regard such increase inadequate for service of process while others have granted jurisdiction.

11. See Mandel v. Swan Land & Cattle Co. (1895) 154 Ill. 177, 40 N. E. 462 (to enforce a call made on the corporation's stock).


16. Duke v. Pioneer Mining & Ditch Co. (D. C. W. D. Wash. 1922) 280 Fed. 883 (officer trying to settle claim with an insolvent lender bank); Consolidated Iron & Steel Co. v. Maumee Iron & Steel Co. (C. C. A. 8, 1922) 284 Fed. 550 (a comparable combination in which the maintenance of a bank account was characterized as the strongest circumstance pointing to the corporation's intention to do business).

17. N. K. Fairbank & Co. v. Cincinnati, N. O. & T. P. Ry. (C. C. A. 7, 1922) 54 Fed. 420 (office, telephone number in directory, and agent for soliciting business, but no authority to contract, issue tickets, or collect charges); Stephen v. Union Pac. Ry. (D. C. D. Minn. 1921) 275 Fed. 709; Philadelphia & Reading Ry. v. McKibbin (1917) 243 U. S. 264 (sale of tickets along with other tickets by medium of domestic carrier, advertising, and listing name in telephone directory opposite the local carriers); Zimmers v. Dodge Bros. (D. C. N. D. Ill. 1927) 21 F. (2d) 152 (agent repaid for office rent, name of corporation on door, listing in telephone directory, but no authority to contract); Layne v. Tribune Co. (App. D. C. 1934) 71 F. (2d) 222 (employee occupied rooms with rent and other expenses paid by the corporation, name placed on the door, and listing in telephone directory); Raiola v. Los Angeles First Nat. Trust & Savings Bank (N. Y.
Thus, presence of a district representative to assist distributors in salesmanship and to aid in selling, to supervise service, and with authority to select distributors, has been held merely incidental to the sale of the corporation's products to distributors or dealers. In another case, a concern whose agent exercised like authority and in addition made collections was held to be "doing business" sufficient for the service of process.

The courts in deciding when a corporation is "doing business" for purposes of process must make an evaluation of two conflicting interests—the interest of the state in protecting its citizens affected by the corporation's activities and the protection of the corporation from unreasonable interference. While evaluation is frequently difficult, the decision in the instant case seems sound and in accord with the general trend of the cases.

W. R. K.