Chipman, Ltd. Vs. Thomas B. Jeffrey Co.

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Court : US Supreme Court

Decided On : Jan-19-1920

Appeal No. : 251 U.S. 373

Appellant : Chipman, Ltd.

Respondent : Thomas B. Jeffrey Co.

Judgement :

Chipman, Ltd. v. Thomas B. Jeffrey Co. - 251 U.S. 373 (1920)
U.S. Supreme Court Chipman, Ltd. v. Thomas B. Jeffrey Co., 251 U.S. 373 (1920)

Chipman, Limited v. Thomas B. Jeffrey Company

No. 516

Submitted December 8, 1919

Decided January 19, 1920

251 U.S. 373

ERROR TO THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

By the law of New York, when a foreign corporation, as a condition to doing local business, appoints an agent upon whom process may be served and subsequently removes from the state, service on such agent, though his appointment stand unrevoked, will not confer jurisdiction in an action by a local corporation upon a contract between it and such foreign corporation but made and to be performed in another state when it is not shown that anything was done in New York in the way either of performance or breach of the contract, and it is not material that the foreign corporation was there doing business during a period when the contract was made and should have been performed. P. 251 U. S. 378 .

Page 251 U. S. 374

Such a case must be dismissed for want of jurisdiction upon removal to the district court from the Supreme Court of New York. *Id.*

260 F. 856 affirmed.

The case is stated in the opinion.

Page 251 U. S. 376

MR. JUSTICE Mc KENNA delivered the opinion of the Court.

Plaintiff in error was plaintiff in the courts below, defendant in error was defendant, and we shall refer to them respectively as plaintiff and defendant.

The action was brought in the supreme court of the State of New York, and removed upon motion of the defendant to the District Court of the United States for the Southern District of New York. In the latter court, defendant made a motion for an order vacating and setting aside the service of summons and dismissing the complaint for lack of jurisdiction of the person of the defendant. The motion was

granted, and the case is here on the jurisdictional question only.

A brief summary of the grounds of action and the proceedings upon the motion to dismiss is all that is necessary. Plaintiff is a New York corporation; defendant, one under the laws of Wisconsin, and a manufacturer and seller of motor cars, known as the "Jeffrey" and "Rambler," and parts thereof, and motor trucks and parts thereof. By contracts, in writing, made in Wisconsin by the plaintiff and defendant, it was agreed that the former should have the sole right to sell the motor cars and parts

Page 251 U. S. 377

thereof (first cause of action) and the motor trucks and parts thereof (second cause of action) of defendant in Europe and certain other foreign places, and to receive certain designated percentages. The contracts as to motor cars and their parts, and the trucks and their parts, provided that they (cars, trucks, and parts) should be sold and delivered to plaintiff (called in the contracts the "distributor") at Kenosha, Wisconsin, for sale at the designated places by plaintiff, defendant reserving the right to fill the orders of plaintiff (distributor) for the cars, trucks, and parts from any of its defendant's depots in New York City. Cars and trucks purchased under the contracts to be paid for at Kenosha. Both contracts continued in effect to July 31, 1915.

There are allegations of performance of the contracts by plaintiff, their nonperformance by defendant, whereby plaintiff, on one cause of action, was entitled, it is alleged, to $280,000, and upon the other $600,000. Judgment is prayed for their sum, to-wit, $880,000.

The district court has certified three questions, but, as the first includes the other two, we give it only as it sufficiently presents the question at issue:

"Whether, in the service of summons, as shown by the record herein, upon Philip B. Adams, this Court acquired jurisdiction of the person of the defendant."

Plaintiff contends for an affirmative answer, and adduces the New York statute which requires of corporations not organized under the laws of New York, as a condition of doing business in the state, to file in the office of the secretary of state a stipulation designating

"a place within the state which is to be its principal place of business, and designating a person upon whom process against the corporation may be served within the state,"

and the person designated must consent, and the designation "shall continue in force until revoked by an instrument in writing" designating some other person.

Page 251 U. S. 378

Defendant complied with the requirements of the statute July 6, 1914, designating 21 Park Row, New York, as its place of business, and Philip B. Adams as its agent upon whom process might be served. The designation and appointment have not been revoked.

It is not denied, however, that defendant had removed from the state before service on Adams, and, as we have stated, the contracts sued on made the place of their performance Kenosha, Wisconsin. But, in emphasis of the requirement of the statute, it is urged that at all of the times of the duration of the contracts sued on and their breaches, defendant was doing business in the state, and at any time had the right to transact business in the state. It is further urged that the contracts contemplated they might be performed within the state. There is no allegation of such performance, nor that the present causes of action arose out of acts or transactions within the state. The other circumstances of emphasis may be disregarded, as the validity of the service depends upon the statute, assuming it to be controlling -- that is, whether, under its requirements, the unrevoked designation of Adams as an agent of defendant gave the latter constructive presence in the state. And making that assumption of the control of the statute, which we do in deference to counsel's contention, for light we must turn to New York decisions, and there is scarcely ambiguity in them, though the facts in none

of them included an actual absence from the state of the corporation with which they, the cases, were concerned.

Bagdon v. Philadelphia & Reading Coal & Iron Co., 217 N.Y. 432, passed upon the effect of a cause of action arising out of the state, the corporation, however, doing business within the state, and having complied with the statute in regard to its place of business and the designation of an agent upon whom process could be served. But the court throughout the opinion, with conscious solicitude

Page 251 U. S. 379

of the necessity of making the ground of its decision the fact that the corporation was doing business in the state, dwelt upon the fact, and distinguished thereby *Old Wayne Mut. Life Assn. v. McDonough,* 204 U. S. 8 , and *Simon v. Southern Ry. Co.,* 236 U. S. 115 , in both of which the causes of action were based on transactions done outside of the states in which the suits were brought.

Tauza v. Susquehanna Coal Co., 220 N.Y. 259, is nearer in principle of decision than the case just commented upon. The question of the doing of business within the state by the coal company was in the case, and was discussed. But the question was unconnected with a statutory designation of a place of business or of an agent to receive service of process. However, there was an implication of agency in the coal company's sales agent under other provisions of the Code of Civil Procedure of the state and it was considered that the principle of *Bagdon v. Philadelphia & Reading C. & I. Co., supra,* applied. But the court went further, and left no doubt of the ground of its decision. It said: "Unless a foreign corporation is engaged in business within the state, it is not brought within the state by the presence of its agents," citing and deferring to *St. Louis Southwestern Ry. Co. v. Alexander,* 227 U. S. 218 . And further said: "The essential thing is that the corporation shall have come into the state." If prior cases have a different bent, they must be considered as overruled, as was recognized in *Dollar Co. v. Canadian Car & Foundry Co.,* 220 N.Y. 270, 277.

In resting the case on New York decisions, we do not wish to be understood that the validity of such service as here involved would not be of federal cognizance, whatever the decision of a state court, and refer to *Pennoyer v. Neff,* 95 U. S. 714 ; *St. Louis Southwestern Ry. Co. v. Alexander, supra; Philadelphia & Reading Ry. Co. v. McKibben,* 243 U. S. 264 ; *Meisukas v. Greenough Red*

Page 251 U. S. 380

Ash Coal Co., 244 U. S. 54 ; *People Tobacco Co. v. American Tobacco Co.,* 246 U. S. 79 .

It follows that the district court did not have jurisdiction of defendant, and its order and judgment dismissing the complaint is

Affirmed.