Volume 51 | Issue 3 Article 8

March 1949

Federal Courts--Venue--"Residence" of Defendant in Federal Reservation Grounded on State Laws Concerning Admission of Foreign Corporations

D. B. H.
West Virginia University College of Law

they might "further find" presupposes that they have already found, and it is not unreasonable to say that the jury thereby could be misled into returning an unqualified verdict, though all twelve had not agreed to do so.

T. E. M.

FEDERAL COURTS — VENUE — "RESIDENCE" OF DEFENDANT IN FEDERAL RESERVATION GROUNDED ON STATE LAWS CONCERNING ADMISSION OF FOREIGN CORPORATIONS. — Plaintiff, a Massachusetts citizen, sued defendant Delaware corporation in the Federal District Court for the Eastern District of Virginia to recover for injuries received from a fire in defendant's hotel on the Fort Monroe Military Reservation located in that part of Virginia included in the eastern district. Service was pursuant to a Virginia statute, VA. CODE (Supp. 1946) § 3846a, providing that foreign corporations doing business in Virginia should be deemed to have appointed the Secretary of the Commonwealth as agent to receive service of process. The act of cession of the reservation from Virginia to the United States reserved the right of the state officers to serve process therein. Defendant, who did no business in Virginia except that on the reservation, made timely objection to the venue. After judgment for plaintiff, defendant appealed on the ground of want of personal jurisdiction. *Held,* that under state statutes requiring consent by foreign corporations to constructive service as a condition of entering to do business within the state, a foreign corporation doing its only business in that state on a federal reservation is suable in the locally appropriate federal court on causes of action arising from the business done provided the act of cession from the state to the federal government reserves the right of state officers to serve process in the reservation. *Affirmed. Knott Corp. v. Furman,* 163 F. 2d 199 (C. C. A. 4th 1947).

The federal venue statute indicates the district of residence of either plaintiff or defendant as the only proper venue when federal jurisdiction is based exclusively on diversity of citizenship. 49 STAT. 1213 (1936), 28 U. S. C. A. § 112 (Supp. 1947). However, in *Neirbo v. Bethlehem Steel Corp.,* 308 U. S. 165 (1939), designation of an agent to receive service of process in conformity with a valid state statute as a condition of doing business within the state was held an effective consent to be sued in the federal courts as

well as the courts of that state. The principal case, where consent was not express but implied by the statute from the corporation's doing business in the state, extends that doctrine. A more serious question arises from the application of the Virginia venue statute to a defendant whose only business was on the federal reservation. Such statutes, challenged in the courts, have been upheld as a constitutional exercise of the state's power to exclude foreign corporations, except those desiring to carry on an exclusive interstate commerce business, or to place such terms on their admission as will protect the interest of the state and its citizens. 17 FLETCHER, CYCLOPEDIA OF CORPORATIONS (1933) § 8456. Had Virginia then such power of exclusion or regulation as to one doing no business in Virginia outside the reservation? The Constitution gives Congress the power of exclusive legislation in areas ceded to the United States for military purposes. U. S. CONST. Art. I, § 8. If Congress had exclusive power to regulate defendant's entry, the power of exclusion and regulation upon which application of Virginia's venue statute is ordinarily predicated would seem to be lacking. While state laws in force at the time of cession are presumably adopted as the law of the ceded area until changed by Congress, *James Stewart & Co. v. Sadrakula,* 309 U. S. 94 (1940), and reservations and conditions not inconsistent with the purposes of the acquisition may be attached by the state in the act of cession, *United States v. Unzetta,* 281 U. S. 538 (1930), the act of cession of the Fort Monroe Military Reservation was passed in 1821 before the problem of bringing foreign corporations into court was articulated. Va. Acts 1821, c. 73. The act did provide that state officials might execute process and discharge their legal functions in the reservation, which the principal case construes to mean that state process laws both existing and as amended would apply in the reservation; so that such statutes as the one here involved are incorporated in the law of the reservation with the same legal consequences in the reservation as in the state at large. This interpretation, although fairly liberal, is not obviously opposed to the intent of the act of cession. But a legal hiatus still remains in assuming the application of the statute, the terms of which do not suggest a construction allowing Virginia power to exclude or condition defendant's entry to do business in the reservation, the traditional justification for constructive appointment of a state official to receive service of process. Without such power the state

has nothing to confer in exchange for defendant's consent to service. Unless defendant is suable in the state courts the *Neirbo* doctrine does not apply nor support venue in the federal courts. Had defendant corporation done business elsewhere in the body of the state outside the military reservation or had the act of cession expressly reserved to the state authority to regulate entry of foreign corporations to do business therein, other issues would be presented: and of course the principal case is not authority that doing business on a federal reservation invokes the state statutes on venue and constructive appointment for service regardless of the terms of the act of cession. What is involved is the proper construction and operation of a conventional reservation of jurisdiction clause.

D. B. H.

TAXATION — INCOME TAXES — NEGLIGENCE PENALTY. — The Internal Revenue Commissioner assessed a five per cent negligence penalty on a deficiency resulting from taxpayer's failure to report as his income dividends on stock in form sold to his son and on a deficiency resulting from omission of two items from 1941 income. The taxpayer contested the treatment of the dividends as his income and asserted that he was not aware of a duty to report the two items as income in 1941. The tax court upheld the assessment of deficiencies and the penalty and taxpayer appealed. *Held,* assessments sustained. Assessment of the negligence penalty is an administrative act depending upon a finding of the existence of negligence, and taxpayer could easily have obtained advice as to the proper course to be pursued. *Gouldman v. Commissioner,* 165 F. 2d 686 (C. C. A. 4th 1948).

INT. REV. CODE 293 (a) (1) provides: "If any part of any deficiency is due to negligence, . . . 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency . . . ." The holding in the principal case is in accord with settled judicial treatment of this provision of the statute. *Board v. Commissioner,* 55 F. 2d 73 (C. C. A. 6th 1931), *cert. denied* 284 U. S. 658 (1931); *Bothwell v. Commissioner,* 77 F. 2d 35 (C. C. A. 10th 1935); *Guaranty Trust Co. v. United States,* 44 F. Supp. 417 (E. D. Wash. 1942). In ascertaining whether tax-