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pulsory appearing is not eligible for immunity from service. Where one has been arrested in a foreign jurisdiction and is brought into the state after waiving extradition, he is immune from service until convicted or until a reasonable time after acquittal.[50] This enactment was made to prevent the abuse of the extradition process by creditors who might otherwise trump up criminal charges in order to get their debtor within the state for service. Once guilt was established, it was apparent that the extradition power had not been misused, and the immunity terminated immediately.[51]

The Appellate Division sustained the summons in the instant case on the theory that the statutory immunity provision applied and that the immunity ceased upon the defendant's conviction. Extradition was admittedly not involved, but there is no extradition in federal courts and hence the statute, if narrowly construed, would never apply to grant immunity to persons in federal courts. In the view of the Appellate Division, the legislature had expressed the policy that the immunity should last only until judgment if the defendant were convicted, and the fact that a federal criminal proceeding were involved rather than one in the state courts should not change the result.[52] The Court of Appeals rejected this argument, however, since, prior to his original appearance, the defendant had not been arrested or restrained in any way but had rather "in fact and in law" appeared voluntarily. Hence, the statute did not apply and the common law immunity principles ruled.

The decision is interesting in that it appears to extend the concept of immunity, contrary to previous cases, to situations where the defendant was free on bail. However, unlike the *Netograph* case, the defendant in the instant case originally appeared voluntarily. The Court is apparently holding, as in the *Bunce* case, that the mere fact that subsequent legal restraint is imposed after voluntary appearance does not change the original voluntariness or remove the immunity resulting therefrom. To hold otherwise would frustrate the underlying policy of the immunity doctrine. If the privilege of immunity may be avoided by the simple expedient of serving the person with a subpoena or imposing bail after he appears voluntarily, the doctrine in fact grants no immunity and offers no effective inducement for voluntary appearance.

Service of Process on Foreign Corporation Doing Business Within State

What constitutes the "doing of business" in the state sufficient to render a foreign corporation amenable to suit in New York? This familiar question was again presented when a plaintiff attempted to commence an action against a Florida hotel by service of summons pursuant to section 229 of the Civil Practice

50. N. Y. CODE CRIM. PROC. §855.
51. Thermoid Co. v. Fabel, 4 N.Y.2d 494, 500-501, 176 N.Y.S.2d 331, 335-336 (1958).
52. Thermoid Co. v. Fabel, 4 A.D.2d 475, 165 N.Y.S.2d 274 (1st Dep't 1957).

Act (managing agent) upon a New York partnership known as Broadway Resort Service. Broadway had twenty-five telephones, and the nearly fifty hotels which Broadway represented (including the defendant) had telephone listings in the New York City directory under these numbers. When a prospective customer of a particular hotel called one of these members, Broadway answered and gave out information concerning prices, the availability of space and in general tried to induce the customer to secure accommodations. After being notified in advance by the defendant (among others) as to the availability of space, Broadway would accept deposits for reservations and issue receipts, but all checks for deposits were cashed by the defendant and all reservations were subject to final confirmation by it. Broadway and the defendant had no employees in common and the defendant paid none of Broadway's bills. For the service, the defendant paid Broadway $750.00 per year, securing thereby approximately $10,000.00 worth of business to the defendant. Although the defendant hotel had no other similar agency in New York, independent travel agencies would secure reservations as requested.

Classifying Broadway as little more than a "travel agency,"[53] the Court of Appeals unanimously voted to vacate the service of process.[54] The Court pointed out that mere solicitation without more, does not constitute the "doing of business" in this state,[55] and the fact that the defendant advertised the office of Broadway as its New York City office and shared one of Broadway's telephone numbers with seven or eight other Florida hotels does not alter the fact that this was mere solicitation in New York City of orders for hotel space in Florida. The Court stated the term "managing agent" within section 229 of the Civil Practice Act as meaning an agent vested with general powers involving judgment and discretion,[56] and that the salesmanship activities of Broadway could not be considered to be such. In support of its interpretation, the Court noted that management is not purchased for $750.00 per year.

The decision in the instant case is a consistent reflection of the New York view that unless an agent has some general powers of judgment and discretion aside from duties of solicitation, the out-of-state corporation will not be subject to *in personam* jurisdiction in New York, particularly where as in the instant case, the New York contact is an independent concern performing similar services for a number of foreign corporations.[57]

53. *Cf.*, Guile v. Sea Island Co., 66 N.Y.S.2d 467 (Cy.Ct. 1946), *aff'd* 272 App. Div. 881, 71 N.Y.S.2d 911 (1947).

54. Miller v. Surf Properties, Inc., 4 N.Y. 475, 176 N.Y.S.2d 318 (1958).

55. Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915 (1917); Holzer v. Dodge Bros., 233 N.Y. 216, 135 N.E. 268 (1922); Yeckes-Eichenbaum, Inc. v. McCarthy, 290 N.Y. 437, 49 N.E.2d 517 (1943).

56. See Yeckes-Eichenbaum, Inc. v. McCarthy, *ibid.*

57. See Greenberg v. Lamson Brothers Co., 273 App.Div. 57, 75 N.Y.S.2d 233 (1947); *cf.* Sterling Novelty Corp. v. Frank & Hirsch Distributing Co., Ltd., 299 N.Y. 208, 86 N.E.2d 564 (1949).