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Civil Practice—Service on Corporations

Gerard R. Haas

The majority stressed the fact that the words "judgment or decree" had been retained through the various changes in the codes of procedure in spite of the fact that the category of special proceedings with its resultant final *orders* had been created. Under these circumstances they felt that what the Legislature had not seen fit to add should not be supplied by the courts. The dissenters maintained that the inclusion of final orders in C.P.A. § 44 could fairly be implied in view of the fact that the Legislature had apparently intended to create a comprehensive system of limitations.[11]

A fine for contempt is unquestionably different from the ordinary civil judgment. It is not, for example, a debt which will be released by a discharge in bankruptcy.[12] A fine awarded to the state for contempt of the Legislature would seem more closely akin to a fine in a criminal action. It appears that there is no limitation on the recovery of such fines.[13]

Service on Corporations

When the Legislature has provided an exclusive method to be used for service on a party, failure to follow the prescribed method obviates the attempt to obtain jurisdiction over the party.[14] In *Sease v. Central Greyhound Lines of New York*,[15] the Court of Appeals applied this rule most stringently.

The plaintiff, in order to ascertain the name and address of the operator of a bus which is alleged to have caused the plaintiff damage in a highway accident, inquired: (1) at the office of the sheriff where the accident report was filed; (2) at the local office of the defendant nearest the scene of the accident; (3) of the New York Bureau of Motor Vehicles via a State Police teletype to the offices of the Bureau in Albany where the defendant's application for a motor vehicle license was filed. The report from all of these sources was that the operator of the bus was Central Greyhound Lines of New York with offices at 2600 Hamilton Avenue, Cleveland, Ohio. Proceeding on the theory that the defendant was a foreign corporation, and, therefore, a non-resident operator of a motor vehicle in this state, the plaintiff attempted service under Section 52 of the Vehicle and Traffic Law. The defendant was, in fact, a New York corporation with offices

11. See C. P. A. § 10.
12. In re *Koronsky*, 170 Fed. 719 (2d Cir. 1907).
13. *See Smith v. United States*, 143 F. 2d 228, 229 (9th Cir.), *cert. denied* 323 U. S. 729 (1944).
14. *Eisenhofer v. New York Zeiting Publishing & Printing Co.*, 91 App. Div. 94, 86 N. Y. Supp. 438 (1st Dep't 1904).
15. 306 N. Y. 284, 117 N. E. 2d 899 (1954).

in Syracuse. The Cleveland address was that of the principal office of the defendant, however, and was given as the defendant's address on the application filed with the Bureau of Motor Vehicles for this reason. The state of incorporation was also included on the application, but this information was not transmitted to the plaintiff. The court, by a 4-3 vote, reversed the finding of the trial court, which was affirmed by the Appellate Division, that, under the circumstances, service under Section 52 was not improper.

The majority found that the defendant was in no way to blame for the plaintiff's mistaken belief since the defendant's statements to the Bureau of Motor Vehicles were correct and the state of incorporation was included in the application. It was no fault of the defendant, they maintained, that the latter information was not communicated to the plaintiff.

Judge Dye, in his dissenting opinion, asserted that the defendant was, for purposes of service of process, a resident of Ohio. Such a concept of a non-resident domiciliary has long standing recognition in the courts.[16] The dissent also suggests that the service may have been proper on a theory of estoppel analogous to the finding of misrepresentation in cases involving the use of license plates registered in the name of another.[17]

The only difference between the manner of service used in this case and that which would have been unquestionably allowable seems to be that the plaintiff mailed the summons to the Secretary of State, whereas personal service on that officer is the method required.[18] The desirability of maintaining strict compliance with the prescribed methods of service was, however, apparently deemed to outweigh any equitable considerations in favor of the plaintiff.

Joinder of Parties

When a stockholder brings a derivative action he sues, not in his own right, but in the right of the corporation.[19] Generally the stockholder must join the corporation in such a suit.[20] It has been held, however, that when a derivative action involves

16. *Haggart v. Moran,* 5 N. Y. 422 (1851); *Uslan v. Woronoff,* 173 Misc. 693, 18 N. Y. S. 2d 222 (City Ct. of New Rochelle), *aff'd* 259 App. Div. 1093, 21 N. Y. S. 2d 613 (2d Dep't 1940).

17. See *infra* p. 53.

18. *Compare* VEHICLE AND TRAFFIC LAW § 52 *with* C. P. A. § 228, STOCK CORPORATION LAW § 25.

19. *Clarke v. Greenberg,* 296 N. Y. 146, 71 N. E. 2d 443 (1947).

20. *Greaves v. Gouge,* 64 N. Y. 154 (1877); 13 FLETCHER, CORPORATIONS § 5997 (Rev. ed. 1943).