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Civil Practice—"Doing Business" Within the State

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"Doing Business" within the State

The test to determine whether a foreign corporation is "doing business" within the state to such an extent as to be amenable to process, is that the corporation be "here with a fair measure of permanence and continuity."[5] This test, formulated by Cardozo and derived from the United States Supreme Court,[6] has been followed by the Court of Appeals.[7]

In *Elish v. St. Louis Southwestern Ry. Co.*,[8] the Court of Appeals again applied this test. A Missouri corporation, although not qualified to do business within the state, had an office in New York City and Buffalo to solicit freight. It also maintained a separate New York City office, listed as one of the corporation's three general offices, which conducted fiscal business and was the location for one of the corporation's four annual board of director's meetings. The corporation argued that its only *business* within the state was solicitation, which alone is insufficient for the New York courts to acquire jurisdiction.[9] The court held, however, that solicitation plus other business activities conducted in this state renders the corporation "here" and therefore amenable to process.

Construction of Complaint

Under Civil Practice Act § 275, pleadings must be liberally construed. If the defendant moves under Civil Practice Rule 106 to dismiss the complaint on the grounds that it is legally insufficient, the complaint will not be dismissed if in any aspect of the facts stated, the plaintiff is entitled to recovery. Every inference is in favor of the pleading.[10]

In the recent case of *Curren v. O'Connor*,[11] these principles of law were applied by the court. Plaintiffs, social guests of defendants, brought an action for personal injuries and loss of services, charging the defendants with negligence. Defendants moved under Rule 106 to dismiss the complaint, challenging its legal sufficiency. The Appellate Division, reversing Special Term, granted the motion because the plaintiffs, as social guests of the defendants could not recover.

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5. *Tauza v. Susquehanna Coal Co.*, 220 N. Y. 259, 268, 115 N. E. 915, 918 (1917).
6. *International Harvester v. Kentucky*, 234 U. S. 579 (1914).
7. *Chaplin v. Selznick*, 293 N. Y. 529, 58 N. E. 2d 719 (1944); *Sterling Novelty Corp. v. Frank & Hirsch Distributing Co.*, 299 N. Y. 208, 86 N. E. 2d 564 (1949).
8. 305 N. Y. 267, 112 N. E. 2d 842 (1953).
9. *Yeckes-Eichenbaum, Inc. v. McCarthy*, 290 N. Y. 437, 49 N. E. 2d 517 (1943).
10. *Dyer v. Broadway Central Bank*, 252 N. Y. 430, 169 N. E. 635 (1930); *Pomerance v. Pomerance*, 301 N. Y. 254, 93 N. E. 2d 832 (1950).
11. 304 N. Y. 515, 109 N. E. 2d 605 (1952).