

resulting from absence for a brief period, would be a want of due process of law, and therefore repugnant to the Fourteenth Amendment. Let it be further conceded, as we also think is essential, that a state law which did not provide adequate notice as prerequisite to the proceedings for the administration of the estate of an absentee would also be repugnant to the Fourteenth Amendment. Again, let it be conceded that if a state law, in providing for the administration of the estate of an absentee, contained no adequate safeguards concerning property, and amounted therefore simply to authorizing the transfer of the property of the absentee to others, that such a law would be repugnant to the Fourteenth Amendment. We think none of these concessions are controlling in this case. So far as the period of absence provided by the statute in question, it certainly cannot be said to be unreasonable. So far as the notices which it directs to be issued, we think they were reasonable. As concerns the safeguards which the statute creates for the protection of the interest of the absentee in case he should return, we content ourselves with saying that we think, as construed by the Supreme Court of Pennsylvania, the provisions of the statute do not conflict with the Fourteenth Amendment.

Affirmed.

KENDALL v. AMERICAN AUTOMATIC LOOM COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

No. 541. Submitted April 24, 1905—Decided May 29, 1905.

This court can review by appeal under § 5 of the act of March 3, 1891, the judgment of the Circuit Court dismissing the bill on the sole ground that it never acquired jurisdiction over the defendant, a foreign corporation, for lack of proper service of process. *Board of Trade v. Hammond Elevator Co.*, ante, p. 424.

Where the foreign corporation was doing no business and had no assets in the State, service upon a former officer residing therein, *held*, insufficient under the circumstances of this case.

THIS suit was brought against the defendant, appellee, for the purpose of obtaining a discovery of all the matters referred to in the bill of complaint, and to have a receiver appointed of the assets of the company within the State of New York, and for an accounting by the directors of the defendant, and for other relief.

The bill alleged that the plaintiff, at the time of filing his bill, was a citizen of the United States and of the State, county and city of New York; that the defendant was a stock corporation, organized in March, 1898, and existing under the laws of the State of West Virginia, and was incorporated to engage in the business of manufacturing and selling looms and weaving machinery, and that by its charter its principal office and place of business was in the city, county and State of New York. The bill of complaint, together with a writ of subpoena requiring the defendant to answer the bill, were served in the city of New York upon a person who had been the treasurer of the defendant corporation. Within the proper time the defendant appeared specially, for the sole purpose of questioning the jurisdiction of the court and of moving to set aside the attempted service.

The motion was founded upon the affidavit of Joseph H. Emery, in which he averred, among other matters, that the service of the subpoena had been made upon him in the city of New York, because (as he believed) he had been the treasurer of the defendant corporation; that the domicile and residence of the defendant were in the State of West Virginia; the purpose of its incorporation was the development of a self-feeding loom attachment, which gives to the ordinary loom a continuous supply of filling thread. It was further stated in the affidavit that the corporation was the owner of divers patents, but it had never manufactured merchandise. It had never made a sale, and it had never engaged in the transaction

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of the business for which it was incorporated. It had no business or assets in the State of New York, and had no office or place of business there, and those of its officers who resided in that State were not there officially, or as representing any business or interest of the corporation. After the formation of the corporation, and between the years 1898 and 1901, the meetings of the directors of the company were held at different places in the city of New York where accommodations could be secured, sometimes at the office of the counsel of the company in New York and sometimes at a hotel; but since August 10, 1901, there had been no meeting, either of the stockholders or of the directors, and on the last-mentioned date the stockholders were notified that the company had no funds with which to pay the franchise taxes which were due to the State of West Virginia, and affiant averred that no funds had since been provided for that purpose; that since that date the company had transacted no business, had maintained no office in the State of New York, and that an action had been commenced by the State of West Virginia against it to terminate and forfeit its corporate franchise. The sole assets of the company consisted of two automatic looms and tools and machinery employed in the making thereof and its patents. The looms, with machinery and tools, were in Attleboro, Massachusetts. The letters patent were also in the possession of a Mr. Mossberg, in Attleboro, Massachusetts, who had made divers attempts to improve the looms. The company had no bank account, no office force, and no employés. It had never reached the stage of the active transaction of business, and such assets as it possessed were beyond the jurisdiction of the court. No one had been elected treasurer in place of Mr. Emery, so far as the record shows, and he was the treasurer of the company when service was made upon him.

An affidavit in opposition was filed by the complainant, but the facts above set forth were substantially undenied. The Circuit Court, upon the hearing, granted the motion of the defendant to set aside and declare null and void the attempted

service on the corporation of the bill of complaint and writ of subpœna by the service thereof upon Joseph H. Emery, on or about the thirteenth day of December, 1904. The complainant has appealed directly to this court from the order of the Circuit Court setting aside the service of the subpœna.

Mr. Noah C. Rogers for appellant:

The defendant is subject to the jurisdiction of the New York court by the provision in its articles of incorporation fixing its principal place of business there. *People v. Geneva College*, 5 Wendell (N. Y.), 211; *Attorney General v. Oakland Co. Bank*, 1 Walker C. L. (Mich.) 90, 97.

Having made it one of the conditions of its creation that its principal place of business should be in the city, county and State of New York, it will not be heard now to deny this jurisdiction. The defendant has not amended its charter, revoked the agency of its treasurer or withdrawn its place of business to another jurisdiction. *Canada Southern R. Co. v. Gebhard*, 109 U. S. 527, 537.

The service of the writ of subpœna on the defendant's treasurer was sufficient to give the court jurisdiction. *Am. Locomotive Co. v. Dickson Co.*, 117 Fed. Rep. 972; *McCord Lumber Co. v. Doyle*, 97 Fed. Rep. 22; *Conn. Mut. Life Ins. Co. v. Spratley*, 172 U. S. 602; *Merchants' Mfg. Co. v. Grand Trunk Ry. Co.*, 13 Fed. Rep. 358.

Mr. Benjamin N. Cardozo for appellee:

The defendant has no domicile or abode in the State of New York; it is not engaged in business in that State; and the service of the subpœna on its treasurer was ineffective to bring it into court. *Conley v. Mathieson Alkali Works*, 190 U. S. 406; *Goldey v. Morning News*, 156 U. S. 518; *Construction Co. v. Fitzgerald*, 137 U. S. 106; *Geer v. Mathieson Alkali Works*, 190 U. S. 429; *Caledonian Coal Co. v. Baker*, 196 U. S. 444; *Sharkey v. Indiana &c. Ry. Co.*, 186 U. S. 479; *Wabash Ry. Co. v. Brow*, 164 U. S. 271; *In re Keasbey*, 160 U. S. 221; *St. Clair v. Cor*,

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106 U. S. 350; *Stock Exchange v. Board of Trade*, 125 Fed. Rep. 463; *Martin v. Asphalt Co.*, 130 Fed. Rep. 394; *McGillin v. Claflin*, 52 Fed. Rep. 657; *Good Hope Co. v. Fencing Co.*, 22 Fed. Rep. 635.

The cases which attribute controlling force to the designation of the place of business, as contained in the certificate of incorporation, have relation only to the question of the *situs* of the corporation within the State of its origin. They have no bearing upon its *situs* without that State. *Western Transportation Co. v. Scheu*, 19 N. Y. 408; *Galveston R. R. v. Gonzales*, 151 U. S. 496.

The question in issue is not a question of the jurisdiction of the court below within the meaning of section 5 of the act of March 3, 1891, and an appeal directly from the Circuit Court cannot be sustained. *Courtney v. Pradt*, 196 U. S. 89; *Bache v. Hunt*, 193 U. S. 523; *Louisville Trust Co. v. Knott*, 191 U. S. 225, 232; *Blythe v. Hinckley*, 173 U. S. 501; *Mex. Cent. Ry. Co. v. Eckman*, 187 U. S. 429.

The question that the Circuit Court decided is not one as to the jurisdiction of the Federal judiciary. That the suit is cognizable in the Circuit Court of the United States for the Southern District of New York has neither been disputed by the appellee nor denied by the court below. The complainant is a citizen of the State of New York, and a resident of the Southern District of New York; the defendant is a citizen of the State of West Virginia. *Shaw v. Quincy Mining Co.*, 145 U. S. 444. Indisputably, therefore, there exists that diversity of citizenship which confers jurisdiction of the cause on the Federal courts. The trouble is that the defendant has not been served with process. An attempt has been made to bring it into court by service of the subpoena on an agent, and the sole question is whether that service was effective. In passing on that question, the court has been governed, not by any consideration peculiar to the jurisdiction of the Circuit Courts, but by considerations of general jurisprudence, applicable, as this court has declared, to all tribunals.

The Circuit Court has certified no question for review. It has not disputed its jurisdiction of the subject matter of the cause. It has not suggested that the parties, if properly brought before it, are beyond its competence, or are rendered immune from prosecution in the Circuit Courts. It has merely held that the defendant has not yet been served with process. That is not a question of jurisdiction within the meaning of the statute.

The order should be affirmed or the appeal dismissed.

MR. JUSTICE PECKHAM, after making the foregoing statement, delivered the opinion of the court.

It is objected, in the first place, by the appellee that the appellant had no statutory right to appeal directly to this court from the order setting aside the service of the subpoena. It is asserted that the case does not involve the jurisdiction of the court below within the meaning of section 5 of the act of March 3, 1891, inasmuch as the jurisdiction of the Circuit Court as a Federal court is not questioned, the jurisdiction being denied upon grounds alike applicable to any other judicial tribunal, state or Federal, under the same circumstances. This case is, however, on that point governed by that of *Board of Trade v. Hammond Elevator Co.*, decided this day (*ante* p. 424), where it is held that the order is reviewable by this court under the section above mentioned.

Regarding the case as properly here, the question is whether the service made upon the treasurer of the appellee corporation was a valid service upon the corporation itself. We think it was not. It is perfectly apparent that the corporation was, at the time of the service on the treasurer, doing no business whatever within the State of New York, and that it had never done any business there since it was incorporated in the State of West Virginia. While we have lately held that, in the case of a foreign corporation, the service upon a resident director of the State where the service was made was a good service

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where that corporation was doing business within that State, *Pennsylvania Lumbermen's &c. Co. v. Meyer*, 197 U. S. 407, yet such service is insufficient for a court to acquire jurisdiction over the corporation where the company was not doing any business in the State, and was situated like this company at the time of the service upon the treasurer. *Conley v. Mathieson Alkali Works*, 190 U. S. 406.

The order of the Circuit Court was right, and is

Affirmed.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY
v. WEST COAST NAVAL STORES COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH
CIRCUIT.

•No. 225. Submitted April 25, 1905.—Decided May 29, 1905.

A common carrier may agree with such other carrier as it may choose to forward beyond its own line goods it has transported to its terminus; and, if it has adequate terminal facilities at a sea port, sufficient for all freight destined for that place, it is not obliged to allow other and competing carriers to load and discharge at a wharf owned by it and erected for facilitating the transportation of through freight to points beyond that place.

The fact that a wharf is built by a railroad company on what might be the extension of a public street, under permissions of the municipality, does not, in the absence of express stipulations, make it a public wharf, or affect the company's right of sole occupancy, or power of regulation, thereof.

CERTIORARI to the Circuit Court of Appeals for the Fifth Circuit to review a judgment of that court affirming one in favor of the West Coast Naval Stores Company (hereinafter called the plaintiff), against the Railroad Company (hereinafter called the defendant), for damages for refusing to permit the plaintiff to use the wharf of defendant at Pensacola for the