

is necessary for the Commission to find that the rates from the group as a whole are reasonable, before it can raise the intrastate rates. Compare *Georgia Public Service Comm'n v. United States*, 283 U.S. 765; *State Corporation Comm'n v. Aberdeen & Rockfish R. Co.*, 136 I.C.C. 173. But it by no means follows that that body, before it can remove discrimination against the district of origin whose rates are under consideration, must find or make reasonable rates adjusted to a different base rate and applying from districts lying in comparatively distant areas.

The Commission has found that the interstate rates from four districts of origin are reasonable. It has found that Ohio intrastate rates, the transportation conditions being similar, are, distance considered, out of relation to these interstate rates, so as to create undue preference and prejudice. These findings, supported by evidence, fully justified the order with respect to the intrastate rates under § 13 of the Act. Compare *Louisiana Commission v. Texas & N. O. R. Co.*, 284 U.S. 125.

No. 868, Judgment affirmed.

No. 886, Appeal dismissed.

INTERNATIONAL MILLING CO. v. COLUMBIA TRANSPORTATION CO.

CERTIORARI TO THE SUPREME COURT OF MINNESOTA.

No. 561. Argued February 16, 1934.—Decided May 28, 1934.

1. In determining whether a suit brought in a state court by one foreign corporation against another on a foreign cause of action is an unreasonable burden on the interstate commerce conducted by the defendant and is therefore beyond the jurisdiction of the court, the fact that the plaintiff is a resident of the State, in the sense that its business is there, is of high significance. P. 519.
2. The business of a Delaware corporation, with its principal office in Ohio, was carriage of merchandise by steamer in interstate and

foreign commerce, between ports on the Great Lakes and tributary waters including ports of Minnesota. Its vessels navigated waters of Lake Superior over which Minnesota and Wisconsin have concurrent jurisdiction, and it maintained at Duluth, Minnesota, an agent who did whatever was necessary to facilitate loading and unloading of cargoes. When one of its vessels, bearing cargo partly destined for Duluth, arrived in adjacent waters within the concurrent jurisdiction, it was attached in an action brought by another Delaware corporation, whose business was in Minnesota, on a cause of action for negligence in the transportation of cargo between Chicago, Illinois, and Buffalo, New York. *Held*:

(1) That maintenance of the action would not be an unreasonable burden upon interstate commerce. P. 520.

(2) The forum being in other respects appropriate, jurisdiction was not lost because the property subjected to the attachment was an instrumentality of commerce, nor because the chief witnesses on the trial resided in other States. P. 521.

189 Minn. 516; 250 N.W. 190, reversed.

CERTIORARI, 290 U.S. 622, to review a judgment affirming a judgment which vacated for want of jurisdiction a summons and attachment served on the master of a vessel in an action against the owner for negligence in the transportation of cargo. See 189 Minn. 507; 250 N.W. 186.

Mr. James G. Nye, with whom *Messrs. Oscar Mitchell* and *Albert C. Gillette* were on the brief, for petitioner.

Mr. Edgar W. MacPherran, with whom *Messrs. Thomas H. Garry*, *Carl V. Essery*, and *Thomas H. Adams* were on the brief, for respondent.

Maintenance of a suit against a foreign corporation engaged in interstate commerce on a cause of action arising outside the State is, in the absence of consent, an unreasonable burden on interstate commerce. *Davis v. Farmers Co-operative Equity Co.*, 262 U.S. 312; *Atchison, T. & S. F. R. Co. v. Wells*, 265 U.S. 101; *Michigan Central R. Co. v. Mix*, 278 U.S. 492; *Denver & R. G. W. R. Co. v. Terte*, 284 U.S. 284. Distinguishing: *Missouri ex rel. St.*

Louis, B. & M. R. Co. v. Taylor, 266 U.S. 200; *Hoffman v. Missouri ex rel. Foraker*, 274 U.S. 21; *Denver & R. G. W. R. Co. v. Terte*, 284 U.S. 284 (as to Santa Fe).

The burden is objectionable regardless of the nature of the process employed to subject the defendant to jurisdiction. *Atchison, T. & S. F. R. Co. v. Wells*, 265 U. S. 101; *Denver & R. G. W. R. Co. v. Terte*, 284 U.S. 284.

While this Court has perhaps laid down no specific rules as to when such an action will or will not be objectionable, it is clear from the adjudicated cases that it is the burden imposed upon the defendant which renders the maintenance of the action objectionable and that in the absence of facts which render it clearly reasonable to impose the burden, the maintenance of the suit will not be allowed.

Petitioner is not a resident or a citizen of Minnesota. For purposes of jurisdiction, the residence of a corporation is considered to be in the State where incorporated, regardless of its doing business elsewhere. *Germania Fire Ins. Co. v. Francis*, 11 Wall. 210, 216; *Ex parte Schollenberger*, 96 U.S. 369, 377; *Pennsylvania R. Co. v. St. Louis, A. & T. H. R. Co.*, 118 U.S. 290, 295; *Shaw v. Quincy Mining Co.*, 145 U.S. 444, 450; *Seaboard Milling Co. v. Chicago Ry. Co.*, 270 U.S. 363.

The decisions under the statute relating to removal of actions from state to federal courts on the ground of diversity of citizenship, are applicable to the present question. *Southern Ry. v. Allison*, 190 U.S. 326; *Missouri Pacific Ry. Co. v. Castle*, 224 U.S. 541.

While it is true that in the *Davis* case this Court left open the question of what, if any, effect the fact that the suit was instituted in the jurisdiction of which the plaintiff was a resident at the time of the accrual of the cause of action might have, it is submitted that this question has since been determined by the *Terte* case adversely to

the position taken by petitioner that residence of the plaintiff is of importance. *Cressey v. Erie R. Co.*, 278 Mass. 284, distinguished.

The true doctrine enunciated by this Court in the *Davis* case and succeeding cases is that regardless of the residence of the plaintiff, a suit against a foreign corporation in a jurisdiction unconnected with the cause of action constitutes a burden upon interstate commerce and can not be maintained unless defendant has either expressly consented to be sued there, or its operations in the State are of such a character that consent must necessarily be implied.

Respondent had neither consented to be sued in Minnesota nor was it carrying on such business there as to warrant the maintenance of this action. See *Peoples Tobacco Co. v. American Tobacco Co.*, 246 U.S. 79, 86; *Philadelphia & Reading Ry. Co. v. McKibbin*, 243 U.S. 264.

Minnesota's jurisdiction and territorial limits are covered by two separate sections of the Minnesota Constitution. The first, § 1, Art. II, defines the boundaries of the State; the second, § 2 of the same Article, gives to Minnesota certain concurrent jurisdiction beyond its boundaries. The attached vessel, up to the time of its attachment, had not come within the boundaries of Minnesota. The respondent, whether on waters within the boundaries of Minnesota, on waters without those boundaries but within the so-called concurrent jurisdiction of Minnesota, or whether on waters entirely outside any Minnesota jurisdiction, is operating upon the navigable waters of the United States which are free to commerce under the repeated decisions of this Court. The respondent, on the other hand, only goes to the State as it secures cargoes from other States destined to Minnesota. When, if ever, it may again go to Minnesota is a matter of conjecture.

While it is true that the mere fact that the business carried on by a corporation is entirely interstate in char-

acter does not render that corporation immune from the ordinary process of the courts of the State, *International Harvester Co. v. Kentucky*, 234 U.S. 579, it does not follow that the mere carrying on of some business in the State renders the foreign corporation amenable to suit upon all causes of action. *Louisville & N. R. Co. v. Chatters*, 279 U.S. 320.

MR. JUSTICE CARDOZO delivered the opinion of the Court.

Petitioner, plaintiff in the court below, is a Delaware corporation, a dealer in grain, with its principal office and place of business in Minneapolis, Minnesota. Respondent, defendant below, is also a Delaware corporation, a carrier by water, with its principal office in Cleveland, Ohio. We are to determine whether in the circumstances exhibited in the record a suit between the parties in the courts of Minnesota is an unreasonable burden upon interstate commerce.

On January 1, 1930, petitioner loaded a cargo of grain on one of the vessels of respondent's predecessor for transportation and storage. This vessel was the W. C. Richardson, and the termini of the voyage were Chicago and Buffalo. At one of those points or somewhere between them the grain was negligently handled while in the carrier's possession with ensuing damage discovered about the end of 1930. The defendant in this suit is a successor corporation, which took over the business in December, 1931, and assumed its liabilities.

The new corporation, like its predecessor, is a carrier of merchandise in interstate and foreign commerce, picking up cargoes where it can get them, but principally along the Great Lakes and in tributary waters. It has a fleet of ten steamers which it uses for that purpose as occasion requires. Owing to slack business, the only vessel in commission during the first half of 1932 was

the C. Russell Hubbard, which operated principally between ports on Lakes Superior and Michigan. On July 1, 1932, this vessel arrived at Duluth, Minnesota, carrying a cargo of coal from Sandusky, Ohio. While unloading in neighboring waters she was seized by the sheriff under a writ of attachment sued out by the petitioner in a District Court of the state. The summons and the attachment writ were served on the master of the vessel, who made report of the proceeding to the respondent's agents at Duluth. These agents, a firm of vessel brokers, were employed by the respondent as its Duluth representatives to act for it as might be necessary when its boats were at the dock. They saw to it that the cargoes were loaded and unloaded, reported to their principal the coming and going of the vessels, and issued bills of lading. Notice of an expected cargo came to them by telegraph, for there was no regular schedule to put them on the watch. Payment was by the job, \$10 for each cargo. Like services had been rendered by the same agents since 1928, and, it may be, even earlier. Just how often they had acted, the record does not tell us, though presumably the facts were within the knowledge of the principal. If there may be inferences from silence, we draw them against the party who bears the burden of persuasion.

Promptly upon the seizure of the vessel, the respondent filed an undertaking in the sum of \$40,000, whereupon the levy was released. Then, appearing specially, it moved to vacate the attachment and the summons upon the ground that the prosecution of the action in the state of Minnesota would impose a serious and unreasonable burden upon interstate commerce, in contravention of Article I, Section 8, of the Constitution of the United States. The District Court granted the motion. The Supreme Court of Minnesota affirmed, three judges dissenting. 189 Minn. 507; 250 N.W. 186. Later there was a final judgment in the District Court, and again an affirmance

on appeal. 189 Minn. 516; 250 N.W. 190. A writ of certiorari has brought the case here. 290 U.S. 622.

Our point of departure is the decision of this court in *Davis v. Farmers Co-operative Equity Co.*, [1923] 262 U.S. 312. There a Kansas corporation brought suit in Minnesota against the Director General of Railroads, representing the Atchison, Topeka & Santa Fe Railway Company, also a Kansas corporation. The plaintiff was not a resident of Minnesota, nor engaged in business there. The railway company was not a resident of Minnesota, and did no business there, except to solicit traffic. The cause of action had no relation to any local activity. Service of process was made in reliance upon a Minnesota statute (Laws of 1913, c. 218, p. 274) whereby every foreign interstate carrier was compelled "to submit to suit there as a condition of maintaining a soliciting agent within the State." 262 U.S. at pp. 313, 315. Upon those facts the ruling of this court was that the effect of the statute, when applied to a carrier so situated, was an unreasonable obstruction of interstate commerce. The decision was confined narrowly within the bounds of its own facts. "It may be," the court said (262 U.S. at p. 316), "that a statute like that here assailed would be valid although applied to suits in which the cause of action arose elsewhere, if the transaction out of which it arose had been entered upon within the State, or if the plaintiff was, when it arose, a resident of the State." The facts in the *Davis* case were substantially identical with those in *Atchison, T. & S. F. Ry. Co. v. Wells*, 265 U.S. 101, decided a year later. Then, in 1929, *Michigan Central R. Co. v. Mix*, 278 U.S. 492, enforced the same conclusion where the plaintiff, a resident of Michigan at the time of an accident, sued a Michigan railway company in Missouri upon a Michigan cause of action, though the defendant's only activity in Missouri was the maintenance of an agency for the solicitation of business. The suit

was not saved because the plaintiff had moved into Missouri "after the injury complained of, but before instituting the action." "For aught that appears her removal to St. Louis shortly after the accident was solely for the purpose of bringing the suit; and because she was advised that her chances of recovery would be better there than they would be in Michigan." (278 U.S. at p. 495.) There was no proof of such a relation between the residence or activities of the suitor and the forum chosen for the suit as to make the choice a natural or suitable one, and rid the burden on the carrier of at least a measure of its hardship.

To be contrasted with these cases where jurisdiction was denied because of the necessities of commerce is another series of cases where differentiating circumstances led to a different result. Thus, in *Missouri ex rel. St. Louis, B. & M. R. Co. v. Taylor*, [1924] 266 U.S. 200, a Delaware corporation with a usual place of business in Missouri brought suit in a Missouri court against the St. Louis, Brownsville & Mexico Railway Company, a Texas corporation, operating a railroad in Texas and nowhere else, jurisdiction being asserted solely by reason of the garnishment of traffic balances due from a connecting carrier. The cause of action was for damages to freight originating in Texas on lines of the Brownsville Company and shipped on through bills of lading to points in Missouri as well as other states. This court rejected the carrier's contention that *Davis v. Farmers Co-operative Equity Co.*, *supra*, and *Atchison, T. & S. F. Ry. Co. v. Wells*, *supra*, supplied the applicable rule. The opinion pointed out (1) that for anything made to appear the negligence of the connecting carrier may have occurred in Missouri where the goods were to be delivered, and (2) that "the plaintiff consignee is a resident of Missouri—that is, has a usual place of business within the State."

"To require that, under such circumstances, the foreign carrier shall submit to suit within a State to whose jurisdiction it would otherwise be amenable by process of attachment does not unreasonably burden interstate commerce." 266 U.S. at p. 207. In line with that decision is *Denver & Rio Grande Western R. Co. v. Terte*, [1931] 284 U.S. 284, where the plaintiff, a resident of Missouri, had brought suit in a Missouri court upon a cause of action for personal injuries suffered in Colorado. There were two defendants, the Rio Grande railway company and the Santa Fe. The first, a Delaware corporation, did not operate a railroad in Missouri, but had a traffic agency only. As to it the suit was dismissed upon the authority of the *Davis* case. The other defendant had part of its line in Missouri, though the accident occurred elsewhere. Cf. *Hoffman v. Foraker*, 274 U.S. 21. As to the defendant so situated, jurisdiction was upheld. The groups are clearly marked, and also the reasons for the grouping.

The question now is whether the defendant with its steamship business shall be placed in the one group or the other. At the outset, we mark the fact that the petitioner, though a Delaware corporation, is suing in the state of its business activities. For many purposes, its domicile in law is in the state of its creation (*Shaw v. Quincy Mining Co.*, 145 U.S. 444; *Seaboard Rice Milling Co. v. Chicago, R. I. & P. Ry. Co.*, 270 U.S. 363), but it is living its life elsewhere. In a very real and practical sense, it is a resident of the forum, like the plaintiff in the *Taylor* case (266 U.S. 200, 207), who was domiciled in one state and resided in another. Certainly its relation to the locality was so permanent and intimate as to relieve it of the opprobrium of an impertinent intruder when it went into the local courts. In saying this we do not hold that the residence of the suitor will fix the proper forum without reference to other considerations, such as the nature

of the business of the corporation to be sued. *Denver & Rio Grande Western R. Co. v. Terte, supra*, is opposed to such a holding. Residence, however, even though not controlling, is a fact of high significance. Our next inquiry must be whether there is anything in the nature of the activities of the defendant to overcome its force.

The defendant, though an interstate carrier, does not do business like a railroad company along a changeless route. It is engaged in transportation in Minnesota as much as it is engaged in transportation anywhere, if we exclude the activities of management that have their centre in Ohio. Its vessels navigate the waters of Lake Superior, not merely occasionally, but by long continued practice, and Minnesota and Wisconsin maintain over the boundary waters of that lake a concurrent jurisdiction. Constitution of Minnesota, Art. II, § 2; Constitution of Wisconsin, Art. IX, § 1. At Duluth a designated agent does whatever is necessary to facilitate the work of loading and unloading cargoes, and in the waters near at hand there was a levy of an attachment upon property brought into the state in the usual course of business. When subjected to this levy, the carrier was not engaged in some incidental or collateral activity, such as the solicitation of freight to be carried at other times and places. It was engaged, when thus subjected, in the very act of transportation, the dominant end and aim of its corporate existence.

Viewing all these circumstances together, we find ourselves unable to conclude that by the prosecution of this suit there has been laid upon the carrier a burden so heavy and so unnecessary as to be oppressive and unreasonable. Rather we find a situation where the defendant, chargeable with knowledge of the attachment laws of Minnesota, brought its property into that state, not fortuitously or by a rare accident, but in furtherance of a

systematic course of business, and thereby subjected itself to suit *quasi in rem*, at the instance of a local creditor, who could not with equal convenience or facility have sued it anywhere else. Such a suit may be a burden, but oppressive and unreasonable it is not. There is no occasion to determine whether the conclusion would be the same if an attachment had been levied upon property brought within the state through the voluntary act of the defendant, but in an isolated instance, dis severed from a course of dealing. In the circumstances of this case, *Missouri ex rel. St. Louis, B. & M. R. Co. v. Taylor*, *supra*, and *Denver & Rio Grande Western R. Co. v. Terte*, *supra*, to the extent that the latter case involved a suit against the Santa Fe, supply, when read together, the applicable rule, and sustain the jurisdiction of the Minnesota courts.

The forum being in other respects appropriate, jurisdiction is not lost because the property subjected to the attachment is an instrumentality of commerce (*Atchison, T. & S. F. Ry. Co. v. Wells*, *supra*, p. 103; *Davis v. Cleveland, C., C. & St. L. Ry. Co.*, 217 U.S. 157), nor because the chief witnesses on the trial reside in other states, most of them, it seems, in Chicago, Illinois. "As a practical matter, courts could not undertake to ascertain in advance of trial the number and importance of probable witnesses within and without the State and retain or refuse jurisdiction according to the relative inconvenience of the parties." *Denver & Rio Grande Western R. Co. v. Terte*, *supra*, p. 287; *Hoffman v. Foraker*, *supra*, p. 22.

The judgment should be reversed and the cause remanded to the Supreme Court of Minnesota for further proceeding not inconsistent with this opinion.

Reversed.