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PERKINS v. BENGUET CONSOLIDATED MINING CO. et al.

No. 85.

Argued Nov. 27, 28, 1951.

Decided March 3, 1952.

Rehearing Denied March 31, 1952.

See 343 U.S. 917, 72 S.Ct. 645.

Actions by Idonah Slade Perkins against Benguet Consolidated Mining Company, an alien business association known as A Sociedad Anonima and others. The Court of Appeals of Ohio, Clermont County, Per Curiam, 88 Ohio App. 118, 95 N.E.2d 5, affirmed a judgment of the Court of Common Pleas, Clermont County, sustaining a motion to quash service of summons on the named defendant, 99 N.E.2d 515, and plaintiff appealed. The Supreme Court, 155 Ohio St. 116, 98 N.E.2d 33, affirmed the judgment, and plaintiff brought certiorari. The United States Supreme Court, in an opinion by Mr. Justice Burton, held that under the circumstances it would not violate due process of law under the Fourteenth Amendment for Ohio courts either to take or refuse to take jurisdiction of a foreign corporation in action not arising out of the corporation's activities within the state.

Judgment of the Supreme Court of Ohio vacated, and cause remanded for further proceedings.

Mr. Justice Minton, with whom Chief Justice Vinson joined, dissented.

1. Mines and Minerals ⇐108

Where foreign mining corporation had not secured license to transact business in Ohio or designated agent upon whom process could be served, but actual notice of proceeding was given to corporation through regular service of summons upon its president while he was in Ohio acting in that capacity, there could be no jurisdictional objection based upon lack of notice to responsible representative of corporation. Gen.Code Ohio, §§ 8625–2, 8625–4, 8625–5, 8625–25, 11288, 11290.

2. Corporations ⇐665(1)

Whether state courts of Ohio are open to proceeding in personam against amply notified foreign corporation to enforce cause of action not arising in Ohio and not related to business or activities of corporation in that state depends entirely upon law of Ohio unless due process clause of the Fourteenth Amendment compels decision either way. U.S.C.A.Const.Amend. 14.

3. Constitutional Law ⇐305

The due process clause of the Fourteenth Amendment does not compel a state to open its courts to proceeding in personam against amply notified foreign corporation to enforce cause of action not arising in that state and not related to business or activities of corporation in that state. U.S.C.A.Const.Amend. 14.

4. Constitutional Law ⇐309(1)

Provision for making foreign corporation subject to service in a state is a matter of legislative discretion, and failure to provide for such service is not a denial of due process of law. U.S.C.A.Const.Amend. 14.

5. Constitutional Law ⇐305

In providing due process of law, state need not make jurisdiction over foreign corporation wide enough to include adjudication of transitory actions not arising in the state. U.S.C.A.Const.Amend. 14.

6. Constitutional Law ⇐305

Merely because the State of Ohio permits a complainant to maintain proceeding in personam in its courts against properly served nonresident natural person to enforce cause of action which does not arise out of anything done in Ohio, state is not compelled by the due process clause of the Fourteenth Amendment to provide like relief against foreign corporation. U.S.C.A.Const.Amend. 14.

7. Courts ⇐109

Under Ohio practice as understood by the United States Supreme Court, syllabus of the state Supreme Court constitutes official opinion of that court, but it must be read in light of facts and issues of the case. Gen.Code Ohio, § 1483.

8. Constitutional Law ⇐309(3)

If authorized representative of foreign corporation be physically present in state of forum and be there engaged in activities appropriate to accepting service or receiving notice on its behalf, there is no unfairness in subjecting corporation to jurisdiction of courts of that state through

such service of process upon the representative. U.S.C.A.Const. Amend. 14.

9. Constitutional Law ⇐305

In determining whether due process clause of the Fourteenth Amendment precluded the State of Ohio from subjecting a foreign corporation to jurisdiction of its courts in an action in personam which did not arise in the state and did not relate to corporation's activities there, issue was one of general fairness to the corporation. U. S.C.A.Const.Amend. 14.

10. Constitutional Law ⇐305

The amount and kind of activities which must be carried on by foreign corporation in state of the forum so as to make it reasonable and just to subject corporation to jurisdiction of that state are to be determined in each case, and corporate activities which, under state statute, make it necessary for foreign corporation to secure a license and to designate statutory agent upon whom process may be served provide a helpful, but not conclusive test. U.S.C.A.Const.Amend. 14.

11. Constitutional Law ⇐305

No requirement of due process of law under the Fourteenth Amendment prohibits the State of Ohio from opening its courts to a proceeding in personam to enforce a cause of action not arising out of corporation's activities in the state, or compels state to do so. U.S.C.A.Const. Amend. 14.

12. Courts ⇐394(1)

Consideration of circumstances which, under law of Ohio, ultimately will determine whether courts of that state will choose to take jurisdiction over foreign corporation in proceeding in personam to enforce cause of action not arising out of corporation's activities in that state is reserved for courts of Ohio.

13. Constitutional Law ⇐305

Where Philippine mining operations of foreign corporation were halted by Japanese occupation, and president, who was general manager and principal stockholder, returned to Ohio home and there maintained office from which he carried on personal and corporate business, did banking for corporation, supervised policies dealing with rehabilitation of properties and dispatched funds, and summons was regularly served upon him while in Ohio in action not arising out of corporation's activities within the state, Ohio courts would not violate due process of law under the Fourteenth Amendment in either taking or declining to take jurisdiction. U.S.C.A.Const. Amend. 14.

14. Courts ⇐400

Where syllabus denied relief against foreign corporation but did not indicate whether Ohio Supreme Court rested decision on state law or on due process clause of Fourteenth Amendment, and opinion placed concurrence of author unequivocally on ground that due process clause prohibited courts from exercising jurisdiction, but report did not disclose to what extent other members of court may have shared that view, United States Supreme Court would vacate judgment and remand cause for further proceedings in light of its opinion determining that due process would not be violated if Ohio court either took or declined jurisdiction. U.S.C.A.Const. Amend. 14.

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Mr. Robert N. Gorman, Cincinnati, Ohio, for petitioner.

Mr. Lucien H. Mercier, Washington, D. C., for respondent.

Mr. Justice BURTON delivered the opinion of the Court.

This case calls for an answer to the question whether the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States precludes Ohio from subjecting a foreign corporation to the jurisdiction of its courts in this action *in personam*. The corporation has been carrying on in Ohio a continuous and systematic, but limited, part of its general business. Its president, while engaged in doing such business in Ohio, has been

Co., 220 N.Y. 259, 115 N.E. 915; cf. St. Louis S. W. R. Co. v. Alexander, supra [227 U.S. 218, 33 S.Ct. 245, 57 L.Ed. 486].

"* * * some of the decisions holding the corporation amenable to suit have been supported by resort to the legal fiction that it has given its consent to service and suit, consent being implied from its presence in the state through the acts of its authorized agents. Lafayette Insurance Co. v. French, 18 How. 404, 407; St. Clair v. Cox, supra, 106 U.S. [350] 356, 1 S.Ct. [354] 359, 27 L.Ed. 222; Commercial Mutual Accident Co. v. Davis, supra, 213 U.S.
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[245] 254, 29 S.Ct. [445] 447, 53 L.Ed. 782; State of Washington v. Superior Court, 289 U.S. 361, 364, 365, 53 S.Ct. 624, 626, 627, 77 L.Ed. 1256. But more realistically it may be said that those authorized acts were of such a nature as to justify the fiction. Smolik v. Philadelphia & Reading Co., D.C., 222 F. 148, 151. Henderson, The Position of Foreign Corporations in American Constitutional Law, 94, 95.

"* * * Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations. Cf. Pennoyer v. Neff, supra [95 U.S. 714, 24 L.Ed. 565]; Minnesota Commercial Assn. v. Benn, 261 U.S. 140, 43 S.Ct. 293, 67 L.Ed. 573."

It remains only to consider, in more detail, the issue of whether, as a matter of federal due process, the business done in Ohio by the respondent mining company was sufficiently substantial and of such a nature as to *permit* Ohio to entertain a cause of action against a foreign corporation, where the cause of action arose from activities entirely distinct from its activities in Ohio. See International Shoe Co. v. Washington, supra, 326 U.S. at page 318, 66 S.Ct. at page 159.

[12, 13] The Ohio Court of Appeals summarized the evidence on the subject. 88 Ohio App. at pages 119–125, 95 N.E.2d at pages 6–9. From that summary the following facts are substantially beyond controversy: The company's mining properties were in the Philippine Islands. Its operations there were completely halted during the occupation of the Islands by the Japanese. During that interim the president, who was also the general manager and principal stockholder of the company, returned to his home in Clermont County, Ohio. There he maintained an office in
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which he conducted his personal affairs and did many things on behalf of the company. He kept there office files of the company. He carried on there correspondence relating to the business of the company and to its employees. He drew and distributed there salary checks on behalf of the company, both in his own favor as president and in favor of two company secretaries who worked there with him. He used and maintained in Clermont County, Ohio, two active bank accounts carrying substantial balances of company funds. A bank in Hamilton County, Ohio, acted as transfer agent for the stock of the company. Several directors' meetings were held at his office or home in Clermont County. From that office he supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines and he dispatched funds to cover purchases of machinery for such rehabilitation. Thus he carried on in Ohio a continuous and systematic supervision of the necessarily limited wartime activities of the company. He there discharged his duties as president and general manager, both during the occupation of the company's properties by the Japanese and immediately thereafter. While

sylvania Fire Insurance Co. v. Gold Issue Mining Co., 243 U.S. 93, 37 S.Ct. 344, 61 L.Ed. 610 (statutory agent appointed); Philadelphia & Reading R. Co. v. McKibbin, 243 U.S. 264, 268–269, 37 S. Ct. 280, 281, 282, 61 L.Ed. 710 (question left open).

no mining properties in Ohio were owned or operated by the company, many of its wartime activities were directed from Ohio and were being given the personal attention of its president in that State at the time he was served with summons. Consideration of the circumstances which, under the law of Ohio, ultimately will determine whether the courts of that State will choose to take jurisdiction over the corporation is reserved for the courts of that State. Without reaching that issue of state policy, we conclude that, under the circumstances above recited, it would not violate federal due process for Ohio either to take or decline jurisdiction of the corporation in this proceeding. This relieves the Ohio courts of the restriction relied upon in the opinion

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accompanying the syllabus below and which may have influenced the judgment of the court below.

[14] Accordingly, the judgment of the Supreme Court of Ohio is vacated and the cause is remanded to that court for further proceedings in the light of this opinion.[7]

It is so ordered.

Judgment vacated and cause remanded for further proceedings.

Mr. Justice BLACK concurs in the result.

Mr. Justice MINTON, with whom the CHIEF JUSTICE joins, dissenting.

As I understand the practice in Ohio, the law as agreed to by the court is stated in the syllabus. If an opinion is filed, it expresses the views of the writer of the opinion and of those who may join him as to why the law was so declared in the syllabus. Judge Taft alone filed an opinion in the instant case.

The law as declared in the syllabus, which is the whole court speaking, is clearly based upon adequate state grounds. Judge Taft in his opinion expresses the view that the opinions of this Court on due process grounds require the court to declare the law as stated in the syllabus. As the majority opinion of this Court points out, this is an erroneous view of this Court's decisions. "This brings the situation clearly within the settled rule whereby this Court will not review a State court decision resting on an adequate and independent nonfederal ground even though the State court may have also summoned to its support an erroneous view of federal law." Radio Station WOW v. Johnson, 326 U.S. 120, 129, 65 S.Ct. 1475, 1480, 89 L.Ed. 2092.

The case of State Tax Comm'n v. Van Cott, 306 U.S. 511, 59 S.Ct. 605, 83 L.Ed. 950, is not this case. There the case was not clearly decided

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on an adequate state ground, but the state ground and the federal ground were so interwoven that this Court was "unable to conclude that the judgment rests upon an independent interpretation of the state law." 306 U.S. at page 514, 59 S.Ct. at page 606. In the instant case, a clear statement of the state law is made by the court in the syllabus. Only Judge Taft has summoned the erroneous view of this Court's decisions to his support of the adequate state ground approved by the whole court.

What we are saying to Ohio is: "You have decided this case on an adequate state ground, denying service, which you had a right to do, but you don't have to do it if you don't want to, as far as the decisions of this Court are concerned." I think what we are doing is giving gratuitously an advisory opinion to the Ohio Supreme Court. I would dismiss the writ as improvidently granted.

7. For like procedure followed under somewhat comparable circumstances see State Tax Comm'n v. Van Cott, 306 U.S. 511, 59 S.Ct. 605, 83 L.Ed. 950.