

done on this application, and suggested the form of an order whereby that result could be effected. I see no such difficulty. I foresee none; but if it does occur, then this court will take the needed action. As the matters are now before the court, these receivers are bound to protect the interests of this applicant and of every one else. Disintegrating the property would be pernicious, even in the modified form in which this appointment is asked. It would cause a confusion of accounts, and such a confusion as would benefit no one, and would involve, I may say, pernicious consequences. Hence the result is this, and such is the decision of the court: That, inasmuch as it does not appear to the court that there is any present necessity for the appointment of receivers under the cross-bill, as prayed for, the application will lie over for further consideration, to be determined when, in the further progress of the proceedings, it may appear to the court that its action is required in respect thereto.

*Mr. Stewart.* I understand the application is not denied, but just continued?

*The Court.* No; I simply postpone it as future action may require. You understand, of course, in regard to the matter, that I am not going to disturb the present order of things. I simply leave it open until something occurs, and then you can come in and make such suggestion as may be deemed necessary. I now hold it in abeyance.

See S. C. *ante*, 269.

---

### ESTES and others v. BELFORD and others.

(*Circuit Court, S. D. New York. December 5, 1884.*)

#### PRACTICE—SERVICE ON AGENT OF FOREIGN CORPORATION—NEW YORK STATUTE

Service upon the agent of a foreign corporation, who is agent in the very transaction out of which the suit arises, is sufficient under the statutes of New York.

In Equity.

*J. L. S. Roberts*, for orators.

*J. A. Hyland*, for defendants.

*WHEELER, J.* The principal defendant is a corporation of the state of Illinois, and its offices are and its officers reside there. This suit is brought to restrain an alleged infringement of the orator's trademark by agents of, at a place of business of, the corporation within this district. A subpoena has been served upon one of these agents at that place of business, for the corporation, and it moves to set aside the service. The statutes of New York provide for the service of a summons upon a foreign corporation by delivering a copy within

the state to the president, treasurer, or secretary, or officer performing corresponding functions, or a person designated by the corporation; and if none is designated, and none of these officers can be found with due diligence, then to the cashier, a director, or managing agent of the corporation within the state. It is objected to the service that the return of the marshal does not show that there was no person designated to receive service, nor that the officers could not be found with due diligence; and that these agents are not such as the statute contemplates. The return does not appear to show that service otherwise than upon the agent could not be made, as, perhaps, it ought to show; but the defendants allege that there are none of the officers, nor any one but these agents, to make a service upon here, as a reason why the service made should be set aside, and this would seem to obviate the necessity of showing the same thing in the return. The agent is agent in the very transaction out of which the suit arises. The corporation is found here doing this business by this agent. If it was doing also some other business by another agent, and service had been made upon that agent, it might well be objected to. The statute, probably, does not mean any agent in any business, but the agent in the business in controversy in the suit. In this view the service was made in a statutory mode according to the laws of the state, upon a corporation found here according to the laws of the United States. *Ex parte Schollenberger*, 96 U. S. 369; *Hayden v. Androscoggin Mills*, 1 FED. REP. 93; *Eaton v. St. Louis, etc., Co.* 7 FED. REP. 143. This is not any hardship, or, if any, not an undue hardship, upon this defendant, as between it and the orators. It is compelled to answer away from its domicile, but not any further away than it has gone voluntarily by its agents to do that which has given occasion for the process and its service.

Motion denied.

---

PULLMAN SOUTHERN CAR Co. v. NOLAN, Comptroller. (No. 2,592.)

SAME v. MONTGOMERY Co. and others. (No. 2,591.)

STATE OF TENNESSEE v. PULLMAN SOUTHERN CAR Co. (No. 2,679.)

(Circuit Court, M. D. Tennessee. October, 1884.)

I. SLEEPING-CAR COMPANY—PRIVILEGE TAX.

The act of the Tennessee legislature, passed March 16, 1877, declaring the mode and manner of valuing the property of telegraph companies for taxation, and of taxing sleeping cars, imposes upon sleeping-car companies what is known to the constitution and laws of that state as a privilege tax. It is not a property tax based on value, but an arbitrary charge, fixed by the legislature, without regard to the actual or comparative value of the article which is the basis of the tax.