

agent to a personal service upon an individual in conferring jurisdiction upon a court to render a personal judgment; and such a judgment would be treated as void for want of jurisdiction by other tribunals than those of the state where it was obtained. The authorities may be found in the note to section 522, Mor. Priv. Corp. The subject has recently been considered by the supreme court of the United States in *St. Clair v. Cox*, 106 U. S. 350, S. C. 1 Sup. Ct. Rep. 354, and Mr. Justice FIELD, speaking for the court, said:

"We are of opinion that, when service is made within the state upon an agent of a foreign corporation, it is essential, in order to support the jurisdiction of the court to render a personal judgment, that it should appear somewhere in the record that the corporation was engaged in business in the state."

A corporation ought not to be deemed "found" within the meaning of section 739, unless it is so far constructively present at the place where its agent is served with process that a judgment against it would be respected everywhere and be given full force and efficacy in other jurisdictions. Where a corporation is not engaged in business in this state there is no room for implying its consent to come here to litigate with a citizen of this state or of a foreign state. In this case the president of the defendant was here in his representative character, but the corporation had never been practically engaged in business here. It had made purchases here occasionally, but it could have made them by correspondence as well as by the presence of its agents here. If the purchases had been made by correspondence it could be as logically urged that the corporation was engaged in business here as it can be now. Instead of writing, its agent came here in person. As it has never kept an office here, or carried on any part of its business operations here, or been engaged in any business here, which required it to invoke the comity of the laws of the state, it was not "found" here for the purpose of being sued. The motion to vacate the service of the process is granted.

---

FRERICHS v. COSTER.

(Circuit Court, S. D. New York. January 10, 1885.)

I. INTERNAL REVENUE—SEIZURE OF PROPERTY—REV. ST. § 989—CERTIFICATE OF PROBABLE CAUSE.

The court is not justified in granting a certificate pursuant to Rev. St. § 989, that a collector of internal revenue, who seized the property of the plaintiff upon the pretense that he was unlawfully carrying on the business of a distiller, "acted under the direction of the secretary of the treasury, or other proper officer of the government," when it appears that he acted pursuant to the request of a revenue agent who was instructed to make the request by the chief clerk of a supervisor.

2. SAME—POWER OF CIRCUIT COURT—REFUSAL OF CERTIFICATE BY DISTRICT COURT UNDER REV. ST. § 970.

Where the district court, in the original proceedings, has refused to grant a certificate of reasonable cause, under Rev. St. § 970, the circuit court cannot certify "that there was probable cause for the act done by the collector," under section 989.

In May, 1876, the defendant, then collector of internal revenue, seized the property of the plaintiff upon the pretense that he was unlawfully carrying on the business of a distiller. This issue was tried and resulted in a verdict for the plaintiff. The collector asked for a certificate of reasonable cause, under section 970, Rev. St., which was refused by the court. *U. S. v. Frerichs*, 16 Blatchf. 547; S. C. 106 U. S. 160; S. C. 1 Sup. Ct. Rep. 169. The present action to recover damages was then commenced against the collector personally. The case was tried at the December circuit and resulted in a verdict for the plaintiff.

*H. E. Davies*, for the motion.

*Edward Salomon* and *Elihu Root*, U. S. Atty., opposed.

COXE, J. The court is asked to grant a certificate, pursuant to section 989, Rev. St., that the defendant "acted under the directions of the secretary of the treasury, or other proper officer of the government." The motion is founded upon the evidence of *Edward McLeer*, who testified in substance, as follows:

"In May, 1876, I was a revenue agent attached to the office of the supervisor of New York. I had examined the plaintiff's distillery and reported the result to the chief clerk of the supervisor, who was acting in the latter's absence. I was instructed by him to request the defendant to make the seizure of plaintiff's distillery. Subsequently I went to defendant's office, and, the defendant not being there, made the request of his deputy."

Do these facts present the case contemplated by the statute referred to? It is thought not. The construction of this testimony most favorable to the defendant is that he acted pursuant to the request of a revenue agent, who was instructed to make the request by the chief clerk of a supervisor. The plain intent of the statute, in my judgment, is that the direction to the collector shall shield him only when given by some officer of the government who has the undoubted authority to direct. Unless the collector is under some obligation to heed the instructions, he is not protected. The defendant here was not required to perform the unlawful act complained of because of any request or demand disclosed by this testimony. Neither the revenue agent nor the chief clerk stood in such a relation to him that he could be protected by following their instructions or censured for refusing so to do.

Upon the case presented the defendant has not succeeded in showing that he acted under the directions of a "proper officer of the government." I do not mean to intimate that a revenue agent may not, in certain circumstances, be such an officer. He may receive from his chief, instructions, general or special, clothing him with the most