

son served was its representative in securing business—advertisements—for its newspaper, and there can be no doubt but that the defendant held Brooke out to the world, in this capacity and to this extent, as its agent in the city of New York. In *Palmer v. Pennsylvania Co.*, 35 Hun, 369, the court at general term say:

"The Code does not specify the extent of the agency required to bind defendant by service of process. * * * Every object of the service is obtained when the agent served is of sufficient character and rank to make it reasonably certain that the defendant will be apprised of the service made. The statute is satisfied if he be managing agent to any extent."

And in *Tuchband v. Railroad Co.*, 115 N. Y. 437, 22 N. E. 360, the court say:

"Where a corporation created by the laws of another state does business in this state, the person who, as its agent, does that business, should be considered its managing agent; and more especially should that be so where the foreign corporation has an office or place of business in this state, and when that office is in charge of that person, and he there acts for the corporation. He is there doing business for it, and so manages its business. Such person is, in every sense of the word used in the statute, 'a managing agent.'"

Moreover, it seems to me that the cases at bar fall directly within the purview of the cases of *U. S. v. American Bell Telephone Co.*, 29 Fed. 17, and *Palmer v. Evening Post Co.*, 70 Fed. 886. In both these cases the court say:

"When, however, such foreign corporation carries on some substantial part of its business in the state by means of an agent or representative appointed to act there, it impliedly assents to be found and sued there."

Brooke was employed by the defendant to obtain advertisements in New York for defendant's newspaper published in St. Louis, Mo. He was in charge of an office here, which carried on its door or window the name of defendant's newspaper. He did the business of the defendant in this line in this state, and was so far its agent and representative duly appointed and authorized by the defendant to act here. The statute does not require that the service shall be made upon the managing agent, but only upon a managing agent, of the defendant. *Code Civ. Proc. N. Y.* § 432, subd. 3, and *Brayton v. Railroad Co.*, 72 Hun, 602, 25 N. Y. Supp. 264. He had authority to make conclusive contracts in regard to advertisements, and receive pay therefor. There can be no question that the soliciting of advertisements, and the making of conclusive contracts therefor, are substantial parts of the corporate business of the defendant; and it may therefore be fairly held that the defendant did business in this state, and had a representative here, and did thereby impliedly assent to be found and sued here in the person of such agent. The motion must, therefore, in both cases, be denied.

SOWLES v. NATIONAL UNION BANK OF SWANTON, VT.

(Circuit Court, D. Vermont. October 9, 1897.)

1. ATTACHMENT OF NATIONAL BANK STOCK—STATE LAWS.

The levy of an attachment on the shares of a national bank under the Vermont statutes (R. L. §§ 3261, 3262), which do not include national bank stock in their provisions, is of no effect against the defendant in attachment.

2. SAME.

It seems doubtful whether any attachment under state laws can operate as a transfer of shares of national bank stock, since such stock exists solely under the laws of the United States, which provide for transfers, and declare the effect thereof.

This was a suit in equity by Merritt Sowles against the National Union Bank of Swanton, Vt. The cause was heard upon an intervening petition filed by Margaret B. Sowles and Edward A. Sowles.

Edward A. Sowles, for petitioners.

WHEELER, District Judge. Fifty-two and two-thirds shares of the capital stock of the bank stood on the books in the name of Edward A. Sowles, and were long ago attached, so far as they could be under the state statutes, as his, in suits in a state court, the proceedings in which have been long stayed, and lain for want of prosecution. Dividends amounting to \$1,040, and five shares of National Car Company stock, belonging with this stock, have been withheld by the receiver, in winding up the affairs of the bank, because of this attachment, and the funds and car stock are now in court. Margaret B. Sowles, who has some color of title to these shares, has joined with Edward A. Sowles in an intervening petition for the payment of the dividends and delivery of the car stock to her, and they have tendered a bond of indemnity to the plaintiff in the attachments. When this attachment was attempted the laws of the state provided, in terms, for the attachment of shares of stock in corporations organized under the laws of the state only. R. L. Vt. §§ 3261, 3262. Shares in a national bank existing wholly under the laws of the United States were not included, if they could be. The laws of the United States provide for the transfer of shares in national banks, and what the effect of the transfer shall be, and this might exclude any effect of transfer proceedings by attachment under state laws. Rev. St. U. S. § 5139. This attachment does not of itself, therefore, seem to be of any force against the defendant in the attachment. His acts, however, in joining in this petition for payment and delivery to Margaret B. Sowles, may be, and for safety they should be, made upon an acquittance from both, and for still greater safety, upon acceptance of the bond. Bond accepted and petition granted.

BONNER et al. v. MEIKLE et al.

(Circuit Court, D. Nevada. September 20, 1897.)

No. 633.

1. MINING CLAIMS—APPLICATION FOR PATENT—RIGHT TO CONTEST.

Occupants of lots in a town located on public lands of the United States, who have built on and improved the same, have a possessory right, which entitles them to contest the issuance of a patent to the claimant of a mining location covering such lots, though neither they nor the authorities of the town have taken any steps to secure title to themselves.

2. SAME—CONTEST BETWEEN TOWN-SITE AND MINERAL CLAIMANTS.

To entitle an applicant to a patent for a mining claim, as against occupants who have improved lots situated within its limits, claiming under