should be procured. Pipe Co. v. Connell, 86 Hun, 319, 33 N. Y. Supp. 482; Neuchatel Asphalt Co. v. Mayor, etc. (Com. Pl.) 33 N. Y. Supp. 64. Irrespective of this point, and even if respondent is not estopped to set up this plea, it does not appear that the complainant is "doing business" in this state. Gilchrist v. Railroad Co., 47 Fed. 593; Chase's Patent Elevator Co. v. Boston Towboat Co., 152 Mass. 432, 28 N. E. 300. It is not alleged, and it does not appear, that the contract was made in this state. Shelby Steel Tube Co. v. Burgess Gun Co., 8 App. Div. 444, 40 N. Y. Supp. 871; O'Reilly v. Greene (City Ct. N. Y.) 40 N. Y. Supp. 360. It is sufficiently proved that the original contract was intended to include the process, and that subsequent oral agreements were made to the same effect. Let a decree be entered for complainant in accordance with this opinion.

NEDERLAND LIFE INS. CO., Limited, v. HALL.[1]

(Circuit Court of Appeals, Seventh Circuit. January 22, 1898.)

No. 466.

COSTS—WRIT OF ERROR—MOTION FOR NEW TRIAL.

An order denying a motion for a new trial is not reviewable, and where without special reason therefor such a motion is transcribed and printed as part of the record, its cost will not be taxed against defendant in error.

In Error to the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

This was an action at law by Fannie Gideon Hall against the Nederland Life Insurance Company, Limited, on a policy on the life of Elbert Mills Hall. Verdict and judgment were given for plaintiff, and the defendant sued out this writ of error. On January 10, 1898, this court rendered an opinion reversing the judgment, and remanding the case for a new trial. 27 C. C. A. 390, 84 Fed. 278. The case is now heard on a motion for taxation of costs.

Edward G. Mason, Henry B. Mason, and Henry E. Mason, for plaintiff in error.

John M. Hamilton and James A. Fullenwider, for defendant in error.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

PER CURIAM. The defendant in error has moved for a taxation of costs against the plaintiff in error. It appears that a little more than 32 pages of the printed record and a corresponding portion of the transcript are given up to a motion filed in the court below for a new trial. It has often been decided that the granting or denying of a motion for a new trial is a discretionary act, which will not be reviewed on writ of error. It follows that, unless there be a special reason therefor, a motion for a new trial should not be included in the transcript of the record taken for the purpose of prosecuting a writ of error. It is therefore ordered that the costs in this case, caused by transcribing and printing the motion for a new trial, be not taxed against the defendant in error; or that, if already taxed, the amount thereof be deducted upon payment of the balance of the costs taxed. The costs of this motion shall be taxed against the plaintiff in error.

[1] Rehearing denied March 5, 1898.

PARK HOTEL CO. v. FOURTH NAT. BANK OF ST. LOUIS.

(Circuit Court of Appeals, Eighth Circuit. April 18, 1898.)

No. 966.

1. CORPORATIONS—AUTHORITY OF PRESIDENT—NEGOTIABLE PAPER.
The general authority of the president of a business corporation to make and discount its promissory notes gives him no power to make a note of the corporation payable to his own order, and one who discounts such a note cannot recover thereon against the corporation without showing special authority for its execution.

2. PRINCIPAL AND AGENT—SCOPE OF AGENCY—NOTICE.
To the general rule that the acts and contracts of a general agent within the scope of his powers are presumed to be lawfully done and made, there is an exception as universal and inflexible as the rule. It is that an act done or a contract made with himself by an agent on behalf of his principal is presumed to be, and is notice of the fact that it is, without the scope of his general powers, and no one who has notice of its character may safely recover upon it without proof that the agent was expressly and specially authorized by his principal to do the act or make the contract.

3. CORPORATIONS—POWER TO MAKE ACCOMMODATION PAPER.
It is ultra vires of a corporation to make accommodation paper, or to guaranty the payment of the obligations of others.

4. SAME—RATIFICATION.
A contract which a corporation has no power to make, it has no power to ratify, and no power to estop itself from denying.

In Error to the Circuit Court of the United States for the Eastern District of Arkansas.

This writ of error challenges a judgment for $14,528 in favor of the Fourth National Bank of St. Louis, the defendant in error, and against the Park Hotel Company, a corporation, the plaintiff in error, upon a promissory note in these words:

"St. Louis, Mo., Dec'br 3rd, 1894.

"On February 1st, 1895, after date, I, the Park Hotel Co. of Hot Springs, Ark., promise to pay to the order of the Fourth National Bank of St. Louis, Mo., fifteen thousand dollars, for value received, with interest at the rate of eight per cent. per annum from maturity until date.

"The Park Hotel Co.,
"By Ed. Hogaboom, Pres't.
"Ed. Hogaboom."

The bank alleged in its complaint that this note was executed in renewal of a note of the hotel company of like amount, which was executed by it to the bank, for value received, on February 28, 1891, and which was extended from time to time, upon payment of interest, until December 3, 1894, when the note in suit was made in its stead. The hotel company denied that it made either of these notes; that it ever received any consideration for them; that it ever paid any interest on them; that they were ever extended at its request, or with its knowledge; denied that its president, Ed. Hogaboom, ever had any authority to make them; and averred that the entire transaction was one between Ed. Hogaboom and the bank, of which it never had any knowledge, and to which it never assented. At the close of the trial of the issues thus raised, the court below instructed the jury to return a verdict for the bank, and this charge is the error assigned. The essential facts upon which this instruction rests are these: In 1891 the Park Hotel Company was a corporation engaged in the construction and furnishing of an hotel, and afterwards in the operation of it, at Hot Springs, in the state of Arkansas; and Ed. Hogaboom was its president. On February 28, 1891, without paying the corporation any consideration therefor, and without the knowledge or consent of any other officer or agent of the hotel company, Hogaboom made a promissory note in this form: