

volving the competency of his testimony. Quite commonly, appellate courts sustain the rulings of the trial judge charging or refusing to charge on the issue of the decoy's being an accomplice under the facts presented, and uphold verdicts based upon the conclusion that he was not.⁶ Whether the feigned accomplice possesses a public or official status is immaterial.⁷ However, it has been said that no criminal intent is imputable even though public authorities are not consulted.⁸

On the other hand, where a private detective induced a larceny, the intent to deprive the owner temporarily of possession in order to secure a reward was sufficient for conviction.⁹ It has been held that the testimony of a prosecuting attorney, who contrived to be bribed so as to entrap the offer of the bribe, was that of an accomplice.¹⁰ In *Dever v. State*¹¹ and *State v. Brownlee*,¹² the informant witness was characterized an accomplice though the initial proposition looking to the offense came from the accused. Both have since been distinguished, the *Dever* case because¹³ the ruling of complicity applied the test of intent,¹⁴ while the statement in the *Brownlee* case has been declared *dictum*.¹⁵ In a number of cases, participation of the feigned accomplice in the crime, while not held criminal, has nevertheless provoked severe judicial criticism.¹⁶

The instant case, in emphasizing the element of intent of one who pleads the defense of deception, seems to accord with the prevailing opinion.¹⁷ Criminal responsibility does not attach to participation without criminal intent.

V. K.

CONFLICTS—FOREIGN CORPORATIONS—"DOING BUSINESS" FOR PURPOSES OF PROCESS—[Federal].—A foreign corporation having no property, place of business, or agent in Minnesota received orders from plaintiff company by mail, telephone, or telegraph at its Washington, D. C. office. Service of sum-

9. *Slaughter v. State* (1901) 113 Ga. 284, 38 S. E. 854, 84 Am. St. Rep. 242.

10. *Davis v. State* (1913) 70 Tex. Cr. Rep. 524, 158 S. W. 288. See also *Sterling v. State* (1923) 93 Tex. Cr. Rep. 527, 248 S. W. 684.

11. (1895) 37 Tex. Cr. Rep. 396, 30 S. W. 1071.

12. (1892) 84 Iowa 473, 51 N. W. 25.

13. *Holmes v. State* (1913) 70 Tex. Cr. Rep. 214, 156 S. W. 1172.

14. *Slaughter v. State* (1901) 113 Ga. 284, 38 S. E. 854, 84 Am. St. Rep. 242, cited *supra*, note 9.

15. *Backenstoe v. State* (1900) 19 Ohio Cir. Ct. 568, 10 Ohio Cir. Dec. 688.

16. *Connor v. People* (1893) 18 Colo. 373, 33 Pac. 159, 25 L. R. A. 341, 36 Am. St. Rep. 295; *United States v. Whittier* (C. C. E. D. Mo. 1878) Fed. Cas. No. 16,688; *Saunders v. People* (1878) 38 Mich. 218.

17. Of the above cases see especially: *People v. Keseling* (1917) 35 Cal. App. 501, 170 Pac. 627; *State v. McKean* (1873) 62 Iowa 343, 14 Am. Rep. 530; *People v. Swift* (S. Ct. 1936) 161 Misc. 851, 293 N. Y. S. 378; *Commonwealth v. Earl* (1927) 91 Pa. Super. 447; *Ausbrook v. State* (1913) 70 Tex. Cr. Rep. 289, 156 S. W. 1177. See also *Talmadge v. State* (1922) 91 Tex. Cr. Rep. 177, 237 S. W. 568 (sheriff assisting in larceny not an accomplice).

mons was made in Minnesota upon defendant's president, who had entered the state to discuss certain grievances with plaintiff company. He had made two previous trips into the state at plaintiff's request. *Held*, that defendant corporation was not amenable to suit in Minnesota, there being no "doing of business" sufficient to sustain the service of summons.¹

The quantum of activity required before a foreign corporation will be regarded as "doing business" varies² according to whether the jurisdictional issue affects matters of licensing, taxation, or service of process.³ The instant case is concerned with the extent of activity requisite to sustain service of process.⁴

Obviously a foreign corporation which has neither property, place of business, nor agent in the state, and whose products or activities do not enter into the state, is not "doing business" for purposes of service of process. Moreover certain single or isolated acts of the corporation have been regarded as not affording a sufficient basis for jurisdiction.⁵ Among the acts thus held not to constitute "doing business" for purposes of process are the sale of goods within a state under a buyer-seller relationship,⁶ the presence of an official to adjust a claim⁷ or purchase goods,⁸ the mere solicitation of orders,⁹ designation of an agent to pay bond coupons,¹⁰ the

1. *Truck Parts Inc. v. Briggs Clarifer Co.* (D. C. D. Minn. 1938) 25 F. Supp. 602.

2. *Henry M. Day & Co. v. Schiff, Lang & Co.* (D. C. S. D. N. Y. 1921) 278 Fed. 533; *State v. The Pioneer Creamery Co.* (1922) 211 Mo. App. 116, 245 S. W. 361.

3. Munsert, "Doing Business" in a State for the Purpose of Service of Process on a Foreign Corporation (1936) 13 Chi.-Kent L. Rev. 328.

4. For a discussion of "doing business," see Stimson, *Jurisdiction over Foreign Corporations* (1933) 18 ST. LOUIS LAW REVIEW 195; Comment (1936) 10 Tulane L. Rev. 639; Comment (1938) 38 Col. L. Rev. 340; Comment (1936) 10 So. Calif. L. Rev. 85; Note (1937) 23 Va. L. Rev. 307; Comment (1936) 1 Mo. L. Rev. 349.

5. *Jameson v. Simonds Saw Co.* (1906) 2 Cal. App. 582, 84 Pac. 289; *Home Lumber Co. v. Hopkins* (Kan. 1920) 190 Pac. 601.

6. *Harrell v. Peters Cartridge Co.* (1913) 36 Okla. 684, 129 Pac. 872, 44 L. R. A. (N. S.) 1094; *Downs v. Delco Light Co.* (1932) 175 La. 242, 143 So. 227; *Watson v. Oregon Moline Plow Co.* (1920) 113 Wash. 110, 193 Pac. 222.

7. *Painter v. Colo. Springs & Cripple Creek Dist. Ry.* (1907) 127 Mo. App. 248, 104 S. W. 1139; *Walton N. Moore Dry Goods Co. v. Commercial Industrial Co., Ltd.* (D. C. N. D. Cal. 1921) 276 Fed. 590; *Henry M. Day & Co. v. Schiff, Lang & Co.* (D. C. S. D. N. Y. 1921) 278 Fed. 533. But see *A. Harvey's Sons Mfg. Co. v. Sterling Materials Co.* (1929) 247 Mich. 317, 225 N. W. 538.

8. *Rosenberg Bros. & Co., Inc. v. Curtis Brown Co.* (1923) 260 U. S. 516.

9. *Boardman v. S. S. McClure Co.* (C. C. D. Minn. 1903) 123 Fed. 614; *Bauch v. Weber Flour Mills Co.* (1922) 210 Mo. App. 666, 238 S. W. 481. In *Peebles v. Chrysler Corp.* (D. C. W. D. Mo. 1932) 57 F. (2d) 867, the test was whether the agent was not only soliciting business, but also concluding business transactions within the state. *Commercial Inv. Trust Corp. v. Stuart* (Miss. 1939) 187 So. 204, held that sending of agent into state to solicit reserve title contracts to be purchased outside the state was not "doing business" for the service of process.

10. *Toledo Railways & Light Co. v. Hill* (1917) 244 U. S. 49.

bringing of suit,¹¹ the sale of travellers' checks through a domestic bank,¹² and the residence of an official within the state.¹³

The courts have also refused to find a doing of business for purposes of process in various combinations of acts or factors.¹⁴ Thus, where a manufacturer's drummer solicited orders for its product from retailers for the jobbers, and the corporation owned stock in companies owning shares in a third company carrying on business within the state, the facts were insufficient to make out a doing of business for purposes of process.¹⁵ Similarly, a corporation which purchased bank stock, borrowed money, and frequently bought supplies within the state was held not to be "doing business" within the jurisdiction.¹⁶

The borderline is approached in those cases wherein at least three or more distinct acts or factors are involved. Many courts regard such increase inadequate for service of process¹⁷ while others have granted juris-

11. See *Mandel v. Swan Land & Cattle Co.* (1895) 154 Ill. 177, 40 N. E. 462 (to enforce a call made on the corporation's stock).

12. *Krause v. Hanover Nat. Bank* (1927) 143 Wash. 518, 255 Pac. 934.

13. *Langley v. Planters Tobacco Co.* (1939) 215 N. C. 237, 1 S. E. (2d) 558.

14. *Aldrich v. Anchor Coal & Development Co.* (1893) 24 Ore. 32, 32 Pac. 756, 41 Am. St. Rep. 83 (contract made by official while in state for purpose of negotiating sale of property); 18 *Fletcher, Cyclopedia of Private Corporations* (rev. perm. ed. 1933) 392, sec. 8722; *Cannon Mfg. Co. v. Cudahy Packing Co.* (1925) 267 U. S. 333 (resale through a distinct entity, a subsidiary jobber completely dominated through stock ownership and not acting as agent); *Consolidated Textile Corp. v. Gregory* (1933) 289 U. S. 85; *Comment* (1935) 13 *Tex. L. Rev.* 225; *Samuel Hoffman Inc. v. Mode Shoppe, Inc.* (Sup. Ct. 1930) 139 Misc. 742, 247 N. Y. S. 266 (making of purchases even if systematic); *Kohn v. Wilkes-Barre Dry Goods Co.* (Sup. Ct. 1930) 139 Misc. 116, 246 N. Y. S. 425 (purchases through a resident buyer); *Loeb v. Star & Herald Co., Inc.* (1919) 187 App. Div. 175, 175 N. Y. S. 412 (solicitation of advertisement for foreign newspaper by resident); *Brocia v. Franklin Plan Corp.* (1932) 235 App. Div. 421, 257 N. Y. S. 167 (office and doing business other than for the purpose incorporated).

15. *People's Tobacco Co. v. American Tobacco Co.* (1918) 246 U. S. 79.

16. *Duke v. Pioneer Mining & Ditch Co.* (D. C. W. D. Wash. 1922) 280 Fed. 883 (officer trying to settle claim with an insolvent lender bank); *Consolidated Iron & Steel Co. v. Maumee Iron & Steel Co.* (C. C. A. 8, 1922) 284 Fed. 550 (a comparable combination in which the maintenance of a bank account was characterized as the strongest circumstance pointing to the corporation's intention to do business).

17. *N. K. Fairbank & Co. v. Cincinnati, N. O. & T. P. Ry.* (C. C. A. 7, 1892) 54 Fed. 420 (office, telephone number in directory, and agent for soliciting business, but no authority to contract, issue tickets, or collect charges); *Stephen v. Union Pac. Ry.* (D. C. D. Minn. 1921) 275 Fed. 709; *Philadelphia & Reading Ry. v. McKibbin* (1917) 243 U. S. 264 (sale of tickets along with other tickets by medium of domestic carrier, advertising, and listing name in telephone directory opposite the local carriers); *Zimmers v. Dodge Bros.* (D. C. N. D. Ill. 1927) 21 F. (2d) 152 (agent repaid for office rent, name of corporation on door, listing in telephone directory, but no authority to contract); *Layne v. Tribune Co.* (App. D. C. 1934) 71 F. (2d) 223 (employee occupied rooms with rent and other expenses paid by the corporation, name placed on the door, and listing in telephone directory); *Raiola v. Los Angeles First Nat. Trust & Savings Bank* (N. Y.

diction.¹⁸ Thus, presence of a district representative to assist distributors in salesmanship and to aid in selling, to supervise service, and with authority to select distributors, has been held merely incidental to the sale of the corporation's products to distributors or dealers.¹⁹ In another case,²⁰ a concern whose agent exercised like authority and in addition made collections was held to be "doing business" sufficient for the service of process.

The courts in deciding when a corporation is "doing business" for purposes of process must make an evaluation of two conflicting interests—the interest of the state in protecting its citizens affected by the corporation's activities and the protection of the corporation from unreasonable interference.²¹ While evaluation is frequently difficult, the decision in the instant case seems sound and in accord with the general trend of the cases.

W. R. K.

CORPORATIONS—CONVERSION BY UNAUTHORIZED TRANSFER OF STOCK ON CORPORATION RECORDS—DUTY TO INQUIRE WHEN BY AGENT TO WIFE—[Federal].—At the request of X, the manager and president of A corporation, B corporation transferred on its books certain of its shares owned by A corporation, to X's wife. The receiver of A corporation, contending that

City Ct. 1929) 133 Misc. 630, 233 N. Y. S. 301 (office to solicit business and gather information); Union Associated Press v. Times-Star Co. (C. C. E. D. N. Y. 1898) 84 Fed. 419 (salaried agent to solicit advertisements, make contracts therefor, and receive payments, name on door); Davega, Inc. v. Lincoln Furniture Mfg. Co. (C. C. A. 2, 1928) 29 F. (2d) 164 (soliciting agent, orders f. o. b., sometimes aided in collecting overdue accounts, adjustments subject to company approval, trips by president into state for adjustments; Honeyman v. Colorado Fuel & Iron Co. (C. C. E. D. N. Y. 1904) 133 Fed. 96 (office, officers, facilities for registering stock, bank account, and the holding of directors' meetings).

18. Lamont v. S. R. Moss Cigar Co. (1920) 218 Ill. App. 435 (salesman had drawing account and traveling expenses, sold to retailers and wholesalers, made allowances to jobbers for advertising); St. Louis S. W. Ry. v. Alexander (1913) 227 U. S. 218 (company maintained an office where agent declined to make adjustments of a claim after investigation); Stark v. Howe Sound Co., Inc. (Sup. Ct. 1931) 141 Misc. 148, 252 N. Y. S. 233 (activities systematically and regularly controlled from headquarters in state); Schuman v. Nat. Pressure Cooker Co. (Sup. Ct. 1939) 10 N. Y. S. (2d) 743 (systematic and continuous course of business in solicitation of orders and shipment of merchandise to numerous customers); Ricketts v. Sun Printing & Publishing Ass'n (1906) 27 App. D. C. 222 (office for direct delivery of news reports to newspapers that contracted therefor, central office only received compensation contracted for, agent fixed the charge, collected the money, and used it for the benefit of corporation); Ruff v. Manhattan Oil Co. (1927) 172 Minn. 585, 216 N. W. 331 (ownership of controlling stock in domestic corporation, active control and supervision thereof, orders given to bookkeeping, agents sent into state with supervisory duties, traffic and marketing departments).

19. Southeastern Distributing Co. v. Nordyke & Marmon Co. (1924) 159 Ga. 150, 125 S. E. 171.

20. La Porte Heinekamp Motor Co. v. Ford Motor Co. (D. C. D. Md. 1928) 24 F. (2d) 861.

21. Note (1937) 23 Va. L. Rev. 307.