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VENUE OF SUIT AGAINST DOMESTIC CORPORATION. *M. J. GROVE LIME CO. V. WOLFENDEN.*¹

The M. J. Grove Lime Company, a Maryland corporation having its principal office in Frederick County, was sued in the Superior Court of Baltimore City for damages arising out of an automobile accident in Frederick County. The sole activities of the corporation in Baltimore City consisted of the solicitation of orders, which were subsequently ac-

¹ The statute proposed by the Bar Association of Baltimore City, Daily Record, February 2, 1937, and *Ibid.*, February 3, 1937, does not go this far. It merely seeks to make it possible to bring suits in Maryland for wrongful deaths caused elsewhere. It provides that the "Courts of this State shall apply the law of such other State, District of Columbia, or territory of the United States, to the facts of the particular case, as though such foreign law were the law of this state . . ." and that local rules of pleading and procedure shall apply to the end that they shall "give effect to the rights and obligations created by and existing under the laws of the foreign jurisdiction . . ." where the tort occurred.

¹ — Md. —, 188 Atl. 794 (1937).

cepted by the company at its Frederick County office; occasional delivery of merchandise pursuant to said orders; occasional receipt of payments by the Baltimore City agent, and consultation by officers of the company with public officials in connection with the submission of bids for public work. The company had no office in Baltimore City, although its sales agent in that district had previously, for a short time, been listed in the telephone directory as agent of the company. *Held*, that the company was not "carrying on any regular business, or habitually engaging in any avocation or employment" in Baltimore City, within the meaning of Maryland Code, Art. 75, Sec. 157, and that the Superior Court had no jurisdiction.

The statute cited by the Court was regularly applied to suits against corporations prior to the enactment of Article 23, Section 103 in its present form.² An example of such application is *Henderson v. Maryland Home Insurance Co.*³ However, Article 23, Section 103 now regulates specifically the question of venue in a suit against a corporation, and it may be suggested therefore that Article 75, Section 157 no longer has any proper application to such suits. The applicable provision of Section 103 is as follows:

"Every corporation of this State may be sued in any county or in the City of Baltimore, as the case may be, where its principal office is located, or *where it regularly transacts business or exercises its franchises*, or in any local action, where the subject matter thereof lies." (Italics ours.)

Language of substantially the same tenor is found in the statute regulating suits against foreign corporations.⁴ Hence, authorities on what constitutes "doing business" within the meaning of one of these statutes may properly be considered as applicable in the construction of the other. The Court in its instant decision cites and relies upon the case of *Stewart Fruit Co. v. Railroad Co.*,⁵ holding that the solicitation of orders for freight by a foreign corporation does not constitute doing business. Evidently the Court had

² The applicable sentence was introduced by Acts, 1908, Ch. 240, Sec. 62. Previously the statute relating to venue of suits against corporations contained language similar to Md. Code, Art. 75, Sec. 157, as, for example, Acts, 1900, Ch. 21 (amending Md. Code, Art. 23, Sec. 296).

³ 90 Md. 47, 44 Atl. 1020 (1899).

⁴ Md. Code, Art. 23, Sec. 118 provides that a foreign corporation "regularly doing business or regularly exercising any of its franchises" in the State is subject to suit therein, and permits such suit to be brought in the county in which its principal office in the State is located or in any county in which it "regularly transacts business."

⁵ 143 Md. 56, 121 Atl. 837 (1923).

in mind the same tests, in construing Article 75, Section 157, which it would have applied if Article 23, Section 103 had been brought to its attention⁶ and the decision seems in line with the substantial weight of authority.⁷

Many of the cases, however, involving solicitation of orders, hold that a foreign corporation engaging in such activity is not required to qualify and pay a franchise tax, not on the ground that it is not "doing business," but on the ground that such business is interstate commerce. Under these authorities solicitation of orders may render a corporation subject to the jurisdiction of the courts. The particular significance of the present decision is that the Maryland Court appears to regard the regular solicitation of orders as not in fact the doing of business. Although considerations relating to undue burdens on interstate commerce were not present, the Court evidently felt that the same tests should be applied as in the case of foreign corporations, and thus avoided the confusion which would result from adopting different standards for the two classes of cases.