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FEDERAL PROCEDURE-VENUE-APPLICABILITY OF SECTION 1404(a) OF NEW TITLE 28 TO ANTI-TRUST SUITS

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FEDERAL PROCEDURE—VENUE—APPLICABILITY OF SECTION 1404(a) OF NEW TITLE 28 TO ANTI-TRUST SUITS—Working directly from a branch office in Washington, D.C., defendant corporation solicited orders and distributed films in the state of Virginia, although it had not registered as a foreign corporation in that state. Alleging that the defendant had violated the anti-trust laws[1] by its activities in Virginia, plaintiff brought a civil action for damages and injunctive relief in the United States District Court for the District of Columbia. Pursuant to section 1404(a) of Title 28 U.S.C.[2] defendant moved to transfer the action to the District Court for the Eastern District of Virginia. *Held,* since the defendant was not transacting business in Virginia sufficient to satisfy the venue provisions of the anti-trust acts[3] and had not shown a preponderance of circum-

[1] Sherman and Clayton Acts, 15 U.S.C. (1946) §§1-7, 12 et seq.

[2] "For the convenience of parties and witnesses, in the interests of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

[3] "Any suit, action, or proceeding . . . against a corporation may be brought [inter alia] . . . in any district wherein it . . . transacts business. . . ." 15 U.S.C. (1946) §22.

stances favoring the transfer as required by section 1404(a), motion denied. *Hampton Theatres Inc. v. Paramount Film Distributing Corporation,* (D.C.D.C. 1950) 90 F. Supp. 645.

In seeking to transfer an anti-trust suit under section 1404(a), the defendant must first establish that the same action "might have been brought" in the desired transferee district.[4] Since all federal district courts have jurisdiction over anti-trust actions,[5] the usual limitation to the transfer will arise from the venue requirements.[6] Under the anti-trust laws, venue may be laid in any district where the defendant corporation is "transacting business."[7] This phrase has been defined as a quantum of activity which is a substantial part of the ordinary business of the corporation, yet less than the "ordinary business" necessary to find a corporation in a district for service of process purposes.[8] However, few settled rules can be set out, and the decisions make it clear that each case must be governed by its particular facts.[9] A second requirement of section 1404 (a) is that the transfer must be for the "convenience of the parties and witnesses, [and] in the interests of justice." Some courts have taken the position that this clause merely codifies the criteria of forum non conveniens,[10] substituting a right of the court to transfer the action in lieu of the former power to dismiss it.[11] However, other decisions seem to indicate the present power to transfer is more sweeping.[12] Under either view, it is recognized that the plaintiff's inherent right to choose his forum is a strong one, and this choice will not be readily disturbed unless a strong case is made for the transfer.[13] The principal case is in accord with this

[4] The applicability of §1404(a) to suits brought under the anti-trust laws was upheld in United States v. National City Lines, 337 U.S. 78, 69 S.Ct. 959 (1949). On the applicability of §1404(a) generally, see 10 A.L.R. (2d) 932 (1950).

[5] 28 U.S.C. (Supp. III, 1950) §1337.

[6] Some decisions have added the further requirement that the defendant could have been served in the transferee district, 49 MICH. L. REV. 760 (1950), but the better view seems to oppose this requirement. 1-A OHLINGER'S FEDERAL PRACTICE 324 (1950). This requirement will be of no significance in the anti-trust suits, since process on a corporate defendant may be served wherever it is found or is an inhabitant. 15 U.S.C. (1946) §22. See also Eastman Kodak Co. v. Southern Photo Materials Co., 273 U.S. 359, 47 S.Ct. 400 (1927).

[7] See note 3 supra.

[8] Windsor Theatre Co. v. Loew's Inc., (D.C. D.C. 1948) 79 F. Supp. 871.

[9] See annotations 9 and 10, Found, and Transacting Business, 15 U.S.C.A. (1951) §22.

[10] The doctrine of forum non conveniens is discussed in Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 67 S.Ct. 839 (1949).

[11] Hendrick v. Atchison, T. & S.F. Ry. Co., (10th Cir. 1950) 182 F. (2d) 305. Ferguson v. Ford Motor Co., (D.C. N.Y. 1950) 89 F. Supp. 45.

[12] Jiffy Lubricator Co. v. Stewart Warner Corp., (4th Cir. 1949) 177 F. (2d) 360.

[13] Ford Motor Co. v. Ryan, (2d Cir. 1950) 182 F. (2d) 329; Hansen v. Nash-Finch Co., (D.C. Minn. 1950) 89 F. Supp. 108. But see Barnhart v. John B. Rogers Producing Co., (D.C. Ohio 1948) 86 F. Supp. 595, where it was stated that the purpose of §1404(a) was to place the defendant on an equal footing with the plaintiff in selecting the forum.

general proposition. Since the philosophy behind the liberal venue and service provisions of the anti-trust acts is to allow the plaintiff to select a readily accessible forum, unhampered by usual jurisdictional difficulties,[14] this holding seems to be particularly appropriate.

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[14] 58 YALE L.J. 482 (1949).