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IN THE COURT OF APPEALS OF IOWA OCT 21 1980

CLERK SUPREME COURT

SPENCER FOODS, INC.,

)

Plaintiff-Appellee,

)

Filed October 21, 1980

vs.

)

CROUSE CARTAGE COMPANY,

)

0-258

2-64072

Defendant-Appellant,

)

Appeal from Clay District Court - Murray S. Underwood, Judge.

Defendant takes interlocutory appeal from trial court's order denying its motion for change of venue. AFFIRMED AND REMANDED.

Gary L. McMinimee of the Wunschel Law Firm, Carroll, Iowa, for defendant-appellant.

Stephen F. Avery of Cornwall & Avery, Spencer, Iowa, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant takes this interlocutory appeal from trial court's order denying its motion for change of venue. Defendant claims the trial court erred in not changing venue to Carroll County (defendant's residence) from Clay County where plaintiff alleges venue under section 616.8, The Code. We affirm the trial court and remand for further proceedings.

On August 6, 1979, plaintiff filed a petition in Clay County alleging that defendant hauled carcass beef for plaintiff and that when this method of transportation ceased in 1977, defendant failed to return a number of meat hooks valued at \$20,885.25. On August 21, defendant moved for change of venue to Carroll County wherein it is a resident, apparently relying on section 616.17, The Code. Plaintiff resisted the motion, citing section 616.8, The Code, which reads in part as follows: "An action may be brought against any railway corporation, the owner of stages or other line of coaches or cars ... in any county through which such road or line passes or is operated." On September 26 the trial court overruled defendant's motion. Referring to identical exhibits attached to affidavits submitted by both parties, the court found that the defendant had authority to haul meat products on an irregular route from its Spencer, Iowa facilities to other states. Since Spencer is located in Clay County, the court found defendant's operations to exist in part in Clay County and therefore venue was proper under section 616.8. On November 13, defendant was granted permission to bring this interlocutory appeal.

In arguing section 616.8 is not applicable, defendant relies on Bruce Transfer Co. v. Johnston, 227 Iowa 50, 287 N.W. 278 (1939). Specifically, defendant focuses on one sentence in that case: "We conclude that the trucks of Bruce Transfer Company, operating as common carriers of freight on a fixed schedule and over a regular route ... did constitute a 'line of cars' within the intent and purview of [the predecessor of section 616.8]" 227 Iowa at 55, 287 N.W. at 281. Defendant concludes that, since it did not operate on a "fixed schedule" or over a "regular route" in Clay County, venue there would be improper under the statute.

We think defendant misreads Bruce Transfer. The above quotation merely refers to the specific facts of that case; it does not require all carriers to have fixed schedules and regular routes as conditions precedent for proper venue under section 616.8. This is indicated in Bruce Transfer itself where the court said: "[t]hat the statute does not in

so many words specifically describe the operations and business of petitioner will not necessarily prevent its applicability thereto." 227 Iowa at 52, 287 N.W. at 280.

It is undisputed that defendant transported plaintiff's meat products out of Spencer, Iowa in Clay County. Whether or not the schedules were fixed or the routes were regular is of no significance for venue purposes. According to Bruce Transfer, the terms of section 616.8 are not to be narrowly construed. We agree with the trial court that Clay County is a "county through which [defendant's] road or line passes or is operated" for purposes of section 616.8. Venue is therefore proper under that statute and the trial court did not err in overruling defendant's motion for change of venue.

The trial court's ruling is affirmed. We remand the case for further proceedings.

AFFIRMED AND REMANDED.