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Constitutional Law - Due Process - Jurisdiction of a State Court Over a Foreign Corporation

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CONSTITUTIONAL LAW—DUE PROCESS—JURISDICTION OF A STATE COURT OVER A FOREIGN CORPORATION—Peninsular Gas Company, a Michigan corporation, brought an action in Missouri against the plaintiff for breach of contract. A judgment was returned for plaintiff, and plaintiff immediately filed suit for malicious prosecution and served process on the president of the corporation who was in Missouri for the prior trial. On a motion to quash, *held,* sustained. Under the due process clause of the United States Constitution, the court had no right to assume jurisdiction. Defendant corporation was not doing business in Missouri, for bringing a prior lawsuit was a single isolated act and was not a part of its usual and customary business. *Collar v. Peninsular Gas Company,* (Mo. 1956) 295 S.W. (2d) 88.

A satisfactory test for determining when state courts can exercise jurisdiction over foreign corporations must reconcile certain conflicting factors. These factors include the inconvenience to the corporation, the location of witnesses and other evidence, the physical and legal risks to citizens of the state because of the activities of the corporation, and the benefit to the corporation from being in the state.[1] Each state may reconcile these factors

[1] See 104 UNIV. PA. L. REV. 381 (1955) for an extended treatment of these considerations. See also O'Connor and Goff, "Expanded Concepts of State Jurisdiction over Non-Residents: the Illinois Revised Practice Act," 31 NOTRE DAME LAWYER 223 (1956) for a defense of the new Illinois statute concerning jurisdiction, and a discussion of this balancing of interests.

in accordance with the considerations that it regards as significant, and may set up its own jurisdictional tests, limited only by the due process requirement of the United States Constitution.[2] The constitutional extent of a state's power over foreign corporations is a question that has frequently been litigated. The early cases,[3] following the rule applied in determining jurisdiction over natural persons, required that the corporation be present within the state. The difficulty of ascertaining the presence of a corporation in a state was resolved by requiring that the corporation be "doing business" within the state.[4] The Supreme Court's decision in *International Shoe Company v. State of Washington*,[5] the most significant recent case dealing with this question, leaves some doubt, however, as to whether "doing business" is still a prerequisite to jurisdiction. In that case the nonresident corporation had no permanent place of business within the state, but did have salesmen in the state who exhibited samples and solicited orders. The state court's jurisdiction was upheld in an action to recover state unemployment compensation contributions for which the corporation became liable as employer of the salesmen. The Court, after reviewing prior decisions, concluded that no violation of due process would result from a state court's assuming jurisdiction over a foreign corporation so long as there were certain "minimum contacts" between the corporation and the state. Just what contacts will comprise the necessary minimum is not obvious from the broadly-phrased opinion. Later interpretations of the decision by state and lower federal courts have produced two views. The first, followed in the principal case, regards the *International Shoe* case as merely an extension of the "doing business" test, and looks primarily to the factual situation in that case, viz., the fact that there were continuing acts within the state in pursuance of the usual business of the corporation.[6] The second view, resting primarily on the language of the decision, treats the *International Shoe* case as having done away with the "doing business" test, and instead allows jurisdiction whenever acts done within a state create the liability which gives rise to the litigation.[7] While the United States Supreme Court has not yet passed upon the constitutionality of this second

2 Perkins v. Benquet Consol. Mining Co., 342 U.S. 437 (1952); Schmidt v. Esquire, Inc., (7th Cir. 1954) 210 F. (2d) 908. Missouri law provides no particular standard for determining jurisdiction over foreign corporations. Mo. Rev. Stat. (1952) §506.150 (3). See principal case at 93 for basis of this decision under the Missouri and United States Constitutions.

3 Pennoyer v. Neff, 95 U.S. 714 at 733 (1877). See STUMBERG, CONFLICT OF LAWS, 2d ed., 7, 93-100 (1951); GOODRICH, CONFLICT OF LAWS, 3d ed., 172, 186 (1949).

4 St. Louis S.W. Ry. v. Alexander, 227 U.S. 218 (1913); International Harvester Co. v. Kentucky, 234 U.S. 579 (1914). See 20 C.J.S. 45-62 (1940).

5 326 U.S. 310 (1945). See McBaine, "Jurisdiction over Foreign Corporations: Actions Arising out of Acts Done Within the Forum," 34 CALIF. L. REV. 331 (1946); 104 UNIV. PA. L. REV. 381 (1955); 12 N.Y.U. INTRA. L. REV. 127 (1957).

6 Goldstein v. Chicago R. I. & P. R. Co., (W.D.N.Y. 1950) 93 F. Supp. 671 at 678.

7 Johns v. Bay State Abrasive Products Co., (D.C. Md. 1950) 89 F. Supp. 654; Smyth v. Twin State Improvement Co., 116 Vt. 569, 80 A. (2d) 664 (1951); S. Howes Co. v. W. P. Milling Co., (Okla. 1954) 277 P. (2d) 655; Duraladd Products v. Superior Court, 134 Cal. App. (2d) 226, 285 P. (2d) 699 (1955).

interpretation, it seems unlikely that it would be held to violate due process. Statutes in several states have expressly given their courts power to assume jurisdiction over a foreign corporation on the basis of a single liability-creating act.[8] Reason itself seems to require that a state court be permitted to take jurisdiction of a controversy that arises directly out of acts within the state by agents of a foreign corporation where those acts are the primary issues of the litigation. In the principal case the suit for malicious prosecution arose directly from acts done within the state. All witnesses and evidence were present in Missouri, and notice was served on the president of the corporation within the state. A liability-creating act was done within the state, and under the second view of the *International Shoe* case, the Missouri court would be permitted to take jurisdiction. Apart from the possibility of jurisdiction based on the liability-creating act, it might also be argued that the defendant corporation consented to jurisdiction of the Missouri courts. When a person brings a law suit within a state he submits himself to the jurisdiction of that state's courts for any cross-action or set-off arising from that suit.[9] In *Adam v. Saenger*[10] the Supreme Court upheld jurisdiction over a foreign corporation on a cross-action filed three years after the original complaint. This suit arose in California where a cross-action has the position of an independent suit, and judgment may be obtained without waiting for the results of the original plaintiff's claim. The Court said the foreign corporation's voluntary act in demanding justice made it reasonable to treat the corporation as submitting to the court's jurisdiction for all purposes which justice requires. This implied consent concept might be extended to subject a foreign corporation which has brought suit within a state without probable cause to the jurisdiction of the courts of that state for purposes of determining the corporation's liability for malicious prosecution. The Missouri court in the principal case could have found jurisdiction either by a theory based on the existence of a liability-creating act or under a theory of implied consent. Since service of process was entirely proper, the claim of its citizens for malicious prosecution could have been resolved economically and expeditiously. In view of the current trend for allowing broader jurisdiction, provided ade-

8 Vt. Stat. (1947) §1562; Md. Code Ann. (Flack, 1951) art. 23, §88 (d); Ill. Rev. Stat. (1955) c. 110, §17.

9 STUMBERG, CONFLICT OF LAWS, 2d ed., 82 (1951); CONFLICTS RESTATEMENT §§83, 88 (1934).

10 Adam v. Saenger, 303 U.S. 59 (1938). In Young Co. v. McNeal-Edwards Co., 283 U.S. 398 (1931), a counter-claim was allowed against a foreign corporation although it was treated as a separate action. Holmes, J., speaking for the court, said at 400, ". . . [P]laintiff being already in court *qua* plaintiff by his own voluntary act, it is reasonable to treat him as being there for all the purposes for which justice to the defendant requires his presence." Gordy v. Levison & Co., 157 Ga. 670, 122 S.E. 234 (1924), and Wachovia Bank & Trust v. Jones, 166 Ga. 747, 144 S.E. 256 (1928), allowed jurisdiction over foreign corporations for independent equity actions based on prior actions at law brought by the corporations.

quate notice is given,[11] the Missouri Supreme Court probably has taken an unreasonably narrow view of the limits of due process as a test of jurisdiction.

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[11] See note 1 supra. See also Joiner, "Let's Have Michigan Torts Decided in Michigan Courts," 31 MICH. ST. B. J. 5 (Jan. 1952).