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Constitutional Law--Jurisdiction--Foreign Corporation Subjected to Suit on Basis of Single Contract Not Violation of Due Process (Beck v. Spindler, 99 N.W.2d 670 (1959))

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the names and addresses of those responsible for it the ordinance is violated even though the subject matter is within the area of protected speech and otherwise immune from censure. The ordinance was not limited to unlawful handbills, but applied to "any handbill in any place under any circumstances." [28] Therein lies the constitutional objection. In order to accomplish its purpose of deterring and aiding in the punishment of abuses of the right freely to communicate by handbills, the ordinance imposed a restraint upon all occasions where it was desired to use them. The evil sought to be averted simply did not justify the measure adopted to avert it.[29]

It cannot be seriously doubted that such an ordinance would deter at least some writers and distributors. Anonymity clothes not only the lawbreaker, but also the spokesman of the unpopular viewpoint who fears the censure of business and social contacts, as well as the writer who simply wishes to avoid the public eye. The right of free expression cannot be said to be limited only to those who are so courageous or so deeply moved that they will act regardless of the consequences which might follow. The purpose of the ordinance could have been equally well served by providing additional penalties for literature of the offensive class if the author and distributor were not named therein. It is submitted, therefore, that the Court acted wisely in striking down an ordinance which encroached upon a fundamental freedom without any showing of real necessity for doing so.

CONSTITUTIONAL LAW—JURISDICTION—FOREIGN CORPORATION SUBJECTED TO SUIT ON BASIS OF SINGLE CONTRACT NOT VIOLATION OF DUE PROCESS.—Defendant, a foreign corporation engaged in the manufacture of house trailers, was sued on the theory of implied warranty on the basis of a single sale by a resident dealer. The defendant had granted the dealer an exclusive franchise, joined in filing documents for the dealer's license, reimbursed such dealer for one-half of advertising costs, drafted the dealer's conditional sales contracts, sent a warranty policy directly to the resident purchaser, furnished servicemen in an attempt to repair defects, and maintained correspondence with the dealer concerning the unsuitability of plaintiff's trailer. Service of process was made on the Secretary of State and notice to defendant was accomplished by ordinary mail pursuant to

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[28] LOS ANGELES, CAL., MUNICIPAL CODE § 28.06.

[29] "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." Schneider v. State, 308 U.S. 147, 161 (1939).

statutory provisions [1] subjecting foreign corporations involved in a single contract to be performed in whole or in part within the state to in personam jurisdiction by state courts. The Minnesota Supreme Court, affirming the trial court, *held* that making the foreign corporation amenable to suit in a cause of action arising out of a single contract performed within the state did not violate the due process clause of the United States Constitution.[2] *Beck v. Spindler*, — Minn. —, 99 N.W.2d 670 (1959).

At common law a personal judgment could be rendered against a foreign corporation only if it had voluntarily submitted to the jurisdiction of state courts.[3] The doctrine of *Pennoyer v. Neff* [4] defined the limits of state court jurisdiction under the constitutional guarantee of due process,[5] which takes cognizance of a corporation as a "person." [6] Just where the line of limitation falls, particularly with regard to foreign corporations, has been a continuing subject of controversy. With the recognition of state power to require corporations "doing business" within the state to appoint agents upon whom process could be served,[7] and the imposition of jurisdiction on the basis of acts committed within the forum sufficient to constitute "doing business," [8] came fictional concepts of corporate "presence" and "consent." [9] Amenability to process in the absence of actual consent, however, was limited to causes of action arising from business activities within the state.[10]

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[1] MINN. STAT. ANN. § 303.13(3) (Supp. 1959). "If a foreign corporation makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if such foreign corporation commits a tort in whole or in part in Minnesota against a resident of Minnesota, such acts shall be deemed to be doing business in Minnesota by the foreign corporation and shall be deemed equivalent to the appointment by the foreign corporation of the secretary of the State of Minnesota and his successors to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings against the foreign corporation arising from or growing out of such contract or tort. Such process shall be served in duplicate upon the secretary of state . . . and the secretary of state shall mail one copy thereof to the corporation . . . ." *Ibid.*

[2] U.S. CONST. amend. XIV, § 1.

[3] See, *e.g.*, Moulin v. Trenton Mut. Life & Fire Ins. Co., 24 N.J.L. 222 (1853); M'Queen v. Middletown Mfg. Co., 16 Johns. R. 3 (N.Y. Sup. Ct. 1819).

[4] Pennoyer v. Neff, 95 U.S. 714 (1877).

[5] *Id.* at 733.

[6] Covington & L. Turnpike Rd. Co. v. Sanford, 164 U.S. 578, 592 (1896).

[7] See, *e.g.*, Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co., 243 U.S. 93, 95 (1917); Smolik v. Philadelphia & Reading Coal & Iron Co., 222 Fed. 148 (S.D.N.Y. 1915).

[8] See, *e.g.*, Washington *ex rel.* Bond, Goodwin & Tucker, Inc. v. Superior Court, 289 U.S. 361, 364-65 (1933); Commercial Mut. Acc. Co. v. Davis, 213 U.S. 245 (1909).

[9] *Ibid.* See generally GOODRICH, CONFLICT OF LAWS 210-13 (1949).

[10] Simon v. Southern Ry., 236 U.S. 115, 129-32 (1915); *accord*, Old Wayne Mut. Life Ass'n v. McDonough, 204 U.S. 8, 22-23 (1907).

The doctrine of "mere solicitation plus" developed with an expansion of what constitutes "doing business." Solicitation alone was deemed insufficient activity to subject a foreign corporation to the personal jurisdiction of state courts,[11] while continuous solicitation plus other corporate activities was considered sufficient activity to constitute "doing business" and warrant an inference of corporate "presence" within the state.[12] The determination in each case depended upon its own facts,[13] but the rule remained that single, isolated acts were insufficient for rendering a personal judgment against a foreign corporation.[14] Each state may determine for itself what constitutes "doing business" within the meaning of its own laws unless assumption of jurisdiction is so unreasonable as to come in conflict with the requirements of due process or the commerce clause of the Constitution.[15]

Under the exercise of "police power," states have enacted statutes which confer jurisdiction over nonresidents engaged in activities regulated by the state for the protection of its citizens.[16] Although jurisdiction may be imposed upon nonresidents solely on the basis of a single act committed within the state, these statutes have been constitutionally applied.[17] However, the jurisdictional interpretation

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[11] People's Tobacco Co. v. American Tobacco Co., 246 U.S. 79, 87 (1918) (continuous solicitation by agents of retail trade for jobbers); Philadelphia & R. Ry. v. McKibbin, 243 U.S. 264, 268 (1917) (activities of connecting carriers); Peterson v. Chicago, R.I. & Pac. Ry., 205 U.S. 364, 393 (1907) (activities of subsidiary corporations); Green v. Chicago, B. & Q. Ry., 205 U.S. 530, 533 (1907) (solicitation of freight and passenger traffic).

[12] International Harvester Co. of America v. Kentucky, 234 U.S. 579, 587 (1914) (solicitation plus continuous shipment of machines into Kentucky and agents authorized to receive payments and deal with state banks); *accord,* International Shoe Co. v. Lovejoy, 219 Iowa 204, 257 N.W. 576 (1934) (continuous solicitation plus promotional activity and a permanent display room for products); Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915 (1917) (systematic solicitation plus maintenance of office and continuous shipments into state). *But see* Cancelmo v. Seaboard Air Line Ry., 12 F.2d 166 (D.C. Cir. 1926). See generally the discussion of Supreme Court cases in Farmers' & Merchants' Bank v. Federal Reserve Bank, 286 Fed. 566 (E.D. Ky. 1922).

[13] *E.g.,* People's Tobacco Co. v. American Tobacco Co., *supra* note 11, at 87; International Harvester Co. of America v. Kentucky, *supra* note 12, at 583.

[14] Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516 (1923).

[15] Kansas City Structural Steel Co. v. Arkansas, 269 U.S. 148, 150 (1925).

[16] See, *e.g.,* N.Y. VEHICLE & TRAFFIC LAW § 52 (amended statute explicitly covering nonresident automobile owners).

[17] See, *e.g.,* Travelers Health Ass'n v. Virginia *ex rel.* State Corp. Comm'n, 339 U.S. 643 (1950) (application of the Virginia "Blue Sky Law" to nonresident mail-order health insurance association); Hess v. Pawloski, 274 U.S. 352 (1927) (statute subjecting nonresident motorists to personal jurisdiction following service of process on state official); Kane v. New Jersey, 242 U.S. 160 (1916) (statute requiring nonresident motorists to appoint secretary of state as agent for service of process). See generally Scott, *Jurisdiction Over Nonresident Motorists,* 39 HARV. L. REV. 563 (1926).

was limited to the special facts of each case.[18] Outside of those activities subjected to special regulations of the state, jurisdiction could not be imposed on the basis of a single, isolated act within the state.[19]

In *International Shoe Co. v. Washington,*[20] the United States Supreme Court discarded the fictions of corporate presence and implied consent,[21] and formulated the following test:

> [D]ue process requires only that in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." [22]

This test shifts the emphasis from determining whether there is a "doing of business" to adjudging the activity in relation to the purpose for which jurisdiction is sought, based on a test of reasonableness and fair play. However, a direct limitation was placed on jurisdiction over foreign corporations in that the state must have some reasonable connection with the corporation because of its activities within the state. Solicitation alone would not supply the minimal contact with the state;[23] but the Court also implied that single or isolated acts may be a basis for jurisdiction if connected with the activities of the foreign corporation within the state.[24] Applying the doctrine of *International Shoe,* regular and systematic solicitation creating continuing obligations was considered sufficient activity to subject an insurance company to the jurisdiction of a state court,[25] notice by registered mail satisfying the requirements of due process.[26] The United States Supreme Court approved assertion of state jurisdiction in *McGee v. International Life Ins. Co.*[27] with no solicitation or business within the state other than one insurance policy. Although the state exerts regulatory power over insurance companies, the decision was not predicated on the right of the state to apply its police power in that particular area, but rather on

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[18] Doherty & Co. v. Goodman, 294 U.S. 623 (1935).

[19] *Ibid.*

[20] 326 U.S. 310 (1945).

[21] McGee v. International Life Ins. Co., 355 U.S. 220, 222 (1957) (dictum).

[22] International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

[23] *Id.* at 314. "[S]olicitation . . . plus some additional activities there are sufficient to render the corporation amenable to suit . . . ." *Ibid. But see* Huck v. Chicago, St. P., M. & O. Ry., 4 Wis.2d 132, 90 N.W.2d 154 (1958).

[24] International Shoe Co. v. Washington, *supra* note 22, at 317. "[S]ingle or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit *on causes of action unconnected with the activities there.*" *Ibid.* (Emphasis added.)

[25] Travelers Health Ass'n v. Virginia *ex rel.* State Corp. Comm'n, 339 U.S. 643 (1950). Compare Minnesota Commercial Men's Ass'n v. Benn, 261 U.S. 140 (1923).

[26] Travelers Health Ass'n v. Virginia *ex rel.* State Corp. Comm'n, *supra* note 25, at 650-51.

[27] 355 U.S. 220 (1957).

the reasoning that jurisdiction was "based on a contract which had substantial connection with that State." [28] The language of the Court was almost too broad, and became more explicit in *Hanson v. Denckla* [29] where, in recognizing the trend toward increasing state jurisdiction over nonresidents as a natural development accompanying more expedient transportation and communication, it was asserted that minimal contacts of a foreign corporation with the state are required for the exercise of personal jurisdiction, and that it would be a mistake to assume that this trend heralds the eventual end of all restrictions over state jurisdiction.[30]

The standards set forth in *International Shoe, McGee,* and *Hanson* provide the present state of the law regarding state jurisdiction over foreign corporations.[31] It is essential that there be some act by which the foreign corporation places itself in the position of utilizing the benefits and protection of state law.[32] The cause of action must be one which arises out of, or results from, corporate activities in the forum.[33] There must be sufficient contact of the defendant with the state so that assertion of jurisdiction does not violate due process tenets of "fair play" and "substantial justice." [34] In the area of state taxation of foreign corporations the broad language of the United States Supreme Court [35] created considerable concern and uncertainty, resulting in legislative action.[36]

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[28] McGee v. International Life Ins. Co., 355 U.S. 220, 233 (1957).

[29] 357 U.S. 235 (1958).

[30] Hanson v. Denckla, 357 U.S. 235, 251 (1958). "Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States." *Ibid.*

[31] See generally *Developments in the Law—State-Court Jurisdiction,* 73 HARV. L. REV. 909 (1960); Note, *Jurisdiction Over Nonresident Corporations Based on a Single Act: A New Sole for International Shoe,* 47 GEO. L.J. 342, 349-73 (1958).

[32] Hanson v. Denckla, *supra* note 30, at 253.

[33] Hanson v. Denckla, *supra* note 30, at 251-52. *But see* Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952).

[34] International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). See Hanson v. Denckla, *supra* note 30, at 251; McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957).

[35] Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450 (1959). "We conclude that net income from the interstate operations of a foreign corporation may be subjected to state taxation provided the levy is not discriminatory and is properly apportioned to local activities within the taxing State forming sufficient nexus to support the same." *Id.* at 452.

[36] Pub. L. No. 272, 86th Cong., 1st Sess. §§ 101-04 (Sept. 14, 1959). "(a) No State . . . shall have power to impose . . . a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State . . . are . . . :

"(1) the solicitation of orders . . . in such State . . . which orders are sent outside the State . . . and . . . are filled by shipment . . . from . . . outside the State . . . .

"(c) For purposes of subsection (a), a person shall not be considered to have engaged in business activities within a State . . . merely by reason of sales in such State, or the solicitation of orders for sales . . . ."

In 1957 Minnesota became the sixth state to enact an isolated act statute.[37] A similar statute was upheld in *Smyth v. Twin State Improvement Corp.*[38] where jurisdiction was imposed on the basis of a single tort committed during the corporation's sole entry into the state. In a tort action against a foreign corporation for personal injuries resulting from the misrepresentations of an agent who had solicited orders and rendered advice continuously within the forum, such a statute was also applied and upheld.[39] A reluctance is discernible toward applying isolated act statutes in libel suits,[40] although jurisdiction has been imposed in other types of actions when corporate activities were probably no more substantial.[41] The leading case upholding jurisdiction on the basis of a single contract is *Compania de Astral, S.A. v. Boston Metals Co.*,[42] in which the activities of the foreign corporation related to a single transaction, but added up to considerable contact with the state.[43] Both *Smyth* and *Compania de Astral* were cited with approval by the Supreme Court in the *McGee* case.[44] However, where the activity of a foreign corporation has failed to provide "substantial minimum contact" with the forum, the use of an isolated act as the basis of jurisdiction is apparently a denial of due process.[45]

An era of rapid technological achievements has enabled corporations to extend the scope of business activities; it has also become increasingly less burdensome to defend actions in jurisdictions foreign to their incorporation. The Supreme Court has applied a flexible standard of reasonableness and fair play to the requirements of due process, which provides both latitude and limitation to the exercise of state court jurisdiction over foreign corporations. The outermost limits of jurisdiction on the doing of an act have not been

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[37] See Note, *Personal Jurisdiction in Minnesota over Absent Defendants*, 42 MINN. L. REV. 909 (1958). Other states with isolated act statutes are: ILL. ANN. STAT. ch. 110, § 17 (Smith-Hurd 1956); Me. Laws ch. 317, § 125 (1959); MD. ANN. CODE art. 23, § 92(d) (1957); N.C. GEN. STAT. § 55-145(a) (Supp. 1959); VT. STAT. ANN. tit. 12, § 855 (1959); W. VA. CODE ANN. § 3083 (Supp. 1959); WIS. STAT. ANN. ch. 226, § 262.05(5) (Supp. 1959).

[38] 116 Vt. 569, 80 A.2d 664 (1951).

[39] Johns v. Bay State Abrasive Prods. Co., 89 F. Supp. 654 (D.C. Md. 1950).

[40] See Insull v. New York World Telegram Corp., 172 F. Supp. 615 (N.D. Ill. 1959); Putnam v. Triangle Publications, Inc., 245 N.C. 432, 96 S.E.2d 445 (1957).

[41] See Painter v. Home Fin. Co., 245 N.C. 576, 96 S.E.2d 731 (1957).

[42] 205 Md. 237, 107 A.2d 357 (1954), *dissent reported in* 108 A.2d 372 (1954), *cert. denied*, 348 U.S. 943 (1955).

[43] Compania de Astral, S.A. v. Boston Metals Co., 205 Md. 237, 107 A.2d 357, 367 (1954).

[44] McGee v. International Life Ins. Co., 355 U.S. 220, 223 n.2 (1957).

[45] Mueller v. Steelcase, Inc., 172 F. Supp. 416 (D.C. Minn. 1959). See Morgan v. Heckle, 171 F. Supp. 482 (E.D. Ill. 1959); Arundel Crane Serv., Inc. v. Thew Shovel Co., 214 Md. 387, 135 A.2d 428 (1957); Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc., 239 F.2d 502 (4th Cir. 1956).

clearly defined, but it is apparent that the application of isolated act statutes to impose jurisdiction over a foreign corporation on the basis of a single contract to be performed within the state satisfies due process if there has been "substantial minimum contact" between the defendant and the forum, and defending the action is not an unreasonable burden.

Although the holding of the principal case is predicated upon a cause of action arising out of the performance of a single contract within the state, the Minnesota Court took into consideration additional corporate activities related to that contract before concluding the requirements of due process had been satisfied. The minimal contacts of defendant with the forum represent a degree of activity barely sufficient to fall within the limitations prescribed by the Supreme Court as the present scope of state jurisdiction over foreign corporations.

CONSTITUTIONAL LAW — REFUSAL TO RENEW APPELLANT'S PASSPORT TO TRAVEL IN CERTAIN AREAS HELD IMMUNE FROM JUDICIAL REVIEW.—Appellant newspaper correspondent applied for renewal of his passport which contained a restriction against travel to certain areas with which the United States does not have diplomatic relations. Appellant had violated this restriction on his original passport and refused to commit himself to abide by it in the future. The Secretary of State refused to issue the passport. The United States Court of Appeals, in affirming the judgment of the District Court, *held,* the designation of certain areas in the world as "trouble spots" and the concomitant restriction upon American travel therein is a part of the President's conduct of foreign affairs as delegated to the Secretary. The basis of the restriction is military, political, and geographical, not personal, and the President's discretion in such affairs is immune from judicial review. *Worthy v. Herter,* 270 F.2d 905 (D.C. Cir. 1959).

In English law, man's natural right to travel has been virtually unquestioned for centuries. The Magna Carta in 1215 asserted this right of free men against the right of the monarch to restrict them to the kingdom [1] and, by the time of Blackstone little, if any, thought was given to the notion that one of His Majesty's subjects would have any restrictions placed upon his travel—within or without the kingdom.[2] The American colonists undoubtedly shared this view and article four of the Articles of Confederation stated it expressly.[3]

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[1] MAGNA CARTA ch. 42 (1215).

[2] 1 BLACKSTONE, COMMENTARIES *134.

[3] See CHAFFEE, THREE HUMAN RIGHTS IN THE CONSTITUTION 162-213 (1956).