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CONSTITUTIONAL LAW-CIVIL PROCEDURE-DUE PROCESS REQUIREMENTS FOR STATE JURISDICTION OVER FOREIGN CORPORATIONS

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RECENT DECISIONS

CONSTITUTIONAL LAW—CIVIL PROCEDURE—DUE PROCESS REQUIREMENTS FOR STATE JURISDICTION OVER FOREIGN CORPORATIONS—The plaintiff, a nonresident of Ohio, brought an action in Ohio against the defendant, a *sociedad anonima* organized under the laws of the Philippine Islands, on claims which neither arose in Ohio nor were connected with the defendant's activities in Ohio. Defendant's president, who was also its general manager and principal stockholder, had returned to his home in Ohio when the company's mining operations were suspended by the Japanese occupation of the Philippines. During the war years, he conducted such business as was possible in Ohio, holding directors' meetings, carrying on correspondence, maintaining bank accounts, but the defendant did not appoint a statutory agent or otherwise consent to service of process in Ohio. Process was served upon the defendant's president, but the Ohio Supreme Court, after ruling that the defendant's legal status under Philippine law was equivalent to that of a corporation, granted defendant's motion to quash service on the ground that a state court had no jurisdiction in personam over a foreign corporation without that corporation's consent when the cause of action did not arise from corporate activities within the state.[1] Despite some question whether the Ohio court's decision rested on federal constitutional grounds,[2] the United States Supreme Court granted certiorari and vacated the judgment, *holding*: the Fourteenth Amendment Due Process clause does not prohibit state jurisdiction in the instant case, even though the corporation has not expressly consented to jurisdiction and the cause of action was unconnected with the defendant's activities within the state. *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 72 S. Ct. 413 (1952).

In the absence of express consent to jurisdiction,[3] state jurisdiction in personam over foreign corporations doing business within the state has, historically, found constitutional basis in the theories of implied consent[4] and corporate presence.[5] These theories, both fictional in nature,[6] were employed

[1] Perkins v. Benguet Consolidated Mining Co., 155 Ohio St. 116, 98 N.E. 33 (1951).

[2] Vinson, C. J., and Minton, J., dissenting, felt that the writ of certiorari should have been dismissed because no federal question was raised. 342 U.S. 437 at 449, 72 S.Ct. 413 (1952).

[3] This note is limited to a consideration of cases in which the corporation is doing business within the state without complying with statutory requirements as to consent to service of process. Where there is express consent, the only question is the scope of that consent, as determined by the state statute of the corporation's stipulation, and such consent may well include causes of action unconnected with the corporation's activities within the state. Smolik v. Philadelphia & Reading Coal and Iron Co., (D.C. N.Y. 1915) 222 F. 148; Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co., 243 U.S. 93, 37 S.Ct. 344 (1917).

[4] Lafayette Ins. Co. v. French, 18 How. (59 U.S.) 404 (1855); Connecticut Mutual Life Ins. Co. v. Spratley, 172 U.S. 602, 19 S.Ct. 308 (1899).

[5] Int'l Harvester Co. v. Kentucky, 234 U.S. 579, 34 S.Ct. 944 (1914); Philadelphia & Reading Ry. Co. v. McKibbin, 243 U.S. 264, 37 S.Ct. 280 (1917); Louisville & Nashville R. Co. v. Chatters, 279 U.S. 125, 49 S.Ct. 329 (1929).

[6] For discussions of the fictional nature of these theories and their frequent inadequacy, see HENDERSON, THE POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW 87-96 (1918); 1 BEALE, CONFLICT OF LAWS, §§89.6 and 89.7; GOODRICH, CONFLICT OF LAWS §76 (1949).

in causes of action arising out of the corporation's activity within the state[7] where it was felt that jurisdiction was justified, upon proper service of process,[8] by the amount of corporate activity within the state. However, where the cause of action was unconnected with corporate activity within the state, it was not clear, prior to the *Perkins* decision, whether the Fourteenth Amendment Due Process clause permitted such a fictional extension of jurisdiction.[9] The two leading Supreme Court decisions on the question ruled that the requirements of due process limited the use of the fiction of implied consent to cases arising out of corporate activity within the state,[10] but Cardozo, in a notable New York decision,[11] proceeded on a presence theory and held that once the corporation was found to be "present" within the state, the court could take jurisdiction over any transitory cause of action against the corporation. More recently, in the case of *International Shoe Co. v. State of Washington*,[12] Chief Justice Stone completely rejected the use of both of these fictions as bases for state jurisdiction, and directed judicial attention to a more realistic, if not a more definite,[13] test of valid state jurisdiction, namely, state jurisdiction in personam over a foreign corporation fulfills the requirements of due process if the corporation's activities within the state establish sufficient contacts or ties with the state to make jurisdiction "reasonable and just, according to our traditional conception of fair play and substantial justice."[14] Although this "balancing of interests" approach was limited, in the *International Shoe* case, to causes of action arising out of corporate activities within the state,[15] it is submitted that its extension in the *Perkins* case to actions unconnected with the corporation's activities within the state is both consistent and sound. It seems settled that if a natural person has been served with process within a state on a transitory cause of action, the state court has jurisdiction even though the cause of action has no relation

[7] A distinction should be drawn between the geographical origin of the cause of action and its connection with corporate activities in a given state. Thus, the cause of action may arise in State X and still be connected with corporate activity in State Y.

[8] It will be assumed in this note that the "notice" requirement of the Fourteenth Amendment Due Process clause has been fulfilled.

[9] Holding that such jurisdiction violated due process: Old Wayne Mutual Life Assn. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907); Simon v. Southern Ry. Co., 236 U.S. 115, 35 S.Ct. 255 (1914); Fry v. Denver & Rio Grande R., (D.C. Cal. 1915) 226 F. 893; Takacs v. Philadelphia & Reading Ry. Co., (D.C. N.Y. 1915) 228 F. 728. *Contra:* Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915 (1917); Reynolds v. Missouri, K. & T. Ry. Co., 228 Mass. 584, 117 N.E. 913 (1917), affd. without opinion, 255 U.S. 565, 41. S.Ct. 446 (1920). And see Barrow S.S. Co. v. Kane, 170 U.S. 100, 18 S.Ct. 526 (1898); St. Louis S.W. Ry. Co. v. Alexander, 227 U.S. 218, 33 S.Ct. 245 (1913). For a detailed discussion of the state of authority prior to the Perkins case, see Fead, "Jurisdiction Over Foreign Corporations," 24 MICH. L. REV. 633 (1926) and Osborne, "Arising Out of Business Done in the State," 7 MINN. L. REV. 380 (1923).

[10] Old Wayne Mutual Life Assn. v. McDonough, supra note 9; Simon v. Southern Ry. Co., supra note 9. In both cases service of process was upon a state officer and the fact of inadequate notice bulked large.

[11] Tauza v. Susquehanna Coal Co., supra note 9.

[12] 326 U.S. 310, 66 S.Ct. 154 (1945).

[13] See McBaine, "Jurisdiction Over Foreign Corporations," 34 CALIF. L. REV. 331 (1946), criticizing the Stone test for its vagueness.

[14] Int'l. Shoe Co. v. State of Washington, supra note 12.

[15] Ibid.

to the defendant's presence within the state. No reason appears why the due process clause should automatically compel a different result when the defendant is a foreign corporation. Moreover, the early decisions to the effect that such jurisdiction was contrary to due process had given rise to the anomaly that a corporation which did business in a state without complying with the statutory requirements as to the appointment of an agent to receive process on all actions was in a better position, in terms of freedom from jurisdiction, than a corporation which obeyed the law.[16] In treating the due process limitation as simply a requirement of "general fairness" to the defendant,[17] the *Perkins* decision permits a wider discretion to the state courts in taking jurisdiction over foreign corporations having minimum contacts with the state without undue hardship to the defendant corporation. It indicates that the thrust of the law is away from a consideration of the jurisdictional question in terms of physical power over the corporate entity to a more sophisticated "estimate of the inconveniences"[18] in the individual case.

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[16] See Hand's analysis in Smolik v. Philadelphia & Reading Coal & Iron Co., supra note 3.

[17] Principal case at 445. It is significant that the Court placed no special emphasis in its decision on the fact that defendant was a "corporation in exile" and not amenable to suit in its home jurisdiction.

[18] Int'l. Shoe Co. v. State of Washington, supra note 12. For discussions of the impact of the Int'l. Shoe Doctrine, see Hand, J., in Kilpatrick v. Texas and P. Ry. Co., (2d Cir. 1948) 166 F. (2d) 788, and 16 UNIV. CHI. L. REV. 523 (1949).