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Jurisdiction of courts over foreign corporations is a developing subject. Almost all aspects of it are touched on by decision or discussion in two cases in different courts and under different statutes; one case was in the Supreme Court of Tennessee, the other in the United States district court.

Tucker v. International Salt Co.[1] was an action in a state court in contract and quasi-contract against a Pennsylvania corporation. According to the stipulation of facts a traveling salesman of the corporation lived in Tennessee, spent about four days a month soliciting orders there, and reported directly to his immediate superior in Louisiana. The orders, which came to about $10,000 a year, were forwarded by the salesman or the customers to the home office and were there accepted or rejected. Two or three times the salesman had called on past due accounts, and in one case he had received a check in payment. The plaintiff, relying on Tennessee Code Annotated sections 20-217, -220, had process against the corporation served on the salesman in the state. The stipulation of facts, however, failed to show the plaintiff's claim related to any transaction within the state. The trial court held a plea in abatement good and the service of process void. The supreme court, in an opinion by Justice Swepston, affirmed the judgment below on the ground that the traveling salesman was "no more than a mere soliciting agent."

Shuler v. Wood[2] was an action in tort in the United States District Court for the Eastern District of Tennessee against two Pennsylvania corporations. The principal defendant had made a subcontract with a prime contractor of the Atomic Energy Commission for the fabrication and installation of steel towers at Oak Ridge, Tennessee. This defendant employed an intermediary found to be its agent to install the towers at a cost of $3,000, about one-third of the amount of the defendant's subcontract. The plaintiff, an iron worker employed by the agent on the work, was injured when a tower collapsed because of the alleged negligence of the agent. In suing the foreign corporations the plaintiff relied on Tennessee Code Annotated section 48-923, and under that statute had process served on the secretary of state on their behalf. The defendants moved to dismiss the

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1. 349 S.W.2d 541 (Tenn. 1961).

2. 198 F. Supp. 801 (E.D. Tenn. 1961).

action on the ground they were not subject to suit in the state. Judge Taylor denied the motion.

The power of a state to subject a foreign corporation to suit raises a federal question under the due process clause. The recent trend, as both cases pointed out, is "'toward expanding the permissible scope of state jurisdiction over foreign corporations . . . ,'"[3] especially when the cause of action arises out of an activity in the state. The *Shuler* case is within the trend, since the activities within the state were considerable and the cause of action arose from them. In the *Tucker* case, where the cause of action was unrelated to such activities, the answer is not clear. The leading case on the subject, which upheld a suit in Ohio against a foreign corporation on an out-of-state cause of action, put the issue in these vague terms:[4] "[W]hether . . . the business done in Ohio . . . was sufficiently substantial and of such a nature as to *permit* Ohio to entertain a cause of action against a foreign corporation, where the cause of action arose from activities entirely distinct from its activities in Ohio."

Granting the state has judicial jurisdiction under the federal constitution, there is the question of state law: whether the state statutes authorize the court to exercise the jurisdiction in the case before it. The answer is obvious when the foreign corporation has qualified to do business in the state and, in compliance with the statute, has assented to suit against it.[5] The corporations in these two cases, however, had not qualified, and counsel for the plaintiffs relied on different statutes that use separate measures of corporate activity in authorizing suit against a foreign corporation. Tennessee Code Annotated sections 20-217, -220, in the title, "Civil Procedure," subjects a foreign corporation to suit "so far as relates to any transaction had, in whole or in part, within this state, or any cause of action arising here" or "having any transaction with persons, or having any transaction concerning any property situated in this state, through any agency whatever, acting for it within the state . . . ." This was the statute relied on in the *Tucker* case. The facts stipulated failed to satisfy the statute as they did not show the transaction was within the state. Tennessee Code Annotated section 48-923, in the title, "Corporations and Associations," makes the foreign corporation amenable to suit through langnage which may not be met by a single corporate transaction and appears to require some element of continuity; that is, doing business. The key language in this section is: "any foreign corporation who shall *do business* in Tennessee" and "any civil action . . . arising out of such . . . business done in this State . . . ." This was the section relied on in the *Shuler* case. It clearly reaches the case, as there was substantial cor-

3. Shuler v. Wood, *supra* note 2, at 803.
4. Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 447 (1952).
5. TENN. CODE ANN. § 48-904 (1956).

porate activity in the state out of which the cause of action arose. The other section, Tennessee Code Annotated section 20-220, it would appear, also extends to the case.

In the *Shuler* case, however, there was a preliminary question. In this matter does the policy of *Erie R.R. v. Tompkins*[6] apply so that the federal court follows the law of the state in which it sits; or do the federal courts have their independent standard? Judge Taylor held that the *Erie* policy applies, constraining him to follow the Tennessee "statute, *as construed by the Tennessee courts.*"[7] There had been no reported decision interpreting this statute, Tennessee Code Annotated section 48-923, on the meaning of "do business." The federal court looked to the interpretation the Tennessee courts had given to a statute on qualification by foreign corporations, which employs somewhat different language as the measure of activity requiring qualification, "engage in any character of intrastate activity."[8] Guided by these decisions it believed to be analogous, the court found the activity would bring the corporation within the statutory provision that authorizes suit.[9]

In these cases there is the additional question of appropriate notice to the defendant. This question, too, takes the double form of federal law and of state law: Does the notice meet the due process requirement of the United States Constitution, and does it also comply with the terms of the state statute? In the matter of notice, unlike the matter of state jurisdiction mentioned above, the interpretation of due process has adhered to strictness of requirement, that is,[10] "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." In both cases the due process requirement was met: in the *Tucker* case, because there was personal service on the defendant's principal representative in the state; in the *Shuler* case because the secretary of state on whom service was made was required to send a certified copy of the summons to the defendants by registered mail.[11] The applicable state statutes were satisfied in the *Tucker* case, and also in the *Shuler* case where the Federal Rules

6. 304 U.S. 64 (1938).

7. Shuler v. Wood, *supra* note 2, at 803-04. The Supreme Court of the United States has not passed on the question and the courts of appeals, as Judge Taylor points out, are divided in opinion.

8. TENN. CODE ANN. § 48-902 (1956).

9. The analogy of the qualification cases to the subjection to suit cases is a questionable one, at least on the constitutional law level, as Justice Douglas pointed out in a vigorous dissent in Eli Lilly & Co. v. Sav-On-Drugs, Inc., 366 U.S. 276 (1961). But as a higher degree of activity is ordinarily required for qualification than for subjection to suit, the decisions on the former subject may have an a fortiori bearing on the latter. See Isaacs, *An Analysis of Doing Business*, 25 COLUM. L. REV. 1018, 1024 (1925).

10. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 310 (1950).

11. TENN. CODE ANN. § 48-925 (1956).

of Civil Procedure authorize the federal court to follow in this matter the law of the state in which it is sitting.[12]

12. FED. R. CIV. P. 4(d)(7).