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FOREIGN CORPORATIONS

VICTOR S. EVANS*

INTRODUCTION

The intended function of this article is to acquaint the reader with the comprehensive and detailed recognition which foreign corporations receive under the South Carolina Business Corporation Act of 1962.1 The increasing trend toward expansion of corporate activities outside the jurisdiction of incorporation requires detailed provisions clarifying the status, powers and responsibilities of the foreign corporation which has business contact with this state.

Many states have enacted legislation in the field of foreign corporations which parallels the new statutory concepts of South Carolina. This article refers to general authorities and to cases and compilations of cases from other jurisdictions as potential guides to the construction of the South Carolina statutes. However, the extent to which individual states exercise jurisdiction and control over foreign corporations, within constitutional limitations of due process and equal protection, is not uniform, and depends on the interplay of a variety of legal and non-legal considerations. For example, one of the most perplexing corporate litigation problems is the extent to which states will assume judicial and administrative jurisdiction over the activities and internal affairs of foreign corporations.

The South Carolina act harmonizes constitutional limitations with the increasing trend toward expanding state jurisdiction over foreign corporations. This article, therefore, concentrates on two basic concepts which are inherent in the new act.

The first concept is that a foreign corporation which contemplates doing business in South Carolina must obtain prior formal authorization in this state. The second is that both authorized and unauthorized foreign corporations are potentially subject to the jurisdiction of local courts by reason of expanded procedure for service of process in connection with

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virtually any business activity in this state. These concepts are treated under various headings in the new act, but this article does not attempt to follow these headings or to develop each section individually.

MEANING AND APPLICATION OF TERM “DOING BUSINESS”

A foreign corporation within the contemplation of the South Carolina Business Corporation Act of 1962 means a corporation for profit formed under the laws of a jurisdiction other than this state. The provisions of the act apply to “all foreign corporations which do business in this state whether or not authorized to do so.”

Any foreign corporation contemplating doing business in South Carolina is immediately confronted with the questions whether, and for what purposes, its acts will be considered as “doing business” in this state. It has been recognized that this phrase applies interchangeably to three distinct problems:

(a) Activity subjecting foreign corporation to penalties unless it is licensed (qualifies).

(b) Activity subjecting foreign corporation to local taxation.

(c) Activity subjecting foreign corporation to service of process (jurisdiction of local courts).

The new corporation act emphasizes important distinctions in purpose and application of the concept “doing business” in the categories of qualification and jurisdiction of local courts. It is important to keep in mind that the new act distinguishes between business which requires prior qualification of the foreign corporation in this state and business

2. S. C. Code §12-11.2(c) (Supp. 1962). This definition excludes nonprofit corporations from the operation of the act, but the definition is sufficiently comprehensive to include business corporations chartered under the laws of foreign countries.


4. Local taxation of foreign corporations is outside the scope of the 1962 Act and of this article. Litigation concerning the taxation of foreign corporations turns largely on the applicability of the Commerce Clause, U. S. Const. art. I, §8, cl. 3. See, generally, 2 HORNSTEIN, Corporation Law and Practice §683 (1959), as to level of local activities subjecting foreign corporation to local taxation. [Hereinafter cited as HORNSTEIN.]

5. 2 HORNSTEIN §581.

which renders the foreign corporation amenable to service of process locally. Thus, a foreign corporation may be doing such business in this state as will make it amenable to service of process and jurisdiction of local courts, but which will not require it to qualify in this state. In this connection, a leading text writer has warned that "standards, not static at any level, are most unstable and difficult to predict in the service of process category." 

STATUS OF FOREIGN CORPORATIONS—AS TO QUALIFICATION BEFORE “DOING BUSINESS” IN SOUTH CAROLINA

One important contribution of the act is its wholesale clarification of the status, rights, and powers of foreign corporations which have business contact with the state. Carried forward from the former act is the proposition that a foreign corporation may not do business in South Carolina unless it has obtained formal authorization from this state to do such business. Whether the foreign corporation is doing such business within this state as to require it to obtain prior formal authorization usually depends on the peculiar facts of each case. Whereas the old act was silent, the new act partially resolves the difficult question whether the foreign corporation is doing business in this state for qualification purposes by designating certain activities which shall not be deemed “doing business” in this state.

Corporate activities which may be carried on in this state without requiring the corporation to qualify include, but are not necessarily limited to, appearing specially in connec-

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7. For example, an isolated transaction completed within thirty days will not require the participating foreign corporation to obtain prior qualification to do such business in this State, but the corporation remains subject to service of process and jurisdiction of local courts as a result of such transaction.
8. 2 HORNSTEIN §581, at 52.
10. S. C. Code §12-23.1(b) (Supp. 1962). These statutory exemptions are recognition of the general rule that “doing business” for the requirements of qualification statutes imports only acts in furtherance of the purposes for which a foreign corporation was organized. A "statutory attempt to list what does constitute ‘doing business’ is of uncertain effect, especially difficult to determine since in a specific case the result may be violative of ‘due process’. A state statute may declare, on the other hand, what does not constitute ‘doing business’ within its borders, and the pronouncement will bind the courts." 2 HORNSTEIN §581, at 52.
tion with judicial or other proceedings, holding stockholder or directors meetings, maintaining bank accounts, maintaining offices for the transfer and registration of securities, creating or acquiring evidences of debt, mortgages, or liens on real or personal property, and enforcing any rights in property covering the same,\(^\text{11}\) effecting transactions in inter-state or foreign commerce,\(^\text{12}\) owning and controlling a subsidiary corporation where the subsidiary is incorporated in or transacting business within the state,\(^\text{18}\) and conducting within the state an isolated transaction which is completed within a period of thirty days, and which is not in the course of a series of repeated transactions.\(^\text{14}\)

The foregoing list of exemptions is not exclusive of all so-called non-business activities, but the list signifies a legislative recognition that not every corporate activity warrants subjecting the non-qualifying foreign corporation to liability for statutory penalties. The specification of certain activities which are exempt from the qualification statutes should not bar them from being considered a basis for sustaining service of process against the foreign corporation. Neither should it mean that other activities necessarily constitute "doing business" for the purpose of requiring the foreign corporation to qualify in this state. In this connection, it is specifically provided that the exemptions from qualifying do not "establish a standard for activities which may subject a foreign corporation to service of process."\(^\text{16}\) For example, control of a subsidiary does not alone require the parent corporation to qualify; but the parent's control may be such that the parent enterprise should be amenable to local service of process.\(^\text{16}\) In South Carolina valid service of process generally turns on whether the foreign corporation has an "agent" in the state,

\(^{11}\) S. C. Code §§12-23.1(b) (5), 23.1(b) (6) (Supp. 1962), carrying forward §12-706, exempting from qualification certain foreign mortgage companies, and broadening this exemption to cover mortgages and liens in personal as well as real property.
\(^{12}\) But, as is true of the other exempt activities, the interstate character of its business does not prevent a corporation's activity being treated as a basis for service of process. International Harvester Co. v. Kentucky, 224 U. S. 579, 58 L. Ed. 1479 (1914).
\(^{13}\) S. C. Code §12-23.1(b) (8) (Supp. 1962). This exemption is derived from CAL. CORP. CODE §6301.
\(^{16}\) See United States v. Imperial Chem. Indus. Ltd., 100 F. Supp. 504, 511 (S. D. N. Y. 1951) (valid service of process on English corporation through a New York subsidiary). And with respect to whether holding company is "doing business" within state, see 18 A. L. R. 2d 187.
since this is the statutory standard. Of course, property or bank accounts maintained in this state remain subject to attachment, independent of any consideration whether the acquisition and maintenance of property and bank accounts exempt the foreign corporation from achieving the status of an authorized foreign corporation.

CORPORATION DOING BUSINESS WITHOUT QUALIFYING—EFFECT THEREOF

At this point it is well to consider the status of the foreign corporation which has done business in this state without obtaining prior qualification. Failure to qualify before “doing business” in this state subjects the unauthorized foreign corporation to liability to the state for fees, penalties and franchise taxes for the period it was doing business without authority. In addition to an action for recovery of these monetary liabilities, the Attorney General may institute an action to restrain the foreign corporation from doing any business in this state without authority when such authority is required by statute.

Suppose, however, that the unauthorized foreign corporation has entered into contracts in South Carolina during a period of non-qualification. The act safeguards the sanctity of any contract entered into by a foreign corporation by providing that its validity shall remain unimpaired. However, the corporation may not maintain an action on the contract unless and until it qualifies to do business in this state, and pays up past-due taxes, fees and penalties which accrued during the period of unauthorized business activities.

21. S. C. CODE §12-23.12(a) (Supp. 1962). Note that action for monetary fees, penalties, etc., is mandatory (“Attorney General shall bring”), whereas action for civil injunctive relief is discretionary (Attorney General “may bring”).
23. S. C. CODE §12-23.15(b) (Supp. 1962). The prohibition to maintain suit extends to any assignee or successor in interest of the unauthorized foreign corporation, and it is not restricted to actions ex contractu. This provision presents an interesting pleading question as to the proper method for defendant to raise the disability of the unauthorized foreign corporation to maintain a particular action. The authorities are in conflict as
though the contract may be unenforceable, in the sense that
the unauthorized foreign corporation may not maintain suit,
the other party to the contract is specifically authorized to
maintain an action thereon against the defaulting corporation
in the courts of South Carolina, and jurisdiction of the cor-
poration may be acquired pursuant to an important new pro-
vision which makes the Secretary of State agent for service
of process on any unauthorized foreign corporation doing any
business in this state.

AUTHORIZATION OF FOREIGN CORPORATION
TO DO BUSINESS

(a) Type of Business Which May Be Authorized

South Carolina may not authorize the foreign corporation
to do any business in this state which it could not do under
the laws of the domiciliary jurisdiction in which it was
created and organized. The business must also be of a type
permitted by the laws and policy of this state for a domestic
corporation. However, authority may not be refused by
this state solely because the laws of the jurisdiction of incor-
poration differ from the laws of this state with respect to
the organization and internal affairs of the foreign corpora-
tion. Thus, eligibility for authority to do business in South
Carolina is not impaired although the jurisdiction of incor-
poration has special provisions regarding such matters as
dividend payments and qualification of directors.

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27. Ibid.
in actions relating to the internal affairs of foreign corporations is inde-
pendent of state qualification statutes, as considered in a later portion
of this article dealing with venue and jurisdiction limitations.
29. An intention to exclude a foreign corporation from doing business
in a state will not be inferred merely because no provision is made by
the law thereof for the organization of domestic corporations similar in
stock structure, as based upon an issue or issues, or divisions of, a par-
ticular kind of stock, to that of the applicant. See cases collected in 8
A. L. R. 2d 1196 (1949).
(b) **Formal Qualification Requirements**

The act provides express and self-explanatory instructions for the foreign corporation seeking authority to do business in this state.\(^{30}\) By designating certain information which must be filed with the Secretary of State as a preliminary condition to qualification, the act relieves both the foreign corporation and the Secretary of State from ambiguities which arose in this respect under the former statutes.

The application for authority which the corporation submits to the Secretary of State must be accompanied by a copy of its articles of incorporation and all amendments thereto,\(^{31}\) together with a certificate signed by an attorney licensed to practice in this state that the qualification requirements of the act have been complied with.\(^{32}\)

The application must designate an agent in this state upon whom effective service of process against the corporation may be achieved.\(^{33}\) A subsequent lapse in maintaining this registered agent is not fatal, as the Secretary of State is deemed an additional agent for service of process on any foreign corporation where there is no registered agent at the time of suit or the agent is unavailable.\(^{34}\) However, it should be noted that the failure of an authorized foreign corporation to maintain a registered agent in this state constitutes a ground for revocation of its authority to do business in this state.\(^{35}\)

**REVOCATION OF FOREIGN CORPORATION'S AUTHORITY TO DO BUSINESS IN THIS STATE**

The authorization of a foreign corporation to do business in this state is not perpetual, and may be revoked by the Secretary of State for such acts of omission as the failure of the corporation to file its annual report, or to pay its annual fees and taxes, or to appoint and maintain a registered agent in this state, or to notify the Secretary of State of a change of the registered office or registered agent, or to file amended

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\(^{32}\) S. C. Code §12-23.2(b) (2) (Supp. 1962).
\(^{34}\) S. C. Code §12-23.13(b) (Supp. 1962).
\(^{35}\) S. C. Code §12-23.11 (a) (2) (Supp. 1962).
articles of incorporation or of merger.\textsuperscript{36} Authorization may also be revoked if a misrepresentation has been made of any material fact in applications, reports, affidavits, or other documents required under the act.\textsuperscript{37} The Secretary of State must give at least sixty days notice of an impending revocation of authority to do business in this state,\textsuperscript{38} and the corporation may remedy the ground for default during this grace period. An interesting question with respect to implementing the notice requirement is presented where the ground for revocation is failure of the corporation to notify the Secretary of State of a change in the registered office or registered agent. Revocation may not be effective in this situation if the Secretary of State mails the notice of revocation to the former registered office or registered agent, unless it can be shown that the corporation received timely actual notice of the impending revocation. On the other hand, a valid revocation in this situation probably can be shown if the Secretary of State transmits the notice of impending revocation by registered mail to the foreign corporation in its jurisdiction of incorporation, at the address contained in the original (or amended) application for authority on file with the Secretary of State. Since authorization to "do business" is a privilege accorded by the state, the foreign corporation is in no position to complain that the revocation is ineffective.

If the authorized foreign corporation amends its articles of incorporation it must file an authenticated copy of the amendment with the Secretary of State within thirty days after its effective date.\textsuperscript{39} It has been noted that failure to file the amendment is a ground for revoking the authority of a foreign corporation to do business in this state, but the default may be rectified by filing the amendment in the sixty-day grace period which follows the notice of impending revocation. The status of the corporation during this grace period is not clear. There is no provision suspending the corporation's authority to do business in this state during the grace period following notice of impending revocation.\textsuperscript{40} It

\textsuperscript{38} S. C. Code §12-23.11(b) (Supp. 1962).
\textsuperscript{39} S. C. Code §12-23.6 (Supp. 1962).
\textsuperscript{40} On the other hand, subsection (d) of S. C. Code §12-23.11 (Supp. 1962, provides that the "authority of the corporation to do business in
is submitted, nevertheless, that suspension of authority to do business relates only to the corporation's power to maintain litigation in the courts of this state (e.g. enforce a contract) during a period of non-qualification. This disability is of no consequence since the contract is subject to enforcement by the corporation when it requalifies by filing the required documents. Moreover, the foreign corporation is subject to service of process (either through the registered agent or Secretary of State) in respect to any transaction which may be consummated in this state during the grace period. It is considered insignificant, therefore, that the act does not affirmatively define the status of the foreign corporation during the sixty-day grace period between notice of impending revocation and actual revocation of its authority to do business in South Carolina.

**AMENDED APPLICATION FOR AUTHORITY**

The act requires any authorized foreign corporation to amend its application for authority if it changes its corporate name in the jurisdiction of incorporation, or if it enlarges, limits, or otherwise changes the business which it does or proposes to do in this state. Failure to file the amendment with the Secretary of State is ground for revocation of the foreign corporation's authority to do business in this state.

**VOLUNTARY SURRENDER OF AUTHORITY**

The authorized foreign corporation may voluntarily surrender its authority to do business in this state. Termination is deemed effective as of the date the Secretary of State files the application for surrender. However, final surrender of authority is not possible unless and until the corporation includes in the application for surrender its consent that process against it in any action, suit or proceeding based

this State shall cease as of the date of the certificate of revocation," thereby suggesting that the corporation retains authority to do business during the grace period.

41. S. C. Code §12-23.8(a) (Supp. 1962). The amendment filing requirement is without counterpart in former South Carolina foreign corporation statutes, and is based upon MODEL ACT §110 and N. Y. CORP. LAWS §§1308-1309. The procedure for effecting the amendment is simple, and subsection (b) of §12-23.8 (Supp. 1962) specifies the relevant information which is to be supplied to the Secretary of State.


upon any cause of action arising in this state before the date of filing the application may be served on the Secretary of State.\textsuperscript{44} There is no guarantee that the corporation will be in existence as a corporate entity on the date suit is instituted, and mere consent to service of process naturally is of doubtful import in those situations involving fly-by-night foreign corporations which contemplate immediate dissolution.

**AUTHORIZED FOREIGN CORPORATION—SERVICE OF PROCESS**

Service of "process, notice, or demand" can generally be effected on the authorized foreign corporation through its registered agent in this state.\textsuperscript{45} In those limited cases where the authorized foreign corporation has neglected to appoint or maintain a registered agent in this state, or where such agent cannot with reasonable diligence be found at the registered office, service on the corporation can be achieved constructively through the Secretary of State.\textsuperscript{46} In such a case the defendant corporation has thirty days in which to make return on service.

These provisions of the new corporation act for service of process on the authorized foreign corporation are not exclusive,\textsuperscript{47} and *in personam* jurisdiction of the corporation may still be obtained under other Code provisions, as for example, section 10-421, which provides for service of summons on any corporation upon its president, "other head," secretary, cashier, treasurer, director or "any agent." The cases construing this section\textsuperscript{48} indicate that the person served must be invested with general powers of judgment and discretion, and be in this state on business of the corporation at the time service is made.\textsuperscript{49}

\textsuperscript{44} S. C. Code §12-23.9(a)(6) (Supp. 1962). Service on foreign corporations after withdrawal from state is considered in an annotation at 86 A. L. R. 2d 1000 (1962).


\textsuperscript{46} S. C. Code §12-23.13(b) (Supp. 1962). Consent to service has been held to extend to any court sitting in the state which applies the laws of the state, including federal courts sitting therein. Neirbo Co. v. Bethlehem Shipbuilding Corp., 308 U. S. 165, 84 L. Ed. 167, 128 A. L. R. 1437 (1939).

\textsuperscript{47} S. C. Code §12-23.13(d) (Supp. 1962).


\textsuperscript{49} Jones v. General Motors Corp., 197 S. C. 129, 14 S. E. 2d 628 (1941); See 2 Hornstein §§584-586.
UNAUTHORIZED FOREIGN CORPORATION—SERVICE OF PROCESS

The unauthorized foreign corporation which does any business in South Carolina is amenable to service of process so as to give jurisdiction, at least initially, to local courts, even though it has no agent in the state. It is provided in the new act that every such foreign corporation is "deemed to have designated the Secretary of State as its agent upon whom process against it may be served in any action or proceeding arising out of or in connection with the doing of any business in this state." It makes no difference that the action or proceeding involves a type of business activity which would exempt the corporation from qualifying in this state. It may be safely stated that a foreign corporation, whether or not it qualifies to do business in this state, is subject to valid service of process in connection with any business done in this state, directly or through an agent. The substance and effect of existing Code section 10-424 are thus continued and the leading case of State v. Ford Motor Co., construing that section, is still relevant for its judicial recognition that a foreign corporation may be doing business in a state so as to bring it within the jurisdiction of a state court and amenable to its process and yet not obtain status to be regulated by a state statute dealing with domestication.

The mechanics for achieving service on the unauthorized foreign corporation through the Secretary of State are clearly spelled out in the statute. Delivery of duplicate copies of process to the Secretary of State is the initial step. The Secretary of State forwards one copy by registered mail to the corporation. Proof of service is by affidavit of compliance with the statutory procedure which along with a copy of the process and the return receipt signed by the foreign corporation must be filed with the clerk of court in which the action is pending. The statute also contains procedure to effect service on the foreign corporation which has refused to

53. State v. Ford Motor Company, 208 S. C. 379, 393, 38 S. E. 2d 242 (1946). This case discusses at length the distinction between "doing business" for the purpose of qualification statute, and "doing business" for service of process, and the interplay of federal constitutional limitations of the interstate commerce and due process clauses with these concepts.
accept the original registered letter of transmittal from the Secretary of State.56

Strict compliance with the statute sanctioning appointment of the Secretary of State as constructive agent for service of process on the unauthorized foreign corporation will have the effect of charging the corporation with notice of the action, thereby removing as a ground for vacating a default judgment any contention by the corporation that it was not notified of the proceeding.58

An alternative method for service of process on the unauthorized foreign corporation is by actual delivery of a copy of the process to the foreign corporation outside the state.57 The statute specifies neither the place for delivery nor the officer or agent upon whom service by delivery can be made. It is apparent that service of process on the unauthorized foreign corporation through the Secretary of State represents the most effective procedure to avoid unnecessary preliminary questions which can arise if reliance is upon service by actual delivery. The latter affords a helpful supplemental procedure, but its utilization as the exclusive method of serving the foreign corporation should be avoided.

The statutory provisions for service upon a non-qualifying foreign corporation must be strictly followed. For example, service has been held to be invalid where statutes required duplicate or triplicate copies to be delivered to the statutory agent for service of process and a lesser number than that sanctioned by the statute were delivered at the inception of the suit.58

In this connection, the new act impliedly permits the foreign corporation to test the validity of service (and of the jurisdiction of the local court of the proceeding) in a special appearance.59 The special appearance is not deemed to be

56. As to setting aside default judgment for failure of statutory agent on whom process was served to notify defendant foreign corporation, see Annot., 20 A. L. R. 2d 1179 (1951).
59. See 2 Hornstein §597, for general discussion of special appearances of foreign corporation to test validity of service. The question of service of process upon the defendant outside the state cannot be considered under demurrer to jurisdiction of court. Thompson v. Queen City Coach Co., 169 S. C. 231, 168 S. E. 693 (1933). This case suggests that if defendant desires to present the question as to validity of service, he should
doing business within the contemplation of the qualification statutes.60

JURISDICTION AND VENUE

Emphasis has already been placed on the new statutory provisions which render authorized and unauthorized foreign corporations amenable to local service of process. Whether the local courts will actually accept jurisdiction of a controversy presents a different question. The majority trend is "toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents." Courts insist upon a proper venue in addition to jurisdiction over the person (or property), the latter having been acquired by service which brought the foreign corporation within the jurisdiction of the court.62 In the absence of venue statutes,63 file a motion to quash or set aside the service without seeking dismissal of complaint on basis of demurrer to jurisdiction. An objection to jurisdiction of the local court or tribunal over the case or proceeding can be raised by entering a special appearance for that sole purpose pursuant to S. C. Code §10-648 (1962), and cases annotated thereunder. But, joinder of a special appearance to test jurisdiction with other objections is treated as a general appearance and subjects the corporation to the jurisdiction of the court, cf. Southeastern Equip. Co. v. One 1964 Autocar Diesel Tractor, 234 S. C. 213, 107 S. E. 2d 340 (1959) (motion to dissolve attachment for insufficiency to constitute cause of action held general submission to jurisdiction of court notwithstanding "special appearance").

61. McGee v. International Life Ins. Co., 355 U. S. 220, 222, 2 L. Ed. 2d 223 (1957). The groundwork for this trend was laid in an earlier Supreme Court decision which recognized that "due 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.'" International Shoe Co. v. Washington, 326 U. S. 310, 316, 320, 90 L. Ed. 95, 161 A. L. R. 1057 (1945). The court narrowed this general test with two specifications, viz, that the activities in the state be continuous and systematic, and give rise to the liability or obligation sued upon. These and other cases are reviewed in the text and supplement in 2 Hornstein §584, at 67-73.
62. See 2 Hornstein §588, at 81; see also S. C. Code §10-310 (1962), providing for change of venue "(3) When the convenience of witnesses and the ends of justice would be promoted by the change," and S. C. Const. art. 6, §2 (1895), as to change of venue upon proper showing supported by affidavit. Objections on the grounds of improper venue or forum non conveniens are probably waived by non-appearance. On the other hand, lack of jurisdiction of the court or tribunal over the controversy may be raised at any time, even in the supreme court. Williamson v. Richards, 158 S. C. 594, 155 S. E. 890 (1930).
63. It seems that there is no specific legislation in this state upon the subject of the place of trials of actions against foreign or domestic corporations. cf. Bass v. American Prod. Corp., 124 S. C. 346, 117 S. E. 594 (1923) (finding no legislation on venue of action against domestic corporation). Under S. C. Code §10-303 (1962), the general venue statute, if none of the parties reside in this state the action may be tried in any county which the plaintiff shall designate in his complaint. It has been
we look to the counterpart of statutory venue limitation in the case law, which has evolved as the doctrine of *forum non conveniens*. In recognition of the case law evolving this doctrine, and of the growing judicial sanction of expanded local jurisdiction over foreign corporations, the new act contains no specific provisions dealing with jurisdiction of local courts and with venue limitations in controversies involving foreign corporations.

In the field of foreign corporations, the judicial doctrine of *forum non conveniens* permits a court, which has jurisdiction in *personam* over all parties and jurisdiction over the subject matter in issue, to exercise discretion and decline jurisdiction of a controversy involving a foreign corporation on the ground that another forum would be more convenient. The power and right to invoke the jurisdiction of local courts in controversies involving foreign corporations is broadened under the new statutes by the expanded methods for service of process on foreign corporations. Although each case turns on its peculiar facts, the following statement delineates the general trend of the recent cases:

Current decisions decline jurisdiction *only* if there is genuine inconvenience or harassment to parties and witnesses in a trial at the forum selected by the plaintiff; or if the likelihood is great that many suits will be instituted with the danger of inconsistent rulings in different states; or if there will be serious problems in the determination of the applicable law of another state; or if the court may be unable to enforce its judgment. The doctrine never justifies dismissal of a suit unless a more

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held, moreover, that a foreign corporation establishes a residence for venue purposes under this section by having an office and agent in the county for the transaction of business, notwithstanding a foreign corporation is ordinarily deemed a nonresident of the state. Tucker v. Ingram, 187 S. C. 525, 198 S. E. 25 (1938). In the absence of an office or agent, a plaintiff may elect in which county he will sue a foreign corporation. Sanders v. Allis Chalmers Mfg. Co., 235 S. C. 259, 111 S. E. 2d 201 (1959).

64. HENN, CORPORATIONS §85, p. 99 (1961). The doctrine assumes the existence of an alternative forum. *cf.* Plum v. Tampax, Inc., 399 Pa. 553, 160 A. 2d 549 (1960) (opinion remanded for further proceedings because there had been no determination in the lower court whether an alternative forum was available to plaintiff). The test under federal law is where the trial will best serve the convenience of parties and witnesses, and the ends of justice, 28 U. S. C. A. §1404(a). A comprehensive list of law review articles, as well as case authority, on the question of forum non conveniens is included as an addendum to the court's opinion in Lansverk v. Studebaker-Packard Corp., 54 Wash. 2d 124, 338 P. 2d 747 (1959) (tort action).
appropriate forum is available to the plaintiff; suit may not be dismissed where the necessary defendant(s) are unavailable for service in a jurisdiction asserted to be more appropriate. And, as might be expected, courts seem especially reluctant to deny relief in litigation involving a foreign corporation when it is closely held and all individual parties affected are before the court.  

An interesting corollary to the venue and jurisdiction question relates to the power of the courts and administrative agencies of the state to regulate the organization and internal affairs of foreign corporations. As a general rule, courts will not take jurisdiction of the internal affairs of a foreign corporation, but this rule has been qualified in some jurisdictions on the ground of expediency. In these jurisdictions, if corporations are non-resident only in that they were created in another state, the necessary parties being within the jurisdiction of the court, the courts will occasionally grant relief even where the internal affairs of the foreign corporation will be affected by the relief granted. In an important recent decision, the California Corporations Commissioner was upheld by a California appeals court in forbidding an amendment of the articles of incorporation of a Delaware corporation which operated primarily in California and which had a large percentage of California shareholders.

The new South Carolina Corporation Act neither permits nor prohibits local courts or regulatory agencies from entertaining jurisdiction over internal affairs of foreign corporations. The reporter's notes to the original draft version of the new act justify non-intervention by the legislature into this area on the logical basis that there is no reason to prevent our courts from meeting a situation which justifies intervention into the internal affairs of a foreign corporation to protect predominant South Carolina interests, merely be-

65. 2 Hornstein §588, at 84, and cases cited therein.

66. Note that a foreign corporation may not be denied authority to do business in this state solely because the laws of the jurisdiction of its incorporation differ from the laws of this state with respect to the organization and internal affairs of the corporation. S. C. Code §23-13.1(a) (Supp. 1962). But qualification to do business differs markedly from the power of South Carolina courts and administrative tribunals to regulate to some extent the internal affairs of a foreign corporation for the protection of predominant South Carolina interests.

cause the corporation has chosen to incorporate elsewhere under looser standards.88

COMMENT AND CONCLUSION

It is anticipated that the South Carolina Business Corporations Act of 1962 will engender the development of extensive case authority in the field of foreign corporations. Although the status and responsibilities of the foreign corporation having business activity in this state are significantly clarified by the new act, the expanded provisions for service of process on foreign corporations increase the opportunities for invoking the jurisdiction of local courts in controversies involving these corporations. Cases in which jurisdiction is successfully invoked will lead to decisions at the appellate level which involve the application of constitutional limitations and choice of legal principles. The result will be that law students will have ample case material in this jurisdiction with which to correct, improve, and expand upon the treatment which this article gives to the complex field of foreign corporations. The concentration of cases, however, will involve those questions not specifically resolved under the new act, e.g., venue, jurisdiction, application of local substantive law to internal affairs of foreign corporations. In all other respects, the act represents a comprehensive and much needed clarification and modernization of the laws of South Carolina with respect to foreign corporations.