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in such cases where it tries unsuccessfully to implead and vouch in a third party. The Appellate Division and the Court of Appeals suggested that the plaintiff could have protected itself by inserting a clause in the insurance contract giving the plaintiff the right to compel the insured to institute a third party action.

M. A. L.

SERVICE OF SUBPOENA UPON FOREIGN CORPORATION UPHELD

The first question considered by the Court of Appeals in the case of *La Belle Creole Inter., S.A. v. Attorney-General*[27] was whether a subpoena duces tecum, served upon the petitioner-corporation, was unconstitutionally vague and indefinite because it failed to show what matters were under investigation by the Attorney General of New York State, or in what manner the documents requested by the Attorney General were relevant and material to such investigation. The petitioner-corporation's business consisted of the sale and shipment of duty-free, imported liquor to citizens of the state. The Attorney General, acting pursuant to his powers under the Executive Law to enjoin repeatedly fraudulent or illegal acts committed in the conduct of business within the state,[28] attempted to use the subpoena to command the production of the petitioner's corporate records for the past ten months at an inquiry into the possibly fraudulent or illegal acts being committed in the course of petitioner's business. The petitioner brought a proceeding to vacate the subpoena duces tecum.

The subpoena duces tecum has long been a useful investigative tool in the hands of law enforcement officials and, more recently, in the hands of administrative bodies.[29] No question as to a violation of constitutional rights against self-incrimination and unlawful search and seizure now remains in New York when the subpoena is used for law enforcement purposes.[30] One of the more usual grounds for attack of the subpoena has been that it is too burdensome and oppressive, but generally the courts have been quite liberal in upholding the validity of the subpoena, even though the production of rather extensive records has been requested by law enforcement officials.[31] The particular problem raised by the petitioner in the present case is that the subpoena on its face failed to inform him of the purpose and subject matter of the investigation, and the relevance the requested documents had to such investigation.

The Court in the present case admitted that the more preferable practice would have been for the Attorney General to show on the face of the subpoena the relevancy of the documents to an inquiry which the Attorney General was

27. 10 N.Y.2d 192, 219 N.Y.S.2d 1 (1961).
28. N.Y. Executive Law § 63 (12).
29. 1 Davis, Administrative Law § 3.04 (1st ed. 1958).
30. Dunham v. Ottinger, 243 N.Y. 423, 154 N.E. 289 (1926).
31. See, e.g., Manning v. Valente, 297 N.Y. 681, 77 N.E.2d 3 (1947); In re Edge Ho Holding Corp., 256 N.Y. 374, 176 N.E. 537 (1931).

empowered to make. However, the Court held that the subpoena was not rendered invalid by a failure to do so, since a proper inquiry could be made into the petitioner's business to determine whether repeated illegal acts existed (which were capable of enjoinment under Section 63 of the Executive Law)[32] in the conduct of petitioner's business, which was subject to regulation under the Alcoholic Beverage Control Law, and for which inquiry petitioner's records were pertinent. The Court stated that it would be sufficient for the Attorney General to show upon a preliminary motion that the records bore a reasonable relation to the investigation.

The Court's decision is in accord with the broader purpose of furthering the investigative process of law enforcement officials. Otherwise, as the Court observes, "Investigation will be paralyzed if arguments as to materiality or relevance, however appropriate at the hearing, are to be transferred upon a doubtful showing to the stage of a preliminary contest as to the obligation of the writ."[33] Thus, it seems that any concern over the disadvantage suffered by the petitioner by virtue of being compelled to answer to a technically imperfect subpoena is legitimately sublimated to the broader public purpose to be achieved.

The second question considered by the Court was whether the petitioner, a foreign corporation, was doing business within New York State, and, therefore, could be subject to service of the subpoena. The petitioner-corporation's only representative within the state was a New York State Corporation which advertised the petitioner's duty-free liquor service, and which, upon request, supplied order kits to prospective customers for use in ordering liquor from the petitioner when they were traveling abroad.

In civil suits the New York rule is that a foreign corporation will be considered to be doing business within the state if the corporation's conduct extends beyond mere solicitation of business within the state to other business activity, such as conducting the financial affairs of the corporation within the state.[34] However, where the corporation merely has an agent who solicits business for it as well as for other companies, the corporation will not be considered to be doing business within the state.[35] The United States Supreme Court has defined the permissible limits of service on a foreign corporation as something less than solicitation of business within the state. An insurance company that had not solicited insurance business within the state of California became amenable to service by simply maintaining an insurance contract with a resident of the state, where a California statute provided that such acts were equivalent to appointment of the Commissioner of Insurance as an agent upon whom service could be made.[36] A different basis upon which a foreign

32. Supra note 28.
33. Matter of Edge Ho Holding Corp., supra note 31 at 381, 176 N.E. at 539.
34. Elish v. St. Louis Southwestern Railway Company, 305 N.Y. 267, 112 N.E.2d 842 (1953).
35. Miller v. Surf Property, Inc., 4 N.Y.2d 475, 151 N.E.2d 874 (1958).
36. McGee v. International Life Insurance Co., 355 U.S. 220 (1957).

corporation may be held to be amenable to service lies in the case of acts violating state statutes which are punishable by criminal sanction or may be enjoined.[37]

In the present case the Court of Appeals held that the petitioner-corporation was amenable to service of a subpoena on two grounds. First, there was evidence of at least solicitation within the state by the petitioner, which taken together with evidence of other business conduct possibly brought out in the inquiry, may have established that petitioner was in fact doing business within the state, which would have made the petitioner subject to service. Secondly, the corporation may have been violating the Alcoholic Beverage Control Law, a misdemeanor, which activity could have been enjoined under Section 63 of the Executive Law, so that petitioner's possible violation of a state statute rendered it amenable to service.

The Court seems to place emphasis on the second ground in concluding that the petitioner was amenable to service, for the Court states:

> Be that as it may, though, even if the petitioner's contacts within this State were deemed to be less than necessary to justify the maintenance of a civil suit, it is our view that it still would be amenable to the subpoena. . . .[38]

Thus the Court seems to be more concerned with upholding the power of the Attorney General to enjoin commission of illegal acts by bringing foreign corporations within the jurisdiction of the courts than with any abrogation of the civil rule (which requires more than mere solicitation of business within the state) by which a corporation is made subject to service. It seems fair to say that the present case provides no authority for service of process on foreign corporations for purposes of a civil suit, especially where it cannot be found that the foreign corporation is doing business within New York State under the currently applied solicitation—plus formula.

D. P. S.

DEATH ON THE HIGH SEAS ACT HELD TO CONFER CONCURRENT JURISDICTION

An interesting sequel to *Kilberg v. Northeast Airlines, Inc.*[39] is presented in *Ledet v. United Aircraft Corporation*,[40] also decided this term. In this case, the wrongful death occurred on the high seas. The Federal Death on the High Seas Act, enacted in 1920, provides that in the event of a wrongful death occurring at sea beyond the territorial limits of any state or territory of the United States, "the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty. . . ."[41]

37. Cf. Travelers Health Ass'n v. Commonwealth of Virginia, 339 U.S. 643 (1950); United States v. Morton Salt Co., 338 U.S. 632 (1950).

38. Supra note 27 at 198, 219 N.Y.S.2d at 6.

39. 9 N.Y.2d 34, 211 N.Y.S.2d 133 (1961), noted p. 96 infra.

40. 10 N.Y.2d 258, 219 N.Y.S.2d 245 (1961). This decision was received too close to printing time to permit more thorough analysis. A more extensive discussion is planned for the next issue.

41. 46 U.S.C. § 761 (1958).