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Clerk, Supreme Court of Appeals
Richmond, Va.

207 VR 1027

Record No. 6394

In the
Supreme Court of Appeals of Virginia
at Richmond

VIDEO ENGINEERING COMPANY, INC.

v.

FOTO-VIDEO ELECTRONICS, INC.

FROM THE CIRCUIT COURT OF ARLINGTON COUNTY

RULE 5:12 BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 6394

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 21st day of April, 1966.

VIDEO ENGINEERING COMPANY, INC.,
Plaintiff in error,

against

FOTO-VIDEO ELECTRONICS, INC., Defendant in error.

From the Circuit Court of Arlington County
William D. Medley, Judge

Upon the petition of Video Engineering Company, Inc., a Maryland corporation, a writ of error is awarded it from a final order entered by the Circuit Court of Arlington County on the 27th day of October, 1965, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and Foto-Video Electronics, Inc., etc., a New Jersey corporation, was defendant; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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page 1]

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Filed in the Clerk's Office the 24 day of October, 1961.
Teste:
H. BRUCE GREEN, Clerk
VIRGINIA C. GREEN, D. C.

PETITION FOR ATTACHMENT

Your petitioner respectfully represents unto said Court as follows:

1. That it is a Maryland corporation doing business in Maryland and the District of Columbia;
2. That the Defendant is a New Jersey corporation.
3. That the said Defendant is indebted to the Plaintiff in the sum of $5,815.97 by reason of account rendered for merchandise sold, services rendered and sales commission; that said indebtedness remains unpaid and the Defendant refuses and continues to refuse payment of the same.
4. That certain of Defendant's property is presently located in Arlington County, Virginia, to-wit:

V600 Image Orthicon Camera Chain Foto-Video and lens
V1865 Sync Generator Foto-Video
V298 Color Monitor Foto-Video
Pelco Pan and TiltUnit — Light Duty
V 98P 24″ Monitor Foto-Video
V1 2 Channel Distribution Amplifer Foto-Video
V42 4 Channel Distribution Amplifer Foto-Video
1 Equipment rack
V36 14″ Monitor Foto-Video
V9 Wave Form Monitor Foto-Video
V700 Sync Generator Foto-Video
V24 Monoscope Camera Foto-Video
V15 Aperture and Phase Corrector Foto-Video
Tuner (Conrac)
V292 Special Effects Generator Foto-Video
2 each V72 Power Supply Foto-Video

That said property is located at the Marriott Motor-Hotel near the Fourteenth Street Bridge in Arlington County, being displayed at the NAEB Convention.

page 2] 5. The value of the above listed equipment is $5,022.00, and the Plaintiff is entitled to recover, at the least, the sum of $5,815.97.

6. That the Defendant is a foreign corporation, and has property aforesaid in Arlington County, Virginia; and that said Defendant intends to remove such property above listed from the State of Virginia, so that there will probably not be therein effects of such debtor sufficient to satisfy the claim when judgment is obtained therefor should ordinary process of law be used to obtain the judgment.

WHEREFORE, your Petitioner asks for an attachment against the above listed property.

VIDEO ENGINEERING CO., INC.
By NORMAN R. SELING
Its president

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Filed Nov 14 1961
H. BRUCE GREEN, Clerk
Circuit Court, Arlington County, Va.
By: V. GREEN, Deputy Clerk

SPECIAL PLEA IN ABATEMENT AND FOR DAMAGES FOR MISUSE OF PROCESS

COMES NOW the Defendant, Foto-Video Electronics, Inc., by counsel, and respectfully represents as follows:

1. That the Plaintiff to this action has no right to sue and is precluded from pressing any claim in the courts of Virginia for the reason that it is doing business in Virginia, has been doing business in Virginia, and bases its claims in this cause on business done in Virginia and has not complied with the

statutory requirements for foreign corporations by registering itself with the State Corporation Commission and becoming domesticated as required by the statutes in such cases made and provided.

2. That the debt alleged in the Petition for Attachment was not at the time the attachment petition was sworn to then due and payable.

3. That not withstanding the foregoing infirmities, the Plaintiff by its agents, servants and employees did nevertheless cause process to issue from this Honorable

page 9] Court and did misuse the process in the following particulars:

(a) The Plaintiff's agents, servants and employees did declare the value of the property seized under the attachment to be some $5,000.00 when in fact, as well known to them, having possession of all this Defendant's pricing literature, the property seized was in a value of $22,000.00.

(b) The Plaintiff's agents, servants and employees demanded the seizure of all the property of this Defendant located in this jurisdiction when in fact a sufficient amount to satisfy the alleged claim would have been only one or two items of equipment rather than the total number taken and this fact was well known to the said agents, servants and employees.

(c) That at the time of the seizure of the goods aforesaid the agents, servants and employees of the Plaintiff physically touched and handled the equipment well knowing it to be delicate electronic equipment in a rough and careless manner causing damage to this equipment.

(d) That the Plaintiff's agents, servants and employees represented themselves to be electronics experts and refused to allow the Defendant's personnel to properly package and protect the equipment aforesaid.

(e) That the Plaintiff's agents, servants and employees insisted on the removal of the attached equipment from a public display within minutes after the attachment was served notwithstanding that they well knew this Defendant was able to post a forthcoming bond and well knowing that the Defendant did not have any intention of removing the equipment from this jurisdiction for at least two days and that the

page 10] refusal of the Plaintiff's agents, servants and employees to allow the property to remain where

it was, within the jurisdiction of this Court, was motivated by malice and intention to damage the Defendant in the eyes of the public and in the eyes of its customer, the United States Department of Defense, rather than by any proper desire to obtain security for the pleasure of the Court in this action.

(f) That all the occurrences aforesaid took place in the public exhibition halls of a place of gathering of representatives of the customers of this Defendant who are also the potential customers of the Plaintiff, that the Plaintiff is an active business competitor of the Defendant and that the activities of the agents, servants and employees of the Plaintiff were designed to and did harm to the business of the Defendant rather than to pursue any legitimate legal interest.

(g) That the Defendant's property was damaged by rough handling in the sum of $1,200.00 and the Defendant's business reputation was damaged in the sum of $25,000.00 by the actions aforesaid.

WHEREFORE, this Defendant prays that the Court may abate, quash and dismiss the original attachment proceedings for want of jurisdiction and want of a right to use the courts of Virginia by the Plaintiff and retain the said cause on the docket for the purpose of awarding this Defendant damages for property damage in the amount of One Thousand Two Hundred Dollars ($1,200.00) and damage to the business reputation of this Defendant by reason of the malicious actions of the Plaintiff in the sum of Twenty-Five Thousand Dollars ($25,000.00) besides its costs in its behalf expended.

FOTO-VIDEO ELECTRONICS, INC.,
a corporation
By: M. PATTON ECHOLS, JR.
Its Counsel

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DEMURRER

Comes now the Plaintiff, by counsel, and demurs to the counter-claim contained in Defendant's pleading entitled

"Special Plea in Abatement and for Damages for Misuse of Process," and alleges that same does not state a cause of action in that it is premature.

VIDEO ENGINEERING CO, INC.
By LOIS H. MILLER
Of its counsel

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Filed Nov. 30 1961
H. BRUCE GREEN, Clerk
By: V. GREEN, D. C.

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MEMORANDUM

FROM: William D. Medley, Judge

TO: Lois H. Miller, Esq., Attorney for Plaintiff
M. Patton Echols, Jr., Attorney for Defendant

This case came on to be heard upon the Petition For Attachment filed by Plaintiff, the Special Plea In Abatement And For Damages For Misuse of Process filed by Defendant, the Demurrer of Plaintiff, upon Argument of counsel on said Demurrer and upon memoranda filed by counsel.

The demurrer filed by the plaintiff is specifically directed to the claim for damages contained in the defendant's aforesaid Special Plea but was, when heard, treated and considered as a demurrer to the plea in abatement as well as to the counterclaim. The order of court continuing the case for the filing of memoranda recites that it came on to be heard upon the demurrer to the Special Plea in abatement.

The petition asks for an attachment before judgment on the ground that the defendant is a foreign corporation. The allegations of said petition in Paragraph 1 are that the plaintiff is a Maryland corporation doing business in Maryland and the District of Columbia. The Writ of Attachment was

issued and executed by the levying and taking into possession of certain items of property by the Sheriff of Arlington County.

In Paragraph 1 of the Special Plea in Abatement the defendant alleges as follows:

"That the Plaintiff to this action has no right to sue and is precluded from pressing any claim in the courts of Virginia for the reason that it is doing business in Virginia, has been doing business in Virginia, and bases its claim in this cause on business done in Virginia and has not complied with the statutory requirements for foreign corporations by registering itself with the State Corporation Commission and becoming domesticated as required by the statutes in such cases made and provided."

For the purpose of the demurrer, all facts well pleaded are admitted as true. Therefore, in ruling on the demurrer, the Court must consider as established the facts that the plaintiff is a foreign corporation; that it is and has been doing business in Virginia; that its claim herein is based on business done in Virginia, and that, at the time of filing its petition, it had not qualified to do business in Virginia.

It is noted that subsequent to the levying of the attachment and to the filing of the plea in abatement, the plaintiff obtained a certificate of authority to transact business in Virginia.

Section 13.1-119 of the Code of Virginia of 1950, as amended, is, in so far as pertinent to the instant case, as follows:

page 17] "No foreign corporation transacting business in this State without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this State, until such corporation shall have obtained a certificate of authority."

What does the word "maintain" mean?

In 17 Fletcher Cyc. Corp., at page 798, the following is stated:

"It is the majority rule that the prohibition in the statute against maintaining an action implies a prohibition against beginning it, and the beginning of the action is one of the

necessary steps in maintaining it, and the word 'maintain' as used in the statute is construed to be practically synonymous with 'bring' or 'begin'."

In this case, the petition was filed, a writ of attachment issued and, pursuant to said writ, certain property was attached and taken into possession by the officer to whom the writ was directed.

Pertinent to the above is the following statement appearing in 10 *Fletcher Cyc., Corp.*, Sec. 4727, page 7:

"Since attachment is but an auxiliary process, it is obvious that a foreign corporation would be in on position to resort to it where it has incapacitated itself to maintain a suit or action in the state by its failure to meet the statutory conditions prerequisite to its doing business in the State."

Upon consideration of the pleadings, argument of counsel and of the memoranda filed, it is the OPINION OF THE COURT THAT THE DEMURRER TO THE PLEA IN ABATEMENT SHOULD BE OVERRULED AND THAT A HEARING SHOULD BE HAD ON THE SAID PLEA WITH THE DEFENDANT PUT TO PROOF OF ITS ALLEGATIONS AS HEREINABOVE SET OUT.

The demurrer also goes to the claim of the defendant for Damages for Misuse of Process on the ground that such action for damages is premature. Under the circumstances of this case, it appears that the claim by defendant is an action for damages for wrongful attachment and it will be so considered.

No determination has been made in this case as to whether the attachment herein was wrongful or, as stated by the defendant, there has been a misuse of process.

THE COURT IS OF THE OPINION THAT THE CLAIM FOR DAMAGES, FILED HEREIN BY THE DEFENDANT IN CONJUNCTION WITH ITS PLEA IN ABATEMENT, IS PREMATURE AND THAT THE DEMURRER TO SAID ACTION SHOULD BE SUSTAINED WITHOUT PREJUDICE TO THE DEFENDANT.

An order should be prepared pursuant to this memorandum and, after endorsement by counsel, be presented for entry.

November 8, 1963.

WILLIAM D. MEDLEY
Judge

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Filed Nov. 17 1964
H. BRUCE GREEN, Clerk
Circuit Court, Arlington County, Va.
By: V. GREEN, D.C.

STIPULATION

COME NOW the parties, by their respective counsel, and represent to the Court that they have stipulated and agreed to submit the issue of the Plea in Abatement to the Court upon the following agreed statement of facts without any hearing or taking of evidence:

1. That the Plaintiff Corporation was not domesticated in Virginia prior to November 28, 1961; but became domesticated on or about said date and has maintained proper status as a duly licensed foreign corporation since said date.

2. That the Plaintiff Corporation was doing business in Virginia prior to the institution of this action on October 24, 1961.

3. That the contract between the plaintiff, Video Engineering Co., Inc., and the defendant, Foto-Video Electronics Inc., forming the basis of plaintiff's claim for materials and services rendered in this cause, was not made in Virginia, but was entered into in the District of Columbia.

4. That the materials and the services furnished by the plaintiff to the defendant in this cause were delivered to and performed in the Pentagon Building.

WHEREFORE the parties do agree to submit the matter for determination of the Court of the law to be applied to the foregoing statement of facts.

VIDEO ENGINEERING CO., INC.,
Plaintiff
By: LOIS H. MILLER
MAURICE FREIDERMAN

FOTO-VIDEO ELECTRONICS, INC.,
Defendant
By M. PATTON ECHOLS, JR.
Counsel

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MEMORANDUM

FROM: WILLIAM D. MEDLEY, JUDGE

TO: Lois H. Miller, Esq., Attorney for Petitioner
M. Patton Echols, Jr., Esq., Attorney for Defendant

This cause came on to be heard upon the Petition for Attachment filed by the Plaintiff, the Special Plea in Abatement filed by the Defendant and the Stipulation by the parties, by counsel, wherein the parties agreed to submit the issue of the Plea in Abatement to the Court upon an agreed statement of facts without any hearing or taking of evidence.

The Court has heretofore entered an order overruling a demurrer to the Plea in Abatement and retaining the cause on the docket for hearing on the allegations of the Plea. This order contains, in part, language as follows: "It Appearing To The Court that the Plea in Abatement is timely brought and states a factual situation which, if proved, will require that the action abate. . . ."

Prior to the entry of the aforesaid order, the Court had filed a written memorandum opinion which was the basis for the order. For the purpose of clarity, certain parts of said opinion will be repeated herein.

Plaintiff's petition, filed October 24, 1961, asked for an attachment before judgment on the ground that the defendant is a foreign corporation. The Writ of Attachment was issued and the Sheriff of Arlington County executed it by the levying and taking into possession of certain items of defendant's property. Defendant, on November 24, 1961, filed its Special Plea in Abatement alleging in Paragraph 1 thereof as follows:

That the Plaintiff to this action has no right to sue and is precluded from pressing any claim in the courts of Virginia

for the reason that it is doing business in Virginia, has been doing business in Virginia, and bases its claim in this cause on business done in Virginia and has not complied with the statutory requirements for foreign corporations by registering itself with the State Corporation Commission and becoming domesticated as required by the statutes in such cases made and provided.

Subsequent to the levying of the attachment and to the filing of the plea in abatement, the plaintiff obtained a certificate of authority to transact business in Virginia. It is stipulated that the plaintiff corporation was not domesticated in Virginia prior to November 28, 1961, but became domesticated on or about said date; that the plaintiff corporation was doing business in Virginia prior to the institution of this action; that the contract between the parties hereto forming the basis of plaintiff's claim for materials and services rendered was not made in Virginia but was entered into in the District of Columbia; and that the materials and services furnished by the plaintiff to the defendant were delivered to and performed in the Pentagon Building, Arlington, Virginia.

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The plaintiff contends that, by reason of the compliance with statutory requirements subsequent to the filing of the petition, the levying of the attachment, and the filing of the plea in abatement, and the plea in abatement should be denied and the plaintiff be permitted to proceed with this action.

The defendant argues that the plea in abatement should be sustained and the attachment proceeding be dismissed.

The Court has considered the memoranda filed by counsel and the cases cited therein. It is readily apparent that there is a conflict of authority on the question whether the compliance with the statute must be before the action is begun or whether subsequent compliance is sufficient. No Virginia case has been cited or found which deals specifically with the question now presented.

Plaintiff has cited decisions of the Supreme Court of Appeals of Virginia in cases involving Section 56-169 *et seq.* (The Assumed Name Statute) and noted the analogy between the corporation law and statute.*

*All statutory references are to the Code of Virginia of 1950, as amended.

Section 13.1-119 is, insofar as pertinent to the instant case, as follows:

No foreign corporation transacting business in this State without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this State, until such corporation shall have obtained a certificate of authority. . . .

The failure of a foreign corporation to obtain a certificate of authority to transact business in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this State. . .

Section 59-169 of the Code is as follows:

No person or corporation shall conduct or transact business in this State under any assumed or fictitious name unless such person or corporation shall sign and acknowledge a certificate setting forth the name under page 27] which such business is to be conducted or transacted, and the names of each and every person or corporation owning the same, with their respective post office and residence addresses (and, when the corporation is a foreign corporation, the date of the certificate of authority to do business in this State issued to it by the State Corporation Commission), and file the same in the office of the Clerk of the Court in which deeds are recorded in the county or corporation where the business is to be conducted.

Section 59-176 of the same chapter is as follows:

The failure of any person or corporation to comply with the provisions of this chapter shall not prevent a recovery by or against such person or corporation, in any of the Courts in this State on any cause of action heretofore or hereafter arising, but no action shall be maintained in any of the courts in this State by any such person, corporation or his or its assignee or successor in title unless and until the certificate required by this chapter has been filed.

The language of Section 59-176 was provided by Act of the General Assembly in 1942 when the assumed name statute was

amended. This expressly provides that failure to comply with the provisions of the statute should not prevent a recovery nor constitute a bar to the action *by or against* such person or corporation. No such proviso appears in the corportation statute which provides that failure of a foreign corporation to obtain the required certificate of authority shall not impair the validity of any contract or act of such corporation and shall not prevent it from *defending* any action.

The corporate statute enacted by the General Assembly in 1956 and it is to be assumed that the General Assembly was cognizant of and acted in the light of its former enactments with respect to the assumed name statute. The corporation statute (Section 13.1-119) provides that suits, actions and proceedings may be begun *against* a foreign corporation that transacts business in this State without a certificate of authority by the service of process as prescribed in said statute.

The corporation statute in question deals specifically with foreign corporations. Such corporations have a legal existence in the state wherein they are incorporated and in those states wherein they have become domesticated by reason of compliance with the statutes. The Virginia statute, above quoted, validates the contracts or acts of a foreign corporation which has failed to obtain a certificate of authority and permits such corporation to *defend* any action. It goes no further. The apparent purpose of the statute is to require compliance with the laws of Virginia and, as to a foreign corporation not complying, to validate its contracts or acts so as to enable others dealing with it to proceed against it in the courts of this State.

page 28] In the cases cited by plaintiff applying the assumed name statute, the defendants are individual residents of this State and one Virginia corporation. This, it would appear, would be the usual situation. The purpose of the statute is to inform the public of the identity of the persons with whom they deal or contract.

Even if the assumed name statute was analogous to the foreign corporation statute, a careful reading of the assumed name cases cited by the plaintiff indicates that those decisions do not decide the question here presented:

In *Phlegar* v. *Virginia Foods, Inc.*, 188 Va. 747, the Supreme Court of Appeals held that the amendment of 1942 removes

the taint of illegality from the cause of action and gives the suitor the right to maintain the action after he has complied with the requirements of the statute.

The first paragraph of the opinion is as follows:

> The question for our decision is whether a person trading under a fictitious name may proceed with an action, brought before he has complied with the provisions of Virginia Code, 1942, (Michie), section 4722(1), by filing during the pendency of the action, *and prior to a motion to dismiss,* the certificate required by said statute, setting forth the name under which such business is conducted and the name of each person owning the same, with their respective post office and residence addresses. (Emphasis supplied.)

Near the end of the opinion, the Court stated:

> In 38 Am. Jur. Name, Section 22, page 607, it is said that, while there is a conflict of authority as to whether compliance with such a statute is necessary before an action may be brought, the better rule is: "That compliance with the statute is not a condition precedent to the right to begin the action; but that compliance at a later period, as before trial, or (the) *interposition of a plea in abatement* or motion for non-suit, is sufficient." (Emphasis supplied.)*

In the instant case, the plea in abatement was interposed before the plaintiff complied with the statute with respect to foreign corporations.

The *Phlegar* case cites *Bain* v. *Boykin,* 180 Va. 259 and *Watkins* v. *Bishop,* 181 Va. 191.

page 29] In the *Bain* case, the Supreme Court of Appeals held that the 1942 amendment to the assumed name statute was retrospective and remanded the case for a trial *de novo.* The opinion does not state the time when compliance with the statute would be sufficient to permit the maintenance of the action. In the *Watkins* case, the Court stated as follows:

> In the case of *Bain* v. *Boykin,* 180 Va. 259, 23 S.E. (2d) 127, this amendment was directly under consideration by this

*It is noted that there is a misquotation in the Court's language "*in* interposition of a plea in abatement" in the *Pflegar* case. The text of 38 Am. Jur., Name, Sec. 22, Page 607 is "*the* interposition of a plea in abatement."

court and the conclusion was reached that whenever it appears that the principal creditor or his assignee has filed a certificate pursuant to the provisions of the statute prior to the bringing of the action, then he is entitled to recover, if the law and the facts be with him.

Considerable argument has been had concerning the meaning of "begin" and "maintain" and the alleged difference between these terms is treated at some length in the memoranda of counsel

In the *Phlegar* case, the Supreme Court of Appeals stated that it is not the right to begin the action, but the right to maintain it, that is withheld for failure to comply with the statute.

In 17 *Fletcher Cyc. Corp.,* at page 798, it is stated:

It is the majority rule that the prohibition in the statute against maintaining an action implies a prohibition against beginning it, for the beginning of the action is one of the necessary steps in maintaining it, and the word "maintain" as used in the statute is construed to be practically synonymous with "bring" or "begin."

It would appear to the Court that anyone can bring a suit. Rule 3:2 of the Rules of the Supreme Court of Appeals of Virginia, insofar as pertinent, provides that:

. . . court clerks shall receive and file all pleadings without order of the court. Any controversy over whether a party who has filed a pleading had a right to file it shall be decided by the court . . .

Although the above rule does not apply to the petition filed in this case it seems obvious that the clerk would accept the petition when appropriate costs are tendered. Suits are frequently instituted and thereafter dismissed upon the hearing of a plea in bar or a motion to dismiss. This occurs, for example, when a plea of the statute of limitations is sustained. And when a suit is instituted against a city or town it is subject to dismissal upon motion or plea and proof of failure to comply with the statutory requirements as to notice of the claim. Section 8-653. The above amply illustrates what the Court has in mind, that is, that the question of the right to

page 30] maintain an action is not presented to a court until such action has been begun by the filing of pleadings by the plaintiff or petitioner and the filing of a plea in bar or motion to dismiss.

In *Western Electrical Company* v. *Pickett,* 51 Colo. 415, 118 Pac. 988, 990, the Court said:

> To hold otherwise and give it the construction urged on behalf of the plaintiff, would invite and foster the very evil it was intended to prevent. It would enable any foreign corporation, not only to do business in this state in defiance of our laws, but also to prosecute its suits for the enforcements of such business until some party perchance pleaded its noncompliance in an action brought by it to enforce a demand against him, then it would comply with the act, proceed with the action, and have its validity recognized from its inception and during the entire time it was prosecuting it, in the face of a positive prohibitory act to the contrary. Such a construction is contrary to the letter and spirit of the statute, and if adopted by the court, would directly tend to defeat the public policy sought to be enforced by its enactment. The most efficient way to compel obedience to this statute is to enforce it as it reads, and not amend it by judicial construction, so as to enable foreign corporations to avoid the consequences of a noncompliance with its terms by complying after the penalties have been incurred.

note to 117 MBA indicate this conclusion is wrong

The Court agrees with the conclusions reached in the *Western Electrical Company* case.

Upon consideration of the foregoing, the Court is of the opinion that the Plea in Abatement should be sustained and that this action should abate.

An order should be prepared pursuant to this memorandum and, after endorsement by counsel of record, be presented for entry.

July 9, 1965.

WILLIAM D. MEDLEY
Judge

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ORDER

THIS MATTER HAVING COME ON TO BE HEARD the 19th day of November, 1964, and the parties having stipulated the facts at issue making it unnecessary for any evidence to be introduced and the Court having considered the matter, without argument, pursuant to an agreed order hitherto entered and,

IT APPEARING TO THE COURT from the aforesaid stipulation and the papers and proceedings hitherto had herein, that the Plea in Abatement should be sustained and that the action therefore should abate, for reasons more fully set forth in the memorandum by the Court dated July 9, 1965, it is

ADJUDGED, ORDERED AND DECREED that the action do abate and the Clerk is instructed to remove it from the docket and

THIS ORDER IS FINAL.

Entered this 27th day of October, 1965.

WILLIAM D. MEDLEY
Circuit Judge

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Plaintiff hereby notes its appeal from the Final Order entered the 27th day of October, 1965.

Plaintiff assigns the following errors:

1. Denying the Demurrer to the Plea in Abatement.

2. Ruling that business done with a Federal enclave constitutes business done in Virginia.

3. Ruling that an attachment before judgment may not be sued out by a foreign corporation which has not qualified in Virginia.

4. Ruling that qualification by a foreign corporation after it has instituted an action does not permit it to maintain that action.

5. Granting the plea in abatement.

NATHAN L. SILBERBERG
1001 Pennsylvania Building
Washington, D. C. 20004
DI 7-4550

and

MAURICE FRIEDMAN
1001 Connecticut Avenue, N.W.
Washington, D. C. 20036
NA 8-9181

Filed Dec 23 1965
H. BRUCE GREEN, Clerk
Circuit Court, Arlington County, Va.
By: V. GREEN, Deputy Clerk

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A Copy — Teste:

H. G. TURNER, Clerk.

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