the state to the president, treasurer, or secretary, or officer performing corresponding functions, or a person designated by the corporation; and if none is designated, and none of these officers can be found with due diligence, then to the cashier, a director, or managing agent of the corporation within the state. It is objected to the service that the return of the marshal does not show that there was no person designated to receive service, nor that the officers could not be found with due diligence; and that these agents are not such as the statute contemplates. The return does not appear to show that service otherwise than upon the agent could not be made, as, perhaps, it ought to show; but the defendants allege that there are none of the officers, nor any one but these agents, to make a service upon here, as a reason why the service made should be set aside, and this would seem to obviate the necessity of showing the same thing in the return. The agent is agent in the very transaction out of which the suit arises. The corporation is found here doing this business by this agent. If it was doing also some other business by another agent, and service had been made upon that agent, it might well be objected to. The statute, probably, does not mean any agent in any business, but the agent in the business in controversy in the suit. In this view the service was made in a statutory mode according to the laws of the state, upon a corporation found here according to the laws of the United States. *Ex parte Schollenberger*, 96 U. S. 369; *Hayden* v. *Androscoggin Mills*, 1 FED. REP. 93; *Eaton* v. *St. Louis, etc., Co.* 7 FED. REP. 143. This is not any hardship, or, if any, not an undue hardship, upon this defendant, as between it and the orators. It is compelled to answer away from its domicile, but not any further away than it has gone voluntarily by its agents to do that which has given occasion for the process and its service.

Motion denied.

PULLMAN SOUTHERN CAR CO. *v.* NOLAN, Comptroller. (No. 2,592.)

SAME *v.* MONTGOMERY CO. and others. (No. 2,591.)

STATE OF TENNESSEE *v.* PULLMAN SOUTHERN CAR CO. (No. 2,679.)

(*Circuit Court, M. D. Tennessee.* October, 1884.)

1. SLEEPING-CAR COMPANY—PRIVILEGE TAX.

The act of the Tennessee legislature, passed March 16, 1877, declaring the mode and manner of valuing the property of telegraph companies for taxation, and of taxing sleeping cars, imposes upon sleeping-car companies what is known to the constitution and laws of that state as a privilege tax. It is not a property tax based on value, but an arbitrary charge, fixed by the legislature, without regard to the actual or comparative value of the article which is the basis of the tax.

2. PRIVILEGE TAX.
Under the constitution of Tennessee, as construed by the supreme court of that state, a privilege is the exercise of an occupation or business which requires a license from some proper authority, designated by some general law, and not free to all, or any, without such license. The right, therefore, of the legislature of that state to declare an occupation or business a privilege must depend upon the right of the state to prohibit it altogether.

3. CONSTITUTIONAL LAW—INTERSTATE COMMERCE.
The interstate transportation of passengers is beyond the reach of a state legislature, and, therefore, the legislature of Tennessee has no power to impose upon the Pullman Southern Car Company a privilege tax of $75 per annum for running or using sleeping cars in the transportation of interstate passengers, notwithstanding such cars may enter or cross the territory of that state.

4. INTERSTATE COMMERCE.
The cars used by the Pullman Southern Car Company are vehicles of transportation, and their use in receiving and delivering travelers at points widely separated is commerce.

5. SAME—TAXABLE SITUS.
The Pullman Southern Car Company, a corporation of Kentucky, has no domicile in Tennessee, and is not personally subject to its jurisdiction for purposes of taxation. The sleeping cars which it runs upon the railroads of Tennessee, in the transportation of interstate passengers, have no taxable *situs* within that state. They are not brought into the state for the purpose of being employed in a business carried on within it. They are in the state only as passing to and from it while in the act of transportation, performed by virtue of a right secured to the owner of them, not by the authority of the laws of Tennessee, but by virtue of a right secured by the exclusive jurisdiction of congress under the constitution.

At Law.

O. A. Lochrane and *Ed. Baxter*, for Pullman Southern Car Company.

T. E. Matthews, for Comptroller Nolan and Davidson county.

Lanier & Dodd, for Davidson county.

W. A. Quarles, for Montgomery county and others.

Head & Champion, for the state of Tennessee.

MATTHEWS, Justice. The first of these cases is an action at law to recover back an amount alleged to have been illegally exacted as taxes, a statute of the state authorizing such a suit, and the plaintiff being a citizen of Kentucky. It is submitted for decision upon a general demurrer to the declaration. The second is a bill in equity, the object of which is to perpetually enjoin the defendants, the counties of Montgomery, Stewart, Houston, Robertson, Sumner, and Davidson, from collecting taxes, which they assert the right to collect, of the same description as those involved in the action against the comptroller. The third suit is a bill in equity, filed by the state of Tennessee, seeking to compel a discovery from the defendant of the number of cars used by it, claimed to be subject to the tax in question, and to recover and to collect the amount of tax due thereon. This suit was commenced in the chancery court of Davidson county, but was removed into this court on the application of the defendant. All three cases involve and depend upon a single question.

The constitution of Tennessee (article 2, § 28) provides that "all property, real, personal, or mixed, shall be taxed, but the legislature