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Recent Constitutional Developments on Personal Jurisdiction of Courts

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NOTES

RECENT CONSTITUTIONAL DEVELOPMENTS ON PERSONAL JURISDICTION OF COURTS

INTRODUCTION

In strict logic, the concept of the power of courts to deal *in personam* with controversies is said to be a constant and the extension of jurisdiction merely an appropriation of pre-existing power. More realistically, it is obvious that, as institutions and citizens become increasingly mobile and migratory, the courts are obliged to keep their jurisdictional machinery abreast of the times in order that legal processes may continue to be the effective arbiter of disputes in our society. Regardless of what terms are used to describe the source of the power, it is traditionally conceived to be limited by the constitutional requirements of due process. The purpose of this Note is to examine the relation of the due process concept to the assumption by the courts of power to act *in personam* on parties. Because the nature of the problem is more complex with respect to personal jurisdiction over nonresident or absent individuals and over foreign corporations, the discussion will be primarily confined to developments in those fields. No attempt will be made to consider the relationship of due process and notice, although the problems of notice and jurisdiction overlap in many respects.

I. JURISDICTION OVER NONRESIDENT OR ABSENT INDIVIDUALS

The last few years have not witnessed any reallly noticeable development in the field of personal jurisdiction over nonresident individuals, and the subject will be only briefly reviewed here. *Pennoyer v. Neff*[1] established that

1. 95 U.S. 714, 24 L. Ed. 565 (1877). See Notes, 126 A.L.R. 1474 (1940), 132 A.L.R. 1361 (1941). An important recent decision of the Supreme Court, Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 Sup. Ct. 652, 94 L. Ed. 865 (1950), may possibly have considerable effect on the *Pennoyer* doctrine. Since the opinion is concerned with sufficiency of notice, it will not be considered at length here. The Court held, in a proceeding for judicial settlement of accounts of a New York common trust fund involving a number of known and unknown nonresident beneficiaries, that the statutory notice by local newspaper publication was invalid as to the known nonresident beneficiaries. However, the Court did not invalidate notice by publication to those nonresidents whose names and addresses were not known. Jurisdiction with respect to the settlement, itself, is justifiable on the ground that the trust *res* was within the state. But the decree has the effect of foreclosing any claims *in personam* against the trustee which the unknown nonresident beneficiaries might have had, and as to those persons, the *Pennoyer* requirements for the acquisition of personal jurisdiction were not met. The Court, however, did not give any emphasis to this aspect of the case; and the holding was rationalized on the ground that the state must be accorded power to close out settlements of this nature, even though unknown beneficiaries are involved. See 19 U.S.L. WEEK 3029 (July 18, 1950).

On jurisdiction *in personam* over individuals generally, see discussion in GOODRICH, CONFLICT OF LAWS § 73 (3d ed. 1949); STUMBERG, CONFLICT OF LAWS 71-100 (2d ed. 1951).

substituted service alone was insufficient to give a court personal jurisdiction over a nonresident individual, and the courts have looked about since that time for other circumstances upon which to base an assumption of power over absent persons. Jurisdiction based on domicil within the state has been recognized,[2] and in the unusual *Blackmer* case,[3] nationality was held a valid basis. In the absence of these factors, two other theories have grown up to rationalize the assumption of power.

A. *Doing Business.*

Jurisdiction over the absent individual based on the business he conducts locally appeared to be off to a bad start with the decision of *Flexner v. Farson.*[4] Mr. Justice Holmes rejected the theory that a partnership impliedly consented to local service by reason of its doing business locally, stating that a state had no power to exclude a partnership business and consequently could not condition its entry. However, the decision has been justified on other grounds not material here, and the 1935 decision of *Doherty & Co. v. Goodman*[5] established that service on an agent of the nonresident defendant conferred jurisdiction with respect to the local business.[6] The case of *International Shoe Co. v. Washington,*[7] discussed in more detail later, contains language applicable to nonresident individuals and indicates that this type of jurisdiction may now be grounded on the defendant's minimum contacts within the state, rather than on a finding of actual "doing business"; but present decisions indicate that "minimum contacts" jurisdiction will be limited to causes of action arising from those contacts. It should be noted that a factor in the Court's determination of jurisdiction in the *Doherty* case was the fact that the business done in the state—the selling of securities—is an activity traditionally recognized as peculiarly subject to state regulation.

B. *Doing Acts.*

The nonresident motorist statutes have pioneered in the field of jurisdiction based on the doing of an act. *Kane v. New Jersey*[8] held that a state could require a nonresident to appoint a state official to receive service of process

2. Milliken v. Meyer, 311 U.S. 457, 61 Sup. Ct. 339, 85 L. Ed. 278 (1940). See *dictum* in McDonald v. Mabee, 243 U.S. 90, 92, 37 Sup. Ct. 343, 61 L. Ed. 608 (1917).

3. Blackmer v. United States, 284 U.S. 421, 52 Sup. Ct. 252, 76 L. Ed. 375 (1932). *Cf.* Skiriotes v. Florida, 313 U.S. 69, 61 Sup. Ct. 924, 85 L. Ed. 1193 (1941).

4. 248 U.S. 289, 39 Sup. Ct. 97, 63 L. Ed. 250 (1919).

5. 294 U.S. 623, 55 Sup. Ct. 553, 79 L. Ed. 1097 (1935).

6. Wein v. Crockett, 195 P.2d 222 (Utah 1948), 47 MICH. L. REV. 278, upheld jurisdiction over a nonresident doing business locally in a suit for construction costs of erecting a building. See Daum, *The Transaction of Business within a State by a Non-Resident as a Foundation for Jurisdiction,* 19 IOWA L. REV. 421 (1934); Ross, *The Shifting Basis of Jurisdiction,* 17 MINN. L. REV. 146 (1933). See Note, 28 NEB. L. REV. 635 (1949).

7. 326 U.S. 310, 66 Sup. Ct. 154, 90 L. Ed. 95 (1945).

8. 242 U.S. 160, 37 Sup. Ct. 30, 61 L. Ed. 222 (1916). See Scott, *Jurisdiction over Nonresident Motorists,* 39 HARV. L. REV. 563 (1926); Note, 25 COL. L. REV. 204 (1925).

for actions growing out of use of local highways as a condition to such use. *Hess v. Pawloski*[9] went further and held that use of the highways by a nonresident may constitute such appointment, as long as reasonable provision for notice is made.[10] The nonresident motorist statutes have been justified on the ground that operation of a motor vehicle is a dangerous act which the state has police power to regulate, but it would appear that the courts will not insist that the local acts be dangerous in order to justify assumption of jurisdiction over litigation resulting from the acts. A Pennsylvania court has held that statutory service on a state officer in causes of action against nonresident owners or tenants of local property is valid as to suits involving injuries connected with the property.[11] The language of *International Shoe,* discussed later with reference to foreign corporations, is applicable to the local acts of individual nonresidents and does not require, for jurisdictional purposes, that the local acts be dangerous. Jurisdiction based on the doing of an act will be considered further in the succeeding section.

II. Jurisdiction over Foreign Corporations

In the days of *Bank of Augusta v. Earle,*[12] a corporation was regarded as having legal existence only in the state of its incorporation, thus, in effect, immunizing it from liability for many injuries arising out of its activities in other states.[13] In response to the inequities provoked by this premise, the state legislatures undertook a program of statutory regulation designed to assert the power of the state to deal with the local activities of a foreign corporation.[14] A typical statute set forth the requirements which must be met by a foreign corporation desiring to qualify to do business locally. Such a statute either (1) required the corporation to appoint an actual agent or a public official to receive service of process, or (2) provided for service to be made on an actual agent or a public official.[15] The state courts must make the initial determination of whether or not a foreign corporation is subject to state law, but a federal question arises where applicability of such law is questioned by the corporation on the grounds that state assumption of

9. 274 U.S. 352, 47 Sup. Ct. 632, 71 L. Ed. 1091 (1927).

10. In Wuchter v. Pizzutti, 276 U.S. 13, 48 Sup. Ct. 259, 72 L. Ed. 446 (1928), a nonresident motorist statute was held not to include valid provision for notice to the defendant. See Scott, *Hess and Pawloski Carry On,* 64 Harv. L. Rev. 98 (1950) (also considers the problem of venue).

11. Dubin v. Philadelphia, 34 Pa. D. & C. 61 (1938), 87 U. of Pa. L. Rev. 119.

12. 13 Pet. 519, 10 L. Ed. 274 (1839). See Goodrich, Conflict of Laws § 76 (3d ed. 1949); Stumberg, Conflict of Laws 83-100 (2d ed. 1951); Haffer, *Personal Jurisdiction over Foreign Corporations as Defendants in the United States Supreme Court,* 17 B.U.L. Rev. 639 (1937).

13. *But cf.* Railroad v. Harris, 12 Wall. 65, 84, 20 L. Ed. 354 (1870).

14. The statutory requirements for qualification or domestication of foreign corporations will not be discussed here. See 45 Mich. L. Rev. 218 (1946).

15. For an annotated discussion of the statutory development, see Culp, *Constitutional Problems Arising from Service of Process on Foreign Corporations,* 19 Minn. L. Rev. 375, 378-80 (1935).

jurisdiction violates due process.[16] It is therefore not surprising to find that the state and lower federal courts tend to follow the Supreme Court in determining what local activity is sufficient to render a foreign corporation amenable to local process,[17] and this Note will be primarily concerned with Supreme Court holdings.

A. *"Doing Business" as a Basis for Personal Jurisdiction over Foreign Corporations.*

In the 1895 decision of *Goldey v. Morning News*,[18] the Supreme Court stated that regardless of the effect which it might have locally, a judgment rendered against a foreign corporation neither incorporated locally nor doing business there would be invalid outside the courts of that state, unless rendered pursuant to service on an agent appointed by the corporation to act there. Thus, "doing business" became a basis for personal jurisdiction over foreign corporations.[19] The *Goldey* case did not speculate on what kind of authority to an agent would be enough, except to indicate that the agent must be in the state on business of the corporation. Nor did the *Goldey* case reflect on a question which has since proven troublesome—*i.e.*, whether or not the cause of action arose out of the business done locally. Again, the decision gave no clue to any definition of the expression "doing business."

Several years after the *Goldey* case, the Supreme Court attempted to delineate "doing business" in *Green v. Chicago, B. & Q. Ry.*[20] The Court examined the extent of the railroad's activities in the local state, decided that the corporation was doing no more than soliciting, and held that mere solicitation was not such doing business as to render the foreign corporation amenable to local service. Thus began the "mere solicitation" rule as an indication of what was *not* considered doing business.[21] The decision in *International Harvester Co. v. Kentucky*,[22] a few years later, specifically stated that it followed the *Green* case, holding that defendant's activities amounted to more than "mere solicitation" and thus the lower court had valid jurisdiction. However, the factor which swung the balance in this case was actually no more than *repeated* solicitation, which the Court described as "a continuous course of business" sufficient to meet the requirement of doing busi-

16. Bomze v. Nardis Sportswear, Inc., 165 F.2d 33 (2d Cir. 1948). See 49 COL. L. REV. 714 (1949).

17. See, *e.g.*, Steinway v. Majestic Amusement Co., 179 F.2d 681 (10th Cir. 1949).

18. 156 U.S. 518, 15 Sup. Ct. 559, 39 L. Ed. 517 (1895).

19. 156 U.S. at 521.

20. 205 U.S. 530, 27 Sup. Ct. 595, 51 L. Ed. 916 (1907). The corporation maintained a local office and an agent for the purpose of soliciting passengers and freight for its lines. The cause of action arose in connection with the local activities, and it seems doubtful that the decision is authoritative today on the question of what is "doing business" or "solicitation."

21. See Isaacs, *An Analysis of Doing Business*, 25 COL. L. REV. 1018 (1925); Scott, *Jurisdiction over Nonresidents Doing Business within a State*, 32 HARV. L. REV. 871 (1919).

22. 234 U.S. 579, 34 Sup. Ct. 944, 58 L. Ed. 1479 (1914).

ness.[23] The fact that a corporation's officer passes through the state on personal business,[24] or that he resides in the local state,[25] does not alone mean that the corporation is doing business there.

In *Philadelphia & R. Ry. v. McKibbin*,[26] Mr. Justice Brandeis enunciated his famous "presence" test for the doing of business—the corporation must be found to be "doing business within the State in such manner and to such extent as to warrant the inference that it is present there."[27] The Court held that the selling in its behalf of coupon tickets on defendant's lines by a local carrier did not make the defendant railway sufficiently present in the local state to find that it did business there.[28] The language of *People's Tobacco Co. v. American Tobacco Co.*[29] followed the presence concept and stated the rule in terms of the validity of an "inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the State. . . ."[30] At about the same time, Judge Cardozo further limited the "doing business" definition by requiring that, for jurisdictional purposes, a foreign corporation must be within the state "with a fair measure of permanence and continuity."[31]

Judge Learned Hand set about summarizing the pertinent cases and concluded that "presence" was merely a shorthand way of determining whether or not it might be reasonable to require a foreign corporation to

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23. 234 U.S. at 585.

24. Philadelphia & R. Ry. v. McKibbin, 243 U.S. 264, 37 Sup. Ct. 280, 61 L. Ed. 710 (1917).

25. Riverside & Dan River Cotton Mills v. Menefee, 237 U.S. 189, 35 Sup. Ct. 579, 59 L. Ed. 910 (1915). This case is of further interest in its holding that, where no business is done, a judgment against a foreign corporation is not only unenforceable in another jurisdiction, but is initially invalid under the due process clause. *Cf.* Goldey v. Morning News, 156 U.S. 518, 15 Sup. Ct. 559, 39 L. Ed. 517 (1895). See also New York Life Ins. Co. v. Dunlevy, 241 U.S. 518, 36 Sup. Ct. 613, 60 L. Ed. 1140 (1916) (involving a partnership).

26. 243 U.S. 264, 37 Sup. Ct. 280, 61 L. Ed. 710 (1917).

27. 243 U.S. at 265. The cause of action arose in the New Jersey yards of defendant Pennsylvania corporation. Plaintiff, a citizen of New York, sued in the District Court of New York. Defendant had no office or agents in New York and operated no lines there, but some carriage in its cars was performed there by connecting carriers.

28. Mr. Justice Brandeis' dictum to the effect that, even if it were established that defendant had subsidiary companies doing business in the state, defendant would still not be deemed to be doing business there (243 U.S. at 268) seems inconsistent with his "presence" language and would seem to open an avenue for evasion of local process.

29. 246 U.S. 79, 38 Sup. Ct. 233, 62 L. Ed. 587 (1918). Following the *McKibbin* case, the Court held that the fact of ownership by the foreign corporation in a local subsidiary did not mean that the former was "doing business" locally.

30. 246 U.S. at 87. Since the corporation had withdrawn from the state and had revoked the authority of its general manager there prior to service of process on him, it was found not to be present. *But cf.* Mutual Reserve Fund Life Ass'n v. Phelps, 190 U.S. 147, 23 Sup. Ct. 707, 47 L. Ed. 987 (1903).

31. Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915, 917 (1917). The corporation maintained a local branch office under the supervision of an agent employed to procure orders for approval in the foreign state. The corporation was held to be subject to local service. The court held that jurisdiction did not fail because the cause of action had no relation to the business done locally (115 N.E. at 918). On this point, see note 44 *infra*.

defend locally.[32] His opinion foreshadowed the recent developments which have brought the test for jurisdiction to a point where it is analogous to the test for *forum non conveniens*. In a court of appeals decision in 1943, Judge Rutledge suggested that the "mere solicitation" rule be abandoned altogether.[33] The courts have continually dodged its effect by finding some circumstance in addition to mere solicitation on which to predicate jurisdiction; and the decision of *International Shoe Co. v. Washington*,[34] discussed later, limits the occasion for application of the rule.

In addition to the formulas developed by the Supreme Court to assist in the solution of the cases, the Court has attempted to rationalize its holdings by some basic theorization. The initial premise may be stated in this form: The state may refuse to permit a foreign corporation to do business locally; therefore, since the state may exclude, it may also admit on condition that the corporation consent to service of process on a designated local agent.[35] When the corporation designates an agent, it has thus expressly consented to service and there can be no question but that the court has personal jurisdiction within the terms of the consent.[36] When the corporation does not appoint, there is an obvious lack of express consent; and the Court, in *Old Wayne Mutual Life Ass'n v. McDonough*,[37] met this difficulty with the theory that a foreign corporation, on entering to do business without compliance with the statute, impliedly consented to jurisdiction as to causes of action relating to the business done.[38] But the states are constitutionally forbidden to prohibit interstate business. Thus, any theory which depends on the power of the states to exclude is difficult as a predicate for the recognized power of the states to make such business the foundation of personal jurisdiction.[39] An-

32. Hutchinson v. Chase & Gilbert, Inc., 45 F.2d 139, 141 (2d Cir. 1930). Judge Hand listed some factors pertinent in determining whether or not business is done: "Possibly the maintenance of a regular agency for the solicitation of business will serve without more. . . . Purchases, though carried on regularly, are not enough . . . nor are the activities of subsidiary corporations . . . or of connecting carriers. The maintenance of an office, though always a make-weight, and enough, when accompanied by continuous negotiation, to settle claims . . . is not of much significance. . ." *Id.* at 141.

33. Frene v. Louisville Cement Co., 134 F.2d 511 (D.C. Cir. 1943). In this case, defendant's salesman not only actively solicited but rendered extensive advisory engineering service to customers.

34. 326 U.S. 310, 66 Sup. Ct. 154, 90 L. Ed. 95 (1945).

35. Lafayette Ins. Co. v. French, 18 How. 404, 15 L. Ed. 451 (1856).

36. In Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co., 243 U.S. 93, 37 Sup. Ct. 344, 61 L. Ed. 610 (1917), Mr. Justice Holmes affirmed a finding of jurisdiction by the Missouri court, where defendant corporation had consented to service on a state official as to causes of action arising from Missouri liabilities. The suit involved insurance issued in Colorado to an Arizona corporation on Colorado property.

37. 204 U.S. 8, 27 Sup. Ct. 236, 51 L. Ed. 345 (1907).

38. In the *Old Wayne* case, there was a statute, with which defendant corporation had not complied, requiring foreign corporations to agree to service of process on an agent before entering the state to do business. *Cf.* Flexner v. Farson, 248 U.S. 289, 39 Sup. Ct. 97, 63 L. Ed. 250 (1919), where Mr. Justice Holmes maintained that a state had no power to exclude a partnership. The case has been distinguished on other grounds.

39. See International Milling Co. v. Columbia Transportation Co., 292 U.S. 511, 54 Sup. Ct. 797, 78 L. Ed. 1396 (1934); Davis v. Farmers Co-Operative Equity Co., 262 U.S. 312, 43 Sup. Ct. 556, 67 L. Ed. 996 (1923).

other conceptualistic basis for jurisdiction was the holding that a corporation doing local business was "present" for purposes of personal jurisdiction.[40] A more recent basis was developed in the submission theory. The doing of business was said, by the Court, to manifest the corporation's submission to local jurisdiction.[41]

B. *Effect on Jurisdiction of the Relationship between the Business Done and the Cause of Action.*

Where a foreign corporation has expressly consented to service of process, the problem arises as to whether that consent extends only to service in connection with causes of action related to the local business done or whether the consent is to local service regardless of whether or not the cause of action is related to the local business. In *Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co.*,[42] the corporation had consented to service of process so long as it had outstanding liabilities in Missouri. The Missouri court held that this language extended to litigation over an insurance policy issued in Colorado on Colorado property owned by an Arizona corporation, and the Supreme Court affirmed this interpretation.[43] Several lower court holdings have gone even further and have held that, where a foreign corporation has consented to local service and has appointed an agent, there is no lack of due process in serving that agent in connection with *any* cause of action—regardless of whether or not it is related to the local business. Under such holdings as *Tauza v. Susquehanna Coal Co.*, which sustain this position, there is no question of interpreting the extent of the consent.[44]

The *Old Wayne*[45] decision has been for many years a leading case in those situations where there has been no express consent to service of process. In this case, an Indiana insurance company contracted in Indiana to insure the lives of Pennsylvania residents. The company did not comply with the Pennsylvania statutory stipulation for service of process on a state official, and a default judgment was entered against the corporation in Pennsylvania pursuant to service on that official. The Court found that the corporation did such business in Pennsylvania as to be held to have impliedly consented

40. Philadelphia & R. Ry. v. McKibbin, 243 U.S. 264, 37 Sup. Ct. 280, 61 L. Ed. 710 (1917). See Note, 23 ST. JOHN'S L. REV. 126 (1948).

41. People's Tobacco Co. v. American Tobacco Co., 246 U.S. 79, 38 Sup. Ct. 233, 62 L. Ed. 587 (1918).

42. 243 U.S. 93, 37 Sup. Ct. 344, 61 L. Ed. 610 (1917). See also Smolik v. Philadelphia & Reading Coal & Iron Co., 222 Fed. 148 (S.D.N.Y. 1915).

43. The interpretation of the express consent is a question for the state court.

44. 220 N.Y. 259, 115 N.E. 915 (1917). *Cf.* Reynolds v. Missouri, K. & T. Ry., 228 Mass. 584, 117 N.E. 913 (1917), *aff'd per curiam*, 255 U.S. 565 (1921); Bagdon v. Philadelphia & Reading Coal & Iron Co., 217 N.Y. 432, 111 N.E. 1075 (1916). As to the effect of *International Shoe* on this proposition, see Bomze v. Nardis Sportswear, Inc., 165 F.2d 33 (2d Cir. 1948).

45. Old Wayne Mutual Life Ass'n v. McDonough, 204 U.S. 8, 27 Sup. Ct. 236, 51 L. Ed. 345 (1907). See Rothschild, *Jurisdiction of Foreign Corporations in Personam*, 17 VA. L. REV. 129 (1930).

to service there, but that the implied consent did not extend to causes of action not arising from that business. It was apparently felt that since the corporation had not actually consented at all to service of process, an implication of consent derived from the fact of its local "doing business" should arise only in connection with litigation related to the business done. The courts did not feel that it was necessary to impose this limitation on the *Tauza* line of cases involving express consent.

As has been pointed out, the logic of the "implied consent" theory of jurisdiction does not always hold up under analysis, and the courts seem increasingly less inclined to base jurisdiction on a fictionalized approach to the problem. More recent decisions, discussed later, indicate that jurisdiction as to unrelated causes of action no longer depends on consent—either express or implied; and the authority of the *Old Wayne* restriction, in this respect, appears questionable today.

The Supreme Court, in *Davis v. Farmers Co-Operative Equity Co.*,[46] denied jurisdiction over an unrelated cause of action in the case of a railroad, but the decision was based on a finding that to subject the railroad to local jurisdiction would unreasonably burden interstate commerce. In another decision,[47] the Court held that, where a duty was undertaken by a corporation in a state in which it did business and in which it had consented to service of process, the corporation was amenable to service there even though the breach of that duty occurred in a third state. It has further been held that jurisdiction may constitutionally be predicated on a previous doing of business, after withdrawal of the corporation, with respect to causes of action which had arisen from that business prior to withdrawal.[48]

C. *New Developments with Respect to the Basis of Jurisdiction over Foreign Corporations.*

The decision in *International Shoe Co. v. Washington*,[49] in 1945, took a new look at the question of the due process limitation on acquisition of personal jurisdiction over nonresident corporations. The defendant, a Delaware corporation, had no offices or stock in the State of Washington, but employed salesmen there to exhibit samples and solicit orders which were accepted and filled at the home office in Missouri. When process was served on one of the salesmen in the course of an attempt by the state to collect

46. 262 U.S. 312, 43 Sup. Ct. 556, 67 L. Ed. 996 (1923). See International Milling Co. v. Columbia Transportation Co., 292 U.S. 511, 54 Sup. Ct. 797, 78 L. Ed. 1396 (1934).

47. Louisville & N.R.R. v. Chatters, 279 U.S. 320, 49 Sup. Ct. 329, 73 L. Ed. 711 (1929).

48. American Ry. Express Co. v. Kentucky, 273 U.S. 269, 47 Sup. Ct. 353, 71 L. Ed. 639 (1927) (decided on common law principles in absence of statute); Mutual Reserve Fund Life Ass'n v. Phelps, 190 U.S. 147, 23 Sup. Ct. 707, 47 L. Ed. 987 (1903). *Contra:* Gouner v. Missouri Valley Bridge & Iron Co., 123 La. 964, 49 So. 657 (1909).

49. International Shoe Co. v. Washington, 326 U.S. 310, 66 Sup. Ct. 154, 90 L. Ed. 95 (1945). See Note, 16 U. OF CHI. L. REV. 523 (1949).

unemployment compensation contributions from the corporation, the latter asserted that it was not amenable to service in Washington. In upholding the jurisdiction of the Washington court, Mr. Chief Justice Stone made no reference to "doing business" as a basis for jurisdiction. His opinion pointed up the fallacies of dealing with nonresident corporations by the use of the fictions of presence or of consent. The language of the opinion is in terms of the effect of local corporate activities and contacts. With respect to the commission of an isolated or occasional local act, the Court drew an important distinction: while some casual acts may not give jurisdiction, others, because of their nature or quality, may render the corporation amenable to service. The Court cited the corollary line of authority, referred to earlier, which had been developed to validate assumption of personal jurisdiction over nonresident individual defendants for the doing of an act where the act was of such a nature (*e.g.*, the operation of a motor vehicle) as to make jurisdiction reasonable, and indicated that the same principle should be applicable to corporations. The "doing of an act" jurisdictional basis in the nonresident motorist cases has been rationalized on the ground that the nature of the act was particularly subject to state control, and application of that concept to corporations under the language of *International Shoe* might well involve inclusion of this element. However, it is by no means certain that the courts will restrict jurisdiction based on the doing of acts to cases involving acts in some manner specially subject to regulation.

The actual holding of *Internaitonal Shoe* is not expressly put on the basis of the doing of an act. Mr. Chief Justice Stone quoted Judge Hand's statements regarding an "estimate of the inconveniences"[50] to both parties and concluded that due process would "be met by such contacts of the corporation with the State of the forum as make it reasonable . . . to require the corporation to defend the particular suit which is brought there."[51] The test was to be not merely the *amount* of activity in a foreign state, but the nature of that activity weighed in the due process scales of orderly administration of justice.

The tenor of the nonresident motorist cases recurs in the further language of the Court to the effect that a corporation enjoys privileges and protection when it engages in local activities and that there is no lack of due process in requiring the corporation to stand suit for obligations arising from the exercise of this privilege. Thus, it would seem that *International Shoe* did

50. 326 U.S. at 317. See Hutchinson v. Chase & Gilbert, Inc., 45 F.2d 139, 141 (2d Cir. 1930).

51. *Ibid.* In his concurring opinion in *International Shoe*, Mr. Justice Black agreed that there was valid jurisdiction; but he severely criticized the use, in the majority opinion, of a jurisdictional test of reasonableness or fair play. However, he, himself, adopted the same test in his majority opinion in Travelers Health Ass'n v. Virginia, 339 U.S. 643, 70 Sup. Ct. 927, 94 L. Ed. 1154 (1950).

not overrule the *Old Wayne*[52] requirement that the litigation must be related to the local acts, but the *Old Wayne* limitation had been imposed in those cases where the corporation had appointed no local agent and jurisdiction was based on the implied consent theory, and *International Shoe* attached no particular significance to the presence or absence of consent in applying the limitation. *International Shoe* referred with approval to the *Tauza* holding that jurisdiction could extend to *any* cause of action against the corporation, but ignored the fact that in *Tauza* there had been an actual appointment of an agent to receive service of process. Thus, it appears that *International Shoe* did not base a determination, as to whether jurisdiction could extend to any cause of action or whether it should be limited to litigation related to local activities, on the older differentiation between cases where the corporation had actually or only impliedly consented to service of local process. In *International Shoe,* the limitation appears to relate to the nature of the local activities and to the jurisdictional fact of "contacts" rather than of "doing business." The case left open the question of the application of the restriction in cases where there is actually such activity locally as to amount to a doing of business so that it is possible to argue that the corporation is "present" or has given its consent to service.

The Supreme Court in 1950 decided the case of *Travelers Health Ass'n v. Virginia,*[53] involving a cease-and-desist proceeding by the State of Virginia against a Nebraska mail order insurance corporation. The corporation had not complied with a Virginia statute requiring sellers of insurance certificates to apply for a state permit and to agree to service of process on a public official. The corporation had no offices and no paid agents within the State of Virginia, but it issued certificates of insurance to Virginia citizens through the mails and encouraged these members of its association to solicit, without pay, membership among their friends. The Court held that the mail order insurer had sufficient minimum intrastate contacts and obligations to give the state power to affect its activities in a proceeding of this type. A factor in the decision is again the circumstance that insurance is considered peculiarly subject to state regulation.[54]

There have been a number of lower court cases since *International Shoe,* and the opinions reflect some uncertainty among the judiciary as to the effect of that holding. A federal court in Ohio used the "doing business" approach

52. Old Wayne Mutual Life Ass'n v. McDonough, 204 U.S. 8, 27 Sup. Ct. 236, 51 L. Ed. 345 (1907).

53. 339 U.S. 643, 70 Sup. Ct. 927, 94 L. Ed. 1154 (1950). *Cf.* Allgeyer v. Louisiana, 165 U.S. 578, 17 Sup. Ct. 427, 41 L. Ed. 832 (1897).

54. Although its statements seem to go somewhat further than the necessities of the litigation, the Court discusses the inconveniences to *possible* plaintiff-members should they be compelled to resort to Nebraska courts. Mr. Justice Douglas, in his concurring opinion, would limit the holding to the validity of state regulation of solicitation.

to determine that the court had jurisdiction.[55] A decision in Oklahoma[56] held that mere ownership and voting of stock in a resident corporation by a nonresident corporation had never constituted "doing business," although the court conceded that such acts may one day be recognized as valid grounds for jurisdiction. In New York, the language of *Tauza v. Susquehanna Coal Co.* had established the rule that, once a corporation was found to be "present," it would be subject to service of process for any cause of action, regardless of whether or not the litigation were related to the presence.[57] Judge Learned Hand pointed out, in *Bomze v. Nardis Sportswear, Inc.*,[58] that *International Shoe* affected the *Tauza* doctrine by superimposing a necessity to balance the conveniences of the parties and to determine that assumption of jurisdiction would be reasonable; thus, it immediately becomes important to determine whether or not the cause of action is related to the local activities, since such a determination has bearing on the relative conveniences.

In a 1950 decision, *Johns v. Bay State Abrasive Products Co.*,[59] a federal district court asserted that the facts of *International Shoe* were so particularized that that holding could not be said to overrule the "mere solicitation" rule. The *Johns* case found a lack of jurisdiction under the "doing business" test, but determined that a Maryland statute[60] conferring jurisdiction as to contracts made or liabilities incurred for acts done in the state, irrespective of whether or not the corporation did business there, was valid in its application to the facts of that case. The *Johns* decision results in the application of the statute being dependent upon a reasonableness concept similar to that of *International Shoe,* and the statute itself embodies the restriction in *Old Wayne* that the cause of action be related to the local activities.[61]

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55. Willett v. Union Pac. R.R., 76 F. Supp. 903 (N.D. Ohio 1948), 1 OKLA. L. REV. 294.

56. Steinway v. Majestic Amusement Co., 179 F.2d 681 (10th Cir. 1949).

57. See note 44 *supra.*

58. 165 F.2d 33 (2d Cir. 1948).

59. 89 F. Supp. 654 (D. Md. 1950), 64 HARV. L. REV. 500 (1951).

60. MD. ANN. CODE GEN. LAWS art. 23, § 119(d) (Cum. Supp. 1947). See Reiblick, *Jurisdiction of Maryland Courts over Foreign Corporations under the Act of 1937,* 3 MD. L. REV. 35 (1938).

61. Of the many recent lower court decisions discussing the problem of personal jurisdiction over foreign corporations, see *e.g.,* Goldberg v. Southern Builders, Inc., 184 F.2d 345 (D.C. Cir. 1950) (garnishment proceeding upheld on basis of corporation's doing business); Goldstein v. Chicago, R.I. & P.R.R., 93 F. Supp. 671 (W.D.N.Y. 1950) (court denied jurisdiction in New York against Kansas corporation when cause of action arose in Kansas, on basis of reasonableness test of *International Shoe*); Pergament v. Frazer, 93 F. Supp. 9 (E.D. Mich. 1949) (foreign corporation may do local business through another corporation). *Cf.* Sullivan v. Kilgore Mfg. Co., 93 F. Supp. 511 (E.D.N.Y. 1950); Ezell v. Rust Engineering Co., 75 F. Supp. 980 (W.D.S.C. 1948) (appointment of local agent confers jurisdiction with respect to cause of action arising elsewhere); Boyd v. Warren Paint & Color Co., 49 So.2d 559 (Ala. 1950) (jurisdiction dependent upon corporation's "doing business," and court defined "doing business" in terms of *International Shoe*); Continental Convention & Show Management, Inc. v.

III. CONCLUSION

Under the language of *International Shoe,* the courts now have a recognized jurisdiction over both absent individuals and foreign corporations having sufficient local contacts to make the exercise of jurisdiction reasonable, so long as the cause of action relates to those contacts. In these cases, there is no longer a constitutional necessity to meet the old test of "doing business" as a prerequisite to valid jurisdiction. If the state statute requires "doing business" as a basis for jurisdiction, *International Shoe* does not necessarily result in abandonment of the old requirements for "doing business"; but some courts have found a "doing business" on the basis of fewer local contacts than those believed necessary prior to the decision in *International Shoe.* Thus, that decision has been interpreted in some cases as a redefinition of "doing business," rather than as the establishment of a new jurisdictional basis.

It is well settled that the local contacts of individuals need not be of a business nature in order to validate jurisdiction; and although the Court has not yet been called upon to decide this issue with respect to corporations, it is not improbable that contacts of a nonbusiness nature may be held to suffice. It would seem that the early view, with respect to nonresidents, that the act must be of a dangerous nature or of a kind peculiarly subject to state regulation in order to support jurisdiction may henceforth be little more than a makeweight argument in the case of either individuals or corporations. It seems likely that both nonresident individuals and corporations will be called upon in the future to answer for their local acts, so long as a balancing of conveniences does not preclude jurisdiction on the ground that it would not be reasonable to require local defense. The limitation of power here parallels the test for *forum non conveniens.*

Where the cause of action is unrelated to the local acts, jurisdiction over the individual fails; and it is unlikely that jurisdiction over foreign corporations will be assumed in cases where the corporation has had no more than "minimum contacts"—at least in the near future. But where the local activity of the corporation is enough to amount to the old requirements for "doing business," the *Tauza* line of cases may result in holding the corporation amenable to local service for *any* cause of action. If this should be the case, *International Shoe* will unquestionably be pertinent, and the extraneous origin of the cause of action will then be merely a factor in determining the reason-

American Broadcasting Co., 230 Minn. 217, 41 N.W.2d 263 (1950) ("solicitation plus" results in "presence" of corporation); Grace v. Procter & Gamble Co., 57 A.2d 619 (N.H. 1948) (court supported *International Shoe,* but held plaintiff had burden to prove a doing of business); Radio Station WMFR, Inc. v. Eitel-McCullough, Inc., 232 N.C. 287, 59 S.E.2d 779 (1950) (corporation not doing business by virtue of sales to local retail outlets).