

CONSTITUTIONALITY OF STATE JUDICIAL JURISDICTION OVER NON-RESIDENTS

Nelson v. Miller

11 Ill. 2d 378, 143 N.E.2d 673 (1957)

An employee of the defendant, a Wisconsin resident dealing in appliances, was alleged to have negligently injured the plaintiff while unloading a stove in Illinois. Suit was commenced in Illinois, the defendant being served personally in Wisconsin pursuant to an Illinois statute which granted jurisdiction in any cause of action arising from "the commission of a tortious act within the State" by any person.¹ The defendant moved to quash the summons on the grounds that the statute contravened both the United States and the Illinois constitutions. The Illinois court, however, upheld the statute and the service stating that "the requirements of due process of law have been met."

Under the traditional concept of constitutional due process, the individual states have been restricted from exercising judicial jurisdiction over persons or property located in another state.² By statute, Illinois challenged this tradition and sought to reach certain persons beyond its borders. The principal case presented the question as to whether this due process guarantee of the Fourteenth Amendment is violated by a state exercising in personam jurisdiction over a non-resident, non-corporate defendant in an action arising from a single tortious act committed within the state.³ The Illinois court in upholding this statute has permitted an extension into the constitutionally permissible field of state court jurisdiction not heretofore attempted.

Historically, the permitted jurisdiction of the courts was based upon

¹ILL. REV. STAT. c. 110, §17 (1955) reads as follows:

"1 Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts herein-after enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of said acts:

- a) The transaction of any business within this State;
- b) The commission of a tortious act within this State;
- c) The ownership, use, or possession of any real estate situated in this State;
- d) Contracting to insure any person, property, or risk located within this State at the time of contracting.

"2 Service of process . . . may be made by personally serving the summons upon the defendant outside this State, . . ."

² STORY, CONFLICT OF LAWS ch. 2 (1865); *Pennoyer v. Neff*, 95 U.S. 714, 733 (1878). A similar result has been reached in England without the compulsion of a written constitution. *Buchanan v. Rucker*, 9 East 192 (1808); *Schibsby v. Westenholtz* L.R. 6 Q.B. 155 (1870).

³ A further due process requirement, not discussed within this note, is the requirement that the defendant receive adequate notice of the claim against him. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

their de facto power over the person of the defendant. Service of process within the jurisdiction of the court was necessary, in absence of actual consent, to render a judgment personally binding upon him.⁴ However, increasing interstate activity provided situations where it was expedient to depart from this strict interpretation and courts responded by forcing novel concepts of jurisdiction into the language of established frameworks.⁵ These fictive justifications were resorted to in order to subject defendants to a court's jurisdiction where fairness required it.

An excellent example of the facility of courts to build a new idea on the foundation of an old concept is shown with their treatment of the foreign corporation.⁶ It was difficult to say that a foreign corporation was physically "present" in the same sense that an individual was present. However, since a state could require consent to judicial jurisdiction as a condition for doing business within the state, the courts felt equally justified in implying a consent from the mere fact of doing business.⁷ Thus, a foreign corporation could be subject to the jurisdiction of a state whether it expressly consented through qualifying to do business or impliedly consented by doing business without such qualification.

Non-resident individuals also were affected by this expansion of in personam jurisdiction. A non-resident individual doing business in Iowa was held amenable to Iowa's jurisdiction in a cause of action arising from a securities business which was regulated by a statute requiring registration and consent to service as a condition of selling securities in the state.⁸ Non-resident motorists were held to have impliedly consented to the jurisdiction of the courts of a state by use of its highways and to have assented to the appointment of the State Registrar as agent to receive service of process.⁹ This extension was occasioned by the great social impact created by the advent of the automobile and its highly dangerous potential.

⁴ *Pennoyer v. Neff*, *supra* note 1.

⁵ Language of the non-resident motorist statutes was typified by the Massachusetts statute which declared that operation of a motor vehicle on the public ways of that state "shall be a signification of his agreement that any such process against him which shall be so served (upon the State Registrar) shall be of the same legal force and validity as if served upon him personally." MASS. ANN. LAWS c. 90, as amended by Statute 1923 c. 431, §2.

The language of the courts in dealing with foreign corporations was that "when this corporation sent its agent into Ohio with authority to make contracts of insurance there, the corporation must be taken to assent to the condition upon which alone such business could be transacted by them; that condition being that an agent, to make contracts should also be the agent of the corporation to receive service of process in suits on such contracts." *Lafayette Ins. Co. v. French*, 59 U.S. 404, 408 (1855).

⁶ For a treatment of jurisdiction over foreign corporations see, note, *Foreign Corporations—State Boundaries for National Business*, 59 YALE L.J. 737 (1950).

⁷ *Lafayette Ins. Co. v. French*, *supra* note 5.

⁸ *Doherty & Co. v. Goodman*, 294 U.S. 623 (1935).

⁹ *Hess v. Pawloski*, 274 U.S. 352 (1927).

These were the major inroads made on the traditional due process concept until the case of *International Shoe Co. v. Washington*¹⁰ was decided. Due process was held, by that court, to require only that the non-resident defendant have certain minimum contacts with the forum such that the maintenance of the suit in that state does not offend the "traditional notions of fair play and substantial justice." The decision involved a corporate defendant but the court in the principal case held it to be "clear that the general principle underlying the decision applies equally to jurisdiction over non-resident individuals."¹¹

Subsequent to the *International Shoe* case much legislation was enacted attempting to extend the in personam jurisdiction of state courts. The non-resident motorist statutes were extended to watercraft.¹² Jurisdiction over non-resident, unincorporated associations was upheld as to causes of action arising from activities within the state.¹³ A single tort was held to satisfy the jurisdictional requirements of due process in an action against a foreign corporation not doing business in Vermont¹⁴ but the question of whether the state had the power to subject a non-resident individual to a suit arising out of a single tort, not resulting from highly dangerous activity, remained unanswered. The Illinois court in the instant case resolved that question on the theory that the same philosophy underlies this case as *in fact* underlies jurisdiction over the non-resident motorist and the non-resident seller of securities and that legislation may be constitutionally directed to the fact of injury as well as to the probability of injury from a particular instrumentality or business. The social problems resulting from the latter may be of greater magnitude than those of tortious conduct generally but the court felt that the need for such a distinction was peculiarly a problem for the legislature.

The application of the rule of the *International Shoe* case to the controlling circumstances of the principal case would certainly justify the result. Here the defendant had voluntarily sent his agent into the state where he enjoyed the benefit and protection of Illinois law. He inflicted an injury which would be witnessed by Illinois residents and to which Illinois substantive law would be applicable. In balancing such factors against insubstantial claims of inconvenience to the defendant,

¹⁰ 326 U.S. 310 (1945).

¹¹ The court in the *International Shoe* case said "that clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relation." (Emphasis added.) *Supra* note 10.

¹² LA. REV. STAT. ANN. §13: 3479 (1950) upheld in *Goltzman v. Rougeot*, 122 F. Supp. 700 (D. La. 1954). See also *Tardiff v. Bank Line, Ltd.* 127 F. Supp. 945 (1954).

¹³ *McDaniel v. Textile Workers Union*, 254 S.W.2d 1 (Tenn. App. 1952); *Quinn v. Pershing*, 367 Pa. 426, 80 A.2d 712 (1951).

¹⁴ VT. REV. STAT. §1562 (1947) upheld in *Smyth v. Twin State Improvements Corp.* 116 Vt. 569, 80 A.2d 664 (1951).

the assertion of jurisdiction did not violate the "traditional notions of fair play and substantial justice." Indeed, this new due process standard will facilitate justice for individual claimants who, under the old standard, could not afford a foreign trial to recover small sums, thus enabling the defendant to avoid litigation if service upon him were not obtained within the claimant's home state. This new standard reduces the applicability of the standard established by *Pennoyer v. Neff* which based jurisdiction solely on service of process within the jurisdiction of the forum regardless of the inconvenience to the defendant or the extent of his contacts with that forum.¹⁵ It offers as a basis for due process, not chance service but the more rational basis of *forum conveniens*.

There appears to be no precise formula for determining jurisdictional validity under the due process principles established by the *International Shoe* case. This determination, it seems clear, must be made in case to case adjudication upon the peculiar circumstances surrounding each case and what is fair and reasonable under such circumstances.¹⁶ These determining factors should include as relevant the nature and extent of the defendant's activity within the state in relation to the claimant's injury, considering the state's obligation to protect its citizens and to establish the fair and orderly administration of its law.¹⁷ Indeed, to establish any concrete formula for such an elusive concept as "fair play and substantial justice" would result in precluding its purpose prior to actual application.

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¹⁵ The rule in *Pennoyer v. Neff* has been often criticized. Ehrenzweig, *The Transient Rule of Personal Jurisdiction: The "Power" Myth and Forum Conveniens*, 64 YALE L.J. 289 (1956).

¹⁶ Jurisdiction over a foreign corporation was allowed where the cause of action arose from outside the state because its activities within the state made jurisdiction fair and reasonable. *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). A further treatment may be found in Cleary & Seder, *Extended Jurisdictional Bases for the Illinois Courts*, 50 N.W.U.L. REV. 599 (1955).

¹⁷ A recent Supreme Court decision upheld jurisdiction over a foreign corporation in an action arising out of an insurance policy issued to the plaintiff's son where that policy was the extent of the defendant's business and activity in California. *International Life Ins. Co. v. McGee*, 355 U.S. 220 (1957).