

that the present case would have been decided differently if the cause of action had arisen after the Code had been enacted. If this be the case, one wonders why the court failed to seize upon this opportunity to render a decision in consonance with current legislative thinking in this area of the law.

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Constitutional Law—Due Process—Single Act Statute Will Subject Foreign Corporation to State Jurisdiction.—*Atkins v. Jones & Laughlin Steel Corp.*¹—Jones & Laughlin, a Pennsylvania corporation,² manufactured liner and metal containers, and sold them to the defendant Montanin Co., a New York corporation, for use by Montanin's agents in bottling and labeling a hydrofluorsilicic acid, for subsequent resale by Montanin Co. Montanin had no agent, office, or qualification as a foreign corporation in Minnesota, and its only contacts in that state consisted in shipment of its product F.O.B. New York upon direct order from resident consumers, or indirect order from resident independent distributors. Operations had been carried on in this manner in Minnesota for fifty years, Montanin accepting all orders in New York, and billing consumers direct. Although the independent distributors did receive commissions on sales from their orders, there was allegedly no implied or express contractual relationship between them and Montanin. The plaintiff, a truck driver for a Minnesota carrier for the deliveries in Minnesota, was injured as a result of inhaling toxic fumes allegedly produced by leakage from a faulty container of acid. The suit was commenced pursuant to a Minnesota statute³ which provided that commis-

¹ 104 N.W.2d 888 (Minn. 1960).

² The defendant Jones & Laughlin had no agents, made no contracts, and maintained neither an office nor solicitors in Minnesota. In fact its only connection with the principal case is that it manufactured the container for Montanin's acid, and allegedly inspected same without due care, since there was evidence that one of them was faulty—thus the claim against Jones & Laughlin on the basis of manufacturer's liability. This defendant did not appear in the case either specially to challenge jurisdiction, or to plead to the merits, and therefore suffered judgement by default as to the jurisdictional issue. It is submitted that this judgement might be challenged in another forum should action on a judgment be sought after successful trial on the merits still pending.

³ Minn. Stat. Ann. § 303.13, subd. 1 (1957). "A foreign corporation shall be subject to service as follows:

(3) If a foreign corporation makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if such foreign corporation commits a tort in whole or in part in Minnesota against a resident of Minnesota, such acts shall be deemed to be doing business in Minnesota by the foreign corporation and shall be deemed equivalent to the appointment by the foreign corporation of the Secretary of the State of Minnesota and his successors to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings against the foreign corporation arising from or growing out of such contract or tort . . . the making of the contract or the committing of the tort shall be deemed to be the agreement of the foreign corporation that any process against it which is so served upon the Secretary of State shall be of the same legal force and effect as if served personally within the State of Minnesota."

sion of a tort in whole or in part by a foreign corporation resulting in injury to a resident was deemed to be "doing business", and therefore subjected the corporation to the jurisdiction of the court of Minnesota by constructive service and notice. The plaintiff sought damages from Montanin for alleged negligent containment of the acid and proceeded against Jones & Laughlin for alleged negligent manufacture of the containers. Montanin appeared specially and made a motion to quash service of process and to dismiss. The trial court denied the motion and the Supreme Court of Minnesota affirmed. HELD: The statute, in so far as it provides the criteria for jurisdiction and validity of constructive service, does not offend the Fourteenth Amendment, since *in personam* jurisdiction obtains whenever a defendant has certain minimum contacts within the state, and personal injury to a resident of the state caused by defendant's product constitutes such contact.

The Due Process requirements for state court jurisdiction over foreign corporations were re-examined and modified⁴ by the decision of *International*

⁴ Traditionally a plaintiff could meet the requirements for *in personam* jurisdiction over individual defendants by establishing physical presence, *Pennoyer v. Neff*, 95 U.S. 714 (1877); domicile, *Milliken v. Meyer*, 311 U.S. 457 (1940); consent, *Adam v. Saenger*, 303 U.S. 59 (1938); or activities within the state, *Hess v. Pawloski*, 274 U.S. 352 (1926). Many of these same criteria were applicable to fulfill the requirements for jurisdiction over corporations, but the two main theories of corporate jurisdiction were presence and consent. Since a corporation was not a citizen, and therefore not entitled to rights under the privileges and immunities clause of the Fourteenth Amendment of the Constitution, it could be excluded from a state so far as intrastate business was concerned. Cf. *Paul v. Virginia*, 75 U.S. (8 Wall.) 168 (1868). If it were admitted it could be made to conform to regulations to promote health, safety, and welfare of the residents whether it was engaged in intrastate or interstate activities. *Castle v. Hayes Freight Lines*, 348 U.S. 61 (1954); *Wheeling Steel Corp. v. Glander*, 337 U.S. 562 (1949); *Spout v. South Bend*, 277 U.S. 163 (1928); *Buck v. Kuykendall*, 267 U.S. 307 (1925); *International Harvester v. Kentucky*, 234 U.S. 579 (1914). It was the prevailing view that incorporation by promoters within a state, was in fact, if not by the form of the articles, consent to the jurisdiction of the state. *St. Louis v. Ferry Co.*, 78 U.S. (11 Wall.) 423, 429 (1870); *Bank of Augusta v. Earle*, 38 U.S. (13 Pet.) 519, 588 (1839). Although a state could not condition admittance of a foreign corporation engaged in Interstate commerce upon surrender of its constitutional rights by requiring it to appoint an agent for service of process, or requiring other express consent to jurisdiction, if the corporation failed to so consent or to designate an agent, the state could provide for substituted service on a state official by finding sufficient presence from its business operations to imply consent. *Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court*, 289 U.S. 361 (1933) (dictum); *Philadelphia R. Ry. v. McKibben*, 243 U.S. 264 (1917); *Old Wayne Mutual Life Ass'n v. McDonough*, 204 U.S. 8 (1906). In this regard mere solicitation of business was not considered sufficient. *Peoples Tobacco Co. v. American Tobacco Co.*, 246 U.S. 79, 87 (1918); *International Harvester v. Kentucky*, supra. Single or occasional acts have also been held insufficient for such implication of consent. *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516 (1923); *Green v. Chicago B. & Q. Ry.*, 205 U.S. 530 (1907); *Old Wayne Mutual Life Ass'n v. McDonough*, supra. State Jurisdiction was founded upon the theory that if an individual not a resident, or a foreign corporation entered the state to beneficially transact business, then it must assume the liabilities and responsibilities attaching thereon by submission to suit arising from that business. It would be reasonably more convenient for the corporation to answer in the state of its acts if sufficient business was therein being transacted, than for the party resident to

Shoe Co. v. Washington.⁵ This decision applied a rationale requiring an analysis of the quality and nature of the activity in the state, rather than a mere consideration of the quantum of business activity in order to establish sufficient and equitable basis for jurisdiction. This standard, i.e., whether the "corporation had certain minimum contacts with the state such that the maintenance of the suit would not offend traditional notions of fair play and substantial justice," encompasses the criteria of both the "presence" and "consent" doctrines.⁶ It includes recognition of a state's interest in a particular kind of corporate activity—in lieu of the "systematic and continuous" nature of a corporation's activities—as a reason for requiring the corporation to be prepared to answer claims against it arising from such activity within

travel to the state of its incorporation. *Latimer v. A/A Industrias F. Matavazzo*, 175 F.2d 184 (2d Cir. 1949), cert. denied, 338 U.S. 867 (1949); *Kilpatrick v. Texas & D. Ry.*, 166 F.2d 788 (2d Cir. 1949), cert. denied, 335 U.S. 814 (1949) (dictum). If the corporation were not transacting a significant volume of business so as to be considered "present," but the nature of the activity were such as to create sufficient danger to the residents, or of a nature to create other special state interest, then exceptions were made to the requirement of presence or consent. See the Non-Resident Motorist cases; *Young v. Masci*, 289 U.S. 253 (1933); *Hess v. Pawloski*, supra; *Kane v. New Jersey*, 242 U.S. 160 (1916). See also the insurance company cases holding that isolated acts which attract sufficient state interest come within its police power and are therefore sufficient basis for jurisdiction. *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957); *Travelers Health Ass'n v. Virginia*, 339 U.S. 643 (1950). See also the "Blue Sky" law cases such as *Doherty v. Goodman*, 294 U.S. 623 (1935).

⁵ 326 U.S. 310 (1945), a case in which a Delaware Corporation with its principal place of business in St. Louis, Missouri, was held liable for a sales tax in Washington since it had salesmen and contracts in that state. In modifying the presence doctrine and the implied consent tests of prior decisions, this decision established the criteria for jurisdiction applied in present cases. It affirmed the theory that a corporate personality is a fiction intended to be acted upon as a fact, and therefore its presence, unlike that of an individual, is manifested by its activities. Cf. *Klein v. Board of Supervisors*, 282 U.S. 19, 24 (1930). *International Shoe* at page 320 states: "Due Process requires only that in order to get in personam jurisdiction, if it be not present, it must have certain minimum contacts with the . . . (state) such that the maintenance of the suit does not offend the traditional notions of fair play and substantial justice." This was a modification of the Solicitation-Plus rule applied by the Washington Supreme Court in upholding the state's jurisdiction. The Supreme Court decision goes on to state that the conclusion in each case must be based upon a fair consideration of all relevant matters including among others: the nature and extent of the corporation's actual activities within the state, and whether sporadic, casual, or systematic and continuous over a substantial period of time; its consequent points of contact or lack thereof within the state; the nature of the particular transaction, contract or tort, relied upon by the resident plaintiff occurring within the state; and how such activities affect general policy of the state with regard to the subject matter and relative inconvenience to the respective parties. The Court states at page 327 that the "demands of Due Process may be met by such contacts of the corporation with the state of the forum as make it reasonable in the context of our federal system of government to require the corporation to defend the particular suit brought. . . . An estimate of the inconveniences which would result to the corporation from a trial away from its home or principal place of business is relevant in this connection." The Court is quoting from *Hutchinson v. Chase & Gilbert*, 45 F.2d 139, 141 (2d Cir. 1930).

⁶ *International Shoe v. Washington*, supra note 5 at 320, 322, 325.

the state. Moreover, some consideration should be given to factors which would be pertinent to the issue of *forum non conveniens*.⁷

Adoption of legislation like the Minnesota statute would seem to be an attempt to extend state jurisdiction beyond the scope of the *International Shoe* standard, in the light of an apparent qualification made by the *Hanson v. Denckla* decision⁸ to the effect that it is essential in each case that there be some act by which the defendant purposefully avails himself of the privilege of conducting activities within the state of the forum, thus invoking the protection of its laws. The purpose of these single-act statutes is to grant a resident, injured by the wrongful act of a foreign corporation, the convenience and certainty of remedy offered by a court of that state, by predicating jurisdiction solely upon acts done, or liabilities incurred, within the state whether or not there is consent, or other contact between the corporation and the state.⁹ They are therefore designed to preclude the necessity of establishing either minimum contacts of a beneficial nature to the corporation or activity of a sufficiently dangerous nature to justify a peculiar state interest. This design was bared by the principal case, where the Minnesota Court upheld jurisdiction purely on the fact that the injury—which resulted from a tort perpetrated outside the state—occurred within the state, the state of the injury therefore determining not only the applicable law,¹⁰ but also the jurisdiction of the court of that state.

Five other states have similar statutes,¹¹ but significantly, in each case

⁷ 28 U.S.C. § 1404(a) (1952), enacted after the *International Shoe* case, provides for transfer to a more convenient forum, and has been held not to pre-empt the consideration of balance of inconvenience in determination of jurisdiction, since jurisdiction is a condition precedent to power to transfer the case. *Smith v. Louisville & N. R.R.*, 90 F. Supp. 189 (S.D.N.Y. 1950). But § 1404(a) does not apply to state courts and at least one court has indicated that calendar restrictions, etc. applicable to forum non conveniens under § 1404(a) would not be relevant to jurisdiction under *International Shoe*. Cf. Restatement (Second), Conflict of Laws § 78 (Tent. Draft #3 1956).

⁸ 357 U.S. 235 (1958). The court in this case recognized that the recent development of modern transportation systems made defense of actions in foreign jurisdictions less burdensome but noted: "... it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. . . . These restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective states. . . . However minimal their burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the minimal contacts with that state that are pre-requisite to its exercise of power over him. . . . It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." (357 U.S. at 251).

⁹ *Atkins v. Jones & Laughlin*, supra note 1, at 894.

¹⁰ Restatement, Conflict of Laws §§ 378, 379 (1934).

¹¹ Ill. Rev. Stat. ch. 110, § 17 (1959) provides as one basis for personal jurisdiction over a non-resident defendant, "the commission of a tortious act within this state"; N.C. Gen. Stat. § 55-145(a)(1) (Cum. Supp. 1959) provides that a foreign defendant may be sued "on any cause of action arising . . . out of tortious conduct in this state, whether arising out of misfeasance or nonfeasance"; Vt. Stat. tit. 12, § 855 (1947) reads like the Minnesota statute that if a foreign corporation "commits a tort in whole or in part in Vermont against a resident of Vermont, such acts shall be deemed doing

which has upheld such a statute as authorizing jurisdiction over a nonresident corporation, the action was for damages caused by tortious activity within the forum state.¹² Moreover, many cases have allowed jurisdiction if continuous business,¹³ implicit agency,¹⁴ or sufficient inherent danger in the product¹⁵ were established *in addition to* the injury. The Minnesota Court was faced with the problem of its ability under such a statute to sustain jurisdiction over a non-resident corporate defendant whose alleged tortious activities all occurred outside of Minnesota.¹⁶

business in Vermont by such foreign corporation and shall be deemed equivalent to the appointment by such foreign corporation of the Secretary of State of Vermont to be its true and lawful attorney . . ."; W. Va. Code ch. 31, art. 1 § 3083 (Supp. 1959) provides that "a foreign corporation . . . shall be deemed to be doing business . . . if such corporation commits a tort in whole or in part in this state"; Md. Ann. Code art. 23, § 92(d) (1957) subjects a foreign corporation to suit on "liability incurred for acts done within this state."

¹² The Vermont statute was construed in *Smythe v. Twin State Improvement Corp.*, 116 Vt. 569, 80 A.2d 664 (1951), and held valid as applied to a Massachusetts company which came into Vermont and negligently did some repairs on the house of a Vermont resident. The Illinois statute was sustained in *Nelson v. Miller*, 11 Ill. 2d 378, 143 N.E.2d 673 (1957) as applied to a defendant, a resident of Wisconsin, who had sent an employee into Illinois to install a stove for the plaintiff. While the plaintiff was helping to unload the stove, defendant's employer negligently pushed it so as to injure the plaintiff's hand; In *Painter v. Home Finance Company*, 245 N.C. 576, 96 S.E.2d 73 (1957), the North Carolina statute was held effective to give the court jurisdiction in a tort action against a foreign corporation for wrongfully repossessing plaintiff's automobile by duress, the cause of action arising out of defendant's tortious conduct committed within North Carolina; the Maryland statute was involved in *Johns v. Bay State Abrasive Products Co.*, 89 F. Supp. 654 (D. Md. 1950). In that case the plaintiff had been injured when a grinding wheel, manufactured by a Massachusetts corporation shattered while in use on a grinding machine made by a Texas corporation whose agent recommended the use of the grinding wheel of the Massachusetts corporation. In an action against both corporations, the federal district court dismissed as against the Massachusetts corporation since it "had no transaction within the state in relation to the tort liability alleged . . ." (80 F. Supp. at 661) but upheld jurisdiction over the Texas corporation since the complaint against it was "for tort occurring in Maryland . . ." (89 F. Supp. at 662), i.e., its agent's misrepresentation.

¹³ *Woodworkers Tool Works v. Byrne*, 191 F.2d 667, aff'd on rehearing, 202 F.2d 530 (9th Cir. 1953); cf. *Frene v. Louisville Cement Co.*, 134 F.2d 511, 515 (D.C. Cir. 1943); *William J. Harlick Co. v. Boque Elec. Mfg. Co.*, 146 F. Supp. 347 (D.C. Mass. 1956); *Orange Crush Grapico Bottling Co. v. The Seven-Up Co.*, 128 F. Supp. 174 (N.D. Ala. 1955).

¹⁴ *Florio v. Powder Power Tool Corp.*, 248 F.2d 367 (3d Cir. 1957); cf. *Lone Star Motor Import Co. v. Citroen Cars Corp.*, 185 F. Supp. 48 (S.D. Tex. 1960); But cf. *Swavely v. Vandergift*, 397 Pa. 281, 154 A.2d 779 (1959).

¹⁵ *Green v. Equitable Powder Co.*, 99 F. Supp. 237 (E.D. Ark. 1951).

¹⁶ In *Helriegel v. Sears Roebuck and Co.*, 157 F. Supp. 718 (N.S. Ill. 1957), the federal district court construed the Illinois statute so as not to authorize jurisdiction over the non-resident manufacturers of a power lawn mower that injured an Illinois plaintiff where the manufacturing took place in Ohio and Wisconsin; in *Putnam v. Triangle Publications*, 245 N.C. 432, 96 S.E.2d 445 (1957), a Pennsylvania magazine publisher sold its magazines to newsdealers in North Carolina, shipping them from outside North Carolina. The court affirmed the dismissal of a libel action by a North Carolina resident against the Pennsylvania publisher because the injury did not arise out of tortious conduct in North Carolina. See also, *Erlanger Mills Inc. v. Cohoes Fibre Mills, Inc.*, 239

It is probable that the defendant Montanin by its continuous sales activity in Minnesota for fifty years would have fallen within the "minimum contacts" test of *International Shoe* if it had been applied. Since Montanin had obtained the benefits of the business in the state it seems reasonable to impose jurisdiction, but to do so purely in reliance on the "commits a tort in whole or in part" clause of the Minnesota Statute is another matter. The Minnesota Federal District Court has twice denied jurisdiction when this very statute was pleaded as the predicate. In *Mueller v. Steelcase Inc.*¹⁷ where a defective chair manufactured by a foreign corporation caused injury to a resident, and in *Dahlberg Corp. v. American Sound Products Co.*¹⁸ where unfair business competition outside the state resulted in damage to a resident corporation, it was held that the "minimum contacts" test had not been satisfied. These two decisions, to the effect that other contacts of a beneficial nature,¹⁹ in addition to injury within the state, are necessary before a foreign corporation is subjected to litigation within the state, would seem in accord with the majority interpretation of similar statutes. A prior Minnesota case, *Beck v. Spindler*,²⁰ adopts this interpretation in qualifying the application of this same statute. Although the case is distinguishable in the nature and quality of the contacts involved, it is notable for the court's reluctance to base jurisdiction solely on the application of the statute.²¹

Considering the case law in other jurisdictions and that of Minnesota itself, it would seem the Court has sounded a rather uncertain trumpet in its attempt to replace the existing standard with a new rigid jurisdictional formula based only on a strict interpretation of this statute. As previously mentioned the defendant Montanin Corporation might well have qualified for Minnesota jurisdiction upon an application of the "minimum contacts" test, but certainly the defendant Jones & Laughlin would not have so qualified under this same test. With respect to this transaction, Jones & Laughlin had no business contacts with Minnesota, but operated solely outside the state, and was only involved through a supply contract with the other defendant, without privity or connection to the purchaser or the plaintiff. Nor was the nature of the article manufactured of such inherent danger as to be the subject of foreseeable injury to a plaintiff such as the one in the principal case. Jones & Laughlin would more nearly parallel the status of the exonerated corporation in *Johns v. Bay State Abrasive Products Co.*²² which although

F.2d 502 (4th Cir. 1956); See *Johns v. Bay State Abrasive Products Co.*, supra note 12; Reillich, *Jurisdiction of Maryland Courts over Foreign Corporations under Act of 1937*, 3 Md. L. Rev. 35 (1938).

¹⁷ 172 F. Supp. 416 (D.C. Minn. 1959).

¹⁸ 179 F. Supp. 928 (D.C. Minn. 1960).

¹⁹ In the *Dahlberg* case, the Court said "... the fact that the effects of the tortious acts of American Sound Products in competing unfairly elsewhere in the country may have been felt in Minnesota by plaintiff to its damage is not the type of activity which creates contacts with Minnesota so that the tort-feasor is amenable to substituted service." [179 F. Supp. at 932 (emphasis supplied)].

²⁰ 256 Minn. 543, 99 N.W.2d 670 (1959).

²¹ 99 N.W.2d at 677.

²² Supra note 12.

responsible for the defective product causing injury, was held not subject to Maryland State Court jurisdiction. It would therefore seem apparent that this former defendant would not qualify under any existing test, as subject to the jurisdiction of the Minnesota Court. Yet by the kind of strict application of the statute which occurred with respect to Montanin, Jones & Laughlin would likewise be held subject to the jurisdiction of the Minnesota court.

Should the theory of the *Atkins* decision remain undisturbed, there is the danger that a formal statutory definition of "doing business" would replace the substance requirement of "minimum contacts." A corporate manufacturer would be subject to suit anywhere that a consumer might carry his product, or whence it might wend its way by resale, as long as a similar statute were provided. This would hardly be within the traditional notions of "fair play and substantial justice" since no consideration would be given to the extent of the corporate activity, the systematic or continuous nature of such activity, the points of contact of the activity within the state, or the *parens patriae* interest of the state in the dangerous nature of the activity akin to the non-resident motorist cases. Instead this decision would eliminate, in a tort action, the necessity for the evaluation proposed in *International Shoe*, and narrow the test to the single factor of injury within the forum state. Removal of the restrictions imposed in *Hanson v. Denckla*²³ and other cases,²⁴ by the Supreme Court of the United States must precede the affirmation of this decision, since it is hardly within the purview of a state to alter so sweepingly the Constitutional tests for jurisdiction.

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Constitutional Law—State Application of Privilege Tax to Carrier in Interstate and Intrastate Commerce.—*Oregon-Nevada-California Fast Freight, Inc. v. Stewart*.¹—The taxpayer was an interstate motor carrier with its main office in California, but with terminals in Oregon, which it leased. Taxpayer engaged primarily in interstate commerce but did have some intrastate operations in Oregon. An Oregon statute imposed an excise tax for the privilege of carrying on or doing business in the state of Oregon.² The tax assessed was under an apportionment formula which compared the total miles traveled in Oregon by the taxpayer to the total mileage traveled by taxpayer in its entire operation.³ The resulting fraction was applied to the carrier's net income to determine the amount of the tax. The defendant tax commissioner assessed a tax under the statute; the taxpayer paid under protest and then commenced suit for a refund. The taxpayer con-

²³ Supra note 8.

²⁴ Supra note 4.

¹ 353 P.2d 541 (Ore. 1960).

² Ore. Rev. Stat. § 317.070 [amended by c. 607 § 3, c. 709 § 1(3), (1957); c. 631 § 2 (1959)].

³ Ore. Rev. Stat. § 317.180 (Repealed), now replaced by § 314.280 (1959).