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JURISDICTION OVER FOREIGN CORPORATIONS

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The recently decided case of *Hess v. Pawloski*,[1] though confined in its decision to substituted service upon individuals, is not without implications and repercussions in the law governing jurisdiction over foreign corporations, for as Justice Gray said in *Barrow Steamship Co. v. Kane*:[2]

"The constant tendency of judicial decisions in modern times has been in the direction of putting corporations on the same footing as natural persons in regard to jurisdiction of suits by or against them."[3]

The decision extending the power of the state to bring back into its jurisdiction an individual having there done certain acts, without meeting the constitutional requirements of *Pennoyer v. Neff*[4] and *Riverside Mills v. Menefee*,[5] suggests a reconsideration of the Supreme Court's decisions with respect to service on foreign corporations.

In the early days of our law the corporation was regarded by the courts as a sort of metaphysical abstraction; a creature only of the law; something above and beyond the tangible group. The idea was best expressed by Chief Justice Taney in *Bank of Augusta v. Earle*:[6]

"It is very true, that a corporation can have no legal existence out of the boundaries of the sovereignty by which it was created. It

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[1] *Hess v. Pawloski*, 47 S. Ct. 632 (1927), upholding Massachusetts statute relating to service of process on nonresident motorist by delivery of copy of process to registrar or his successor in office, and providing for mailing of copy thereof by registered mail to the nonresident. It is to be regretted that Justice Butler cites with seeming approval the case of *Flexner v. Farson*, 249 U. S. 289, a case which has been almost universally condemned, and which constitutes a constitutional barrier to many procedural reforms. It is believed that the best interests of all concerned would be served if the doing of business within a State were allowed by the Supreme Court as a basis for jurisdiction of the State courts, whether that business be done by a corporation, association, partnership, natural person, or any other thing or being capable of carrying on business as an entity. See the able paper of Cahill, *Jurisdiction Over Foreign Corporations and Individuals Who Carry on Business Within the Territory*, 30 *Harv. Law Rev.* 676.

[2] (1898) 170 U. S. 100.

[3] *Ibid.*, p. 106.

[4] (1877) 95 U. S. 714.

[5] (1915) 237 U. S. 189.

[6] (1839) 13 Pet. 519.

exists only in contemplation of law, and by force of the law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence. It must dwell in the place of its creation, and cannot migrate to another sovereignty. But although it must live and have its being in that state alone, yet it does not by any means follow that its existence there will not be recognized in other places; and its residence in one state creates no insuperable objection to its power of contracting in another. It is indeed a mere artificial being, invisible and intangible; yet it is a person, for certain purposes in contemplation of law, and has been recognized as such by the decisions of this court."

This idea, though seemingly now at least partially abandoned by the Supreme Court,[6a] has not been without influence in shaping the decisions of that court, even in the more recent cases. The corporation is still something different from a physical person for purposes of service of process, and it will be the purpose of this paper to attempt to discover in what respects the corporation is to be likened to an individual for that purpose. The decisions of state courts will be referred to only as illustrative, or as bearing upon moot questions. The Supreme Court is the final arbiter of the question,[7] so that the governing rules, if any can be found, must be culled from its decisions.

Several theories have been put forward as forming the basis for the jurisdiction of a state court over a foreign corporation. Most of them have required exceptions and fictions to support the structure of cases built upon them. Other theories attempt to find an all-inclusive rule which will include every decided case, and at the same time serve as a yardstick for the proper measurement of future cases. Whether any such all inclusive rules are necessary, or even desirable, will be later discussed.

It having been early determined that the corporation could exert acts outside the state of its incorporation through its agents and by the rule of comity,[7a] it seemed not a far step to hold that the corporation might be sued in the state when it was there operating

[6a] It was early thought that a state statute authorizing a corporation to do business in the state had the effect of giving that corporation a sort of quasi-local character. See the remarks of Justice Swayne in *Railroad Co. v. Harris* (U. S. 1870) 12 Wall. 65, 82. See also *Philadelphia & Reading Ry. v. McKibben* (1916), 243 U. S. 264, 265; *Bank of America v. Whitney Bank* (1923), 261 U. S. 171. For an expression of the modern view of the Supreme Court on the point see the remarks of Brandeis, J., in *Bank of America v. Whitney Bank*, quoted in Note 19a, *infra*.

[7] *Philadelphia & Reading Ry. v. McKibben* (1916), 243 U. S. 264.

[7a] *Bank of Augusta v. Earle* (U. S. 1839) 13 Pet. 519.

through its agents. There was a considerable conflict in the state courts as to whether this could or could not be done, and it was generally supposed that the common law provided no means of serving process on a foreign corporation. Statutes were passed for the purpose of remedying this defect and authorizing service upon the agents of the foreign corporation.[8] The question finally came before the Supreme Court in the case of *LaFayette Insurance Co. v. French*[9] where the Supreme Court's first theory of jurisdiction over foreign corporations was enunciated by Justice Curtis. It being postulated that the state could exclude the foreign corporation[10] it followed that it might allow the corporation to enter subject to conditions. If the state made one of those conditions a subjection to the jurisdiction of the courts of the state, such condition was perfectly proper, provided that the condition was not calculated to deprive the corporation of due process of law,[11] and the foreign corporation by coming into the state and doing business there must be deemed to have consented to those conditions, for by such consent alone it could have legally transacted business in the state. In other words, even though the corporation was still regarded as absent from the state, jurisdiction could be obtained because of a previous implied consent. The objections to this theory are many. In the first place, it is incredible that a corporation still be regarded in law as non-existent outside the jurisdiction creating it. It is notorious that there is not always any necessary connection between the state where the corporation holds its charter, and that where it carries on its business. To say that a Delaware corporation whose only business is the operation of a factory in Illinois exists only in Delaware is absurd.

If the consent of the foreign corporation be a real one (evidenced by actions which speak more forcefully than words), as has been argued by Mr. Beale,[12] then it would follow that any service prescribed by the statute of the state would be sufficient to gain the approval of the Supreme Court. That, however, is not the case,

[8] Henderson, The Position of Foreign Corporations in American Constitutional Law, Cambridge, 1918, pp. 77-81.

[9] (U. S. 1855) 18 How. 404.

[10] *Paul v. Virginia* (U. S. 1868), 8 Wall. 168. Generally see, Henderson, *op. cit.*, Chap. VI.

[11] See the remarks of Curtis, J. in *Lafayette Insurance Co. v. French* (U. S. 1815), 18 How. 404, 407. See also *Hanover Fire Insurance Co. v. Carr* (1926), 47 Sup. Ct. 179.

As to the doctrine of unconstitutional conditions see Henderson, *op. cit.*, Chap. VIII.

[12] Beale, *Foreign Corporations*, Sec. 266.

for in a series of decisions following *LaFayette Insurance Co. v. French, supra,* it was determined that in order for the statute to meet due process, two essentials must be provided for:

(1) The company must be doing business in the state at the time of service.[13]

(2) And the agent served must bear a sufficiently close relation to the corporation.[14]

Further, the implied consent is limited to causes of action arising out of business done in the state.[14a] It is therefore impossible to sustain any theory of real consent. Judge Hand, in the case of *Smolik v. Philadelphia & Reading Coal & Iron Co.*,[15] frankly recognizes the fictitious character of the consent, and says that the court, in causes of action arising within the state, simply implies the consent because it is reasonable and just to do so. If the Constitution still insists upon personal service within the state as essential to jurisdiction, and if the Supreme Court still considers that a corporation can have no existence outside the state of its creation, then the theory of Judge Hand means that the court may avoid an acknowledged constitutional limitation by the simple expedient of assuming a fact which it knows is untrue.[16]

There is yet another theory upon which jurisdiction might be based, but which means that the idea that a corporation cannot exist outside the state creating it must be cast overboard. The theory is that a corporation, by doing business in a state, is "present" there,

[13] *Lafayette Insurance Co. v. French* (U. S. 1815), 18 How. 404; *St. Clair v. Cox* (1882), 106 U. S. 350; *Connecticut Mutual Life Insurance Co. v. Spratley* (1899), 172 U. S. 602; *Conley v. Matheison Alkali Works* (1903), 190 U. S. 406; *Kendall v. Automatic Loom Co.* (1905), 198 U. S. 477; *Green v. C. B. & Q. Ry.* (1907), 205 U. S. 530; *Commercial Mutual Accident Co. v. Davis* (1909), 213 U. S. 245; *Hunter v. Mutual Reserve Life Insurance Co.* (1910), 218 U. S. 573; *International Harvester Co. v. Kentucky* (1914), 234 U. S. 579; *Riverside Mills v. Menefee* (1915), 237 U. S. 189; *Washington-Virginia Ry. v. Real Estate Trust* (1915), 238 U. S. 185; *Philadelphia & Reading Ry. v. McKibben* (1916), 243 U. S. 264; *Toledo Railways etc. Co. v. Hill* (1917), 244 U. S. 49; *Meisukas v. Greenough Coal Co.* (1917), 244 U. S. 54; *Chipman v. Jeffery Co.* (1920), 251 U. S. 373; *Rosenberg Bros. & Co. v. Curtis-Brown Co.* (1922), 260 U. S. 516; *Bank of America v. Whitney Bank* (1923), 261 U. S. 171; *Cannon Manufacturing Co. v. Cudahy* (1924), 267 U. S. 333; *James-Dickinson Manufacturing Co. v. Harry* (1927), 47 Sup. Ct. 308.

[14] *Connecticut Mutual Life Insurance Co. v. Spratley* (1899), 172 U. S. 602, 610; *Lumberman's Insurance Co. v. Meyer* (1905), 197 U. S. 407; *Philadelphia & Reading Ry. v. McKibben* (1916), 243 U. S. 264, 265; *Lafayette Insurance Co. v. French* (1855), 18 How. 404, 407.

[14a] See note 69 *infra.*

[15] (D. C., S. D., N. Y., 1915), 222 Fed. 148.

[16] Cf. Henderson, *op. cit.*, p. 96.

and therefore amenable to process as any other legal person within the jurisdiction.[17] The English courts have found no difficulty in taking jurisdiction over a foreign corporation doing business in the realm, by service upon one of the chief agents of the corporation there.[18] This is on the theory that the corporation is there and thus amenable to service through its agent. At least one American case[19] is seemingly to be explained on no other ground, and there have been dicta in Supreme Court cases, particularly recent ones, supporting the theory.[19a]

Though this theory seems more satisfactory than either the real consent or the implied consent theories, it has not escaped criticism.

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[17] E.g. Córdoza, J., in *Tauza v. Susquehana Coal Co.*, 220 N. Y. 259, 267:
"We are here to say, not whether the business is such that the corporation may be prevented from being here, but whether its business is such that it *is* here. If in fact it is here, not occasionally or casually, but with a fair measure of permanence and continuity, then, whether its business is interstate or local, it is within the jurisdiction of our courts."
The theory is also supported by Cahill in 30 Harv. Law Rev. 676, cited *supra*, note 1; and Henderson, *op. cit.*, Chap. V.

[18] Westlake, Private International Law, 7th ed., London, 1925, p. 392. See especially *Nutter v. Messageries Maritimes*, 54 L. J. (Q. B.) 527; *Newby v. Van Oppen & Colt's Patent Firearms Co.* (1872), 7 L. R. (Q. B.) 293; *Haggin v. Comptoir d'Escompte de Paris* (1889), 23 Q. B. D. 519; *Insurance Co. v. Societa di Navigazione etc.* (1914), 111 L. T. 97; and *Dunlop Tyre Co. v. Actien. für Motor etc.* (1902), 86 L. T. 427. The rule is the same even though the cause of action arose abroad. *Logan v. Bank of Scotland* (1904), 2 K. B. 495; *Lhoneux, Limon et Cie v. Hongkong Banking Co.* (1886), 33 Chan. Div. 446.

[19] *Barrow Steamship Co. v. Kane* (1898), 170 U. S. 100.

[19a] ". . . The other question as to the presence of the corporation within the jurisdiction of the court in which it was sued raises more difficulty. A long line of decisions in this court has established that in order to render a corporation amenable to service of process in a foreign jurisdiction it must appear that the corporation is transacting business in that district to such an extent as to subject it to the jurisdiction and laws thereof. . . ." Day, J. in *St. Louis, S. W. Ry. v. Alexander* (1913), 227 U. S. 218, 226.
". . . A foreign corporation is amenable to process to enforce personal liability, in the absence of consent, only if it is doing business within the State in such manner and to such extent as to warrant the inference that it is present there. . . ." Brandeis, J. in *Philadelphia & Reading Ry. v. McKibben* (1916), 243 U. S. 264.
". . . The sole question for decision is whether, at the time of the service of process, the defendant was doing business within the State of New York in such a manner and to such an extent as to warrant the inference that it was present there." Brandeis, J., *in Rosenberg Bros. & Co. v. Curtis-Brown Co.* (1922), 260 U. S. 516, 517.
". . . The jurisdiction taken of foreign corporations, in the absence of statutory requirement or express consent, does not rest on the fiction of constructive presence, like *qui facit per alium, facit per se.* It flows from the fact that the corporation itself does business in the State or district in such a manner and to such an extent that its actual presence there is established . . ." Brandeis, J., in *Bank of America v. Whitney Bank* (1923), 261 U. S. 171, 173.

The theory of presence, it is said,[20] cannot support the cases which allow service upon an agent, as to causes of action arising within the state, even though the corporation has withdrawn from the jurisdiction.[21] These cases, it may be answered, have nothing to do with any conflict of laws rule, but are concerned entirely with the police power of the state. *Hess v. Pawloski* has not destroyed the conflicts rule as to natural persons; it has simply established that in proper cases the state may exercise its police power to overcome a conflict of laws rule, even though that rule may have previously had the protection of the due process clause of the Constitution. We would not cast aside the general rule that private property may not be taken without "just" and "previous" compensation simply because we have learned from experience that the state can in certain cases do so. We state the normal rule and explain the legalized non-observance of it as an exercise of the police power.

A second, and stronger, objection is that the "presence" of the corporation is a fiction and therefore open to the same objections as the consent theory.[22] When it is replied that the corporation can as well be "present" in the foreign state as in its home state, the critic simply answers that presence is not the basis of jurisdiction—the point he set out to prove.[23] A better answer, it is submitted, would have been to attack the "presence" of the corporation anywhere. Certainly if it be admitted that a corporation is "present" in any real sense in the state to which it owes its charter it may, by doing the same acts in another state, become just as fully "present" there. Whether or not a corporation can be conceived as "present" *anywhere* will depend largely upon one's turn of mind, and it would therefore be unwise to dismiss as impossible the idea of a corporation being present anywhere. The writer has no trouble in visualizing the corporation as "present" in several different places at the same time, but must admit the possibility of an entirely rational difference of opinion on the point. Much will depend upon one's

[20] Scott, *Jurisdiction Over Non-Resident Motorists,* 39 Harv. Law Rev. 563, 577.

[21] The only Supreme Court case cited by Mr. Scott is *Mutual Reserve Fund Life Ass'n. v. Phelps* (1903), 190 U. S. 147. In that case the court found that the corporation was still doing business in the State (at p. 157). Cf. *Hunter v. Mutual Reserve Life Ass'n.* (1910), 218 U. S. 573. Since the article appeared, however, the Supreme Court has decided a case supportable on no other ground. *American Express Co. v. Royster Guano Co.* (1927), 47 Sup. Ct. 355.

[22] Scott, article cited, p. 576.

[23] *Ibid.,* p. 577.

definition of a corporation. If it be thought of as an abstract, metaphysical creature of the law, nowhere visible to the naked eye, it is futile to talk in terms of "presence." The very word "presence" has become so attached to the actual physical person that its use in another connection is bound to cause dissent. The writer is inclined to look upon a corporation as the sum total of a group of individual persons legally bound together for the same purposes. The employee would seem as much a part of the corporation as the stockholder or the officer. When the activity of the group as such is visible, it is not difficult to believe that the corporation is present, i.e. manifesting its existence in a manner capable of being perceived by the senses. Certainly the writer would not admit that the presence of the corporation is a pure fiction. What he does admit is that there can be a reasonable difference of opinion as to the connotation of the words "corporation" and "presence." The statement so often heard that "two and two make four" might be challenged as a fiction if we desired to carry verbal criticism to its extreme. Certainly the "two and two" statement is not actually demonstrable as an abstract statement. It gains its validity through the general agreement that two and two will be considered as always totalling four. Less agreement might be had on the statement that $2 \times 1 = 2$. It is even algebraically demonstrable that $1 = 0$. When we leave the so-called exact sciences, terminology becomes less and less accurate, until it is well always to agree in argument upon fairly definite meanings of terms frequently used.[24] If it be said that certain activities by individuals, which seem to be part of what one person calls a corporation, is not a manifestation of the corporation's "presence," then an agreement upon the presence or non-presence of the supposed corporation can be reached only by an agreement upon the terms used.

The Supreme Court on several occasions has said that a corporation may be "present" in a state by doing a sufficient amount of business there to manifest such "presence."[24a] To this it has been said that a corporation cannot be "present" by doing business because an individual cannot be "present" by doing business.[25] Here again only the purely personal connotation of the word is considered. Why not take as an analogy the tracks of the Pennsylvania Railroad—

[24] See Walter W. Cook, *Scientific Method and the Law.* Reprinted from the *Johns Hopkins Alumni Magazine,* March, 1927, Vol. XV, No. 3.

[24a] See note 19[a] *supra.*

[25] Scott, article cited, p. 576.

they cross several states and are "present" in each of them, yet are so welded together as to make a continuing whole. Would it be said that the track was "present" only in the state of its beginning?

Since the "presence" theory may be acceptable to some without convincing all, it may be worth while to look further for a satisfactory theory. Mr. Fead, after criticising the presence theory, offers as the soundest rule—

"that a foreign corporation by doing business within a state submits itself to the laws of that state which may be reasonably applied to it, and to the jurisdiction of the state so far as the laws of the state regulating the exercise of that jurisdiction are reasonable."[26]

It would seem that Mr. Fead, in his view that the corporation, by doing business in a state, "submits" to the reasonable jurisdiction of the state, is guilty of the same fault as he properly criticizes in the consent theory. Little difference is perceived in implying a submission on the part of the corporation and implying a consent. In either case the major postulate seems to be that any jurisdiction exercised by the state over a foreign corporation is extraordinary, and that some actual or implied manifestation of willing is necessary on the part of the corporation. Suppose the corporation refuses to submit—what then? There is just as little evidence of submission on the part of the corporation as of its consent to the jurisdiction. The many cases which corporations have carried to the Supreme Court are evidence that they do not always submit. The state, it is submitted, *imposes* its jurisdiction in all cases—on natural persons and corporations alike—and the only remedy open to the corporation is to invoke external pressure upon the state through the Supreme Court to cause the imposition to be removed.

More recently, Professor Scott has offered the rule that—

". . . if a state may, without violating any constitutional limitation, forbid the doing of certain kinds of acts within the state unless and until the person doing such acts has consented to the jurisdiction of the courts of the state as to causes of action arising out of such acts, the state may validly provide that the doing of such acts shall subject him to the jurisdiction of the courts of the state as to such causes of action."[27]

[26] Fead, *Jurisdiction Over Foreign Corporations*, 24 Mich. Law Rev. 633, 637.
[27] Scott, article cited, p. 585.

This, in effect, is the rule stated by the Supreme Court for determining the proper limits of the state's power to tax. In *Provident Savings Ass'n. v. Kentucky*,[28] Justice Hughes said:

"And we cannot doubt that the question whether the state is taxing the corporation for a privilege not granted, that is, whether the acts done by the corporation at the time to which the tax relates are of such a nature as to subject it to local authority on the ground that it is doing acts which can only be done with the permission of that authority, is a Federal question."[29]

While the rule suggested by Professor Scott would include most cases, it is doubtful if cases like *International Harvester Co. v. Kentucky*[30] would fall within it. There the business done was purely interstate in character, and the state could not constitutionally have forbidden the doing of those acts, yet the state courts were allowed to take jurisdiction as to causes of action arising out of those acts. So in the case of *Provident Savings Ass'n. v. Kentucky*,[31] though it was held that the state could not constitutionally forbid the insurance company from continuing policies already written,[31a] the jurisdiction of the state courts as to causes of action arising out of such business was upheld in *Connecticut Mutual Life Insurance Co. v. Spratley*.[32] It appears, then, that the state may exercise a certain jurisdiction over foreign corporations as to acts it could not constitutionally prevent.

Beyond this, it is believed that the formula suggested says nothing more than that the state may exercise jurisdiction in a manner which would otherwise be unconstitutional if the action falls within the police power. The formula suggested tends to cloud the real question, and to insinuate a pervading simplicity which does not exist. The formula proposed seems an unnecessarily roundabout manner of getting at the heart of a doubtful case—i.e. is this assumption of extraordinary jurisdiction within the police power of the state?

It is believed that a great deal of harm has been done to the orderly development of the law in this particular by the continuing idea of corporate personality, and the resultant attempt to apply to

[28] (1915) 239 U. S. 103.
[29] *Ibid.*, p. 112.
[30] (1914) 234 U. S. 579.
[31] *Supra*, note 28.
[31a] Cf. *Allgeyer v. Louisiana* (1897), 165 U. S. 578.
[32] (1899) 172 U. S. 602.

it, not mere analogies to the natural person, but terms and rules which have always had a purely personal connotation.[33] As has been noted above, the theory of corporate personality has resulted in the application of the personal term "presence" to it with the result that the cases seem comprehensible to some and not to others. Surely personality is not a necessary adjunct of the corporation. The courts when adopting that theory could as well have adopted some other. The view that the life of the corporation depends always upon the continued life of the creating state is belied in fact by the recent cases asserting jurisdiction over Russian corporations despite the fact that they had been dissolved by the Soviet government.[34]

Much of the confusion surrounding the theory of jurisdiction over foreign corporations comes, it is believed, from the underlying notion seemingly prevalent that the exercise of *any* jurisdiction by a state over a foreign corporation is an extraordinary and anomalous thing in the law, to be explained only by fictions, implications and sonorous analogies too literally applied. There must have been a time when the jurisdiction of a court over a natural person seemed an awesome thing, and it is doubted that any rule, full grown, was torn from the skies by the judges to regulate the manner and limitations of bringing persons before the court. A practice begun and continued grew to the proportions of law, which later received a constitutional sanction in America. It is believed that the same sort of development may be traced in the decisions of the Supreme Court attempting to outline the method and limitations of bringing a foreign corporation before the court.

The notion that the corporation could only exist in the home state made it seem that any attempt to exercise jurisdiction over the foreign corporation was an onslaught against the settled rule forbidding the extraterritorial exercise of jurisdiction. It is believed that by refusing to further countenance these outworn theories, supported only by an ancient dictum, much will be gained in understanding our problem. It is believed further that the cases decided by the Supreme Court present a fairly consistent stream of jurisprudence from which

[33] See a comment by F. S. Philbrick in 20 Ill. Law Rev. 281.

[34] See 34 Yale Law Journal, 328. Furthermore, a group operating together for a common purpose does not necessarily have to be recognized by the State as such to be amenable to suit. *Coronado Coal Co. v. United Mine Workers of America* (1922), 259 U. S. 344; *Taff Vale Ry. v. Amalgamated Society of Railway Servants* (1901), A. C. 426.

emerges a workable and easily comprehensible theory of jurisdiction over foreign corporations. The cases, it is submitted, may be properly divided for the sake of convenience into "normal" and "abnormal" cases, despite the fact that the word "normal" may be the subject of verbal quibble.

First it is postulated that ultimately the state *imposes* jurisdiction in all cases, without attempting to discover the origins of the authority thus exerted. The power of the state is limited, however, by international law, and by the Constitution. The sanction of the latter, being evident and continuous in its operation, alone will be considered.

It will probably be admitted that the usual method of service upon an individual is by handing him a copy of the process while he is within the state attempting to exercise jurisdiction over him.[35] This may be characterized as the "normal" method of service for the rendering of a personal judgment. However, the person may consent to that jurisdiction without the usual formality. Other methods are possible because of the recognized power over—

(1) Its citizens, wherever they may be.[36]
(2) Persons domiciled within the state, though they be temporarily abroad,[37] and because of—
(3) The power of the state to protect its own legitimate interests within constitutional limitations.[38]

When corporations first came before the courts in America, those courts were somewhat undecided as to the proper manner of bringing such organizations into court, the greatest trouble being with foreign corporations. It was thought by some courts that the common law provided no method for the court to get jurisdiction over a foreign corporation, and that a statute was necessary.[39] The doctrine of the Supreme Court that the corporation could not exist outside the creating state, and the ruling that persons owing no allegiance to a state were immune from the jurisdiction of that state unless caught personally within its boundaries, presented seemingly insuperable constitutional obstacles to the court's taking jurisdiction over any

[35] *Western Loan Co. v. Butte &c. Co.* (1908), 210 U. S. 368.
[36] *New York Life Insurance Co. v. Dunlevy* (1915), 241 U. S. 518, but compare *Mabee v. McDonald* (1916), 243 U. S. 90.
[37] *Ousley v. Lehigh Valley &c. Co.* (C. C., E. D., Pa. 1897), 84 Fed. 602.
[38] *Hess v. Pawloski,* note 1, *supra.*
[39] Henderson, *op. cit.,* pp. 77-78.

foreign corporation. These difficulties were overcome, however, by the passage of statutes which were upheld under the ingenious theory of consent. The first acts were carefully framed to avoid constitutional difficulties,[40] but many modern statutes simply provide for service as upon domestic corporations, with added provisions for cases where that method is impossible.[41]

The only way that service may be had upon any corporation anywhere is by service upon an agent. Formerly service could be had only upon the principal officer,[42] but with the growth in size and complexity of corporations, service upon any agent bearing a sufficiently close relation to the corporation to meet the constitutional requirements as to notice was allowed. Most of the states regulated the service on corporations by statute, so that the question of whether or not service could be had in the absence of an authorizing statute became largely academic.

Thus it became the general custom to get jurisdiction over a corporation by service upon one of the agents through whom it manifested its existence. This manifestation of existence has been characterized by the Supreme Court as "doing business."[43] The term is obviously an expansive one, and it appears from the decisions that a certain volume of "doing business" is required before the state may acquire jurisdiction.[44] In recent cases it is usually said that the business must be done in "such a manner and to such an extent that its (the corporation's) presence there is established."[45] As has been previously noted, the word "presence" as applied to a corporation is

[40] *Ibid.*, p. 80.

[41] E.g. Mass. Stats. 1913, Chap. 257, Sec. 1:

"In an action against a foreign corporation having its principal or a usual place of business within this commonwealth, or which is engaged in or soliciting business in this commonwealth, permanently or temporarily, and with or without a usual place of business therein, service of the summons or writ may be made according to the provisions of section thirty-six of chapter one hundred and sixty-seven of the Revised Laws for service in actions against domestic corporations; and such service shall be of the same effect and validity as if made upon the commissioner of corporations."

[42] Henderson, *op. cit.*, p. 77.

[43] As to what constitutes doing business see Osborne, Arising out of Business Done in the State, 7 Minn. Law Rev. 380; 31 Yale Law Journal 205; and a pamphlet entitled, What is Doing Business?, prepared by the Corporation Trust Co. See comments in 5 N. C. L. Rev. 159, 361; 6 N. C. L. Rev. 93.

[44] *Green v. C. B. & Q. Ry.* (1907), 205 U. S. 530; *St. Louis, S. W. Ry. v. Alexander* (1913), 227 U. S. 218; *Bank of America v. Whitney Bank* (1923), 261 U. S. 171; *James-Dickinson Mfg. Co. v. Harry* (1927), 47 Sup. Ct. 308; and cf. *Hunter v. Mutual Reserve Life Ass'n.* (1910), 218 U. S. 573.

[45] Brandeis, J., in *Bank of America v. Whitney Bank* (1923), 261 U. S. 173.

objectionable to many—certainly it furnishes no complete objective test capable of the same application by everyone. As a matter of fact, it has long been the settled doctrine of the Supreme Court that the question of doing business must in each case be decided upon the facts of the particular case, and that the question is always a Federal one.[46] The use of the word "presence" is therefore unnecessary, and perhaps misleading, since it suggests an objective test where subjective tests are always used. An objective test seems impossible in these cases, and no reason is perceived why the subjective test may not continue to be properly employed.

If it be assumed that the foreign corporation is doing the sort of business which in the opinion of the Supreme Court brings the corporation within the jurisdiction of the state, no reason is perceived why the corporation would not be subjected to that jurisdiction for all causes of action that a natural foreign person in the state would be. The customary method of service on such a foreign corporation, as has been noted above, is by service upon one of the agents of the corporation representing it in the business done there. As was stated by the Supreme Court in *Peterson v. Chicago, Rock Island & Pacific Ry.*[47]

". . . it is essential to the validity of such service that the corporation shall be doing business within the state, and that the service be upon an agent representing the corporation with respect to such business."[48]

These are, it is submitted, the only constitutional essentials, i.e. the doing of business in the state at the time of service, and service upon an agent of the company representing it in such business. When these essentials are met, it has been the practice of the Supreme Court to sustain the jurisdiction of the state courts to the same extent as if foreign individuals were involved. Thus the rule that transitory causes of action may be sued upon wherever a court may be found with jurisdiction over the defendant and the subject matter applies as well to a foreign corporation as to a foreign indi-

[46] *Washington-Virginia Ry. v. Real Estate Trust* (1915), 238 U. S. 185; *St. Louis S. W. Ry. Co. v. Alexander* (1913), 227 U. S. 218.
[47] (1907) 205 U. S. 364.
[48] *Ibid.*, p. 394.

vidual.[49] And no statute specifically authorizing a particular method of service in such jurisdiction is necessary.[50]

Both Fead and Scott maintain the view that service upon the representative agent of a foreign corporation doing business within the state is probably not due process of law, as to causes of action arising outside the state.[51] The opinion is based upon their interpretation of *Simon v. Southern Ry.*[52] and *Old Wayne Mutual Life Ass'n. v. McDonough,*[53] and is tinctured seemingly by a general view that jurisdiction over the foreign corporation is unusual and to be explained in any case only upon some well recognized necessity of the state. The decisions being based, in their opinion, upon the hardship to the defendant corporation, the same reasoning would apply to invalidate service upon the voluntary agent. It must be remembered that in the *Simon* and *Old Wayne* cases the service was upon a state officer designated by statute, which type of service would not come within the "normal" rule. The court therefore approached the problem from the standpoint of the state's police power, an approach which would not have been necessary had the facts fallen within the "normal" rule as stated in *Peterson v. Chicago, Rock Island & Pacific Ry., supra.*

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[49] Day, J., in *A. T. & S. F. Ry. v. Sowers* (1909), 213, U. S. 55.
" . . . An action for personal injuries is universally held to be transitory, and maintainable wherever a court may be found that has jurisdiction of the parties and the subject matter." See also the following cases: *Stewart v. B. & O. Ry. Co.* (1897), 168 U. S. 445; *Northern Pacific Ry. v. Babcock* (1894), 154 U. S. 190; *New York &c. Ry. v. Estill* (1893), 147 U. S. 591; *Dennick v. Railroad Co.* (1880), 103 U. S. 11; *Peterson v. Chicago, Rock Island & Pacific Ry.* (1907), 205 U. S. 364; *In re Hohorst* (1893), 150 U. S. 653; *Reynolds v. M. K. & T. Ry. Co.* (1920), 255 U. S. 565. Cf. *Haskell v. Aluminum Co. of America* (D. C. Mass.), 14 F (2d) 864.

[50] *Barrow Steamship Co. v. Kane* (1898), 170 U. S. 100; *Connecticut Mutual Life Insurance Co. v. Spratley* (1899), 172 U. S. 602, 618; *Railroad Co. v. Harris* (1870), 12 Wall. 65.

[51] Scott, article cited, p. 579, note 40; Fead, article cited, pp. 646-647.
Two cases decided before the Supreme Court passed on *Reynolds v. M. K. & T. Ry., supra,* took the view that the decision in the *Simon* case and the *Old Wayne* applied to the service upon a voluntarily appointed agent. *Takacs v. Philadelphia & Reading Ry.* (S. D., N. Y. 1915), 228 Fed. 728; *Fry v. Denver & Rio Grande Ry.* (N. D. Cal. 1915), 226 Fed. 893. The opposite view, however, was taken in the other jurisdictions where the matter came up. *Hoffman v. Railroad Co.* (D. C. 1916), 44 App. D. C. 419; *El Paso & S. W. Ry. v. Chisolm* (Tex. 1915), 180 S. W. 156; *Tauza v. Susquehana Coal Co.* (1917), 220 N. Y. 259, 115 N. E. 915; *A. T. & S. F. Ry. v. Weeks* (W. D. Tex. 1918), 248 Fed. 970; *Reynolds v. M. K. & T. Ry.* (1917), 228 Mass. 584, 117 N. E. 913, affirmed (1920) 255 U. S. 565; *Rishmiller v. Denver & Rio Grande Ry.* (1916), 134 Minn. 261; 157 N. W. 272.

[52] (1914) 236 U. S. 115.

[53] (1906) 204 U. S. 8.

Both Fead and Scott state that the Supreme Court has not yet passed upon the question, entirely overlooking the case of *Reynolds v. M. K. & T. Ry.*,[54] where service upon the voluntarily appointed agent of the corporation doing business in the state was upheld, even though the cause of action arose outside the state. In that case the suit was upon certain notes executed and payable outside of Massachusetts. Service was upon the general agent of the corporation within the state in conformity with the Massachusetts statute, which provided simply that foreign corporations doing business in the state were subject to service in the same manner as domestic corporations.[55] As was later said, however, by Justice Brandeis in *Davis v. Farmer's Coöperative Co.*,[56] the only constitutional objection asserted in the *Reynolds* case was that of due process, it being intimated that a service perfectly valid under the due process clause might fall as a violation of the commerce clause.

The decision of the Supreme Court in the *Reynolds* case simply followed the previous practice as exemplified in *Barrow Steamship Co. v. Kane, supra; Bennick v. Railroad;*[57] *In re Hohorst;*[58] *New York &c. Ry. v. Estill;*[59] and *Railroad Co. v. Harris.*[60]

In the *Barrow Steamship Co.* case the suit was against a British corporation by a New Jersey citizen for a tort committed in Irish territorial waters. Service was upon the regularly appointed agents of the defendant in New York and suit begun in the Federal district court there. Under the New York statute such service was expressly negatived, and had the defendant been an American corporation the Federal Judiciary Act would have applied to prevent the Federal court from taking jurisdiction.[61] This Federal act, however, was held not to apply to other than American corporations. There was therefore no express statute providing for the service upon the

[54] (1920) 255 U. S. 565. A *per curiam* opinion affirming two cases below. *Reynolds v. M. K. & T. Ry.*, 224 Mass. 379, 113 N. E. 413; and 228 Mass. 584, 117 N. E. 913. The plaintiff's brief shows that the matter of the cause of action arising outside of Massachusetts was fully argued before the court.

[55] The facts are given in the decision below. 228 Mass. 584, 117 N. E. 913.

[56] (1923) 262 U. S. 312, 318. It may be noted that the plaintiff in the *Reynolds* case, *supra*, was a citizen of Massachusetts.

[57] (1880) 103 U. S. 11.

[58] (1893) 150 U. S. 653.

[59] (1893) 147 U. S. 591.

[60] (U. S. 1870) 12 Wall. 65.

[61] See *In re Keasby & Mattison Co.* (1895), 160 U. S. 221; and *Galveston &c. Ry. v. Gonzales* (1894), 151 U. S. 496. The Federal Judiciary Act was held inapplicable to an alien corporation, (i.e. one formed outside the United States) in *In re Hohorst* (1893), 150 U. S. 653.

agent, yet the jurisdiction of the court was upheld on the general grounds that a statute authorizing service upon a regularly appointed agent was not necessary for that method of service to be properly employed. The court had general jurisdiction over the subject matter; the corporation was doing business within the jurisdiction; service was upon the authorized agent carrying on the business there —all that was essential for the jurisdiction of the court to attach.

In *Dennick v. Railroad Co., supra,* both parties were foreign to the jurisdiction and the cause of action arose elsewhere, yet the jurisdiction of the court was not questioned. The court said:

"Wherever, by either the common law or the statute law of a state, a right of action has become fixed and a legal liability incurred, that liability may be enforced and the right of action pursued in any court which has jurisdiction of such matters and can obtain jurisdiction of the parties."[62]

In the instant case the rule as to transitory causes of action was thus specifically held to apply to a defendant foreign corporation.

In re Hohorst, supra, presents a case similar in facts to the *Barrow Steamship Co.* case. The action was for infringement of patent; the defendant a German corporation; service upon the voluntarily appointed New York agents. Under the Federal Judiciary Act the court could not have taken jurisdiction, for the corporation was not an "inhabitant" or "resident" of the district within the meaning of the act. The court disposed of the difficulty by holding that the act was applicable only as to corporations of one of the states of the United States. The jurisdiction was sustained on the ground that the corporation was doing business in the district and the agent served was a proper one under the general rule. Here again the methods of service had the sanction of no express statute, the court taking jurisdiction because of the existence of the essentials announced in the *Barrow* case.

In *New York &c. Ry. v. Estill, supra,* the defendant was a New York corporation, and service was had upon the general agent of the defendant in St. Louis. The cause of action arose out of a tort committed in Ohio. The company was found to be doing business in Missouri, but had appointed no particular agent to receive process of service. The jurisdiction was sustained.

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[62] (1880) 103 U. S. 11, 18.

Likewise, the jurisdiction of the courts of the District of Columbia was sustained with respect to a cause of action arising out of a tort committed in Maryland in *Railroad Co. v. Harris, supra.* Service was upon the president of the corporation who transacted its business within the District. The only District of Columbia statute possibly applicable simply authorized the defendant to do business within the District. It having done so, jurisdiction was properly got by serving the president within the jurisdiction.

In three of these cases there was no statute outlining a method of service, plainly indicating that in the Supreme Court's view no such statute is essential. The five cases outlined above, it is submitted, are representative "normal" ones, and by no means anomalous. From them we may deduce the following:

(1) The state has general jurisdiction over a foreign corporation doing business within the state through its regularly appointed agents.
(2) The normal method of bringing such a corporation into court, either by statute or otherwise, is by service of process on the regularly and voluntarily appointed agent engaged in that business within the jurisdiction.

When the state has general jurisdiction over the foreign corporation, and the latter is properly brought into court as specified in (2), it is immaterial, in transitory causes of action, where the cause of action arose. The general rules applicable to a "person" properly before the court would alone be relevant.

With this view of the "normal" case in mind, we may pass to an examination of the "abnormal" cases. As has been said by the Supreme Court, jurisdiction is a matter of force,[63] and the state may impose it up to the point where some constitutional inhibition intervenes to restrain the activity of the state. We have previously noted the "normal" and "abnormal" jurisdiction imposed upon natural persons. With respect to corporations we have added to the inhibitions of the due process clause those of the commerce clause.[64]

It will not be necessary to consider cases arising under statutes providing simply for service upon an agent of the corporation acceptable to the Supreme Court, for they would fall under the "normal" rule. Many statutes, however, provide for service either upon some person wholly unconnected with the corporation, or upon some

[63] *Michigan Tran. Co. v. Ferry* (1912), 228 U. S. 346, 353.
[64] See *Davis v. Farmer's Co-operative Co.* (1923), 262 U. S. 312, and cf. *Sioux Remedy Co. v. Cope* (1914), 235 U. S. 197.

employee of the corporation whose relation to the latter is in the nature of a servant rather than an agent.[64a] Or the statute may provide for this type of service even after the corporation has ceased to do business in the state. In cases arising under these statutes, jurisdiction must be upheld, if at all, under the police power. The limitations on this exercise of the police power by the state have been sufficiently considered by the Supreme Court to make certain generalizations possible.

First, the state may not impose its jurisdiction upon a corporation which is not then doing, and which had never done, business within the state.[65] This, however, would probably not apply in cases where the corporation had expressly contracted to submit to jurisdiction even in such a case.[66]

Second, the state may properly provide for service upon a state officer unconnected with the corporation, if the company is doing business in the state.[67] It is probable, however, that if no duty were imposed upon such state officer to notify the corporation, the statute would be unconstitutional.[67a] If the corporation expressly appoints the state agent as its agent for service, the causes of action which may be heard by the state courts will depend on the construction of the statute.[68] But if the corporation does not expressly appoint the state agent to receive service, there is nothing to sustain the jurisdiction of the state save its bare power. In such case the state may constitutionally exercise that power only as to causes of action arising out of business done in the state.[69]

The same considerations would seemingly apply to statutes designating agents whose relation to the corporation is too remote to meet the constitutional requirements as to notice. Here, as in the case of the state agent, the state attempts to impose a relation not previously existing and against the will of the corporation. If the corporation makes an express appointment, it is bound by the terms of its con-

[64a] Cf. *Insurance Co. v. Societa de Navigazione etc.* (1914), 111 L. T. 97; and *Rendleman v. Niagra Sprayer Co.*, 16 F. (2d.) 122 for a consideration of who is an "agent."

[65] *Kendall v. American Automatic Loom Co.* (1905), 198 U. S. 477.

[66] Such is the implication of *Pennsylvania Fire Insurance Co. v. Gold Issue Mining Co.* (1917), 243 U. S. 93.

[67] *Hunter v. Mutual Reserve Life Ass'n.* (1910), 218 U. S. 573.

[67a] *See Simon v. Southern Ry.* (C. C. A. 5th.), 184 Fed. 959.

[68] *Pennsylvania Fire Insurance Co. v. Gold Issue Mining Co.* (1917), 243 U. S. 93.

[69] *Old Wayne Mutual Life Ass'n. v. McDonough* (1906), 204 U. S. 8.

tract,[70] but if no such appointment is made the power of the state is limited to causes of action arising out of business done in the state.

Though all the business done in the state may be in interstate commerce, the state still has general jurisdiction over the corporation.[71] Yet the fact that such business is all in interstate commerce places the additional limitation upon the state that the jurisdiction exercised by it must not impose an unreasonable burden upon interstate commerce. In *Davis v. Farmer's Coöperative Co.*,[72] a Minnesota statute attempted to impose jurisdiction as to *all* causes of action as a condition precedent to the foreign corporation's maintaining a mere soliciting agent in the state. This was held to be an unreasonable interference with interstate commerce and therefore invalid. That the statute simply went too far in its terms is indicated by the statement of Justice Brandeis that

"It may be that a statute like that here assailed would be valid though applied to suits in which the cause of action arose elsewhere, if the transaction out of which it arose had been entered upon within the state, or if the plaintiff was, when it arose, a resident of the state."[73]

That is, if there had been a reasonable connection between the statute and the state's police power, the interference with interstate commerce would not have been unreasonable.

Finally, the cases where the corporation attempts to revoke an appointment made for service, or where it ceases to do business in the state remain to be considered. The language of the Supreme

[70] *Smolik v. Philadelphia & Reading Coal & Iron Co.* (S. D., N. Y., 1915), 222 Fed. 148, and *Pennsylvania Fire Insurance Co. v. Gold Issue Mining Co.* (1917), 243 U. S. 93.

[71] *International Harvester Co. v. Kentucky* (1914), 234 U. S. 579.

[72] (1923) 262 U. S. 312. It is doubtful if the corporation was "doing business" here in view of the previous holdings of the court. Cf. *Green v. C. B. & Q. Ry.* (1907), 205 U. S. 530, where it was held that mere solicitation was not "doing business" of the nature required for jurisdiction.

[73] 262 U. S. 312, 316.

An attempt has been made to classify the cases in which the corporation should be held subject to the jurisdiction of the State, by using Mr. Beale's theory of "primary" and "secondary" obligations. This theory is used for the purposes of finding a basis for jurisdiction in more than one State. (Osborne, "Arising out of Business Done in the State," *7 Minn. Law Rev.* 380. See also Fead, article cited, p. 648). If the classification be limited to those cases here classified as "abnormal," it would doubtless serve a useful purpose, but if it be intended to apply the classification to all cases, then, it is submitted, the classification works from a premise which probably cannot be supported by modern cases—i.e. that any jurisdiction exercised by the State over a foreign corporation is a strange and anomalous thing, requiring in every case some sort of special explanation.

Court for a long time indicated that if the service and the doing of business were not coincident in time in all cases the jurisdiction would not be sustained. The language of the court changed in *Mutual Reserve Insurance Co. v. Phelps*,[74] though the court specifically held in that case that the company was still doing business in the state even though it had been theoretically ousted. It is believed that in every case prior to *American Express Co. v. Royster Guano Co.*,[75] the Supreme Court first found that the corporation was doing business in the state at the time of service before the jurisdiction was upheld. In the *Royster Guano Co.* case it appears that the defendant corporation had actually ceased to do business in the state, and service upon a state official was upheld on the ground that the cause of action arose within the state during the time when the corporation was doing business there. It is believed that such a result is sound, for it would seem clearly within the police power of the state to impose a continuing liability for acts done within its borders.

The same result is reached in cases where an actual appointment has been made and the appointment later revoked. The revocation will be valid as to causes of action arising outside the state,[76] but not as to those arising out of business done within the state.[77] Even though the appointed agent's authority is not revoked, when the corporation actually ceases to do business in the state the same rules seemingly apply.[78]

Thus, in the so-called "abnormal" cases the validity or non-validity of the jurisdictional assumptions of the state will depend upon whether or not the jurisdiction complained of is reasonably designed to protect the legitimate interests of the state, and therefore a proper exercise of the police power.

A strong argument has been made, upon grounds of justice and convenience, against the validity of service upon the voluntarily appointed agent of the corporation engaged in carrying on the latter's business within the state as to causes of action arising outside the state.[79] While granting that the rule may often operate to cause hardship on corporations, it is submitted that there are strong argu-

[74] (1903) 190 U. S. 147.
[75] (1927) 47 Sup. Ct. 355.
[76] *Mitchell Furniture Co. v. Selden-Breck Co.* (1921), 257 U. S. 184; *Hunter v. Mutual Reserve Life Ass'n.* (1910), 218 U. S. 573.
[77] *International Harvester Co. v. Kentucky* (1914), 234 U. S. 579.
[78] *Chipman v. Jeffery Co.* (1920), 251 U. S. 373.
[79] Read, Article cited, p. 650, note 63.

ments to be made on behalf of the plaintiff individual for the retention of the rule that transitory causes of action may be sued upon wherever jurisdiction may be got over the defendant and the subject matter. It is said that when a corporation does business in several states the plaintiff would have the privilege of choosing the jurisdiction most favorable to him. The argument, to be of any great weight, would have to assume that the state chosen by the plaintiff was not disposed to decide cases justly and legally—an argument which would probably find little favor with the Supreme Court. On the other hand, it is to be remembered that the corporation has the privilege of choosing the state of its incorporation. Ordinarily the jurisdiction most favorable to it would be chosen, and as a plaintiff, if our rule be denied, would in many cases be forced to go to that jurisdiction, it is plain that the argument of choice is capable of being used as to both parties.

The argument that the corporation would be put to great expense and inconvenience by having to transport documentary evidence and witnesses from one state to another also works both ways. The plaintiff cannot leave his home state for the trial of a cause of action abroad without incurring considerable of the same kind of extra expense, and the plantiff can no more compel the presence of foreign witnesses than can the corporation. In many cases, as will be later shown, this type of hardship would be forced on *both* parties if the rule as to transitory causes of action be denied application to corporations.

Suppose a Delaware corporation, doing business in New Mexico and Oklahoma is excluded from doing business in Texas for breach of anti-trust laws, and it actually does no business there. Its trucks carry materials between New Mexico and Oklahoma across the Texas Panhandle. X is negligently injured by one of the trucks, and Texas has no such statute as Massachusetts has for imposing liability within the state. Why should X be forced to go all the way to Delaware to sue the corporation, instead of being allowed to sue in the nearest state in which the defendant does business? It is difficult to see how the defendant would be benefitted by being forced to defend the action in a state where its only operations consist in the maintenance of transfer books. Both plaintiff and defendant would be highly inconvenienced, yet if the rule be discarded, such a result is inevitable.

We may suppose a Delaware corporation, whose only activity is the operation of a canning plant for food in Illinois. Food is shipped in interstate commerce to jobbers in Missouri. The food is tainted and causes a number of deaths in Missouri. The defendant corporation does no business there, so that the Missouri courts cannot get jurisdiction. What social purpose, it may be asked, is served by sending the representatives of the deceased to Delaware to bring their suits?

Or to take a case in contract, which may more often arise than the tort cases mentioned above. Suppose that an oil producing corporation is incorporated in New Jersey, and confines its operations to Texas, Oklahoma, and Kansas. The company borrows money in St. Louis and executes notes payable there. The notes are not paid. Any property which the plaintiff might attach as belonging to the company is located in one of the three states where the corporation does business, yet he would be forced to go to New Jersey to bring suit on the notes. He would then have to go to the further trouble and expense of bringing new actions in one of the states where the corporations property was located to get execution on his judgment. How much more simple for both parties if the action had been brought in one of the states where the company was doing business! Discard the rule, and in every case where the cause of action arose in a state where the foreign corporation did no business both parties would be forced to a jurisdiction which more often than not is but the fictive "domicile" of the corporation.

In all the cases above mentioned the corporation would be put to practically as much expense and inconvenience—perhaps more—as the plaintiff, for there would probably be nothing belonging to the corporation in its "home" state save its charter and transfer books. Both parties would be benefitted by the action being brought in the nearest state in which the corporation does business.

When it becomes evident that the rule may work hardship in both directions, we do not see that imperative consideration of public policy which alone would warrant the overturning of an established practice of the Supreme Court. It is submitted that the general policy of our law is to favor the individual as against the corporation when it appears that one of them must bear a loss or an inconvenience and both are equally innocent of wrong. A somewhat different policy might arise with reference to public service corporations, where the corporate earnings are limited in favor of the public.

This would be particularly so in cases like *Davis v. Farmer's Co-operative Co., supra,* where the utility was being operated by the government. In the subject here under discussion, it must be remembered that the corporation large enough to carry on business in a sufficiently large number of states to give an individual plaintiff any real choice, is usually large enough to maintain a legal department, or at least retain counsel to represent it generally, and is usually well prepared to meet and defend causes of action in any state where it does business. Further the corporation is in a position to distribute what little extra loss it may suffer from being forced to defend causes of action away from the state of its incorporation, while the individual plaintiff would have to bear alone the inconvenience and hardship that would result if he were forced to go to the corporation's home state to sue. When, in addition to the reasons just given, it appears that, in order to free the corporation from suits arising out of actions committed outside the jurisdiction in question, an established rule of the conflict of laws, and a long standing practice of the courts would have to be thrown overboard, we may well hesitate to subscribe to the arguments criticized above.

It is believed that just results will be reached if each fact case be approached as a "normal" or "abnormal" one. No fictions or implications need be resorted to. This sort of approach, it is believed, accounts for the difference in decision between the case of *Simon v. Southern Ry., supra,* and that in *Reynolds v. M. K. & T. Ry., supra.* In the former case, the method of service was an abnormal one, and the decision rested on a limitation of the state's police power; in the latter, the facts fell within the "normal" situation as previously described, and the police power of the state did not come into question, so there was no necessity for looking into the relative hardships or attempting to find some legitimate interest of the state which might properly be served by allowing the jurisdiction. The cases here spoken of as "abnormal" have nothing to do with the conflict of laws (the rules of which are illustrated by the cases called "normal"), but are concerned with the efforts of the state to abrogate rules of the conflict of laws which have been given constitutional sanction by the Supreme Court.