Louisiana Law Review

Volume 14 | Number 3
April 1954

Amenability of Foreign Corporations to Suit in Louisiana

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Amenability of Foreign Corporations to Suit in Louisiana

With the growth of corporate activities outside the state of incorporation, the Louisiana attorney is having increasingly more contact with the question of when a non-resident corporate defendant may be subjected to suit in Louisiana courts. At one time a foreign corporation could not be made amenable to suit in the state courts.[1] Economic conditions necessitated a retreat from that position. Now the legislatures of the various states have enacted measures allowing suits against foreign corporations. Such legislative authorizations are not without restraints, however. Any assumption of jurisdiction over a non-resident is subject to the jurisdictional requirements of the Federal Constitution.[2] It is the purpose of this comment to find out how the Louisiana statutory provisions as interpreted by our courts compare to the present United States Supreme Court decisions on the question of amenability of foreign corporations to suit in state courts.[3]

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treatment or for diagnosis with a view to treatment, and relevant to an issue of declarant's bodily condition;"

"(13) *Business Entries and the Like.* Writings offered as memoranda or records of acts, conditions or events to prove the facts stated therein, if the judge finds that they were made in the regular course of a business at or about the time of the act, condition or event recorded, and that the sources of information from which made and the method and circumstances of their preparation were such as to indicate their trustworthiness;"

"(26) *Reputation in Family Concerning Family History.* Evidence of reputation among members of a family, if the reputation concerns the birth, marriage, divorce, death, legitimacy, race-ancestry or other fact of the family history of a member of the family by blood or marriage;"

1. Bank of Augusta v. Earle, 13 Pet. 519, 588 (U.S. 1839). Early in the nineteenth century it was thought impossible to acquire jurisdiction *in personam* over a foreign corporation. Middlebrooks v. Springfield Fire Ins. Co., 14 Conn. 301 (1841); HENDERSON, THE POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW 77 (1918).

2. U.S. CONST. Amend. XIV, § 1; Pennoyer v. Neff, 95 U.S. 714 (1878). See also STUMBERG, CONFLICT OF LAWS 69 *et seq.* (2d ed. 1951).

The scope of this comment is limited to the amenability of foreign corporations to actions *in personam*. Any property of a foreign corporation may of course be the object of an action *in rem* under the doctrine of *Pennoyer v. Neff*. The Louisiana Supreme Court has held, however, that if the foreign corporation has qualified to do business in Louisiana, its property may not be proceeded against solely on grounds of non-residence. See Burgin Bros. and McCane v. Barker Baking Co., 152 La. 1075, 95 So. 227 (1922).

3. For the purposes of this comment a foreign corporation will be considered as any corporation which has not been chartered in Louisiana.

The pertinent Louisiana statute grants jurisdiction in suits against foreign corporations in the following circumstances:

(1) where a foreign corporation has appointed a local agent to receive service of process.[4]

(2) where a foreign corporation is required to have an agent, but such agent cannot be found or has not been appointed.[5]

(3) where the foreign corporation is not required to appoint an agent, but conducts business in Louisiana from which a cause of action arises.[6]

An analysis of each of these provisions will follow.

Foreign Corporations Which Have Appointed an Agent to Receive Service of Process

The chapter of the Revised Statutes[7] dealing with foreign corporations provides that all non-resident corporations desiring to do business in Louisiana shall file with the Secretary of State "the name of its agent in this state upon whom process may be served."[8] This is permissible under the holdings of the United States Supreme Court that a state may validly require corporations to appoint a local agent and consent to the jurisdiction of

4. LA. R.S. § 13:3471(5)(a),(b) (Supp. 1952).

5. LA. R.S. § 13:3471(5)(c) (Supp. 1952), provides:

"If the corporation, being one required by law to appoint and maintain an agent for service of process, has failed so to do, or such agent, if appointed, cannot be found, and the corporation has not established and maintained an office in the state, the officer charged with the duty of making the service, after diligent effort, shall make return to the court, stating the efforts made by him to secure service, and the reasons for his failure so to do, and thereafter, the judge, or in the event of his absence from the parish, the clerk, shall order service to be made on the Secretary of State. . . ." (The remainder of the statute provides procedure for obtaining substituted service on the Secretary of State.)

6. LA. R.S. § 13:3471(5)(d) (Supp. 1952):

"If the corporation is *not one required by law to appoint an agent for service of process but has engaged in business activities in this state* through acts performed by its employees or agents in this state, service of process in any proceeding on a cause of action resulting from or relating to such acts performed in this state or any taxes or other obligations arising therefrom may be made on any employee or agent of the corporation, over eighteen years old, found in this state, or in the event such employees or agents are no longer in this state or cannot be found, the officer charged with the duty of making the service, after diligent effort, shall make return to the court, stating the efforts made by him to secure service, and the reasons for his failure so to do, and thereafter, the judge, or in the event of his absence from the parish, the clerk, shall order service to be made on the Secretary of State. . . ." (Italics supplied.) (The rest of the statute provides the procedure to obtain valid service on the Secretary of State.)

7. LA. R.S. § 12:201 *et seq.* (1950).

8. LA. R.S. § 12:202(A)(1) (1950).

a state court as a prerequisite for letting a foreign corporation do business.[9]

If the potential corporate defendant has qualified to do business under the present Louisiana law obtaining a valid service of process is relatively simple. A list of all local agents for foreign corporations is kept by the Secretary of State.[10] Personal service on the appointed agent will generally suffice to subject the defendant to the jurisdiction of state courts.[11] However, certain problems do arise in this area. For instance, can the agent be served in a suit based on a foreign cause of action not in any manner connected with business transacted in Louisiana? Can anyone other than the named agent be served?

A problem which has caused considerable difficulty is whether a foreign corporation is amenable to suit on causes of action which have no connection with the forum state.[12] The extent of the consent, whether it is limited to service upon suits arising out of causes of action connected with business done within the state or whether it includes all causes of action against the corporation, depends upon the terms of the appointment of the agent and those of the state statute requiring the consent.[13]

The Louisiana courts have clearly held that La. R.S. 12:202 requires the foreign corporation only to consent to jurisdiction

9. Bond, Goodwin and Tucker v. Superior Court, 289 U.S. 361 (1933); Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining and Milling Co., 243 U.S. 93 (1917); Barrow Steamship Co. v. Kane, 170 U.S. 100 (1898). See Cahill, *Jurisdiction over Foreign Corporations and Individuals Who Carry on Business Within the Territory*, 30 HARV. L. REV. 676, 686 (1917).

For Louisiana cases on this point see State v. Hammond Packing Co., 110 La. 180, 34 So. 368 (1903); State *ex rel.* Watkins v. North American Land and Timber Co., 106 La. 621, 31 So. 172 (1902); State v. Lathrop, 10 La. Ann. 398 (1855); Kendall v. Grand Lodge of the Brotherhood of Railroad Trainmen, 8 La. App. 50 (1927); O'Conner v. Jones, 8 Orl. App. 244 (La. 1911).

10. LA. R.S. § 12:202(A)(2), (3) (1950).

11. GOODRICH, CONFLICT OF LAWS § 76 (3d ed. 1949).

12. See STUMBERG, CONFLICT OF LAWS 85-86 (2d ed. 1951).

13. In Louisville & N.R.R. v. Chatters, 279 U.S. 320 (1929), the Louisiana statute had been construed by the state court not to apply to causes of action arising out of business elsewhere. Adopting this construction, the Supreme Court upheld the finding of the lower court that jurisdiction existed in spite of the construction on the ground that the cause of action arose out of business in the state. In Lafayette Insurance Co. v. French, 18 How. 404 (U.S. 1856), Mr. Justice Curtis allowed jurisdiction based on a foreign cause of action, finding that the Ohio statute should be so construed. This case was followed in Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining and Milling Co., 243 U.S. 93 (1917), 26 YALE L.J. 794. On this point Mr. Justice Holmes stated, "Unless the state law either expressly or by local construction gives to the appointment a larger scope, we should not construe it to extend to suits in respect of business transacted . . . elsewhere. . . ." Mitchell Furniture Co. v. Selden Breck Const. Co., 257 U.S. 213, 216 (1921).

where the cause of action arises out of or is connected to business done in Louisiana.[14] In the leading case on this point, *Staley-Wynne Oil Corp. v. Loring Oil Co.*,[15] the Louisiana Supreme Court relied on the decisions of the United States Supreme Court.[16] It was thought that these decisions reflected a constitutional limitation on allowing suits against foreign corporations on foreign causes of action. It is submitted this view might explain in part Louisiana's early refusal to entertain jurisdiction in these cases. However, it was made clear by the United States Supreme Court in a 1952 decision that no such constitutional limitation exists, and that a state court may either assume or decline jurisdiction without violating federal due process.[17] Therefore, it would seem that no constitutional objections could be interposed if the legislature saw fit to amend our statutory provisions so as to authorize suits on foreign causes of action.[18]

Since domestic corporations may be sued on causes of action arising elsewhere, and since foreign corporations which register under Title 12 of the Revised Statutes are granted all

14. The consent statute construed is LA. R.S. § 12:202 (1950), which was formerly La. Acts 1924, No. 184, p. 286. See Staley-Wynne Oil Corp. v. Loring Oil Co., 182 La. 1007, 162 So. 756 (1935). See also Sunshine v. Southland Cotton Oil Co., 74 F. Supp. 228 (W.D. La. 1947); United Oil and Natural Gas Products Corp. v. United Carbon Corp., 171 La. 374, 131 So. 52 (1930). *Cf.* Harnischfeger Sale Corp. v. Sternberg Co., 179 La. 317, 154 So. 10 (1934), where the Louisiana Supreme Court announced as a general rule that Louisiana would have no jurisdiction over foreign causes of action in suits against foreign corporations but allowed certain exceptions, *viz.*, the court allowed property brought into the state encumbered by a lien to be subject to an *in rem* action.

15. 182 La. 1007, 162 So. 756 (1935).

16. In Staley-Wynne Oil Corp. v. Loring Oil Co., 182 La. 1007, 1018, 162 So. 756, 759 (1935), the court stated: "'[E]ven when present and amenable to suit it may not, unless it has consented . . ., be sued on transitory causes of action arising elsewhere which are unconnected with any corporate action by it within the jurisdiction (Old Wayne Mut. Life Ass'n v. McDonough, 204 U.S. 8, 27 S. Ct. 236, 51 L.Ed. 345; Simon v. Southern Ry. Co., 236 U.S. 115, 35 S.Ct. 255, 59 L.Ed. 492).'" This statement was taken from Louisville & N.R.R. v. Chatters, 279 U.S. 320, 325 (1929).

Both the *Simon* and the *Old Wayne* cases represent the old view of the United States Supreme Court that you must find express consent before foreign corporations may be subjected to jurisdiction where the cause of action is not connected with the forum state. See 1 BEALE, CONFLICT OF LAWS § 89.4 (1935); GOODRICH, CONFLICT OF LAWS 213 *et seq.* (3d ed. 1949); STUMBERG, CONFLICT OF LAWS 86 (2d ed. 1951).

17. Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952), 50 MICH. L. REV. 1381. Here the Supreme Court allowed suit against a foreign corporation on a foreign cause of action when the corporation had not consented to the jurisdiction.

18. Although the present consent requirement used by the courts to reach the result that foreign corporations are not amenable on foreign causes of action is found in the Louisiana Business Corporations Law, LA. R.S. § 12:202 (1950), the suggested change could be accomplished by amending the service of process provision, LA. R.S. § 13:3471(5) (Supp. 1952), so as to allow suit on all causes of action.

of the privileges of domestic corporations,[19] only the application of the doctrine of *forum non conveniens* would seem to justify refusing to entertain suits against these foreign corporations.[20] A discussion of the doctrine of *forum non conveniens* is outside the scope of this comment.[21]

The question has arisen in Louisiana as to who is the proper person to receive service of process for a foreign corporation. In *In re Curtis*,[22] the court held that under an 1890 statute, a foreign corporation could be served in the same manner as a domestic corporation. The court also held that under this statute service on the president of a foreign corporation who was sojourning in the state was valid.[23] By Act 54 of 1904 the 1890 statute was repealed and it was required that service on foreign corporations be made on the designated agent, or if he could not be found, upon the Secretary of State.[24] In *Jackson v. Waters-Pierce Oil Co.*,[25] the Louisiana Supreme Court held that under the 1904 act service could not be made on the state manager of a foreign corporation. But the court refused to decide whether the provisions of Act 54 of 1904, designating persons to be served, were exclusive or not.

The present provision for service on foreign corporations, contained in Title 13 of the Revised Statutes, which have registered to do business here, requires service to be made on the designated agent, or, if such cannot be found, upon any regularly employed agent or employee over eighteen years old in

19. In Palmer v. Avalon Oil Co., 10 La. App. 512, 515, 120 So. 781, 782 (1929), the court stated: "When a foreign corporation comes to this state to engage in business, and, as a condition precedent, complies with our laws by designating a domicile and appointing an agent, it thereafter enjoys all the privileges and benefits, as well as immunities, of a domestic corporation. In matters of jurisdiction, such corporations are residents of this state and not absentees. Therefore, their property need not be attached in order to obtain jurisdiction."

Therefore, seemingly, a hiatus is presented in our law. If the corporation has appointed a local agent, it is treated as a domestic corporation and no non-resident attachment will lie. But while a domestic corporation may be sued *in personam* on a foreign cause of action, the foreign corporation is immune. Anomalously, the property of a foreign corporation in Louisiana appears to be in a safer position than that of a Louisiana corporation.

20. Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952).

21. Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947); Koster v. Lumbermen's Mutual Casualty Co., 330 U.S. 518 (1947). See also Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law*, 29 COL. L. REV. 1 (1929); Dainow, *The Inappropriate Forum*, 29 ILL. L. REV. 867 (1935).

22. 115 La. 918, 40 So. 334 (1905).

23. Gravely v. Southern Ice-Machine Co., 47 La. Ann. 389, 16 So. 866 (1895).

24. La. Acts 1904, No. 54, p. 133, repealing by implication La. Acts 1890, No. 149, p. 188.

25. 136 La. 764, 67 So. 822 (1915).

any office which the corporation maintains in this state.[26] Although there is no express statement in the jurisprudence that the present provision is mandatory, the indications are that it is. In *Fullilove v. Central State Bank*,[27] the Louisiana Supreme Court held that a valid service of process could not be made on the general manager of the defendant corporation when designated agents were present in the state and the sheriff's return did not show that they could not be found. The same conclusion was reached in *Buckley v. S. Abraham Co.*[28] In the most recent case on this point, *Martin-Owsley, Inc. v. Philip Freetag, Inc.*,[29] service on a foreman was found to be invalid. The rest of the cases seem to be in accord.[30] Therefore, it appears that if service cannot be made on the designated agent, this fact must be shown in the return and then service can be made on any employee or agent of the corporation eighteen years old at any established place of business. The corporate defendant seldom contests the validity of the citation, however, and it is common practice to serve any employee in the corporation's office without attempting to obtain service on the registered agent.

When suing foreign corporations registered to do business here, the use of non-resident attachment proceedings under Article 240 of the Code of Practice has been the source of some difficulty. *Burgin Bros. & McCane v. Barker Baking Co.*[31] settled the point that non-residence could not be the grounds for attachment proceedings against the property of a foreign corporation which had qualified to do business here and appointed an agent to receive service of process. If the foreign corporation has not registered, however, its property is subject to seizure,[32]

26. LA. R.S. § 13:3471(5)(a), (b) (Supp. 1952).

27. 160 La. 831, 107 So. 590 (1926).

28. 172 La. 845, 135 So. 606 (1931).

29. 202 La. 554, 12 So.2d 270 (1943).

30. Gresham v. Swift & Co., 29 F. Supp. 824 (W.D. La. 1939); United States v. Frost Lumber Industries, 3 F. Supp. 1018 (W.D. La. 1932); McGovern v. United Railway Men's Oil Ass'n, 157 La. 966, 103 So. 280 (1924); Teal v. Philadelphia & G.S.S. Co., 139 La. 194, 71 So. 364 (1916); Felt and Tarrant Mfg. Co. v. Sinclair Agency, Inc., 4 La. App. 121 (1926).

Professor Beale states that where a foreign corporation has designated an agent on whom service of process may be made, in accordance with a state statute, it has presumably performed the required condition, and will not be taken to have consented to the service of process in any other manner. 1 BEALE, CONFLICT OF LAWS § 91.3 (1935).

31. 152 La. 1075, 95 So. 227 (1922).

32. National Park Bank v. Concordia Land and Timber Co., 154 La. 31, 97 So. 272 (1922); Palmer v. Avalon Oil Co., 10 La. App. 512, 120 So. 781 (1929). In this connection, see Poulan v. Gallagher, 147 So. 723, 724 (La. App. 1933), where the court in speaking of a writ of attachment against a non-resident said: "The fact alone of personal service would not defeat the right to the writ. The property of an absentee may be attached even though

even if it could be classified as a corporation "doing business" in the state. The latter situation is treated by the court as involving an action against an absentee who is actually present in the state with no known location.[33] A special problem arises when a corporation registered to do business here is sought to be proceeded against by non-resident attachment on a cause of action not connected with Louisiana. It is settled that no personal service may be obtained in this instance.[34] In *Harnischfeger Sale Corporation v. Sternberg Co.*[35] the property of a foreign corporation was made subject to an *in rem* proceeding where the cause of action arose outside Louisiana and no personal service could have been obtained here. In that case the property was subject to a lien when it was brought into the state. This seems to be the crucial point in the *Harnischfeger* case. It would seem doubtful that the court would allow the use of non-resident attachment against the property of a corporation which had registered to do business here in the usual situations.

Foreign Corporations Required to Appoint an Agent, but Which Have Not Done So, or Whose Agent Cannot Be Found

In addition to those foreign corporations which have been licensed to do business here and have appointed agents for receiving service of process, Louisiana law provides for jurisdiction over those corporations which are under legal obligation to register for doing busines in Louisiana, but have not done so.[36] Whether or not a foreign corporation should register to do business here is measured by the concept of "doing business."

In practically all jurisdictions the phrase "doing business" has various uses. It has served not only as the measuring device

the absentee be present in the state and personally served. . . . Palmer v. Avalon Oil Co. et al., 10 La. App. 512, 120 So. 781; Bryans et al. v. Dunseth et al., 1 Mart. (N.S.) 412; Rayne v. Taylor and Co., 10 La. Ann. 726; De Poret v. Gusman, 30 La. Ann. 930; Allison v. Brown, 148 La. 530, 87 So. 262."

33. In Palmer v. Avalon Oil Co., 10 La. App. 512, 515, 120 So. 781, 782 (1929), the court in speaking of a foreign corporation which was doing business here but had failed to register with the Secretary of State said: "His debtors were corporations organized in a state other than Louisiana. They had no legal domicile, no agent, here. They were, therefore, absentees. By the express terms of article 240 of the Code of Practice, a creditor may obtain an attachment 'when such debtor resides out of the State,' and in suits in rem, such as this was, the attachment 'was the very foundation of the suit and stands in the place of the citation required in ordinary proceedings.' "

34. Staley-Wynne Oil Corp. v. Loring Oil Co., 182 La. 1007, 162 So. 756 (1935).

35. 179 La. 317, 154 So. 10 (1934).

36. LA. R.S. § 13:3471(5)(c) (Supp. 1952). See text at note 5 *supra*.

for minimum jurisdictional requirements for service of process,[37] but also to determine jurisdiction to tax[38] and to exercise other forms of legislative control.[39] However, no distinction was found in the treatment of "doing business," whether it be for purposes of service of process, taxation, or statutory regulation.[40]

In treating the term "doing business" as used in the Chapter of the Revised Statutes dealing with foreign corporations, it should be kept in mind that the term as there used does not necessarily have the same meaning as when it is used by the United States Supreme Court when interpreting the Due Process Clause of the Federal Constitution. The Supreme Court has adopted the term to denote a limitation on the states' right to assert judicial jurisdiction.[41] In this context "doing business" connotes a minimum contact with the state necessary to justify jurisdiction in view of the Federal Due Process Clause. The term as used in the Louisiana law designates those foreign corporations over which the legislature has chosen to exercise control. Since the legislature has not defined the term "doing business,"[42] the courts have established their own criteria.

37. LA. R.S. § 12:202 (1950).

38. See LA. R.S. § 47:601 *et seq.* (1950).

39. For example, see LA. R.S. § 12:211 (1950), where it is provided that foreign corporations doing business in Louisiana cannot sue in our courts unless they have complied with the registration requirements of LA. R.S. § 12:201 *et seq.* (1950).

40. In the following cases foreign corporations were found not to be doing business in Louisiana so as to subject themselves to statutory regulation. [LA. R.S. § 12:211 (1950)] Hess Warming & Ventilating Co. v. Home Comforts Corp., 205 La. 1045, 18 So.2d 611 (1944); Graham Mfg. Co. v. Rolland, 191 La. 757, 186 So. 93 (1939); Norm Advertising Inc. v. Parker, 172 So. 586 (La. App. 1937).

In Note, 146 A.L.R. 941, 942 (1943), it is said that corporations may be doing business in a state so as to subject them to jurisdiction of state courts and amenable to service of process therein and yet not be subject to a statute regulating foreign corporations; the power of a state to subject foreign corporations to local regulation is more restricted by the commerce clause of the Federal Constitution than is their power to subject a corporation to service of process.

41. Suppose, for example, that the federal due process requirements are met if a corporation has engaged in certain activities in Louisiana over a six-month period. Suppose also that a Louisiana statute provides that a foreign corporation shall not be subject to the jurisdiction of Louisiana courts unless it has engaged in the same activities for at least one year. The due process requirement would be met. But meeting that requirement would not dispose of the question of jurisdiction, since the Louisiana legislature has further limited the jurisdiction of its courts. Therefore, one of the important aspects of the comment will be an attempt to find what special limitations Louisiana has in fact imposed upon the power to sue foreign corporations, and what relationship, if any, these limitations have to the rules of constitutional law.

42. In Proctor Trust Co. v. Pope, 12 So.2d 724, 727 (La. App. 1943), the court said: "No act of the Legislature of this state has attempted to define or say what acts or course of conduct within the state by a foreign

What Constitutes "Doing Business" in Louisiana. There are few Louisiana cases discussing whether or not an unregistered foreign corporation is amenable to suit in a state court because it is "doing business" within the state. However, the term "doing business" is used to specify not only those foreign corporations amenable to suit, but also those foreign corporations which must register to have standing to institute suits in our courts. The term has been discussed in a number of cases involving the right to maintain suit in Louisiana courts. Since those corporations required to register prior to instituting suit because they are "doing business" in the state are also the corporations subject to suit in Louisiana courts, these cases, dealing with standing to sue, can be considered valid guides in determining when a corporation is "doing business" sufficient to be sued. However, even in these cases no precise definition of "doing business" has been established.

In what seems to be the leading case in the question of the foreign corporations' standing to sue, *R. J. Brown Co. v. Grosjean*,[43] the Louisiana Supreme Court stated: "The rule of law is that, when a foreign corporation transacts a substantial part of its ordinary business in a state, it is doing, transacting, and carrying on or engaging in business therein."[44] The rationale of this test seems to be that if a substantial amount of the corporation's business is conducted within the state, the corporation has sufficient contacts with the state[45] to justify its being made amenable

corporation shall constitute 'doing business' therein. The law-making powers of other states, so far as our research has extended, have not ventured to do so. The question has been left to the courts. Each case must necessarily be determined from its own facts." This view was again expressed recently in Lake Superior Piling Co. v. Stevens, 25 So.2d 120 (La. App. 1946).

43. 189 La. 778, 180 So. 634 (1938). The question of doing business arose in this case under LA. R.S. § 12:211 (1950), which prohibits foreign corporations doing business in Louisiana from suing in our courts unless it has been licensed to do business and paid all taxes due.

Subsequently, the court of appeal, in speaking of the rule announced in the *Grosjean* case, stated: "Surely the large volume of business transacted by plaintiff over so many years was a 'substantial part of its ordinary business' within the purview of this rule." Proctor Trust Co. v. Pope, 12 So.2d 724, 728 (La. App. 1943).

As evidenced by two recent opinions of the courts of appeal, the Louisiana courts do not appear to be in accord as to the meaning and application of the "substantial business" test of the *Grosjean* case. See discussion at page 634 *infra*.

44. 189 La. 778, 783, 180 So. 634, 636 (1938).

45. One of the early United States Supreme Court decisions accepting the presence theory of jurisdiction over foreign corporations was the case of People's Tobacco Co. v. American Tobacco Co., 246 U.S. 79 (1918), where in interpreting a Louisiana statute the court said that to subject a foreign corporation to service of process, it must be doing business of such a nature and character as to warrant inference that it has subjected itself to local

to jurisdiction *in personam*. It is harder to define "substantial part" of a corporation's ordinary business than to define "doing business."

The term "substantial part" is as vague as the term "doing business," and further the use of this term requires that a new factor be considered, the total business of the corporation. A volume of business which might represent a "substantial part" of a small corporation's business might be but an insignificant part of the total business of a large corporation. Thus under the "substantial part" concept two corporations having the same contacts with the state might not be deemed equally subject to suit in state courts solely because one corporation conducts a larger volume of business outside of the state than does the other. The uncertainty of the "substantial part of business" test is well illustrated in two recent decisions of the Louisiana courts of appeal which also deal with standing to sue.[46] In both cases the issue was whether or not the J. R. Watkins Company, a foreign corporation which maintained no office in Louisiana, had no property in this state, and hired no agents in this state who could legally bind the corporation, was "doing business" in Louisiana. The Courts of Appeal, First and Second Circuits, reached directly opposite results, yet both cases recognized the rule announced in *R. J. Brown Co. v. Grosjean*.[47] The Court of Appeal for the Second Circuit, apparently impressed by the fact that only four percent of Watkins Company's total business was conducted in Louisiana, found that the corporation was not doing business in Louisiana since a substantial amount of the Watkins Company's business was not conducted here.[48] The Court of Appeal, First Circuit, seemed to base its decision that Watkins was doing business in Louisiana on the fact that the Watkins Company maintained complete and systematic control over the activities of their agents in Louisiana.[49] These two irreconcilable decisions cogently disclose the inadequacy of the "substantial part of business" test.

Other elements which the courts have considered in deter-

jurisdiction and is, by its duly authorized officers or agents, present within the state or district.

It is submitted that the Louisiana courts in adhering to the substantial business test might possibly be following the old fiction of corporate presence which has been repudiated by the United States Supreme Court. See International Shoe Co. v. Washington, 326 U.S. 310 (1945).

46. J. R. Watkins Co. v. Goudeau, 63 So.2d 161 (La. App. 1953); J. R. Watkins Co. v. Sanford, 52 So.2d 325 (La. App. 1951).

47. 189 La. 778, 180 So. 634 (1938).

48. J. R. Watkins Co. v. Goudeau, 63 So.2d 161 (La. App. 1953).

49. J. R. Watkins Co. v. Sanford, 52 So.2d 325 (La. App. 1951).

mining whether or not the business conducted in Louisiana represented a substantial part are whether or not it was continuous in nature, whether or not it was more than mere solicitation, and whether it was conducted by officers and employees or by agents in Louisiana.[50] The concept of "doing business" does not ordinarily encompass the conclusion of one single business transaction in the state or entering into one contract herein.[51] However, it was held in *Harnischfeger Sale Corporation v. Sternberg*[52] that if one single contract is of such a nature and of such duration so as to require the making of numerous smaller contracts, such as those for the employment of labor and the repairs of machinery, the corporation will be considered as "doing business" in Louisiana.

On several occasions Louisiana courts have held that solicitation of business is not enough to constitute doing business.[53] The mere ownership of property in the state, unaccompanied by its active use in furtherance of the business for which the corporation is formed, is insufficient in itself to constitute "doing business" in this state.[54] If, however, as in *Proctor Trust Co. v. Pope*,[55] another case dealing with standing to sue, the court finds that the

50. Reynolds Metal Co. v. T. L. James & Co., 69 So.2d 630 (La. App. 1954), is the most recent case on this subject. See also State v. Best & Co., 194 La. 918, 195 So. 356 (1939); National Pumps Corp. v. Bruning, 1 So.2d 320 (La. App. 1941); Norm Advertising Inc. v. Parker, 172 So. 586 (La. App. 1937); Schultz v. Long Island Machinery & Equipment Co., 173 So. 569 (La. App. 1937). A general discussion may be found in the following cases: United Oil and Natural Gas Products Corp. v. United Carbon Co., 171 La. 374, 131 So. 52 (1930); Consolidated Carbon Co. v. United Carbon Co., 171 La. 389, 131 So. 57 (1930).

51. In Schultz v. Long Island Machinery & Equipment Co., 173 So. 569 (La. App. 1937), suit was brought by a citizen of this state against a New York corporation on a contract for scrap iron bought by that firm. The court refused to entertain jurisdiction in the case since the corporation was not deemed to be, in the legal sense, doing business in this state. The court said that a continuous course of business, conducted by a foreign corporation's authorized agents within a state, as distinguished from single transactions or mere casual, isolated or sporadic transactions, such as occasional purchases or sales, were necessary in order to constitute doing business in a state.

52. 179 La. 317, 154 So. 10 (1934).

53. In National Pumps Corp. v. Bruning, 1 So.2d 320 (La. App. 1941), the court found that the agent of the corporation was nothing more than a solicitor for orders which would be filled out of the state. Such a transaction does not constitute doing business within the state. See also State v. Read & Nott, 178 La. 530, 152 So. 74 (1934); State v. Best & Co., 194 La. 918, 195 So. 356 (1939); Graham Mfg. Co. v. Rolland, 191 La. 757, 186 So. 93 (1939); Norm Advertising Inc. v. Parker, 172 So. 586 (La. App. 1937). In all of these cases the court stressed the fact that the orders were subject to acceptance or rejection at the home office in another state.

54. Lake Superior Piling Co. v. Stevens, 25 So.2d 120 (La. App. 1946); L'Hote & Co. v. Church Extension Society of Methodist Episcopal Church, 3 Orl. App. 305 (La. App. 1906).

55. 12 So.2d 724 (La. App. 1943).

foreign corporation's course of conduct within the state with respect to its local investments and property was no different from that which a Louisiana corporation would have pursued in like circumstances, and this business extends continuously over a long period of time, the court will hold that the foreign corporation is "doing business" within the state.

Foreign Corporations Not Required to Appoint an Agent, but Which Conduct Business Within the State from Which a Cause of Action Arises

Prior to 1950 service of process could only be made on the foreign corporations which were "doing business" in Louisiana in such a manner so as to require them to register with the Secretary of State. In 1950 the legislature added a provision to the service of process law to enable the Louisiana courts to assert personal jurisdiction over foreign corporations "not required by law to appoint an agent for service of process but . . . engaged in business activities in this state."[56] The procedure for obtaining service of process under the 1950 act is the same as in the case where suit is brought against a foreign corporation "doing business" in Louisiana which has not appointed an agent to receive service of process. In the event that no agent nor employee is found, service may be made on the Secretary of State.[57] It would seem that this act will permit Louisiana to entertain all suits against foreign corporations on local causes of action permissible under *International Shoe Co. v. Washington*,[58] and subsequent developments under this case. As yet, this new provision has not been the subject of judicial interpretation. Obviously, this is a very important piece of legislation which will extend the jurisdiction of our courts to new fields of corporate activities.

Since the service of process rules prior to amendment applied to those corporations required to register under Title 12, Chapter 3 of the Revised Statutes, a finding that the corporation is "doing business" sufficient to be sued, could be interpreted to mean that the corporation is subject to legislative jurisdiction and taxation. The courts, when interpreting the phrase "doing business," are

56. La. Acts 1950, No. 21, p. 28, amending LA. R.S. § 13:3471(5) (1950).

57. For the text of the statute, see note 6 *supra*. The method of substituted service on the Secretary of State provides the defendant adequate constitutional protections of notice and opportunity to be heard. See Du Bell v. Union Central Life Ins. Co., 211 La. 167, 29 So.2d 709 (1947); 1 BEALE, CONFLICT OF LAWS § 89.3 (1935); STUMBERG, CONFLICT OF LAWS 86 (2d ed. 1951). See also GOODRICH, CONFLICT OF LAWS 214 (3d ed. 1949).

58. 326 U.S. 310 (1945), 6 LOUISIANA LAW REVIEW 726 (1946).

aware of all that could follow such a finding and have understandably required that a corporation have substantial contacts with the state before holding that the corporation is "doing business."

Act 21 of 1950, however, does not extend the legislative control of the state; its only effect is to make corporations "engaged in business activities" in the state amenable to suit in Louisiana courts on actions arising out of these business activities. Since a finding that a foreign corporation is encompassed by the act has no relation to the corporation's being subjected to taxation or legislative control, the courts may justifiably adopt a less cautious attitude in their interpretation of "engaged in business activities" within the state than they have shown in their construction of the term "doing business."

It would seem that the purpose of the legislature in avoiding the use of the term "doing business" was to show clearly that this extension of judicial jurisdiction involves no extension of legislative control. It would also seem that the legislature, by adopting a new term, manifested an intent that the jurisprudence construing the term "doing business" should not bind the courts' treatment of the term "engaged in business activities in the state."

It is to be emphasized that the 1950 statute only extended Louisiana's jurisdiction for service of process. Any extension of tax jurisdiction must depend upon the language in the statute levying the tax, which in turn must meet the jurisdictional requirements of the Federal Constitution.

It is submitted that the abandonment of "doing business" as the jurisdictional basis for suits against foreign corporations should be well received. Jurisdiction for purposes of service of process based on the idea of "doing business" often becomes confused with jurisdiction to tax and jurisdiction to regulate based on the same abstract concept. The provision in our 1950 statutes is in accord with a dual trend in jurisdictional decisions: in defining the court with jurisdiction, a trend from the court with immediate power over the defendant to the court where both parties may most conveniently settle their dispute; and, in defining due process of law, a trend from emphasis on the territorial limitations of courts to emphasis on providing notice and an opportunity to be heard.[59]

59. Note, 16 U. OF CHI. L. REV. 523, 536 (1949).

Constitutional Limitations on Suing Foreign Corporations in Louisiana

When foreign corporations are subjected to local jurisdiction through service on a person not authorized by them to receive process, the possibility of violation of basic notions of jurisdictional requirements may arise. In this area the Commerce Clause[60] and the Due Process Clause[61] of the Federal Constitution are the two important safeguards for the non-resident defendant. In both cases the United States Supreme Court is, of course, the final arbiter as to when there has been an unconstitutional assertion of jurisdiction over a foreign corporation.

In *Davis v. Farmers' Co-operative Equity Co.*[62] the United States Supreme Court held that a state may not exercise jurisdiction over a foreign corporation in a manner which imposes an unreasonable burden on interstate commerce. The problem is to determine what amounts to an undue or unreasonable burden on interstate commerce. The present view seems to be that subjection of a foreign corporation to local jurisdiction through service of process on an agent not designated by the corporation for that specific purpose violates the Commerce Clause only when the cause of action has no relationship to the forum state.[63] Since the Louisiana service of process provisions, as interpreted by our courts,[64] do not authorize jurisdiction in cases arising from a foreign cause of action, the Commerce Clause limitation is of little practical importance to Louisiana.

The landmark case of *Pennoyer v. Neff*[65] established the principle that the Fourteenth Amendment requires that in order for a state to assert personal jurisdiction over a non-resident, minimum jurisdictional requirements must be present. It is well settled that the doctrine of *Pennoyer v. Neff* applies not only to

60. U.S. CONST. Art. I, § 8.

61. U.S. CONST. Amend. XIV, § 1.

62. 262 U.S. 312 (1923).

63. The only time when service of process would be an undue burden on interstate commerce is when the cause of action is not related to business done at the forum state. See International Milling Co. v. Columbia Transportation Co., 292 U.S. 511 (1934). There must be a very strong showing of inconvenience to the defendant. Denver and Rio Grande W.R.R. v. Terte, 284 U.S. 284 (1932), 32 COL. L. REV. 541. See also STUMBERG, CONFLICT OF LAWS 89 (2d ed. 1951). See especially cases collected in STUMBERG, *id.* at 89, n. 77.

64. See discussion of Staley-Wynne Oil Corp. v. Loring Oil Co., 182 La. 1007, 162 So. 756 (1935), page 628 *supra*. Service of process under La. Acts 1950, No. 21, p. 28, is limited to causes of action arising out of business transacted in Louisiana. See note 6 *supra*.

65. 95 U.S. 714 (1878). An excellent note on the doctrine of *Pennoyer v. Neff* may be found in 94 L.Ed. 1167 (1950).

individuals but also to personal judgments of state courts against foreign corporations.[66] If the foreign corporation has consented to local jurisdiction, due process is satisfied.[67] However, frequently foreign corporations engage in activities in a state without actually consenting to be sued. In this situation the Supreme Court in its earlier decisions relied, as a test of the forum's power to subject such corporations to suit therein, upon three factors or jurisdictional requisites, which overlap to a great extent. The Court attempted to ascertain whether, from all the facts involved in a case, it could be inferred (1) that the corporation had consented to suit (implied consent);[68] (2) that the corporation was present in the territory of the forum;[69] (3) that a foreign corporation was "doing business" therein,[70] and had thus submitted to the local jurisdiction,[71] inferring therefrom consent to be sued[72] or presence in the forum state.[73]

The presence fiction, as well as the theory of implied consent, were discarded in *International Shoe Co. v. Washington*, in which Chief Justice Stone expressly repudiated them.[74] In lieu

66. Riverside and Dan River Cotton Mills v. Menefee, 237 U.S. 189 (1915); Goldey v. Morning News, 156 U.S. 518 (1895); St. Clair v. Cox, 106 U.S. 350 (1882).

67. *In re* The Louisville Underwriters, 134 U.S. 488 (1890); *Ex Parte* Schollenberger, 96 U.S. 369 (1877).

68. Old Wayne Mut. Life Asso. of Indianapolis v. McDonough, 204 U.S. 8 (1907); Connecticut Mut. Life Ins. Co. v. Spratley, 172 U.S. 602 (1899); St. Clair v. Cox, 106 U.S. 350 (1882); Lafayette Ins. Co. v. French, 18 How. 404 (U.S. 1855).

69. See Louisville and N.R.R. v. Chatters, 279 U.S. 320 (1929); People's Tobacco Co. v. American Tobacco Co., 246 U.S. 79 (1918); International Harvester Co. v. Kentucky, 234 U.S. 579 (1914); St. Louis S.W. Ry. v. Alexander, 227 U.S. 218 (1913); Green v. Chicago, B. & Q. Ry., 205 U.S. 530 (1907).

70. See Washington *ex rel.* Bond & Goodwin & Tucker, Inc. v. Superior Court of Washington for Spokane County, 289 U.S. 361 (1933); Riverside and Dan River Cotton Mills v. Menefee, 237 U.S. 189 (1915); Mechanical Appliance Co. v. Castleman, 215 U.S. 437 (1910); Commercial Mutual Accident Co. v. Davis, 213 U.S. 245 (1909); Henrietta Mining and Milling Co. v. Johnson, 173 U.S. 221 (1899).

71. See Consolidated Textile Corp. v. Gregory, 289 U.S. 85 (1933); People's Tobacco Co. v. American Tobacco Co., 246 U.S. 79 (1918); St. Louis S.W. Ry. v. Alexander, 227 U.S. 218 (1913).

72. See cases cited note 68 *supra.*

73. See cases cited note 69 *supra.*

74. Chief Justice Stone stated: "[S]ome of the decisions holding the corporation amenable to suit have been supported by resort to the legal fiction that it has given its consent to service and suit, consent being implied from its presence in the state through the acts of its authorized agents. ... But more realistically it may be said that those authorized acts were of such a nature as to justify the fiction." 326 U.S. 310, 318 (1945). In regard to the presence theory, he said: "Since the corporate personality is a fiction, ... it is clear that unlike an individual its 'presence' without, as well as within, the state of its origin can be manifested only by activities carried on in its behalf by those who are authorized to act for it. To say that the corporation is so far 'present' there as to satisfy due process requirements,

of the fictitious tests of implied consent and presence a new test was laid down in the *International Shoe* case emphasizing that the Due Process Clause requires that a foreign corporation have certain minimum contacts with the forum state such that the maintenance of the suit is in accord with traditional notions of fair play and substantial justice, and that these demands of due process are 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 that particular suit.[75]

After the announcement of the *International Shoe* rule, there was a great deal of conjecture as to how far it would be extended. This uncertainty has been at least partly dissipated by *Travelers Health Ass'n v. Virginia* ex rel. *State Corporation Commission.*[76] In that case a mail order insurance company was found to be subject to jurisdiction in Virginia although its only contacts with the forum state were solicitations by its policyholders. The corporation maintained no office in Virginia, had no agents there, and owned no property there. From this case it would seem that the "contacts, ties and relations" of the *International Shoe* rule might be small indeed and still meet the requirements of "fair play and substantial justice."[77]

It is submitted that all of the Louisiana service of process law, which incorporates the 1950 act, is well within the "fair play and substantial justice" rule of the United States Supreme Court.[78]

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for purposes of taxation or the maintenance of suits against it in the courts of the state, is to beg the question to be decided. For the terms 'present' or 'presence' are used merely to symbolize those activities of the corporation's agent within the state which courts will deem to be sufficient to satisfy the demands of due process." *Id.* at 316.

75. International Shoe Co. v. Washington, 326 U.S. 310, 320 (1945).

76. 339 U.S. 643 (1950).

77. It may be readily seen that these "contacts, ties and relations" might be small indeed to the corporate defendant, but very large and important to a small plaintiff. See Note, *The Growth of the* International Shoe *Doctrine*, 16 U. OF CHI. L. REV. 523 (1949).

78. The applicable provisions of the Louisiana service of process law are LA. R.S. § 13:3471(5)(a), (b), (c) and (d) (Supp. 1952). Paragraphs (a) and (b) are based on express consent and present no serious problems. Paragraph (c) is based on the concept of doing business, and the Louisiana interpretation of that concept does not even approach the constitutional limitations. Paragraph (d) is predicated on the notion of "engaged in business activities in this state," and as yet, has not been interpreted by the courts. However, due to the language of the statute, it is limited to causes of action arising out of business conducted in Louisiana. Therefore, it would seem difficult to imagine a situation which arises out of the business done in Louisiana where there would not be sufficient ties and contacts between the defendant corporation and the state to meet the liberal test announced in the *International Shoe* case.

Conclusion

Under Louisiana law foreign corporations are amenable to suit in all causes of action arising out of or connected wtih business activities conducted by the corporation in Louisiana. The Louisiana provisions are well within the constitutional limitations set forth by the United States Supreme Court. The presently existing multiplicity of statutes and the conflict with rules pertaining to domestic corporations, however, should be remedied.[79] It is submitted that all non-resident corporations engaging in activities in Louisiana should be classified and treated as two groups—(1) those corporations which do business here in such a manner as to be required to register with the Secretary of State; and (2) those foreign corporations which actually conduct business activities in Louisiana, but not in a manner so as to require registration. The corporations falling into category (1) should be treated as domestic corporations for all purposes including jurisdiction, venue, taxation and statutory regulations. For this first group, the concept of "doing business" as recognized by our courts should serve as the criterion. In the second group should be included those foreign corporations *engaging in business activities* within this state whose contacts with Louisiana are not sufficient to warrant subjection to general legislative control and taxation. They should, however, be amenable to suit in our courts with regard to causes of action arising out of business done within this state.

The interests of resident potential plaintiffs make it necessary to subject foreign corporations to jurisdiction here and to provide for service of process and venue statutes. By the addition of the 1950 statute the courts are granted jurisdiction over all causes of action and tax claims which arise out of business transacted in this state. It is only fair and just that parties liti-

79. At the present four different paragraphs of LA. R.S. § 13:3471(5) (Supp. 1952) relate to service of process against foreign corporations. One has its jurisdictional basis in the concept of doing business which is found in LA. R.S. § 12:202 (1950).

The venue provisions concerning foreign and domestic corporations are in a confused state. While it is not the purpose of the comment to deal with venue provisions, it is to be noted that in suits against foreign corporations, LA. R.S. §§ 13:3234-3235 (1950) give the plaintiff a liberal choice of venue sites. As to venue provisions relating to suits against domestic corporations, one is restricted to LA. R.S. § 12:37 (1950) and Arts. 162-165, LA. CODE OF PRACTICE of 1870. Thus one has more venue choice in suits against foreign corporations than when suing a domestic corporation. This anomaly is due to the broad repealing clause of La. Acts 1928, No. 250, p. 409. While this result is probably due to inadvertence, it is the present law in Louisiana. See Ramey v. Cudahy Packing Co., 200 So. 333 (La. App. 1941).

gant be made amenable to suit in the state where the cause of action arises. The "estimate of inconveniences" mentioned by the late Chief Justice Stone in the *International Shoe* case[80] allows Louisiana to go beyond its pre-1950 claims in asserting judicial jurisdiction over foreign corporations.

A. B. Atkins, Jr.

Confessions in Louisiana Law

CONFESSIONS DEFINED AND DISTINGUISHED FROM ADMISSIONS

Confessions are one species of admissions.[1] Thus, a discussion of the subject of confessions requires discussion of admissions. Admissions are commonly defined as direct or implied statements by a party to a judicial proceeding of facts material to the issue which, together with proof of other facts, tend to establish his guilt or liability.[2] When made extra-judicially, as is usually the case where the question of their admissibility arises, admissions are received in evidence as a time-honored exception to the hearsay rule.[3] According to Professor Wigmore, hearsay evidence is excluded primarily because the person whose statements are offered as evidence would otherwise, in effect, be permitted to testify beyond the reach of cross-examination.[4] This exclusionary principle would seem to have no application if the extra-judicial statements were offered against the party who, having made them, may on trial explain or qualify their meaning. This is normally the situation when a party's admission is offered in evidence against him. For this reason, too, other dangers of admitting hearsay evidence—for example, that the declarant was not under oath[5] or was not confronting the party

80. 326 U.S. 310, 317 (1945), using Judge Learned Hand's language in Hutchinson v. Chase & Gilbert Inc., 45 F.2d 139, 141 (2d Cir. 1930).

1. 1 GREENLEAF, A TREATISE ON THE LAW OF EVIDENCE 346, § 213 (16th ed. 1899); TRACY, HANDBOOK OF THE LAW OF EVIDENCE 241 (1952); 3 WIGMORE, EVIDENCE 231, § 816 (3d ed. 1940).

2. UNDERHILL, A TREATISE ON THE LAW OF CRIMINAL EVIDENCE 507-08, § 265 (4th ed. 1935); 2 WHARTON, EVIDENCE IN CRIMINAL CASES 1081, § 645 (11th ed. 1935).

3. TRACY, HANDBOOK OF THE LAW OF EVIDENCE 231 (1952); 4 WIGMORE, EVIDENCE 2-6, § 1048. See also Morgan, *Admissions as an Exception to the Hearsay Rule*, 30 YALE L.J. 355 (1921); Strahorn, *A Reconsideration of the Hearsay Rule and Admissions*, 85 U. OF PA. L. REV. 484, 564 (1937).

4. 4 WIGMORE, EVIDENCE 3-4, § 1048; 5 *id.* at 27, § 1365.

5. TRACY, HANDBOOK OF THE LAW OF EVIDENCE 218 (1952).