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# Jurisdiction—Single Transaction Held to Be "Doing Business"

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just result. The doctrine of constructive receipt should be sparingly applied and used by the Commissioner only in situations where a taxpayer deviates from the normal course of action to manipulate the year of receipt.

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## JURISDICTION — SINGLE TRANSACTION HELD TO BE "DOING BUSINESS"

Defendant foreign corporation sold machinery to plaintiff. Defendant had taken the order through an independent broker, recommended the manner of installation and sent a salesman to investigate performance after installation. Nothing more was done by defendant within the forum. *Held* (5-4): Defendant had done business in the forum and was subject to its jurisdiction in a breach of warranty suit. *S. Howes Co. v. W. P. Milling Co.*, ___ Okla. ___, 277 P. 2d 655 (1954).

Prior to *International Shoe Co. v. Washington,* 326 U. S. 310 (1945), it was generally held that a single act by a foreign corporation within a state was insufficient to subject it to the *in personam* jurisdiction of the state. *Rosenberg Bros. & Co. v. Curtis Brown Co.,* 260 U. S. 516 (1923); *Hunau v. Northern Region Supply Corp.,* 262 Fed. 181 (S. D. N. Y. 1920). To be subject to jurisdiction it must have engaged in such a continuous and regular course of business that it was "present" in the state, *International Harvester Co. v. Kentucky,* 234 U. S. 579 (1914); or that its consent to suit could be implied, *Commercial Mutual Accident Co. v. Davis,* 213 U. S. 245 (1909). Incidental activities, such as mere solicitation of business, were not sufficient to confer jurisdiction. *Green v. Chicago, B. & Q. Ry. Co.,* 205 U. S. 530 (1907) (railroad with no tracks in state having an agent soliciting freight and passenger traffic); *People's Tobacco Co. v. American Tobacco Co.,* 246 U. S. 79 (1918) (advertisement of products and agents with no authority to take orders). However, solicitation by agents whose orders were accepted outside the state and who had authority to make collections amounted to "doing business." *International Harvester Co. v. Kentucky, supra; Tauza v. Susquehanna Coal Co.,* 220 N. Y. 259, 115 N. E. 915 (1917).

The *International Shoe* case discarded the presence and consent theories and substituted a test of reasonableness. Due process was held to be satisfied where the foreign corporation had such minimum contacts with the state that the maintenance of the suit did not offend traditional notions of fair play and sub-

stantial justice. Any activity of a continuous sort regardless of quantity or quality renders the corporation amenable to suit under the *International Shoe* decision, resulting in the rejection of the previous "mere solicitation" rule. *French v. Gibbs Corp.*, 189 F. 2d 787 (2d Cir. 1951).

There remains some question, however, as to whether a single act is a sufficient basis for jurisdiction under the new jurisdictional test. *Johns v. Bay State Abrasive Products Co.*, 89 F. Supp. 654 (D. Md. 1950). But a single tort within the jurisdiction was held sufficient by the Supreme Court of Vermont. *Smyth v. Twin State Improvement Corp.*, 116 Vt. 569, 80 A. 2d 664 (1951). Where there were additional contacts sufficient to meet the "reasonableness" test, suit brought on a contract made in the forum under a statute subjecting a corporation to jurisdiction on the basis of a single act has been allowed. *Compania De Astral, S. A. v. Boston Metals Co.*, ___ Md. ___, 107 A. 2d 357 (1954). However, the "reasonableness" test was held not to be met where the contract was not consummated in the state, the requirements of the jurisdictional statute thereby not being fulfilled. *Park Beverage Co. v. Goebel Brewing Co.*, 197 Md. 369, 79 A. 2d 157 (1951).

Some jurisdictions have upheld the validity of statutes allowing suits against *insurance* corporations on the basis of a single contract in the state. *Kaye v. Doe*, 204 Misc. 719, 125 N. Y. S. 2d 135 (Sup. Ct. 1953); *Parmalee v. Iowa State Traveling Men's Ass'n.*, 206 F. 2d 518 (5th Cir. 1953).

In the instant case the majority cites the *International Shoe* case to support the decision, specifically noting that the test, as outlined by the Supreme Court, is qualitative, rather than quantitative or mechanical. The test laid down in the *International Shoe* decision, although not yet well-defined by the decisions, would appear to hold due process met when jurisdiction is based on a single act and circumstances are such that it is not unreasonable to require the corporation to defend in the forum. Two factors which appear to determine "reasonableness", applicability of the law of the forum and availability of witnesses, are absent in the instant case. Present, however, is the factor that the cause of action arose out of the corporation's business in the forum.

In view of the diminishing requirements for jurisdiction, as evidenced by the *International Shoe* case, it would appear that state court decisions sustaining jurisdiction on the basis of a single act would be upheld by the Supreme Court where the power of the state is not arbitrarily exercised.

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