Notre Dame Law Review

Volume 31 | Issue 2 Article 4

3-1-1956

Expanded Concepts of State Jurisdiction over Non-Residents: The Illinois Revised Practice Act

John M. O'Connor

EXPANDED CONCEPTS OF STATE JURISDICTION OVER NON-RESIDENTS: THE ILLINOIS REVISED PRACTICE ACT

Since before 1850[1] successive attempts have been made by various states to adjudicate certain classes of controversies between their citizens and non-resident defendants. As time passed the sound policy considerations underlying this oblique demand for power were strengthened by "the present day extensions of business into the various states and the rapidity of commuting interstate."[2] The rigid due process barriers erected by the Supreme Court in *Pennoyer v. Neff*[3] were whittled away until finally the Supreme Court, in *International Shoe Co. v. Washington*,[4] adopted a new concept of due process, and thereby materially increased the power of a state to assert jurisdiction over non-residents in actions *in personam*.

Even before the *International Shoe* case, jurisdiction over non-residents was being extended in a few states,[5] and after that case more states began to press toward the new limits of the due process clause.[6] With the passage of its revised Civil Practice Act,[7] effective January 1, 1956, Illinois becomes the first state to carry its jurisdiction over non-residents virtually to the full limits permitted by the due process clause as presently interpreted.[8]

---

1 D'Arcy v. Ketchum, 52 U.S. (11 How.) 165 (1850).

2 Wein v. Crockett, 113 Utah 301, 195 P.2d 222, 230 (1948).

3 95 U.S. 714 (1877).

4 326 U.S. 310 (1945).

5 See MD. ANN. CODE art. 23, § 88(d) (1951); VT. REV. STAT. § 1562 (1947).

6 See ARK. STAT. ANN. § 27-340 (1947). See also Utah Laws 1947, c. 10, §§ 2, 3 (later repealed by Utah Laws 1951, c. 58, § 3 and now appearing in a modified form in UTAH R. CIV. P. See notes 81-83 *infra*).

7 ILL. REV. STAT. c. 110, §§ 1-101.72 (1955).

8 In interpreting the due process clause of the Fourteenth Amendment, and therefore the limits of Illinois jurisdiction over non-residents, the federal decisions on due process control. Pembleton v. Illinois Commercial Men's Ass'n, 289 Ill. 99, 124 N.E. 355 (1919), *cert. dismissed*, 253 U.S. 499 (1920).

I

THE STATUTORY PROVISIONS

Section 17 of the Civil Practice Act provides a comprehensive scheme whereby Illinois courts may assert jurisdiction over non-residents in *in personam* actions.[9] The statute applies equally to residents and non-residents and provides that a person, or the personal representative of an individual, submits to the jurisdiction of Illinois courts as to any cause of action arising from the doing, either in person or through an agent, of any of the following:

(1) The transaction of any business within the state;
(2) The commission of a tortious act within the state;
(3) The ownership, use, or possession of any real estate situated in the state;
(4) Contracting to insure any person, property or risk located within the state at the time of contracting.

While some overlap in the cases enumerated is apparent,[10] complete coverage is assured; and the courts of Illinois may adjudicate all controversies arising out of a non-resident's contacts with the state.[11]

Section 17(3) limits jurisdiction to causes of action arising out of the enumerated activities.[12] A plaintiff is thus precluded from using jurisdiction obtained under section 17 as a basis for asserting unrelated causes of action. This protection is afforded the defendant only; and he is not precluded from counterclaiming for damages on a cause of action completely alien to those enumerated

---

9 ILL. REV. STAT. c. 110, § 17 (1955).

10 Thus, most cases arising out of ownership, use, or possession of Illinois realty arise also out of the transaction of business in Illinois, or out of an Illinois tort.

11 Claims falling within the enumerated categories may be asserted in an original action or by third party proceedings. ILL. REV. STAT. c. 110, § 25 (1955).

12 *Id.* at § 17(3): "Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section."

in section 17,[13] just as he might file a separate action to recover on his unrelated claim.

Process may be served on a person who has submitted to the jurisdiction of Illinois courts under section 17 only by personal service of the summons,[14] together with a copy of the complaint.[15] Service may be made outside the state without an order of court by any person over 21 years of age who is not a party to the action.[16] The new act thus departs from traditional notions of process, exemplified by the cumbersome substituted service of the Non-Resident Motorist Act,[17] a service justified on a theory of consent now acknowledged to be fictional.[18]

The broad extension of jurisdiction created by section 17 necessitates some examination of the constitutional limits of a state's permissible jurisdiction. These limits are fixed on two distinct levels.[19] Neither (1) the assertion of jurisdiction itself, nor (2) the manner in which it is asserted may exceed the limits imposed by the due process clause of the Fourteenth Amendment.

II

CONSTITUTIONAL LIMITS ON JURISDICTION

The due process clause first appeared as a limitation on the power of a state to assert jurisdiction over non-

---

13 *Id.* at § 38. Principles of fairness suggest that when an unrelated counterclaim is urged by a section 17 defendant, the plaintiff may then assert additional claims other than those enumerated in section 17. However, the statute does not expressly cover this situation.

14 *Id.* at § 17(2).

15 *Id.* at § 101.5, Supreme Court Rule 5.

16 *Id.* at § 16.

17 ILL. REV. STAT. c. 95½, § 23 (1953). Section 17(4) of the Civil Practice Act continues existing methods of service. Thus, in an automobile case covered by the Non-Resident Motorist Act, the plaintiff may serve a non-resident defendant by personal service under section 17 or by service on the secretary of state.

18 Ogdon v. Gianakos, 415 Ill. 591, 114 N.E.2d 686 (1953).

19 McBaine, *Jurisdiction Over Foreign Corporations: Actions Arising Out of Acts Done Within the Forum*, 34 CAL. L. REV. 331, 340-1 (1946).

residents in *Pennoyer v. Neff*,[20] where the Supreme Court, in effect, held that a valid personal judgment could not be entered against a defendant without service of process within the state. This virtual prohibition on the assertion of jurisdiction was no novelty, but rather another expression of the so-called "power" theory of jurisdiction.[21]

A geographical limitation on jurisdiction is singularly inappropriate to jurisdiction over foreign corporations, and even before *Pennoyer v. Neff*, a fiction had been developed to avoid this stringent jurisdictional limitation.[22] With the passage of time and the increased interstate activities of corporations, new theories were devised and expanded, modifying the basic rule. Thus, the states exercised *in personam* jurisdiction over foreign corporations, while paying lip service to *Pennoyer v. Neff*, through the fictions that the corporation, by reason of its activities in the state "consented"[23] to service in the state or was "present"[24] for jurisdictional purposes.

The local activities of foreign corporations were sufficient to supply the fictional "consent" or "presence" to satisfy the requirements of due process if the corporation was "doing business" in the state asserting jurisdiction.[25] A number of cases involving applications of the "doing business" test resulted in the evolution of two rules: "mere solicitation" did not constitute doing business,[26]

---

20 95 U.S. 714 (1877).

21 For an excellent discussion of the "power" theory and of the constitutional development of due process, see: Cleary & Seder, *Extended Jurisdictional Bases for the Illinois Courts*, 50 NW. U. L. REV. 599 (1955); and Cleary, *Service of Process for Personal Judgments*, 37 ILL. BAR J. 236 (1948-49).

22 Lafayette Ins. Co. v. French, 59 U.S. (18 How.) 404 (1855).

23 *Ibid.*

24 Green v. Chicago B. & Q. Ry., 205 U.S. 530 (1907).

25 "Doing business" for jurisdictional purposes is distinguishable from "doing business" for purposes of domesticating a corporation. Most state courts apply different tests to the same facts, depending on the purpose. See Davis-Wood Lumber Co. v. Ladner, 210 Miss. 863, 50 So. 2d 615 (1951).

26 Green v. Chicago B. & Q. Ry., 205 U.S. 530 (1907).

but "solicitation plus" other activities in the state constituted doing business.[27]

For a time following *Pennoyer v. Neff* no successful effort was made to dilute its limitation on jurisdiction over non-resident individuals. A few cases were finally presented to the Supreme Court, and after one failure,[28] two inroads were made. In *Hess v. Pawloski*,[29] the Court sustained the Massachusetts Non-Resident Motorist Act, which provided that by his use of the highways of the state, a non-resident impliedly consented to the appointment of an appropriate state official to accept service of process in causes of action arising out of his use of the highways. Later, in *Doherty v. Goodman*,[30] the Court affirmed a personal judgment against a non-resident individual on a case arising out of his doing business in the state where service of process had been made on a resident agent of the defendant under an Iowa statute.

These cases did not substantially weaken the doctrine of *Pennoyer v. Neff* as it affected non-resident individuals; for in *Hess v. Pawloski* the Court emphasized the dangerous character of motor vehicles, and the interest of the states in their regulation, and in *Doherty v. Goodman* the cause of action arose out of the non-resident's securities business in Iowa, a business which the Court noted was subject to special regulation in that state.

For many years the concept of "doing business" flourished as a technique for evading the impractical due process limitations on jurisdiction over non-residents. Thousands of cases defined and refined the concept until an esoteric lore had accumulated around it. Finally, in *International Shoe Co. v. Washington*,[31] the Supreme

27 International Harvester Co. v. Kentucky, 234 U.S. 579 (1914).

28 Flexner v. Farson, 248 U.S. 289 (1919).

29 274 U.S. 352 (1927).

30 294 U.S. 623 (1935).

31 326 U.S. 310 (1945).

Court discarded the doctrine of *Pennoyer v. Neff* and established a completely new concept of the due process limitations on jurisdiction over non-resident individuals and foreign corporations. The Court thus wiped the slate clean and "marked a change in the judicial climate."[32]

In the *International Shoe* case the Court, having exposed the fiction of the "consent" and "presence" theories, declared:

> ... due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice. . . ."[33]

Significantly, the only positive limitation placed on the assumption of jurisdiction over a non-resident defendant by this case is that due process ". . . does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties or relations."[34]

The doctrine thus established rests not on the old "power" theory of jurisdiction, but on the theory that having received the benefits of the laws of a state, a non-resident cannot avoid their obligations.[35]

The Court did not attempt the creation of a mechanical test for determining the minimum contacts requisite to the assertion of jurisdiction, but said, in effect, that the court must ". . . balance the conflicting interests involved: i.e., whether the gain to the plaintiff in retaining the action where it was, outweighed the burden imposed upon the defendant; or vice versa."[36]

---

32 Smyth v. Twin State Improvement Corp., 116 Vt. 569, 80 A.2d 664, 25 A.L.R.2d 1193 (1951).

33 326 U.S. 310 at 316 (1945).

34 *Id.* at 319.

35 See note 41 *infra.*

Clearly the Court discarded,[37] without expressly overruling,[38] the "doing business" test which had been used to determine the due process limitations on jurisdiction over foreign corporations.[39]

Occasionally it has been urged that the principles of this case do not apply to non-resident individuals because it involved a corporate defendant. This theory is based on a supposed distinction between foreign corporations and non-resident individuals for jurisdictional purposes, a patently false distinction in view of the language and philosophy of the opinion in the case.[40]

In the *International Shoe* case the Court further indicated that isolated activity might subject a foreign corporation to local suit if the cause of action arose out of that

---

36 Kilpatrick v. Texas & P. Ry., 166 F.2d 788, 790-1 (2d Cir. 1948). In this case, Judge Hand points out the identity between this test and that involved in a plea of "forum non conveniens."

37 Compania de Astral, S.A. v. Boston Metals Co., 205 Md. 237, 107 A.2d 357, 365-6 (1954), *cert. denied,* 348 U.S. 943 (1955).

38 International Shoe Co. v. Washington, 326 U.S. 310 at 319 (1945):

> "It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative."

39 One court has said that while the *International Shoe* case adopted a more liberal interpretation of "doing business," it also gives some support to the view that mere solicitation will not support jurisdiction, since the defendant there was engaged in regular and systematic solicitation which resulted in a continuous flow of its products into the state. Goldstein v. Chicago R. I. & P. R.R., 93 F. Supp. 671 (W.D.N.Y. 1950): This complete disregard of the language in the *International Shoe* case has gained no following.

40 See Cleary & Seder, *Extended Jurisdictional Bases for the Illinois Courts,* 50 NW. U. L. REV. 599 (1955). Dubin v. Philadelphia, 34 Pa. D. & C. 61, 65-66 (1939), and Wein v. Crockett, 113 Utah 301, 195 P.2d 222, 229-30 (1948), rejected attempted limitations on a court's jurisdiction over non-resident individuals. One court suggested that a distinction may exist between corporations and individuals as to the sufficiency of the contacts to warrant subjecting the non-resident to suit, but the court did not doubt the applicability of the *International Shoe* case to individuals. Compania de Astral, S.A. v. Boston Metals Co., 205 Md. 237, 107 A.2d 357 (1954), *cert. denied,* 348 U.S. 943 (1955).

activity.[41]

Subequently, in *Travelers Health Ass'n v. Virginia*,[42] the Supreme Court again condemned the "consent" and "presence" theories,[43] applying the "fair play and substantial justice" criteria.[44] The Court held that Virginia's assertion of jurisdiction over a non-resident insurance company having no resident agents but engaged in the mail order solicitation of business in Virginia, by service, pursuant to statute, upon a state official, did not violate the due process clause.

Because the *International Shoe* case involved the collection of state unemployment compensation contributions,

---

41 The Court said, 326 U.S. at 318:

> "Finally, although the commission of some single or occasional acts of the corporate agent in a state sufficient to impose an obligation or liability on the corporation has not been thought to confer upon the state authority to enforce it, *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516, other such acts, because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit."

It also pointed out that single or isolated items of activity are not enough to subject one to suit in the state "on causes of action unconnected with the activities there," 326 U.S. at 317; and then went on to say, 326 U.S. at 319:

> "[T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, *so far as those obligations arise out of or are connected with the activities within the state,* a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." (Emphasis added.)

This refutes any argument that this case does not approve the assertion of jurisdiction over non-residents when the contact has been a single isolated act. Several courts have considered and rejected the argument, permitting jurisdiction for the adjudication of a cause of action arising out of the particular act on which jurisdiction is based. *Compania de Astral, S.A. v. Boston Metals Co.*, note 37 *supra; Smyth v. Twin State Improvement Corp., note* 32 *supra.*

42 339 U.S. 643 (1950).

43 "Metaphysical concepts of 'implied consent' and 'presence' in a state should not be solidified into a constitutional barrier against Virginia's simple, direct and fair plan for service of process on the Secretary of the Commonwealth." Travelers Health Ass'n v. Virginia *ex rel.* State Corp. Comm'n, 339 U.S. 643, 649 (1950).

44 In spite of the Supreme Court, the "consent" fiction persists. See Wein v. Crockett, 113 Utah 301, 195 P.2d 222, 230 (1948).

and the *Travelers Health Ass'n* case involved the insurance business, it has been suggested that the doctrine of these cases is limited to matters peculiarly subject to state regulation and those in which the state has a direct interest.[45] This distinction is not supported by the broad language of the majority opinion in the *International Shoe* case.[46]

During the period between *Pennoyer v. Neff*[47] and the *International Shoe* case, there accumulated a myriad of state court decisions as to what constituted "doing business." Since the *International Shoe* case some federal courts have applied these state court decisions in diversity cases,[48] thereby frequently following the old "doing business" rule.[49] Other federal courts have measured jurisdiction solely by the standards laid down in the *International Shoe* case.[50] The correct approach depends upon

---

45 The concurring opinion of Justice Douglas in the *Travelers Health Ass'n* case limiting the holding to validity of state regulation of solicitation, affords some support for this view. 339 U.S. at 651. See also: Watson v. Employers Liab. Corp., 348 U.S. 66, 72 (1954), *rehearing denied*, 348 U.S. 921 (1955); Parmalee v. Iowa State Traveling Men's Ass'n, 206 F.2d 518 (5th Cir.), *cert. denied*, 346 U.S. 877 (1953); Gillioz v. Kincannon, 213 Ark. 1010, 214 S.W.2d 212, 215 (1948). This is the distinction which received such wide acceptance in connection with *Hess v. Pawloski*, note 29 *supra*, and *Doherty v. Goodman*, note 30 *supra*.

46 See also Davis-Wood Lumber Co. v. Ladner, 210 Miss. 863, 50 So. 2d 615, 624 (1951), rejecting that distinction.

47 Note 3 *supra*.

48 Thus, it has been said that whether a corporation is "doing business" within the limits of the due process clause differs from whether it is "doing business" within the statutes and decisions of the particular state for jurisdictional purposes. The one is the question how far the state may go; the other, how far it will go. It frequently happens that the law of a state will not extend jurisdiction as amply as it has power to do. Bomze v. Nardis Sportswear Co., 165 F.2d 33 (2d Cir. 1948).

49 Riverbank Laboratories v. Hardwood Products Corp., 220 F.2d 465 (7th Cir. 1955); Partin v. Michaels Art Bronze Co., 202 F.2d 541 (3d Cir. 1953); Canvas Fabricators, Inc. v. Wm. E. Hooper & Sons Co., 199 F.2d 485 (7th Cir. 1952); Rosenthal v. Frankfort Distillers Corp., 193 F.2d 137 (5th Cir. 1951); Pulson v. American Rolling Mill Co., 170 F.2d 193 (1st Cir. 1948); Bomze v. Nardis Sportswear, Inc., 165 F.2d 33 (2d Cir. 1948).

50 Scholnik v. National Airlines, Inc., 219 F.2d 115 (6th Cir.), *cert. denied*, 349 U.S. 956 (1955); Woodworkers Tool Works v. Byrne, 191 F.2d 667 (9th Cir. 1951); Clover Leaf Freight Lines, Inc. v. Pacific Coast Wholesalers Ass'n, 166 F.2d 626 (7th Cir.), *cert. denied*, 335 U.S. 823 (1948); Nugey v. Paul-Lewis Laboratories, 132 F. Supp. 448 (S.D.N.Y. 1955); Satterfield v. LeHigh Valley R.R., 128 F. Supp. 669 (S.D.N.Y. 1955).

the nature of these state court decisions.[51] They were at least colored by the then prevailing constitutional doctrine, and may have been no more than applications of that doctrine. If they are regarded simply as expressions as to the requirements of the Fourteenth Amendment, they have lost their vigor under the *International Shoe* case. If, however, they constitute independent expressions of state law, they are presumably binding upon the federal courts in diversity cases under *Erie v. Tompkins*.[52] No final determination of this question has yet been made.

It is at least clear that where the state legislature has enacted a statute governing the assertion of jurisdiction over non-residents that statute will control even though it does not assert jurisdiction to the full limits permitted by the due process clause.[53] In section 17 the Illinois legislature has designated a series of situations giving rise to jurisdiction over non-residents. The transaction of business in the state and the ownership of real property in the state constitute minimum contacts within the *International Shoe* case. The commission of a tortious act in the state represents an extension of *Hess v. Pawloski* within the philosophy of the *International Shoe* case, and the fourth classification (*i.e.*, the insuring of any risk located within the state) is clearly supported by the *Travelers Health Ass'n* case. In all of these situations, jurisdiction is based upon certain minimum contacts between the non-resident and the state, and it is limited to causes of action arising out of these minimum con-

51 Where the particular state statute involved is sufficiently broad so that it does not require a construction of "doing business" which varies from the federal constitutional interpretation of that phrase, jurisdiction may be measured by the standards of the *International Shoe* case. Electrical Equipment Co. v. Daniel Hamm Drayage Co., 217 F.2d 656 (8th Cir. 1954).

52 304 U.S. 64 (1938). Moore apparently regards the *Erie* rule as inapplicable. MOORE, FEDERAL PRACTICE § 4.25 (2d ed. 1948).

53 The state need not assert jurisdiction to the limits of the due process clause. It may assert or decline jurisdiction. Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, *rehearing denied*, 343 U.S. 917 (1952).

tacts.[54] It is obviously consistent with traditional notions of fair play to require that actions ordinarily involving Illinois witnesses and Illinois law be tried in the state where interest is most direct and immediate. There accordingly appears to be no question concerning the consitutionality of section 17 so far as the assertion of jurisdiction is concerned.

III

CONSTITUTIONAL REQUIREMENTS AS TO NOTICE IN ASSERTING JURISDICTION

Pennoyer v. Neff[55] held that the process of a court of one state could not run into another and summon a party there to respond to proceedings against him. This doctrine continued undisturbed for many years and necessitated the development of the fictional appointment of a state officer as an agent to receive process, a concept which reached the height of its popularity with the Non-Resident Motorist Acts.[56]

The breakdown in this geographical limitation on process occurred in *Milliken v. Meyer*,[57] where the Court approved personal service in Colorado of Wyoming process on a defendant who was domiciled in Wyoming. The Court held that due process required no more than a method of service reasonably calculated to afford the defendant actual knowledge of the proceedings and an opportunity

---

54 It would not violate due process for a state either to take or decline jurisdiction in a suit against a foreign corporation carrying on a continuous and systematic but limited part of its general business in the state on a cause of action not arising out of the corporation's business in the state. Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 444-445, 447-448, *rehearing denied*, 343 U.S. 917 (1952). Thus, section 17 does not in all cases assert jurisdiction to the full extent permitted by the due process clause.

55 Note 3 *supra*.

56 See ILL. REV. STAT. c. 95½, § 23 (1955).

57 311 U.S. 457 (1940), *rehearing denied*, 312 U.S. 712 (1941).

to defend.[58]

Later, in *Mullane v. Central Hanover Bank & Trust Co.*,[59] a proceeding for the judicial settlement of accounts of a common trust fund, the Supreme Court held that notice by publication was valid as to non-resident beneficiaries whose interests or whereabouts could not be ascertained with due diligence. The Court there reasserted the due process test laid down in *Milliken v. Meyer*, holding that the requirements of due process were met if the service employed was reasonably calculated under all the circumstances to give defendant actual notice and an opportunity to be heard.

The section 17 requirement that defendant be personally served with process is much more "reasonably calculated to apprise" a non-resident of the pending litigation than the registered mail service approved in the *International Shoe*[60] and *Travelers Health Ass'n*[61] cases. Since a copy of the complaint must be served with the summons, the requirements of due process are more than met.[62]

IV

OTHER CONSTITUTIONAL PROVISIONS

The commerce clause imposes a limitation on the extent to which a state may interfere with interstate commerce, but it does not invalidate section 17, since that

---

58 "Its adequacy so far as due process is concerned is dependent on whether or not the form of substituted service provided for such cases and employed is reasonably calculated to give him actual notice of the proceedings and an opportunity to be heard. If it is, the traditional notions of fair play and substantial justice . . . implicit in due process are satisfied." 311 U.S. 457 at 463.

59 339 U.S. 306 (1950).

60 Note 4 *supra*.

61 Note 42 *supra*.

62 Allen v. Superior Court, 41 Cal. 2d 306, 259 P.2d 905, 909 (1953):

". . . for no more certain provision for defendant's receipt of actual notice of the institution of litigation against him could be made than through the specified personal service of process. Milliken v. Meyer, supra, 311 U.S. 457, 463; 61 S.Ct. 339; see 40 Cal. L. Rev. 156."

section is specifically restricted to causes of action arising out of the enumerated acts in Illinois.[63]

A judgment in a case where jurisdiction is based on section 17 will be enforced in other states under the full faith and credit clause. Although the question of the jurisdiction of the Illinois court under section 17 depends on an adjudication as to the merits (*viz.*, whether the defendant has committed a tortious act in Illinois), a defendant cannot relitigate this issue in the foreign forum in which the judgment is sought to be enforced.[64]

V

PRECEDENTS

Other states have statutes asserting jurisdiction in one or more of the four classes enumerated in section 17, and some of these statutes predate the *International Shoe* case.[65] Section 17 is unique in that it constitutes the first effort to combine the scattered provisions in a single comprehensive scheme for the assertion of jurisdiction over

---

[63] In International Harvester Co. v. Kentucky, 234 U.S. 579 (1914), the Court said at 588-9:

> "True, it has been held time and again that a State cannot burden interstate commerce or pass laws which amount to the regulation of such commerce; but this is a long way from holding that the ordinary process of the courts may not reach corporations carrying on business within the State which is wholly of an interstate commerce character."
>
> ". . . We are satisfied that the presence of a corporation within a State necessary to the service of process is shown when it appears that the corporation is there carrying on business in such sense as to manifest its presence within the State, although the business transacted may be entirely interstate in its character. In other words, this fact alone does not render the corporation immune from the ordinary process of the courts of the State."

This case was decided under the "presence" theory of submission to jurisdiction, but the change effected by the *International Shoe* case does not weaken the holding of this case on the interstate commerce point. See also Davis v. Farmers' Co-operative Co., 262 U.S. 312 (1923).

[64] Coe v. Coe, 334 U.S. 378 (1948); Sherrer v. Sherrer, 334 U.S. 343 (1948).

[65] See Cleary & Seder, *Extended Jurisdictional Bases for the Illinois Courts*, 50 Nw. U. L. Rev. 599 (1955).

non-residents.[66]

(1) *The Transaction of Any Business Within This State.*[67]

In asserting jurisdiction over causes of action arising out of the transaction of business within the state, Illinois has departed from the traditional "doing business" basis of jurisdiction and has moved toward the outer limits of its constitutional power.[68] The term "transaction of business" includes all cases which meet the older "doing business" test of jurisdiction as well as cases where the defendant's activities amount to something less than "doing business."[69] However, under the old test, once a defendant was

66 Compare the English rules which permit service on a non-resident by registered mail, upon leave of court, where:

(1) A contract has been made in the jurisdiction by an agent who carries on business in the jurisdiction on behalf of the non-resident. 1 ANNUAL PRACTICE, Order 9, R. 8(a) (1949).

(2) The subject matter of the litigation is land located within the jurisdiction. *Id.* Order 11, R. 1(a).

(3) Any act, deed, will, contract, obligation or liability affecting land in the jurisdiction is sought to be construed, set aside or enforced. *Id.* Order 11, R. 1(b).

(4) Relief is sought against a person domiciled within the jurisdiction. *Id.* Order 11, R. 1(c).

(5) The action is brought against a defendant not domiciled in Scotland, based on a contract (1) made within the jurisdiction or through an agent in the jurisdiction on behalf of a non-resident principal; or (2) governed by English law; or (3) breached outside the jurisdiction rendering impossible the performance of part of the contract which ought to be performed within the jurisdiction. *Id.* Order 11, R. 1(e).

(6) A tort is committed within the jurisdiction. *Id.* Order 11, R. 1(ee).

(7) An injunction is sought as to anything to be done within the jurisdiction or a nuisance within the jurisdiction is sought to be prevented. *Id.* Order 11, R. 1(f).

(8) The non-resident is a necessary party to an action properly brought against some person duly served within the jurisdiction. *Id.* Order 11, R. 1(g).

67 ILL. REV. STAT. c. 110, § 17(1)(a) (1955).

68 Cleary & Seder, *Extended Jurisdictional Bases for the Illinois Courts,* 50 Nw. U. L. REV. 599 (1955).

69 In defining the term "transaction of business," the "doing business" cases may not be ignored, particularly where the court found against the defedant on this issue.

"doing business" general jurisdiction could attach.[70] Illinois limits its jurisdiction to causes of action arising out of defendant's transaction of business in the state, and thus does not reach the limit of its constitutional power in the "doing business" case.

There are no precise standards for the measurement of the extent to which jurisdiction has been expanded. The court, in determining whether the cause of action before it arose out of defendant's transaction of business in the state, will apply substantially the same test as is used for due process purposes.[71]

Most of the comparable provisions in other states[72] cling to the more limited "doing business" test of jurisdiction over non-residents.[73] These statutes have historical significance in the development of expanded jurisdiction, but they do not measure the scope of the Illinois provision. Other provisions have a more direct bearing.

With reference to the "doing business" test, Maryland has gone a little further than Illinois, not only abandoning but expressly disavowing this concept of jurisdiction. In Maryland, a foreign corporation is subject to suit by a resident ". . . on any cause of action arising out of a contract made within this State or a liability incurred for acts done within this state, whether or not such foreign corporation is doing or has done business in this State."[74] In the event that the foreign corporation does not have a resident agent

70 See note 54 *supra.*

71 Note 68 *supra.*

72 MISS. CODE ANN. § 1437 (1942); ARK. STAT. ANN. § 27-340 (1947). The Mississippi statute does not go as far in asserting jurisdiction as due process permitted before the *International Shoe* case.

73 Mississippi Wood Preserving Co. v. Rothschild, 201 F.2d 233 (5th Cir. 1953); Davis-Wood Lumber Co. v. Ladner, 210 Miss. 863, 50 So. 2d 615 (1951).

74 MD. ANN. CODE art. 23, § 88(d) (1951). This is in addition to provisions subjecting foreign corporations "doing business" in Maryland to jurisdiction there without much distinction between a resident plaintiff and a non-resident plaintiff. *Id.* § 88(a), (b) and (c). These provisions are not pertinent because they are not comparable to section 17.

or its resident agent cannot be served, process may be served on the defendant by service on the state tax commission.[75]

The Maryland statute is in effect a combination of sections 17(1)(a)[76] and 17(1)(b)[77] and thus covers virtually the same cases as are covered by two of Illinois' four new bases for jurisdiction.

The Maryland statute, however, so far as actions arising out of contracts are concerned, does not require that the liability asserted be based upon acts within the state. Such a requirement is explicitly stated with respect to other actions. The Illinois statute contains no express requirement that the acts upon which liability is founded, as distinguished from the conduct which establishes jurisdiction, must occur within the state. There is thus at least a possibility that the Illinois provision may extend to cases not covered by the Maryland statute.[78] Another apparent difference arises from the fact that the Maryland statute speaks of "any acts done within this State" without restriction. Section 17 of the Illinois act, on the other hand, enumerates four specific types of conduct giving rise to jurisdiction. While the specific enumeration of the Illinois statute may at first blush suggest that it is less comprehensive than the generalized provision of the Maryland act, the breadth of the kind of conduct which the Illinois statute describes is such that no difference in scope will probably result.

In at least two respects, the Maryland provision is more

---

75 *Id.* at § 92(d).

76 Jurisdiction founded on the transaction of any business within the state.

77 Jurisdiction founded on the commission of a tortious act within the state.

78 Whether or not an actual difference exists in the cases covered by the two provisions depends (1) on the interpretation of the Illinois Act (*i.e.*, whether the term "transaction of any business" requires that the operative act giving rise to the cause of action occur in Illinois); and (2) on the Maryland court's definition of the phrase "acts . . . within the state."

restricted than section 17. In Maryland, the plaintiff must be a resident of (or have a usual place of business in) the state and the defendant must be a foreign corporation.[79]

The validity of the Maryland statute was unsuccessfully challenged in a case where jurisdiction was founded on a contract made in that state.[80] The opinion of the Maryland court, relying on the rule announced in the *International Shoe* case "by which the jurisdiction of Maryland is to be tested" did not emphasize any of the features which distinguish that statute from section 17.

Utah asserts general jurisdiction over a foreign corporation "doing business" in the state[81] and by a separate statute over a non-resident person who ". . . is associated in and conducts business within the state of Utah in one or more places in his own name or a common trade name," as to any action arising out of his conduct of the business.[82] Process must be served within the state on the defendant or his agent, in the case of an individual,[83] and on the person "doing business" or in charge of the office or place of business in the case of a foreign corporation.[84]

The language of the Utah provision is probably broad enough to authorize the assertion of jurisdiction where something less than the continued activities of the "doing business" test is present. However, there has been a tendency to confine jurisdiction to cases where the traditional

---

79 Note 74 *supra.*

80 Compania de Astral, S.A. v. Boston Metals Co., 205 Md. 237, 107 A.2d 357 (1954), *cert. denied,* 348 U.S. 943 (1955). The statute had previously been sustained in a tort action. Johns v. Bay State Abrasive Products Co., 89 F. Supp. 654 (D. Md. 1950). *But cf.* note 109 *infra.*

81 UTAH R. CIV. P. 4(e) (4), 9 UTAH CODE ANN. 460 (1953).

82 *Id.* Rule 17(e).

83 *Id.* Rule 4(e) (10).

84 Note 81 *supra.* The Utah provision for jurisdiction over non-residents bears a striking resemblance to the Iowa statute sustained in *Doherty v. Goodman,* note 30 *supra.*

elements are present,[85] in spite of broad language used in the opinion sustaining this statute against constitutional attack.[86]

Even if the Utah statute were interpreted to reach individuals transacting business but not "doing business" in the state, the state's jurisdiction over non-residents would be more narrow than the Illinois provision in several respects: The jurisdictional test for corporate defendants in Utah remains "doing business";[87] the non-resident individual must have an agent in the state,[88] and must also have at least one place of business in the state.[89]

A Florida statute subjects to the jurisdiction of its courts non-residents who ". . . operate, conduct, engage in, or carry on a business or business venture in the State of Florida" in any action ". . . arising out of any transaction or operation connected with or incidental to such business or business venture. . . ."[90] The language of this section would seem to require something more as a basis for jurisdiction than is required by the Illinois provision. Whether there is a difference depends on the extent to which the terms "operate, conduct, engage in, or carry on

---

85 Dykes v. Reliable Furniture & Carpet, 3 Utah 2d 34, 277 P.2d 969 (1954).

86 Wein v. Crockett, 113 Utah 301, 195 P.2d 222, 227 (1948), where the court noted:

> ". . . the trend of authorities away from the strict and narrow holdings of the early cases to the more liberal principle of permitting a non-resident to be sued in a jurisdiction where he has performed certain acts or transacted certain business, providing, the cause of action arose out of the acts or the business transacted. . . ."

and concluded at 229 that:

> "To require a non-resident to defend where he commits the alleged wrong is not an unreasonable imposition."

87 Note 81 *supra*.

88 Without such an agent, there can be no service of process.

89 The place of business must be in his own name or a common trade name. Thus, if the place of business is in the name of the agent, the Utah court is presumably without jurisdiction.

90 FLA. STAT. ANN. § 47.16 (1943). Process is served on a non-resident by service on the secretary of state.

a business or business venture" contemplate more activities than the term "transaction of any business." In sustaining this provision, the Florida Supreme Court interpreted the term "business venture" so as to include an activity having little connection with the actual business venture there involved.[91]

Several states have statutes asserting jurisdiction over non-residents which are in no way comparable to the Illinois provision.[92] A New Jersey workman's compensation provision imposing liability on non-resident employers [93] has been sustained.[94] New York asserts jurisdiction over foreign corporations "doing business" in that state, [95] and over individuals "when any natural person . . . not residing in this state shall engage in business in this state. . . ."[96] as to causes of action arising out of the business in the state. Service of process on a corporation may be by service on certain designated officials in the state or on the secretary of state.[97] An individual may be served by (1) personal service within the state, or (2) service within the

91 State *ex rel.* Weber v. Register, 67 So. 2d 619 (Fla. 1953). This was an action for commission by a broker with whom the non-resident defendants had listed for sale an orange grove operated by them. The court held that while the listing for sale was not a transaction or operation connected with or incidental to the business of operating the orange grove, it was a transaction connected with or incidental to the business venture of acquiring the grove. Since there was a business venture in the normal sense supporting jurisdiction, it does not follow that the Florida court would necessarily, or even probably, interpret the term "business venture" so as to include a single isolated business transaction.

92 Note 72 *supra.*

93 N. J. STAT. ANN. § 34: 15-55.1 (Supp. 1954).

94 Kawko v. Howe & Co., 129 N.J.L. 319, 29 A.2d 621 (1943). This decision was adhered to in Halloran v. Haffner, 25 N. J. Super. 241, 95 A.2d 921 (1953).

95 N. Y. GEN. CORP. LAW § 218. Elish v. St. Louis South Western Ry., 305 N.Y. 267, 112 N.E.2d 842 (1953).

96 CAHILL-PARSONS, NEW YORK CIVIL PRACTICE § 229b (2d ed. 1955). The term "engaged in business" as applied to an individual has been said to be the same as "doing business" as applied to a corporation. Debrey v. Hanna, 182 Misc. 824, 45 N.Y.S.2d 551 (1943).

97 N. Y. GEN. CORP. LAW § 217, CAHILL-PARSONS, NEW YORK CIVIL PRACTICE § 229 (2d ed. 1955).

state on the person who at the time of the service is in charge of the defendant's business in New York, if the defendant is also served either by mail or by personal service outside the state.[98]

The Illinois provision is most nearly like a combination of the Maryland statute (respecting the scope of activities on which jurisdiction may be found) and the Florida statute (respecting the classes of plaintiffs and defendants). Unlike many states, Illinois does not limit the class of defendants to non-residents,[99] and draws no distinction between individuals and corporations. Finally, the Illinois statute differs from all the statutes discussed in that it does not require substituted service or personal service within the state.

(2) *The Commission of a Tortious Act Within This State.*[100]

The second of Illinois' four new bases for jurisdiction may also be described as a break with tradition, though the departure is perhaps not as startling as the abandonment of the "doing business" concept.[101]

Since *Hess* v. *Pawloski*,[102] the states have asserted jurisdiction over causes of action arising out of single tortious acts within the state,[103] but they have carefully picked

98 CAHILL-PARSONS, NEW YORK CIVIL PRACTICE § 229b (2d ed. 1955).

99 This eliminates any problem as to applicability of section 17 when the defendant is a resident of Illinois at the time the cause of action arises but subsequently becomes a non-resident. This situation is expressly covered by the Florida statute, note 90 *supra*.

100 ILL. REV. STAT. c. 110, § 17(1) (b) (1955).

101 *Id.* at § 17(1) (a).

102 Note 29 *supra*.

103 A statute purporting to give New York courts jurisdiction in an action against a non-resident operator or owner of aircraft, growing out of an accident in which the aircraft is involved, regardless of the locus of the accident, so long as the aircraft "has landed at, or departed from, any airfield in this state" has been held to violate the due process clause insofar as it applies to accidents which do not occur within or over the territorial limits of the state or have no causative connection to acts within or over those limits. Peters v. Robin Air Lines, 281 App. Div. 903, 120 N.Y.S.2d 1 (2d Dep't 1953).

areas which can be said to be subject to the state's police power.[104] While not the first state to do so, Illinois now asserts jurisdiction over causes of action arising out of the commission of all tortious acts within the state.

A Vermont statute subjects a foreign corporation to the jurisdiction of its courts if it "commits a tort, in whole or in part, in Vermont against a resident of Vermont."[105] In one respect it is broader than section 17(1)(b)—the tort need not be committed wholly within the state; in two respects it is narrower — it applies only to foreign corporations and the tort must be against a resident of the state. Although the statute was thus qualified, the court in *Smyth v. Twin State Improvement Corp.*[106] considered the question in its broadest aspects and upheld the power of the state to base jurisdiction on a single tortious act within its borders, observing:

> The only limitations upon the jurisdiction of the courts of one of the United States are to be found in the constitution of the state, the Constitution of the United States, and the same extensive powers possessed by the other states of the United States. No express limitation is known to us in any of these sources which prevents appropriate courts of a state from exercising jurisdiction over proceedings therein arising out of tortious acts done within the state, provided always that adequate notice of the litigation be given to the particular defendant against whom liability is sought to be enforced. There is

---

104 (1) The operation of automobiles. *E.g.*, ILL. REV. STAT. c. 95½, § 23 (1955).

(2) The operation of aircraft. *E.g.*, PA. STAT. ANN. tit. 2, § 1410 (Purdon 1954); ILL. REV. STAT. c. 110, § 263a-263c (1955).

(3) The operation of watercraft. *E.g.*, LA. REV. STAT. ANN. § 13:3479 (West 1951); ILL. REV. STAT. c. 110, § 263a-263c (1955).

105 VT. REV. STAT. § 1562 (1947). Jurisdiction is also given over a foreign corporation making "a contract with a resident of Vermont to be performed, in whole or in part, by either party in Vermont." A defendant under this statute is served by service on the secretary of state. The statute resorts to a curious legislative definition of "doing business" as the foundation for the assertion of jurisdiction. This has been ignored and is undoubtedly due to the fact that the statute preceded the *International Shoe* case.

106 116 Vt. 569, 80 A.2d 664 (1951).

> no arbitrary exercise of the power, since the non-resident has had the protection of the state's laws while acting therein. See 34 California Law Review 331, 337.[107]

The Maryland statute considered in *Compania de Astral, S.A.* v. *Boston Metals Co.*[108] previously had been considered and upheld by the federal court in a tort case.[109]

(3) *The Ownership, Use, or Possession of Any Real Estate in This State.*[110]

Jurisdiction founded on the ownership, use or possession of Illinois realty will frequently also fall within one of the other bases for jurisdiction enumerated in section 17.[111] However, this classification is not without precedent.

A Pennsylvania statute submits a non-resident owner, tenant or user of Pensylvania real estate, by virtue of his "ownership, possession, occupancy, control, maintenance and use," to the jurisdiction of the courts of that state in any civil action arising out of any accident or injury in-

---

107 *Id.* at 667. While it would seem that the *International Shoe* case supports jurisdiction founded on the commission of a tort, the Vermont court however, was of the view that the Supreme Court of the United States had never passed on the question of due process in connection with tort liability, *id.* at 666-667, and considered the question one of first impression. The court's development of the jurisdictional concept has received favorable comment: 56 DICK. L. REV. 257 (1952); 50 MICH. L. REV. 763 (1952); 36 MINN. L. REV. 264 (1952); 21 U. CIN. L. REV. 71 (1952); 100 U. PA. L. REV. 598 (1952); 26 N.Y.U.L.Q. REV. 713 (1951). *Compare,* 27 NOTRE DAME LAW. 117 (1951), approving the justice of the holding, but commenting that it represents a departure from traditional requirements of due process.

108 205 Md. 237, 107 A.2d 357 (1954), *cert. denied,* 348 U.S. 943 (1955). See text, (1) *The Transaction of any Business Within This State, supra.*

109 Johns v. Bay State Abrasive Products Co., 89 F. Supp. 654 (D. Md. 1950). The court's holding was based on the fact that the activities of the non-resident corporation amounted to more than a single isolated transaction. It felt that a single act was not sufficient to support jurisdiction unless that act was subject to the police power. To this extent the decision is contrary to the holding of the *Smyth* case, note 106 *supra.* For comments on the decision see 64 HARV. L. REV. 500 (1951); 49 MICH. L. R. 881, 885-886 (1950).

110 ILL. REV. STAT. c. 110, § 17(1)(c) (1955).

111 Note 10 *supra.* See Miller v. Swann, 170 Misc. 607, 28 N.Y.S.2d 247 (N.Y. City Ct. 1941).

volving the real estate which occurs in Pennsylvania.[112] This statute, limiting jurisdiction to actions involving accident or injury in connection with the real estate, is not as broad as section 17(1)(c). However, nothing in the opinion sustaining the Pennsylvania statute supports the view that this limitation is essential to its validity.[113]

(4) *Contracting to Insure Any Person, Property or Risk Located within This State at the Time of Contracting.*[114]

Congress has declared that the business of insurance is subject to the laws of the several states.[115] The Uniform Unauthorized Insurers Act[116] subjects a non-resident company, not authorized to do business in the state but transacting business there or issuing or delivering policies to residents or citizens, to the jurisdiction of the courts of the state in any suit arising out of a policy so issued or delivered, the commissioner of insurance, ipso facto, being designated as agent for service of process.[117] This statute has been sustained where the policy was delivered in the state to a resident;[118] otherwise it has been held to have

112 PA. STAT. ANN. tit. 12, § 331 (Purdon 1953). Process is served on a defendant under this provision by service on the secretary of the commonwealth.

113 Dubin v. Philadelphia, 34 Pa. D. & C. 61 (1939).

114 ILL. REV. STAT. c. 110, § 17(1)(d) (1955).

115 59 STAT. 34 (1945), as amended by 61 STAT. 448 (1947), 15 U.S.C. §§ 1011-1015 (1952).

116 UNIFORM UNAUTHORIZED INSURERS ACT §§ 1-7; 9A UNIFORM LAWS ANNOTATED 347.

117 *E.g.*, FLA. STAT. ANN. § 625.28 (1943); MASS. ANN. LAWS c. 175B, §§ 1-6 (1954); MICH. STAT. ANN. § 24.567 (101)-(105) (Supp. 1953); PA. STAT. ANN. tit. 40, §§ 1005.1-1005.6 (Purdon 1953); S.C. CODE §§ 37-261 to 37-272 (1952).

118 Parmalee v. Iowa State Traveling Men's Ass'n, 206 F.2d 518 (5th Cir.), *cert. denied*, 346 U.S. 877 (1953). In Storey v. United Ins. Co., 64 F. Supp. 896 (E.D.S.C. 1946), a motion to quash service was denied, but the validity of the South Carolina uniform act was not attacked, the only question being whether the company was engaged in business in South Carolina.

no application.[119]

Section 17(1)(d) is but an extension of the uniform act to non-residents and non-citizens where the risk insured is within Illinois at the time of insuring. Substituted service is replaced by actual service.[120]

For several years, Illinois has had a provision, patterned somewhat after the Uniform Unauthorized Insurers Act, which is in many respects broader than section 17.[121] Under this provision, an Illinois resident may sue an unauthorized insurance company by serving the Director of Insurance and mailing a copy of the process to the company, where the company by mail or otherwise (a) issues or delivers policies, (b) solicits applications, (c) collects premiums or (d) transacts any other business.[122]

---

119 American Farmers Ins. Co. v. Thomason, 217 Ark. 705, 234 S.W.2d 37 (1950). An insurance contract was entered into in California between an Arizona insurance company and an Arkansas resident temporarily in California, and an injury within the coverage of the policy was suffered in California. The Arkansas court held that the statute did not confer jurisdiction over the insurance company which was doing no business in Arkansas at the time of the execution and delivery of the policy in California. Section 17(1)(d) of the Illinois Civil Practice makes no attempt to assert jurisdiction in such a case.

120 ILL. REV. STAT. c. 110, § 17(2) (1955).

121 ILL. REV. STAT. c. 73, § 735 (1955). Paragraph 1 of this section states its purpose:

> "(1) The purpose of this Section is to subject certain companies to the jurisdiction of courts of this state in suits by or on behalf of insureds or beneficiaries under insurance contracts. The Legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued by companies not authorized to do business in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the Legislature herein provides a method of substituted service of process upon such companies and declares that in so doing it exercises its power to protect its residents and to define, for the purpose of this statute, what constitutes doing business in this state, and also exercises powers and privileges available to the state by virtue of Public Law 15, 79th Congress of the United States, Chapter 20, 1st Sess., S. 340, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states."

122 Section 17(1)(d) does not base the assertion of jurisdiction on (b), (c) or (d). (d) is, of course, within section 17 (1)(a).

VI

POLICY CONSIDERATIONS SUPPORTING EXPANDED JURISDICTION OVER NON-RESIDENTS

The restrictions imposed on the assertion of jurisdiction over non-residents by *Pennoyer* v. *Neff* [123] may once have been supported by sound policy considerations. However, changing conditions, resulting from such factors as technological developments improving the speed and facility of transportation and the tremendous increase in interstate commercial activity since that case, required expansion of its concept of the due process limitations on jurisdiction over non-residents.[124] Sound policy reasons support the enactment by the Illinois legislature of section 17 and these considerations have received judicial recognition by various courts.

Requiring resort to a foreign forum is always inconvenient and frequently unjust.[125] It often makes the protection of a right prohibitive[126] or at least greatly handicaps it,[127] particularly where the claim is small.[128] In such a case, the cost of the remedy will largely exceed the value of its fruits.[129] A requirement of distant trials permits a

123 Note 3 *supra.*

124 ". . . Modern life is breaking down State barriers, and as it becomes easier to travel, or to do business, or to own property in other States, one must expect the obligations arising out of such activities to follow more easily. It is just as important that non-resident owners of Philadelphia real estate should keep their property in such shape as not to injure our citizens as it is that non-resident owners of cars should drive about our streets with equal care. It is only a short step beyond this to assert that defendants in both classes of cases should be answerable in this forum. . . ." Dubin v. Philadelphia, 34 Pa. D. & C. 61, 64 (1939).

125 Watson v. Employers Liab. Corp., 348 U.S. 66, 72 (1954), *rehearing denied,* 348 U.S. 921 (1955); Travelers Health Ass'n v. Virginia *ex rel.* State Corp. Comm'n, 339 U.S. 643, 648-649 (1950).

126 Wein v. Crockett, 113 Utah 301, 195 P.2d 222, 228-229 (1948).

127 Smyth v. Twin State Improvement Corp., 116 Vt. 569, 80 A.2d 664, 668 (1951).

128 *Travelers Health Ass'n* case, note 125 *supra* at 648-649.

129 *Smyth* case, note 127 *supra* at 668.

defendant to say to a plaintiff that the issue between them over acts done at plaintiff's home can be settled in only one of two ways — first, by acquiescing in the defendant's view of the matter, or second, by suing the defendant in his own bailiwick.[130] Thus, non-residents could, as a practical matter, continue in business with immunity from legal responsibility.[131]

On the other hand, the local forum is normally the most convenient.[132] The witnesses are there[133] and ordinarily the investigation is conducted there.[134]

Aside from considerations of convenience and justice to individuals, the state has an interest in the litigation. Rights will be determined by the laws of the state where the acts which are the basis of the suit occurred.[135] Furthermore, a state has a legitimate interest in injuries occurring there,[136] particularly since it may be required to care for the injured.[137]

It is reasonable to require a non-resident to defend

---

130 *Ibid.*

131 *Wein v. Crockett,* note 126 *supra* at 228-229; *Smyth v. Twin State Improvement Corp.,* note 127 *supra* at 668.

132 *Watson v. Employers Liab. Corp.,* note 125 *supra* at 72; Johns v. Bay State Abrasive Products Co., 89 F. Supp. 654, 663 (D. Md. 1950); Compania de Astral, S.A. v. Boston Metals Co., 205 Md. 237, 107 A.2d 357, 368 (1954), *cert. denied,* 348 U.S. 943 (1955); *Wein v. Crockett,* note 126 *supra* at 228; *Smyth v. Twin State Improvement Corp.,* note 127 *supra* at 668.

133 *Travelers Health Ass'n v. Virginia ex rel. State Corp. Comm'n* note 125 *supra* at 649; *Johns v. Bay State Abrasive Products Co.,* note 132 *supra* at 663; *Wein v. Crockett,* note 126 *supra* at 228; *Smyth v. Twin State Improvement Corp.,* note 127 *supra* at 668.

134 *Travelers Health Ass'n* case, note 125 *supra.*

135 Compania de Astral, S.A. v. Boston Metals Co., 205 Md. 237, 107 A.2d 357, 368 (1954), *cert. denied,* 348 U.S. 943 (1955); Wein v. Crockett, 113 Utah 301, 195 P.2d 222, 229 (1948); Smyth v. Twin State Improvement Corp., 116 Vt. 569, 80 A.2d 664, 668 (1951).

136 Watson v. Employers Liab. Corp., 348 U.S. 66, 73 (1954), *rehearing denied,* 348 U.S. 921 (1955); Wein v. Crockett, 113 Utah 301, 195 P.2d 222, 230 (1948).

137 Watson v. Employers Liab. Corp., 348 U.S. 66, 72 (1954), *rehearing denied,* 348 U.S. 921 (1955).

where he commits the wrong.[138] One who comes into a state for the purpose of conducting his business should be amenable to the courts and laws of the state and answerable to its citizens for damages sustained by them as a result of the business transacted in the state,[139] and a state ought, as a matter of justice and fairness, to be permitted to control the doing of business within its borders to this extent.[140] By engaging in activities within the state, the non-resident enjoys the benefits and protection of its laws. His conduct may give rise to obligations. Certainly as far as obligations arise out of his activities within the state, a procedure which compels him to respond to a suit to enforce them is not unfair.[141]

Illinois is clearly in harmony with the trend toward the expansion of jurisdiction permitted by the *International Shoe* case [142] founded on these sound policy considerations.[143]

---

138 *Wein v. Crockett,* note 135 *supra* at 229; *Smyth v. Twin State Improvement Corp.,* note 135 *supra* at 668.

139 Sugg v. Hendrix, 142 F.2d 740, 743 (5th Cir. 1944), quoted in Davis-Wood Lumber Co. v. Ladner, 210 Miss. 863, 50 So. 2d 615, 622 (1951); Smyth v. Twin State Improvement Corp., 116 Vt. 569, 80 A.2d 664, 668 (1951).

140 Davis-Wood Lumber Co. v. Ladner, 210 Miss. 863, 50 So. 2d 615, 621 (1951).

141 International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945).

142 *Ibid.*

143 Smyth v. Twin State Improvement Corp., 116 Vt. 569, 80 A.2d 664, at 668 (1951):

> "Extension of the jurisdiction of courts may be expected to continue in the wake of scientific and economic developments. Facility of travel has largely effaced state lines. Specific extensions, including the one under consideration, may generate considerable difference of opinion as to the reasonableness of assuming jurisdiction over a particular defendant or class of defendants. We recognize that there is 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 opportunity to be heard. The implications of International Shoe Co. v. State of Washington are a part of this dual trend. Its broad standard we expect will prevail. Any change will be, most likely, a further extension. See 16 U. Chi. L. Rev. 525, 533, 536."

CONCLUSION

Section 17 is the first statute to eliminate all fictions and circuity in asserting jurisdiction over non-residents, substituting therefor a streamlined and comprehensive scheme.

Problems undoubtedly will arise as to the interpretation and application of the new provision, both as to the particular situations in which the Illinois courts have jurisdiction and as to the relationship between this provision and other statutes. The policy considerations which underlie the statute are those which determine due process under the Fourteenth Amendment. The constitutionality of the statute in a given case can not be successfully challenged unless the Illinois court incorrectly appraises these considerations. Only if the Illinois court finds that a defendant is subject to the jurisdiction of Illinois courts under this section because his activities amount to "the transaction of any business" or the "commission of a tortious act" in the state, when, in fact, his activities in the state do not satisfy the requirements of the due process clause, will the Supreme Court of the United States declare the act unconstitutional.

The Supreme Court has used language in cases concerning state jurisdictional limits which is broad enough to support the extended jurisdictional provisions of the new Illinois Practice Act. These decisions have shown an awareness of inherent problems in limiting the boundaries of state jurisdiction through the due process provisions of the Fourteenth Amendment. Illinois has taken the lead in an attempt to solve these problems, guided by the precedents of other states and with the conviction that legal rights should not be thwarted by an arbitrary delimitation of state jurisdiction through the Fourteenth Amendment.

*John M. O'Connor, Jr.**
*James M. Goff***

* Partner in the firm of Kirkland, Fleming, Green, Martin & Ellis, Chicago, Illinois. Member of the Joint Committee on Illinois Civil Procedure.
** Associate in the firm of Sonnenschein, Berkson, Lautmann, Levinson & Morse, Chicago, Illinois. Member of the Associate Joint Committee on Illinois Civil Procedure.