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VENUE STATUTES: DIAGNOSIS AND PROPOSED CURE*

*George Neff Stevens***

MODERN procedural reform movements have swept by the problems of venue with but little notice. This is unfortunate, for all too many cases are decided on a venue technicality, with complete disregard for the merits. Present day venue procedures are the result of historical developments and piecemeal legislative tinkering. The time has come for an appraisal and for corrective action.

Part I of this paper contains a comparative and critical study of venue statutes in the United States today. Part II points out how and why certain of these provisions have given rise to serious problems and suggests a few simple procedural reforms which will eliminate these objectionable aspects of present-day venue procedures. Part III opens with a discussion of the factors which should be taken into consideration in testing the adequacy of a venue provision and closes with a suggested Model Venue Code.

PART I

A Comparative Study of Venue Statutes in the United States Today†

Venue, as used in this paper, means the place of trial in an action

* This paper has been submitted to the Law School of the University of Michigan in partial fulfillment of the requirements for the S.J.D. degree.

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† All footnote references to statutory material are based upon the statutes and codes hereinbelow listed, and, in the interests of space economy, no further reference to the particular compilation employed will be made:

Ala. Code (1940); Ariz. Code Ann. (1939); Ark. Stat. Ann. (1947); Code of Civil Proc. of Cal. (Deering 1941); Colo. Rules of Civil Proc. (1941); Gen. Stat. of Conn. (Rev. of 1949); Rev. Code of Del. (1935); Fla. Stat. Ann. (1943); Ga. Code Ann. (1933); Idaho Code (1949); Ill. Ann. Stat. (Smith-Hurd 1948); Ind. Stat. Ann. (Burns 1946 Replacement); Code of Iowa (1946); Gen. Stat. of Kan. (1935); Ky. Codes (Carroll 1948); La. Code of Prac. (Dart 1942); Rev. Stat. of Me. (1944); Ann. Code of Md. (Flack 1939); Ann. Laws of Mass. (1933); Mich. Stat. Ann. (1937); Minn. Stat. Ann. (1945); Miss. Code Ann. (1942); Mo. Rev. Stat. Ann. (1942); Rev. Codes of Mont. (1935); Rev. Stat. of Neb. (1943); Nev. Comp. Laws (1929); Rev. Laws of N.H. (1942); N.J. Rules Governing Civil Proc. in the Superior Court (1948); N.M. Stat. Ann. (1941); N.Y.C.P.A. (Gilbert's Bliss 1941); Gen. Stat. of N.C. (1943); Rev. Code of N.D. (1943); Ohio Gen. Code (Page 1938, or Throckmorton 1948); Okla. Stat. Ann.

within a state.¹ Given a cause of action, and having decided what court has jurisdiction over the subject matter, the lawyer must lay the venue, that is, select the place of trial. In making this decision, the lawyer in every state of the United States turns in the first instance, not to common law, but to statute, constitutional provision or rule of court. And he finds that the "proper" venue of his action depends upon the theory of his claim, the subject matter of his claim, the parties involved, or a combination of these factors.

Most codes make provision for the place of trial in local actions,² and all codes provide in one way or another for venue in transitory actions arising both within and without the state.³ Many states make special provision for divorce actions,⁴ actions against executors,⁵ and actions for the specific recovery of personal property.⁶ Most states also provide for venue in actions against residents,⁷ against nonresidents,⁸

(1936); Ore. Comp. Laws Ann. (1940); 12 Pa. Stat. Ann. (Purdon Cum. Supp. 1947) following §3185, Rules of Civil Procedure; Gen. Laws of R.I. (1938); Code of Laws of S.C. (1932); S.D. Code (1939); Tenn. Code Ann. (Williams 1934); Ann. Tex. Stat. (Vernon 1926); Tex. Rules of Civil Proc. (Vernon 1948 Supp.); Rev. Stat. of Utah (1933); Vt. Stat. (1947 Rev.); Va. Code of 1942; Rev. Stat. of Wash. (Remington 1932); W.Va. Code of 1943; Wis. Stat. (1947); Wyo. Comp. Stat. Ann. (1945).

¹ For a discussion of the historical development of venue, see 1 CHITTY, PLEADING, 3d American ed., 197 et seq. (1819); STEPHEN, PLEADING, Andrews 2d ed., 375 et seq. (1901); 5 HOLDSWORTH, HISTORY OF ENGLISH LAW, 2d ed., 117-119, 140-142 (1924); 3 STREET, FOUNDATIONS OF LEGAL LIABILITY 90 et seq. (1906); SUNDERLAND, CASES AND MATERIALS ON JUDICIAL ADMINISTRATION, 2d ed., 524 et seq. (1948); Sunderland, "The Provisions Relating to Trial Practice in the New Illinois Civil Practice Act," 1 UNIV. CHI. L. REV. 188 (1933); Blume, "Place of Trial of Civil Cases," 48 MICH. L. REV. 1 (1949).

² All states except Delaware, Maine, Massachusetts and New Hampshire have specific provisions and these four states are in accord as a matter of common law. See *infra* "Where the Subject of Action or part thereof is situated."

³ All states cover these categories, but the method of coverage varies considerably. See *infra* "Grounds of Venue," Sections B through M.

⁴ Ala. Title 34 §28; Ariz. §21-101(13); Ark. §34-1204; Colo. c. 56 §6; Del. §3503; Const. of Ga. §2-4901(1); Ill. c. 40 §6; Kan. §60-508; Ky. §76; Me. c. 153 §55; Md. Art. 16 §38; Mass. Vol. 6 c. 208 §6; Mich. §25.86; Minn. §518.09; Miss. §2738; Nev. §9460; N.J. Rule 3:83; N.M. §25-703; N.C. §50-3; Ohio §11980; Okla. §138; Pa. Rule 1122; R.I. c. 416 §11; S.D. §14.0720; Tex. Art. 1995(16); Utah §40-3-1; Va. §5105; W.Va. §4709; Wis. §261.01(3); Wyo. §3-5905.

⁵ Ala. Title 61 §118; Ariz. §21-101(8); Cal. §395.1; Ky. §§66, 67; La. Art. 164; Me. c. 99 §11; Md. Art. 75 §158; Mass. Vol. 7 c. 223 §11; Miss. §§1274, 1436; N.H. c. 384 §2; N.J. Rule 3:100-1 thru 3:100-5; N.Y. §182; N.C. §1-78; Ohio §11277; S.C. §422; Tex. Art. 1995(6); Va. §6049 (Fourth); Wis. §261.01(5).

⁶ Ariz. §21-101(11); Colo. Rule 98(a); Ill. c. 119 §3; Mass. Vol. 7 c. 223 §4; Mich. §27.641(1); Minn. §542.06; Miss. §2843; Mo. §872; N.M. §19-501 (Third); N.Y. §184(3); N.C. §1-76(4); N.D. §28-0402(1); Ohio §§12053, 12054, 12055; Ore. §1-401(2); Pa. Rule 1072; S.C. §420(4); S.D. §33.0301(4); Tenn. §8642; Tex. Title 42 Art. 1995(10); Wash. §204(2); Wis. §261.01(1)(d).

⁷ All states except Delaware and Pennsylvania. See *infra* "Where the Defendant Resides."

⁸ For example, see Ala. Title 7 §294; Ariz. §21-101(1); Ark. §§27-608, 27-612; Cal. §395; Colo. Rule 98(c); Conn. §7747; Ga. §3-206; Idaho §5-404; Ill. c. 110 §131; Ind.

against corporations, domestic⁹ and foreign,¹⁰ against partnerships, associations and individuals doing business in the state,¹¹ and against the state, or a county, or a city or public officers generally or specifically.¹² The nature of the plaintiff,¹³ as a resident or nonresident, corporation, domestic or foreign, or political entity, is another factor frequently considered and provided for. When a lawyer has occasion to file a law suit in a state other than his own, he will be on familiar ground so far as his approach to the statutory material is concerned. But quite frequently the similarity ends with his search technique. He will find that he cannot rely with any degree of safety on his knowledge of venue provisions in his home state, with the possible exception of local actions.

A comparative study of contemporary venue provisions reveals some thirteen different fact situations upon which venue statutes are predicated.

§2-707; Iowa §616.17, 616.4; Kan. §60-507; La. Art. 165(5); Md. Art. 16 §98; Mass. c. 223 §§1 and 8; Mich. §27.461(5) and (12); Minn. §542.09; Miss. §1437; Mo. §871; Mont. §9096; Neb. §25-403, 25-408; Nev. §8571; N.H. c. 384 §1; N.J. Rule 3:3-2; N.M. §19-501 (Sixth); N.Y. §182; N.C. §1-82; N.D. §28-0405; Ohio §§6308, 11276; Okla. §137; Ore. §1-403; Pa. Rule 2078; R.I. c. 511 §2; S.C. §422; S.D. §33.0304; Tex. Title 42 Art. 1995(2) and (3); Utah §104-4-7; Vt. §1604; Va. §6049 (Fourth); Wash. §205-2; W.Va. §5517(d); Wis. §261.01(12); Wyo. §§3-807, 60-1101. See *infra* "Grounds of Venue," sections B through M.

⁹ For example, see Ala. Title 7 §60; Ariz. §21-101(18); Ark. §§27-605, 27-606, 27-607; Fla. §46.04; Idaho §5-404; Ill. c. 110 §132; Ind. §2-706; Iowa §616.8 through 616.15; Kan. §60-504, 60-505, 60-506; Ky. §§71, 72, 73; La. Art. 165(9) and (10); Me. c. 99 §13; Md. Art. 23 §110; Mass. c. 223 §8; Mich. §27.641(3), (4), (6) and (7); Minn. §542.09; Miss. §§1433, 1434, 1435; Mo. §874; Neb. §25-405, 25-406, 25-407; N.J. Rule 3:3-2; N.C. §1-79; N.D. §28-0404; Ohio §§11272, 11273, 11275; Okla. §134; Pa. Rule 2179; R.I. c. 511 §3; Tenn. §8643; Tex. Art. 1995(21), (22), (23), (24), (25), (26) and (28); Utah §104-4-5, 104-4-6, 104-4-7; Vt. §1604; Va. §6049 (Second); Wash. §205-1; W.Va. §§5517(b), 5518(a); Wis. §261.01(4), (5) and (6); Wyo. §3-805. See *infra* "Grounds of Venue," sections B through M.

¹⁰ For example, see Ala. Title 7 §60; Ariz. §21-101(18); Ark. §27-608; Conn. §7753; Fla. §46.04; Ill. c. 110 §132; Ind. §2-708; Iowa §616.8 through 616.15; Kan. §60-507; Ky. §§71, 72, 73; La. Art. 165(9) and (10); Me. c. 99 §13; Md. Art. 23 §110; Mass. c. 223 §8; Mich. §27.641(3), (4), (5), (6) and (7); Minn. §542.09; Miss. §§1434, 1435, 1437; Mo. §874; Neb. §25-408; N.J. Rule 3:3-2; N.C. §1-80; Ohio §11276; Okla. §137; Pa. Rule 2179; R.I. c. 511 §4; Tenn. §8643; Tex. Art. 1995(27); Utah §104-4-5, 104-4-6, 104-4-7; Va. §6049 (Fourth); Wash. §205-1; Wyo. §3-807. See *infra* "Grounds of Venue," sections B through M.

¹¹ For example, see Ala. Title 7 §§56, 57, 60; Ariz. §21-101(18); Ark. §27-609; Ill. c. 110 §§131(1), 132(1); La. Art. 165(2); Md. Art. 23 §110, Art. 75 §157; Mass. c. 223 §1; Mich. §27.641(7); N.C. §1-80; Pa. Rule 2077(a)(2), 2130(a), 2156(a), 2179(a)(2), 2179(b)(1); Tex. Art. 1995(23), (24); W.Va. §5517(b). See also *infra* "Grounds of Venue," sections B through M.

¹² For example, see Cal. §394; Idaho §5-403; Ill. c. 110 §132(3); Iowa §616.16; Mont. §9095; Nev. §8570; N.J. Rule 3:3-2; N.Y. §182-b; Utah §104-4-3. See *infra* "Grounds of Venue," sections B through M.

¹³ For example, see Ala. Title 7 §61; Cal. §394; Conn. §§7753, 7754; Idaho §5-403; Me. c. 99 §§13, 15; Mass. c. 223 §§5, 8(4); Minn. §542.07; Mo. §871(5); Mont. §9095; Nev. §8570; R.I. c. 511 §3; Utah. §104-4-3; Vt. §§1286, 1604; Wis. §261.01(8). See *infra* "Grounds of Venue," sections B through M.

Grounds of Venue

A. *Where the subject of action or part thereof is situated.* The common law concept of actions which were local because the facts could have occurred only in a particular place still persists.¹⁴ As might well be expected, the proper venue for such actions is the county where the subject of the action is situated. There is, however, considerable variation from state to state as to what types of cases are local and fall into this category. A detailed study of the statutes is set forth in Paragraph A of the Appendix hereto.

This type of venue, found in all forty-eight states, is based upon the idea that the court of the county in which the res, which is the subject matter of the suit, is located is best able to deal with the problem. The local sheriff can attach, deliver or execute upon the property. The local clerk can make the necessary entries with a minimum of red tape where title to land is affected. Trial convenience is served where "a view" is necessary or of value in reaching a determination. Third parties can readily ascertain, at a logical point of inquiry, the status of a res in which they may be interested.

It is submitted that these factors are of sufficient importance in this type of case to outweigh other considerations such as convenience of parties or witnesses in the selection of place of trial. Consequently, in actions of the type generally referred to as local, venue based upon where the subject of action or part thereof is situated makes sense and should be preserved.

However, two serious problems have arisen out of this type of venue statute. First, the local action theory behind such provisions has led all too many courts to confuse venue with jurisdiction. This problem will be discussed in Part II of this paper. Second, what type of suit or action is a local suit or action? This matter will be further discussed in Part III hereof.

B. *Where the cause of action, or part thereof, arose or accrued.* Convenience of witnesses is the most logical reason for venue provisions allowing the action to be brought in the county where the cause of action, or part thereof, arose or accrued.¹⁵ And since convenience of witnesses is a very practical problem in the trial of a law suit, one would expect to find venue based upon the place where the cause of action arose or accrued a rather common, and general, provision. Surprisingly

¹⁴ Supra note 1.

¹⁵ While "arose" is the more common term, a number of states employ the word "accrued"—Fla. §46.01, 46.04; Mich. §27.641(5); Miss. §§1433, 1437; Mo. §§874, 8410.11; Okla. §135; Tex. Tit. 42 Art. 1995(26), (27).

enough, while common, such statutes are rarely general. For the details, see Appendix, Paragraph B.

The idea behind this type of venue provision—trial at the place where the claim came into being for the convenience of witnesses and because of the possibility of a view of the area involved—is sound and popular. Forty-two states have a provision for venue in the county where the cause of action or some part thereof arose or accrued.¹⁶ However, its usefulness has been somewhat impaired by difficulties arising out of problems of statutory interpretation. First, what do the words “arose” and “accrued” mean? Second, what is the difference, if any, between “arose” and “accrued”? And, third, what is the meaning of the phrase “or part thereof”? These matters will be further discussed in Part III hereof.

C. *Where some fact is present or happened.* There is a sizeable group of statutes which provide for trial of the action in the county where some particular fact or fact situation related to, but no part of, the cause of action is present or happened. For details, see Appendix, Paragraph C.

If the purpose of venue is trial convenience, either of parties, or witnesses, or the court or court officials, then it is hard to find any real justification for this group of venue provisions. Most if not all of them are examples of singling out certain specific types of actions for special treatment where a need for special treatment is not or at least no longer apparent. Although some thirty-two states have one or more statutes of this type,¹⁷ there are few instances where more than half a dozen states have a similar, to say nothing of an identical, provision. Most states cover all of the situations provided for by these special provisions in a general provision. It is submitted that the latter approach alone makes any sense.

D. *Where the defendant resides.* Convenience of the defendant is the reason usually given for venue statutes which provide for the place of trial in the county where the defendant resides—the theory probably being, as suggested by Professor E. R. Sunderland, “that since the plaintiff controls the institution of the suit he might behave oppressively toward the defendant unless restrained.”¹⁸ Forty-seven states make use of this type of provision.¹⁹ For details, see Appendix, Paragraph D.

¹⁶ All except Conn., Del., Ga., R.I., Tenn. and Vt.

¹⁷ All except Ala., Colo., Conn., Del., Fla., Ga., Idaho, Ill., N.H., N.J., N.M., N.D., Ore., S.C., Tenn. and Wash.

¹⁸ 1 UNIV. CHI. L. REV. 188 at 192 (1933).

¹⁹ All except Delaware; but Florida and Pennsylvania use it very sparingly.

Venue provisions based upon the defendant's residence have given rise to little difficulty except where joinder of defendants residing in different counties is involved. This problem is fully discussed in Part II hereof.

Since convenience of the defendant is an important consideration in assuring a fair trial, there is a logical and practical reason behind venue provisions of this type. Their use should be encouraged. This matter will be considered further in Part III hereof.

E. *Where the defendant is doing business.* Some ten states provide that in actions against certain classes of defendants, generally or in certain types of cases, the county in which the defendant is doing business, is the proper venue.²⁰ Convenience of the defendant, and of witnesses, appears to be the reason behind such provisions where they are tied to causes of action arising out of the doing of business in the state. Convenience of the defendant, and even more clearly, convenience of the plaintiff, by providing a county in which to lay the venue against a non-resident individual, partnership, company or corporation without undue inconvenience to defendant, is served by the broader type of provision—against certain classes of defendants generally. A detailed study of the statutes is set forth in Paragraph E of the Appendix.

The advisability of a separate venue provision of this sort is doubtful. It is suggested that if the advantages of this type of provision can be incorporated into other venue statutes, and it is felt that this can be done, then simplification would dictate that such an approach be employed. The matter will be more fully discussed in Part III hereof.

F. *Where defendant has an office or place of business, or an agent, or representative, or where an agent or officer of defendant resides.* Statutes which provide for the venue of actions in the county where defendant has an office or place of business or where an agent or officer of defendant resides, are quite common where a corporation, company or some other type of business organization is the defendant. Convenience of the plaintiff, rather than the defendant, is the moving consideration behind such statutes in most instances.

A simple description of statutes of this nature is impossible because of the variations in terminology employed. A detailed breakdown of such statutes, found in thirty states,²¹ is set forth in Paragraph F of the Appendix.

²⁰ Ala., Ariz., Ill., Md., Mich., N.C., N.D., Pa., Tex. and W.Va.

²¹ Ala., Ariz., Ark., Fla., Idaho, Ill., Ind., Iowa, Kan., Ky., La., Me., Md., Mass., Mich., Miss., Mo., Neb., N.D. Ohio, Okla., Pa., R.I., Tenn., Tex., Utah, Va., W.Va., Wis., and Wyo.

The obvious purpose of this type of statute is to provide a proper place of trial in actions against corporations, partnerships, associations and even individuals under certain circumstances. The piecemeal legislative approach to venue is more apparent in this area than in any other. The need for this entire mass—one might even say mess—of detailed regulation is extremely doubtful. A carefully drafted comprehensive venue provision of a general nature would give the same result, with the additional advantages of equality and elimination of problems of construction of a multitude of special provisions. For suggested treatment, see Part III hereof.

G. *Where the plaintiff resides.* Thirty-seven states have provisions under which venue is properly laid in the county where the plaintiff resides.²² For a breakdown of the statutes see Paragraph G of the Appendix.

Convenience of the plaintiff is the obvious reason behind venue statutes of this nature. Convenience of plaintiff's witnesses may or may not be served, depending upon the nature of the action. A provision of this sort is just as logical from the plaintiff's point of view as is the provision for venue at the defendant's residence from the defendant's side. Neither of them necessarily provide a place of trial at a point convenient for witnesses of either party. In certain types of cases against certain classes of defendants—such as an action on a foreign cause of action against a nonresident—this type of provision is both logical and practical. As a basis of venue, therefore, this ground is worthy of serious consideration. For further comment, see Part III hereof.

H. *Where the plaintiff is doing business.* Two states have statutes which provide for venue in the county where the plaintiff is doing business.²³ Obviously the convenience of the plaintiff is the sole consideration behind such a provision. It is submitted that other factors of trial convenience such as convenience of witnesses and of the defendant are more important, and that in view of the number of adherents to this ground of venue, it would be wise to advocate its abandonment. Where such a county would be in fact the most convenient place of trial—as, for example, if the claim originated there—all of the advantages of this type of provision, with none of its disadvantages, could be had by employing one of the more generally accepted bases of venue hereinabove discussed.

I. *Where the defendant may be found.* Venue based upon the county where the defendant may be found is in accord with the com-

²² All except Ark., Del., Fla., Ga., Ind., N.D., Ore., S.C., S.D., Tenn., and Wash.

²³ Mass. and Vt. See Appendix, Par. H.

mon law doctrine that the right of action follows the person. Eighteen states employ this type of venue provision.²⁴ For details, see Paragraph I of the Appendix hereto.

It is difficult to find any sound reason for venue based upon where the defendant may be found. It serves no useful purpose—no trial convenience of either witnesses or parties. It is a good example of a historical hang-over—a type of provision which has long since outlived its usefulness. The problem which this type of provision was designed to solve was and is not one of venue but of service of process. This matter is fully discussed in Part II herein. If the suggestions therein set forth are followed, this type of venue statute could be, and should be, abandoned.

J. *Where the defendant may be summoned or served.* Another group of statutes, also based upon the common law doctrine that the right of action follows the person, provides that venue may be laid in the county where the defendant may be summoned, or served with process. Such a provision is found in twenty-one states.²⁵ A study of these statutes is set forth in Paragraph J of the Appendix.

The comments which were made with respect to venue based upon where the defendant may be found apply with equal force to this type of provision. A simple, and long overdue, correction of service of process provisions would eliminate any need for venue of this sort. For further discussion, see Part II hereof.

K. *In the county designated in the plaintiff's complaint.* Under certain circumstances some fourteen states allow the venue to be laid in any county designated in the plaintiff's complaint.²⁶ For details, see Paragraph K of the Appendix.

Venue provisions of this type give the plaintiff an unnecessary economic advantage not warranted by convenience of parties or witnesses. In the interests of justice and trial convenience they should be eliminated.

L. *In any county.* The broadest venue provision on the books is that which provides that the plaintiff may lay the venue in any county. Thirteen states have such a provision.²⁷ For details, see Paragraph L of the Appendix.

²⁴ Ariz., Colo., Conn., Ga., Ind., Iowa, Kan., La., Md., Miss., Neb., N.M., Ohio, Okla., Ore., R.I., Tenn. and Tex.

²⁵ Ark., Cal., Colo., Idaho, Ind., Iowa, Kan., Ky., Miss., Mont., Neb., Nev., N.J., Ohio, Okla., Pa., Utah, Va., Wash., W.Va., and Wyo.

²⁶ Cal., Colo., Idaho, Minn., Mont., Nev., N.Y., N.C., N.D., Ore., S.C., S.D., Utah and Wis.

²⁷ Idaho, Ill., Me., Mass., Mich., Minn., Mo., N.H., N.M., Okla., R.I., Vt., and Wis.

The comments which were made with respect to venue based upon the county designated in the plaintiff's complaint apply with equal force to this type of provision—they should be eliminated.

M. *Where the seat of government is located.* Twenty states have statutes which provide for trial in the county where the seat of government is located.²⁸ For a study of the statutes, see Paragraph M of the Appendix.

Statutes of this sort have a sound and practical reason behind them. With one exception, this type of provision is reserved for actions by or against governmental units or agencies. Convenience of the government appears to be the controlling factor. Such provisions have merit and will be further considered in Part III hereof.

Choice of Venue

A plaintiff today has no more election as to the place of trial of real actions than did his great-great grandfather, that is, none. The explanation lies in the fact that the scheme of local actions is practical and convenient and has caused no undue hardship.²⁹

Most states allow the plaintiff to sue in either county when the subject matter of a local action lies in two or more counties.³⁰ Also, there has been a tendency to release trespass to land actions from the category of real actions.³¹

On the other hand, the broad choice of venue under the transitory action concept of the English common law has been substantially reduced by positive legislation. Only three states, Tennessee, Mississippi and Pennsylvania, adhere to the common law approach.³² The most common provision today, and the basic one, appears to be venue based upon the residence of the defendant.³³

However, in the transitory actions the plaintiff is frequently given some choice of venue, as, for example, where the defendant resides or the cause of action arose,³⁴ or where defendant resides or is sum-

²⁸ Ala., Ariz., Ark., Cal., Idaho, Ill., Ky., La., Mass., Mo., Mont., Nev., N.M., N.Y., Pa., Tex., Utah, Va., W.Va., and Wis.

²⁹ For an excellent discussion of the historical background, see Blume, "Place of Trial of Civil Cases," 48 MICH. L. REV. 1, 20 (1949).

³⁰ See Appendix, footnotes 48 through 55.

³¹ See Appendix, footnotes 20 through 25.

³² Miss. §1433; Tenn. §8640; Pa. Rule 1006, 1042, 1072 2078(a)(1), 2078(b)(1).

³³ See Appendix, footnotes 94 through 121.

³⁴ For example, see Ala. Title 7 §54; Ky. §73; Mont. §9096; N.J. Rule 3:3-2; N.M. §19-501; S.D. §33.0304; Wis. §261.01(11).

moned,³⁵ or where either plaintiff or defendant resides,³⁶ or where defendant resides, the cause of action accrued or the property in litigation is located,³⁷ or where defendant has an office or agent or is doing business, or the cause of action arose.³⁸ The number and type of combinations includes all of the grounds of venue above discussed in almost every possible arrangement. A study of the statutes reveals no particular election pattern, even within a particular state. For suggestions see Part III.

Summary

Thirteen different grounds of venue are found in the states of the United States today. Some are employed quite generally while others are used in only a few states. As pointed out above, only five of these grounds have any sound reason behind them. The remaining eight grounds are not based on trial convenience, or could be absorbed into the five sound grounds. In either case the continued use of these eight additional grounds makes for needless confusion. Their use should be abandoned. In Parts II and III hereof will be found some suggestions as to how this result might be achieved.

PART II

Venue Problems and Some Suggestions

Jurisdiction and Venue

If the lawyer representing a single plaintiff in an action against a single defendant on a single cause of action studies the venue provisions of the state before filing his pleading, and makes a reasonable effort to comply, the chances are good that he will not encounter any venue trouble. A very serious problem, however, develops in all too many states if by chance or design his venue is improperly laid. The thing that makes the problem serious is the very real possibility that either by statute or by case law the court will lose jurisdiction over the subject matter of the action or the person of the defendant by reason of the improperly laid venue, with consequent disastrous results to plaintiff's law suit.

³⁵ For example, see Ark. §27-613; Colo. Rule 98(c); Idaho §5-404; Kan. §60-509; Ky. §78; Mont. §9096; N.M. §19-501; Ohio §11277; Ore. §1-403; R.I. c. 511 §2; Wyo. §3-808.

³⁶ For example, see Colo. Rule 98(c); Conn. §7747; Me. c. 99 §9; Mass. Vol. 7 c. 223 §1; Mich. §27.641; Mont. §9096; N.H. c. 384 §1; N.M. §19-501; N.C. §1-82; Utah §104-4-6.

³⁷ For example, see Fla. §46.01; Iowa §616.18; N.M. §19-501.

³⁸ For example, see Fla. §46.04; Idaho §5-404; Ill. c. 110 §132; Md. Art. 23 §110; Miss. §1433; N.C. §1-80; Ohio §11272; Okla. §134; Utah §104-4-7; Wis. §261.01(6).

The theoretical, and very practical, distinction between jurisdiction and venue was beautifully put by Rugg, C. J. in *Paige v. Sinclair*:³⁹

"The distinction between jurisdiction and venue is plainly established. Jurisdiction is a term of comprehensive import. It concerns and defines the power of judicatories and courts. It embraces every kind of judicial action touching the subject of the action, suit, petition, complaint, indictment or other proceeding. It includes power to inquire into facts, to apply the law, to make decision and to declare judgment. Venue in its modern and municipal sense relates to and defines the particular county or territorial area within the State or district in which the cause or prosecution must be brought or tried. It commonly has to do with geographical subdivisions, relates to practice or procedure, may be waived, and does not refer to jurisdiction at all."

There is little, if any, disagreement over these definitions. Difficulties arise primarily because of careless legislative draftsmanship, leading to difficult problems of statutory construction.

Every state in the United States has in its constitution or statutes, or both, a section or sections, devoted to jurisdiction of the courts of the state. In every state in the United States there is a constitutional or statutory provision conferring general original jurisdiction on some court, either generally⁴⁰ or in the county in which the court is sitting.⁴¹ Yet, in not a single state is there a statutory definition of what is meant by jurisdiction.

So also, every state in the United States has constitutional or statu-

³⁹ 237 Mass. 482, 130 N.E. 177 (1921).

⁴⁰ Ala. Code (1940) Tit. 13 §§126 and 129; Const. of Ariz. Art. VI §6; Ark. Stat. Ann. (1947) §22-301 and 22-404; Cal. Const. of 1879 Art. VI §5; Const. of Colo. Art. VI §11; Gen. Stat. of Conn. (Rev. of 1949) §7745; Rev. Code of Del. (1935) §4274; Const. of Fla. of 1885 Art. 5 §11; Const. of Ga. of 1945 §2-3901; Idaho Code (1949) §1-705; Const. of Ill. Art. VI §12; Ind. Stat. Ann. (Burns 1946 Rep.) §4-303; Code of Iowa (1946) §604.1; Gen. Stat. of Kan. (1935) §20-301; Ky. Codes (Carroll 1948) §23.010; La. Const. of 1921 Art. 7 §35; Rev. Stat. of Me. (1944) c. 94 §5; Ann. Laws of Mass. (1933) Vol. 7 c. 212 §§3 and 4; Mich. Stat. Ann. (1937) §27.542; Miss. Code Ann. (1942) §§1262 and 1428; Mont. Const. Art. VII §11 and Rev. Codes of Mont. (1935) §8829; Rev. Stat. of Neb. (1943) §24-302; Nev. Comp. Laws (1929) §8382; Rev. Laws of N.H. (1942) c. 370 §6; N.J. Const. of 1947 Art. 6 §3 ¶2; Const. of N.M. (1911) Art. 6 §13; N.Y. Const. Art. 6 §1; Gen. Stat. of N.C. (1943) §7-63; Rev. Code of N.D. (1943) §27-0506; Ohio Gen. Code (Page 1938, or Throckmorton 1948) §11215; Okla. Const. Art. VII §10; Ore. Const. Art. VII §9; Gen. Laws of R.I. (1938) c. 496 §§6 and 7; Const. of S.C. of 1895 Art. 5 §15; S.D. Code (1939) §32.0904; Tenn. Code Ann. (Williams 1934) §10318; Ann. Tex. Stat. (Vernon 1926) Tit. 40 Art. 1906; Rev. Stat. of Utah (1933) §20-3-4; Vt. Stat. (1947 Rev.) §§1277 and 1400; Va. Code of 1942 §5890; Rev. Stat. of Wash. (Remington 1932) §15; W.Va. Code of 1943 §5196; Wis. Stat. (1947) §252.03; Wyo. Const. Art. 5 §10.

⁴¹ Md. Art. 16 §93, and Art. 26 §41; Minn. §484.01; Mo. §2100; 17 Pa. Stat. Ann. (Purdon 1930) §251.

tory provisions controlling the venue of civil cases. The lawyer looking for the proper place of trial will find it indexed under "Venue," except in two states. In one of these the place of trial provisions appear under the heading "Jurisdiction and Process."⁴² In the other place of trial provisions appear under the heading "Venue Jurisdiction."⁴³ Having located the proper provisions, the lawyer is next faced with the task of interpreting what he has found. And, in not a single state in the United States will he find a statutory definition of venue to help him along his way. Instead, he will find that references to jurisdiction in venue statutes are not uncommon. Three states have statutes which expressly declare that no court has jurisdiction over certain kinds of cases unless the venue is properly laid.⁴⁴ Three others, without mentioning the word jurisdiction, accomplish the same result by providing that a judgment obtained in any county other than the proper one is void.⁴⁵ These statutes are clear. Here venue is and probably was intended to be a geographical limitation on the court's jurisdiction.

Several states have statutes among their venue provisions which declare that in certain types of cases, such as actions respecting title to land lying in two or more counties,⁴⁶ and actions arising on a highway or watercourse which is the boundary between two counties,⁴⁷ the courts of either county shall have jurisdiction. Another group of statutes provide that if certain actions, such as actions by nonresident executors or trustees,⁴⁸ actions against defendants domiciled in the county,⁴⁹ actions involving attachments,⁵⁰ chancery cases where defendants reside in different counties,⁵¹ actions against insurance companies,⁵² actions where a special venue has been provided,⁵³ actions against domestic corporations under certain circumstances,⁵⁴ and actions against nonresident motorists,⁵⁵ are brought in a particular county, the court in that county will have jurisdiction.

⁴² Maryland.

⁴³ Mississippi.

⁴⁴ Iowa §616.11 (nonlife insurance assessments) and 616.12 (nonlife insurance premiums or notes); Md. Art. 16 §95 (land cases); Minn. §542.02 (actions relating to land).

⁴⁵ Me. c. 99 §14 (actions for forfeitures); Ill. c. 110 §174(5) (confession of judgment notes); Va. §6051 (action against public officers).

⁴⁶ Const. of Ga. §2-4902 ¶II; Md. Art. 16 §95; Mich. §27.2013.

⁴⁷ Ariz. §21-101(19); Fla. §46.06; Md. Art. 75 §160; Tex. Tit. 42 Art. 1996.

⁴⁸ Conn. §7754.

⁴⁹ La. Art. 162 and 165.

⁵⁰ Me. c. 99 §12.

⁵¹ Md. Art. 16 §96.

⁵² Miss. §1435.

⁵³ Tex. Tit. 42 Art. 1995(30).

⁵⁴ W.Va. §5517(b).

⁵⁵ Wyo. §60-1101.

If such statutes were intended to confer upon the court a power to hear and determine cases of a kind which the court could not otherwise hear, then such sections would be jurisdictional provisions and as such have no place among the venue statutes. A reading of these statutes, however, makes it quite apparent that the intent of the legislature was to provide a proper place or places for trial in these situations, and not to confer a broader jurisdiction on the court. The use of the word "jurisdiction" under such circumstances is inaccurate and misleading. Steps should be taken to correct these statutes by appropriate legislation, and lawyers, individually and through Bar Association committees, should be vigilant to prevent recurrences of such draftsmanship in the future.

Once the possibility of jurisdictional limitations through venue provisions is recognized, the lawyer who failed to object to improper venue in a timely manner will raise the objection that the court has no jurisdiction. He will argue that the particular provision does not relate to venue but is a jurisdictional limitation.⁵⁶ Such litigation is wasteful,

⁵⁶ Such tactics are not at all uncommon. See, for example, the following cases wherein the contention was successful: *King v. Harris*, 134 Ark. 337, 203 S.W. 847 (1918) (trespass to land lying within the state); *Jones v. Jones*, 181 Ga. 747, 184 S.E. 271 (1936) (divorce); *Robertson v. The State ex rel. Smith*, 109 Ind. 79, 10 N.E. 582 (1886) (state officers); *Gover v. Wheeler*, 296 Ky. 734, 178 S.W. (2d) 404 (1944) (replevin); *Central Maine Power Co. v. Maine Central R. Co.*, 113 Me. 106, 93 A. 43 (1915) (replevin); *Morse v. Dunham*, 48 Mich. 590, 12 N.W. 865 (1892) (state officers); *Automobile Ins. Co. v. Oakland Circuit Judge*, 247 Mich. 67, 225 N.W. 618 (1929) (domestic insurance company); *Moore v. Epstein*, 258 Mich. 425, 242 N.W. 779 (1932) (personal injury case); *Orloff v. Morehead Mfg. Co.*, 273 Mich. 62, 262 N.W. 736 (1935) (dissolution of corporation, chancery case); *Thaw v. Detroit Trust Co.*, 307 Mich. 6, 11 N.W. (2d) 305 (1943) (accounting); *The State ex rel. Gardner v. Hall*, 282 Mo. 425, 221 S.W. 708 (1920) (state officers); *Randolph v. Moberly Hunting and Fishing Club*, 321 Mo. 995, 15 S.W. (2d) 834 (1929) (ejectment); *Lippincott v. Wolski*, 147 Neb. 930, 25 N.W. (2d) 747 (1947) (trespass to land within state); *B. & O. R. Co. v. Hollinberger*, 76 Ohio St. 177, 81 N.E. 184 (1907) (action to recover penalty); *Loftus v. P.R. Co.* 107 Ohio St. 352, 140 N.E. 94 (1923) (wrongful death); *Western and Southwestern Indemnity Co. v. Chicago Title and Trust Co., Rec.*, 128 Ohio St. 422, 191 N.E. 462 (1934) (suit on bond); *Industrial Com. of Ohio v. Weigand*, 128 Ohio St. 463, 191 N.E. 696 (1934) (Workmen's Compensation); *Hall v. Southhall Bros. and Carl*, 146 Tenn. (19 Thompson) 129, 240 S.W. 298 (1921) (trespass to land lying within the state); *Corzelius v. Crosby Producing and Royalty Co.*, 52 S.W. (2d) 270 (C.C.A. Tex. 1932) (trespass to land lying within the state); *Virginia and Southwestern Ry. Co. v. Hollingsworth*, 107 Va. 359, 58 S.E. 572 (1907) (action against corporation).

Compare with the following cases wherein the contention was rejected: *Pgh. C., C., & St. L. Ry. Co. v. Home Ins. Co. of N.Y.*, 73 Ind. App. 226, 125 N.E. 427 (1920) (trespass to land lying within the state); *Gillen v. Ill. Central R. Co.*, 137 Ky. 375, 125 S.W. 1047 (1910) (trespass to land lying within the state); *Smith v. Barr*, 76 Minn. 513, 79 N.W. 507 (1899) (trespass to land lying within the state); *Cox v. Oakdale Cotton Mills, Inc.*, 211 N.C. 473, 190 S.E. 750 (1937) (trespass to land lying within the state); *Smith v. Smith*, 226 N.C. 506, 39 S.E. (2d) 391 (1946) (divorce); *Snyder v. Clough*, 71 Ohio App. 440, 50 N.E. (2d) 384 (1942) (trespass to land lying within the state); *South Texas Development Co. v. Williams*, 130 Tex. 217, 107 S.W. (2d) 378 (1937) (trespass to land lying within the state); *Washington ex rel. The Superior Court for Yakima County*,

unnecessary, and may well lead to injustice. It should be, and could be, eliminated by carefully worded statutes drawn along the lines hereinafter discussed.

Venue statutes which state that the action is to be brought "only" in a particular county,⁵⁷ or which employ words of like import,⁵⁸ or which follow a general venue provision with a proviso that certain actions must be brought in a certain county,⁵⁹ are also easy prey to jurisdiction-venue confusion techniques.⁶⁰

Another common cause of difficulty springs from the positive language of venue provisions. Such statutes provide that the action "must," or "shall," or "may" be brought in a certain county, or that a certain county "is" the proper county.⁶¹ What does this terminology mean? Are these words limitations on the power of a court other than the one sitting in a proper county to hear and determine the particular case, or are they merely venue provisions which can be and are waived unless timely objection is taken?

Common sense would dictate that these words—any or all of them—are not intended to be jurisdictional limitations, but are used only to make it clear that failure to comply subjects the pleader to attack on the ground that the venue is improperly laid. But, since the statutes

193 Wash. 326, 75 P. (2d) 929 (1938) (action against corporation, one judge dissenting); *Mayou Mfg. Co. v. Consumers Oil Co.*, 60 Wyo. 75 at 110-113, 146 P. (2d) 738 (1944) (action against corporation). Trespass to land lying without the state is still generally considered to be a local action and constitutes a geographical limitation on the jurisdiction of the court to hear and determine such cases. For a discussion of this problem, see Foster, "Place of Trial in Civil Actions," 43 HARV. L. REV. 1217 (1930).

⁵⁷ Fla. §46.01 (general provision) and §46.05 (action upon promissory note); Neb. §25-401 (trespass to land); Mass. Vol. 7 c. 223 §1 (transitory actions); Okla. §139 (action on an assigned right); Pa. Rule 1006 (assumpsit); Rule 1042 (trespass), Rule 1072 (replevin); R.I. c. 511 §5 (venue of suits and actions); Va. §6049(b) (action against public officers); Wis. §261.02 (place of trial, general rule, exceptions).

⁵⁸ Iowa §616.19 (negotiable paper); N.M. §19-501(7) (action against state officers); Ohio §11282 (action against maker, acceptor, etc., on negotiable paper); Tex. Tit. 42 Art. 1995 (general provision).

⁵⁹ Cal. Const. Art. VI §5 (actions affecting realty brought in county where situated); Ohio §11273 (actions against railways).

⁶⁰ See, for example: *Sullivan v. Arbuthnot*, 146 Fla. 276, 200 S. 703 (1941) ("only", not jurisdictional); *Triplett v. Western Public Service Co.*, 128 Neb. 835, 260 N.W. 387 (1935) ("only", jurisdictional); *Davis v. Davis*, 179 N.C. 185, 102 S.E. 270 (1920) ("all", not jurisdictional).

⁶¹ Fourteen states use "may" or "must": Ala., Ariz., Ark., Idaho, Ind., Iowa, Kan., Ky., La., Mont., Ohio, S.C., W.Va. and Wyo. Eighteen states use "shall" or "may": Colo., Conn., Del., Fla., Ga., Ill., Me., Mass., Mich., Minn., Miss., Nev., N.H., N.M., R.I., Tenn., Tex., and Wash. Three use "shall", "may" or "must": Neb., S.D., and Utah. One state uses "must" and "shall": N.D. Four use "shall": Mo., N.J., Ore., and Vt. Three use "must": N.Y., N.C., and Okla. Two use "may": Pa. and Va. One uses "is": Wis. One uses "is" and "shall": Cal. One has no venue provisions as such: Md.

are not clear, and a suit may be won by having the action dismissed for lack of jurisdiction, litigation becomes a certainty.⁶²

Part of the difficulty stems from the fact that only thirty states have statutes dealing with the problem of improperly laid venue.⁶³ One state has a provision in its constitution authorizing the legislature to make provision for this contingency, but the legislature has never exercised its prerogative.⁶⁴ In many of these thirty states which have tackled the problem, much remains to be done.

For instance, how to attack venue improperly laid in any and all cases is established by statute in only twenty-one states, and the language of these statutes ranges from very clear to completely vague.⁶⁵ Statutes in six states give the attorney similar instructions with respect to certain kinds of actions only.⁶⁶ The remaining three states of the

⁶² See, for example: *Henry v. Mo., K. & T. Ry. Co.*, 92 Kan. 1017, 142 P. 972 (1914) (may); *State ex rel. Interstate Lumber Co. v. Dist. Court for Lewis and Clark County*, 54 Mont. 602, 172 P. 1030 (1918) (may); *Dept. of Banking of Neb. v. Stenger*, 132 Neb. 576, 272 N.W. 403 (1937) (may); *Davis v. Davis*, 179 N.C. 185, 102 S.E. 270 (1920) (shall); *Osborn v. Lidy*, 51 Ohio St. 90, 37 N.E. 434 (1894) (may); *B. & O. R. Co. v. Hollinberger*, 76 Ohio St. 177, 81 N.E. 184 (1907) (must); *Harber v. McKeown*, 195 Okla. 290, 157 P. (2d) 753 (1945) (must); *South Texas Development Co. v. Williams*, 130 Tex. 217, 107 S.W. (2d) 378 (1937) (must); *Harrison v. Wissler*, 98 Va. 597, 36 S.E. 982 (1900) (may).

⁶³ Ala. Tit. 7 §54; Ariz. §21-102; Cal. §§394, 396 and 397; Colo. Rule 12(b) and (h) and Rule 98(f) and (g); Conn. §7792; Idaho §5-405, 5-406 and 5-409; Ill. c. 110 §§135 and 136; Ind. §2-1011; Iowa §616.6 and Rule No. 175 (1943); Me. c. 99 §§9 and 14; Mass. Vol. 7 c. 223 §§1 and 15; Minn. §542.01, 542.02 and 542.10; Miss. §§1433 and 1441; Mo. §847.61(3), 847.65 and 847.66; Mont. §§9097 (as amended 1943) and 9098(1); Nev. §8572; N.Y. §§186 and 187 and Rule 146; N.C. §1-83; N.D. §28-0406 and 28-0407(1); Ore. §1-404 and 1-405; R.I. c. 511 §5; S.C. §426(1); S.D. §§33.0305 and 33.0306; Tenn. §8644; Tex. Rule 86, 87, 88 and 89; Utah §104-4-8 and 104-4-9(1); Va. §§6105 and 6051; Vt. §1604; Wash. §§208, 209(1), 210 and 308-1, Rule 1(3); Wis. §261.02 and 261.03.

⁶⁴ Const. of Ga. §2-5001 ¶1.

⁶⁵ Ariz. §21-102 (by affidavit); Cal. §§396 and 397(1) (by motion); Colo. Rule 12(b) (by motion); Conn. §7792 (by motion); Idaho §5-405 (by affidavit of merits); Ind. §2-1011 (by answer or demurrer; yet note that §2-1007 does not provide for demurrer for improper venue and specifically says that a demurrer shall be sustained for no other causes than those listed); Iowa Rule No. 175 (by motion); Mass. Vol. 7 c. 223 §15 (by motion); Miss. §§1433 and 1441 (on application); Mo. §847.61 (by motion); Mont. §9097 (by affidavit of merits), and §9098 (on motion); Nev. §8572 (by motion by demand in writing); N.Y. §186 and Rule 146 (by written demand); N.C. §1-83 (by demand in writing); Ore. §1-404 (by motion); S.D. §33.0305 (by demand in writing); Tenn. §8644 (by plea); Tex. Rule 86 (by plea of privilege); Utah §104-4-8 (by affidavit of merits); Va. §6105 (by plea in abatement); Wash. §§208 and 209 (by motion on affidavit of merits).

⁶⁶ Ala. Tit. 7 §54 (by plea; the physical location of the abatement provision in §54, plus the use of the word "section" in connection with this particular provision make it difficult to tell whether this plea goes to all of §54 or is limited to the actions relating to land); Me. c. 99 §9 (in personal and transitory actions, by motion or inspection of the court); Minn. §542.10 (by demand in writing, except in actions relating to land; with respect to actions relating to land, if the county designated in the complaint is not the proper county, the court therein shall have no jurisdiction of the action—§542.02); N.D. §28-0406 (by demand in writing, except in actions relating to real property—N.D. has no

thirty above mentioned fail to give any aid whatsoever on this point.⁶⁷

The time within which an attack on improperly laid venue must be taken is set forth in the statutes of only twenty states. The provisions vary from a requirement that the attack be taken before demurrer, plea in bar, or answer to a provision that it may come at any stage of the proceedings of an action, local or transitory.⁶⁸ In four additional states the statutes are not definite as to the time of attack, but it can be inferred from the language employed.⁶⁹ The remaining eight states with statutes dealing with this general problem fail to cover this particular point.⁷⁰

The effect of failure to attack venue improperly laid in a timely manner is specifically provided for in twenty-three states. In four states such a failure to so attack constitutes a waiver.⁷¹ Fifteen states provide that if the county in which the action is commenced is not the proper county for the trial thereof, the action may, notwithstanding, be tried therein unless timely objection is made.⁷² One state provides that the

provision dealing with improper venue in actions relating to real property); Vt. §1604 (by motion—but note that this statute is limited to the resident venue situation); Wis. §261.03 (by demand in writing, except in actions relating to real property, §261.01(1), and actions affecting marriage, §261.01(3)).

⁶⁷ Ill., R.L., and S.C.

⁶⁸ Va. §6105 (except in actions against public officers, where apparently the objections may be taken at any time, §6051);

At the time defendant appears by answer, demurrer or otherwise: Idaho §5-405; Mont. §9097; Utah §104-4-8; Wash. §208;

Within 20 days after summons is served, except actions relating to land, which may be attacked at any time: Minn. §542.10 and 542.02;

Within 20 days after service of complaint, except in property actions and actions affecting marriages for which no provision is made: Wis. §261.03;

Before expiration of time allowed to answer: Ariz. §21-102; Iowa Rule No. 175; Mo. §847.65; Nev. §8572; N.C. §1-83; N.D. §28-0406 (except in actions relating to real property, for which no provision is made); S.D. §33.0305;

With or before service of answer: N.Y. Rule 146;

Before pleading or in the answer: Colo. Rule 12(b) and (h);

Either before or after the filing of a plea in abatement: Conn. §7792;

Before the pleadings are closed: N.J. Rule 3:3-3;

After the cause is at issue on a question of fact only: Ore. §1-405;

At any stage of the proceedings of an action, local or transitory: Mass. Vol. 7 c. 223 §15.

⁶⁹ Ala. Tit. 7 §54 (in plea); Ind. §2-1011 (before or in answer); Tenn. §8644 (before Plea in Bar); Tex. Rule 86 (before trial).

⁷⁰ Cal., Ill., Me., Miss., Pa., R.I., S.C. and Vt.

⁷¹ Colo. Rule 12(h); Ind. §2-1011; Mo. §847.66; Va. §6105.

⁷² Ariz. §21-102; Idaho §5-405; Ill. c. 110 §§135 and 136; Iowa Rule No. 175; Minn. §542.01 and 542.10 (except actions relating to land, in which case the court has no jurisdiction under §542.02); Mont. §9097; Nev. §8572; N.Y. §186; N.C. §1-83; N.D. §28-0406 (except in actions relating to real property; no provision is found dealing with the effect of improper venue in the land cases); S.D. §33.0305; Tenn. §8644 (but attention is called to the fact that the courts have refused to comply with the terms of this provision in actions relating to land); Utah §104-4-8; Wash. §208; Wis. §261.03 (except in actions relating to land and actions affecting marriages where minor children are involved, under §261.02, which section is not clear as to what the result of such improper venue shall be).

court may transfer an action commenced in the wrong court on its own motion.⁷³ Two states provide that the action shall abate,⁷⁴ and one state provides that such actions improperly brought shall abate on motion or inspection by the court.⁷⁵ Statutes in nine of the states with provisions dealing with the general problem fail to cover this point.⁷⁶

Provision is made in one state whereby any civil cause or any question of law or fact therein may, by consent of the parties and with the approval of the court, be tried and determined in any county,⁷⁷ and some six states provide that venue may be changed by consent of the parties.⁷⁸ On the other hand, one state expressly provides that any agreement or stipulation whereby the venue prescribed is proposed to be altered or changed so that suits may be brought contrary to the provisions of the venue sections is void.⁷⁹ Another has a similar provision with respect to venue in actions to collect nonlife insurance assessments or nonlife insurance premiums or notes.⁸⁰

The distinction between jurisdiction and venue would be clearly drawn and would give no trouble whatsoever in a state where the statute sets forth (1) a specific method for attacking venue improperly laid; (2) a definite and precise time limit for so attacking; (3) a clear and definite provision to the effect that failure to attack in the proper way and within the time limit constitutes a waiver of the venue irregularity; and (4) an equivocal provision that no order, judgment or decree shall be deemed void or voidable for want of jurisdiction because rendered in the wrong venue. The statute should also provide that (1) if the county in which the action is commenced is not the proper county for the trial thereof, the action may, notwithstanding, be tried therein, unless the defendant objects in a timely manner and (2) that any case or controversy may, by consent, stipulation or agreement of the parties either before or after action is brought, be tried and determined in any county, unless the court specifically disapproves, in which instance the action should be retained or removed to the proper county, as the case may be, for further proceedings.

⁷³ Cal. §396.

⁷⁴ Mass. Vol. 7 c. 223 §15 (court on own motion may order a nonsuit); R.I. c. 511 §5 (actions relating to land shall be abated, other actions may be abated).

⁷⁵ Me. c. 99 §9.

⁷⁶ Ala., Cal., Conn., Miss., N.D., Ore., S.C., Tex. and Vt.

⁷⁷ R.I., c. 496 §11.

⁷⁸ Ariz. §21-103 (written consent); Ky. Rev. Stat. (Baldwin's 1943 Rev.) §452.010 (on order of court or judge); La. Art. 342.13 (on order of court); Mont. §9102 (by stipulation or consent in open court); S.C. §§420 and 422 (no conditions are included in the statute); Wash. §216 (by stipulation in writing or consent in open court).

⁷⁹ Ala. Tit. 7 §54.

⁸⁰ Iowa §616.11 and 616.12.

Joinder of Causes of Action and Venue

Joinder of causes of action becomes a venue problem when the attorney wants to join in a single law suit two or more claims against the same defendant which claims, if brought separately, would have to be brought in different counties. Only twenty-three states have attempted to meet this problem by statute. In twenty-one of these states such joinder is not allowed,⁸¹ in one it is expressly permitted,⁸² and in the twenty-third the effect of the statute is not clear.⁸³ In twenty of the twenty-one states thus limiting joinder of causes of action, the statutes provide for attack for misjoinder of causes of action, either by demurrer⁸⁴ or motion.⁸⁵ Nineteen of them further provide that objection for misjoinder is waived unless taken in a timely manner.⁸⁶ In the twenty-first state, provision is made for waiver unless timely objection is taken in cases where several causes of action in assumpsit are joined, but there is no provision whatsoever concerning trespass or ejectment.⁸⁷ In one state which does permit joinder of causes of action even though the venue of each is not properly laid in the county where the action is brought, the statute empowers the court to separate the causes of action if the trial of the two or more together would be inexpedient.⁸⁸ In two of the states which do not permit joinder under such circumstances, the statutes provide that the case shall not be dismissed but is to be divided into as many actions as may be necessary.⁸⁹

Since venue is a factor in joinder of causes of action, it is rather startling to find that so few states have provided for this contingency. Yet, in recent years quite a number of states have liberalized the joinder

⁸¹ Ark. §27-1301; Cal. §427; Conn. §7819; Idaho §5-606; Ind. §2-301; Ky. §83; Minn. §544.27; Mont. §9130; Neb. §25-702; Nev. §8595; N.C. §1-123; N.D. §28-0703; Ohio §11307; Ore. §1-911; Pa. Rule 1020, 1044, 1055; S.C. §487; S.D. §33.0916; Utah §104-7-3; Wash. §296; Wis. §263.04; Wyo. §3-702.

⁸² Fla. §46.03 and 46.08.

⁸³ Tex. Rule 816.

⁸⁴ Cal. §§430(5) and 431; Conn. §7814; Idaho §5-607(5) and 5-608; Ind. §2-1007(6); Minn. §544.03(1)(5); Mont. §§9153 and 9131(5); Neb. §§25-806(5) and 25-807; Nev. §§8596(4) and 8597; N.C. §1-127(5) and 1-128; N.D. §28-0706(4) and 28-0707; Ohio §11309(7) and 11310; Ore. §1-705(5); S.C. §§458(5) and 459; Utah §104-8-1(5) and 104-8-2; Wash. §§259(5) and 260; Wis. §263.06(5) and 263.09; Wyo. §3-1303(6) and 3-1304.

⁸⁵ Ark. §27-1302; Ky. §85; S.D. §33.1002(3).

⁸⁶ Ark. §27-1303; Cal. §434; Idaho §5-611; Ind. §2-1011; Ky. §86; Minn. §544.03(3); Mont. §9136; Neb. §25-808; Nev. §8601; N.C. §1-134; N.D. §28-0709; Ohio §11311; Ore. §1-710; S.C. §462; S.D. §33.1002; Utah §104-8-6; Wash. §263; Wis. §263.12; Wyo. §3-1305.

⁸⁷ Pa. Rule 1032.

⁸⁸ Fla. §46.08.

⁸⁹ Mont. §9189; N.C. §1-132.

of causes of action without making any attempt whatsoever to resolve this problem by direct legislation.⁹⁰

Each state should have a specific provision to the effect that causes of action requiring different places of trial either may or may not be joined. Preferably, in the interest of settling claims between the same parties in one lawsuit, joinder should be encouraged. In a state permitting such joinder, there should be a provision for separating the causes of action so joined, upon timely motion, where the trial of the actions together would be inexpedient. Where such joinder is not permitted, provision should be made for attack by motion or demurrer in a timely manner. The statute should further provide, not for dismissal, but for dividing the suit into as many actions as are necessary and transferring them to the proper county for further proceedings. In either situation the statute should state clearly that unless objection is taken in a timely manner, it is forever waived. Such provisions, in connection with the general provisions suggested under Jurisdiction and Venue herein, should eliminate all grounds of confusion and questions of construction arising out of joinder of causes of action in the venue field.

Service of Process, Jurisdiction over the Person and Venue

Service of process has long been a complicating factor in the venue picture.⁹¹ Its importance stems from the very practical consequence that unless the court has jurisdiction over the person of the defendant it cannot render a binding judgment against him in a personal action. So, the plaintiff's attorney must be certain that the service of process employed in each particular case is sufficient to bring the defendant or defendants personally before the court.

Service of process provisions in eight states provide that service may be made in all civil actions anywhere in the state.⁹² In twenty-two additional states the same result is reached by inference from provisions to the effect that process runs throughout the state, may be issued to any county or be directed to the sheriff of any county,⁹³ or which set

⁹⁰ Ariz. §21-408(2) and 21-507; Colo. Rule 18(a); Ill. c. 110 §168(1); Iowa Rule 22; Mo. §847.37; N.J. Rule 3:18-1; N.M. §19-101(8)(e)(2) and 19-101(18)(b); N.Y. §258.

⁹¹ Blume, "Place of Trial of Civil Cases—Early English and Modern Federal," 48 MICH. L. REV. 1 at 9-15 and 29-34 (1949).

⁹² Ariz. §21-310 and 21-302; Ill. c. 37 §72.27 and c. 110 §134; Ind. §2-702, 2-703, 2-705, 2-706 and 2-707; Me. c. 94 §9; Md. Art. 75 §153, but see Art. 75 §157 (land actions—wherein defendant resides); Mass. Vol. 7 c. 223 §20; Mo. §847.29; Vt. §1530.

⁹³ Fla. §47.08; N.H. c. 386 §3; N.C. §1-89; Ore. §1-601; R.I. c. 514 §6; Tex. Rule 15; Va. §6055, but note that this section is limited by §6056; W.Va. §5530.

forth "Who" may serve process or "How" process is to be served.⁹⁴

In this group of states no problem arises when a defendant is served within the state but outside the county of venue. This is sound and as it should be, for the object of service is notice, the purpose of venue is trial convenience, and the power of the state to provide for service within its geographical boundaries is beyond question.

Yet, in some thirteen⁹⁵ of the remaining eighteen states and in two⁹⁶ of the above a problem has been created by the enactment of statutes which tie together venue and service of process.⁹⁷ In five states service of process may be made anywhere in the state, when the action is *rightly* brought in any county.⁹⁸ Seven additional states provide for service anywhere in the state in certain specific actions.⁹⁹ Four states provide that service must be had in certain named actions in the county where the venue is laid.¹⁰⁰ Four others say that service in certain actions must be made in the county of venue or in the county wherein the defendant resides.¹⁰¹ Two states provide that service must be had in the county of the defendant's residence in any action.¹⁰² One state has a special provision for service in actions on instruments for the payment of money

⁹⁴ Cal. §410; Colo. Rule 4(d)(1); Idaho §5-506; Minn. §543.03; Nev. §8578; N.J. Rule 3:4-3; N.M. §19-101(4)(e); N.Y. §220; N.D. §28-0619; S.C. §433; S.D. §33.0806; Utah §104-5-3; Wash. §225; Wis. §262.07.

⁹⁵ Ark., Ga., Kan., Ky., La., Mich., Miss., Neb., Ohio, Okla., Pa., Tenn., Wyo.

⁹⁶ Md. and Va.

⁹⁷ Some states even put service of process instructions in venue provisions. See, for example: Ala. Tit. 7 §56; Ind. §2-702, 2-703, 2-705, 2-706 and 2-707; Miss. §§1274, 1433, 1435, 1437 and 2843; Mo. §872; Neb. §25-406; Ohio §§6308, 11277 and 11282; Pa. Rule 2131(c), 2157(c) and 2180(b); Wyo. §3-807 and 3-808.

⁹⁸ Kan. §60-2502; Neb. §25-504, but note §25-406 (action against railway companies); Ohio §11282, but note §6308 (automobile accident cases) and 11277 (actions against executors, etc.); Okla. §154; Wyo. §3-1005, but note §3-808 (action against executors, etc.).

⁹⁹ Ark. §27-312 (anywhere in state, except as limited by §27-614 by implication), 27-612 (action for damages against nonresident), 27-618 (actions local in nature); Ky. §41 (anywhere in state, except as limited by §79 by implication); Miss. §1274 (chancery cases), §1433 (land actions), §1435 (actions against insurance companies); §1437 (actions against nonresidents), §2843 (replevin); Ohio §11277 (actions against executors, administrators, guardians or trustees); Pa. Rule 1042 and 1053 (trespass based upon where cause of action arose and ejectment), 1064 (quiet title), 1074(c) (replevin based upon where cause of action arose), 2079 (nonresident), 2104 (action by commonwealth), 2131(c) (partnership based upon where cause of action arose), 2157(c) (association based upon where cause of action arose), 2180(b) (corporation based upon where cause of action arose); Pa. §106 (injury on land), §298 (trespass); Tenn. §8652 (local actions); Wyo. §3-5910 (action to annul or affirm a marriage, or for divorce when plaintiff resides in county where action brought and defendant is a nonresident of said county), §3-808 (actions against executors, administrators, guardians or trustees).

¹⁰⁰ Ky. §79 (residuary provision); Mich. §27.757 (personal transitory actions); Pa. Rule 1006 (assumpsit); Va. §6056 (in actions where venue is based on where the cause of action, or any part, arose, in certain instances).

¹⁰¹ Ark. §27-614 (residuary provision); La. Art. 184 (if court has jurisdiction of the case); Md. Art. 75 §157 (local actions); Ohio §6308 (motor vehicle negligence cases).

¹⁰² Ga. §81-215 and Miss. §1847.

only¹⁰³ and another has a special provision in actions against foreign corporations.¹⁰⁴

Having established such limitations on service of process within the state, one would expect that provision would be made for raising and settling the issue of jurisdiction over the person of the defendant where service of process was made within the state but in a county other than the proper one or where service was made within the state but the venue was improperly laid. Strangely enough only seven states have made specific provision for raising such an issue,¹⁰⁵ and only three for waiver unless raised in a timely manner.¹⁰⁶ Some twenty-five states¹⁰⁷ including six with limitations on service of process¹⁰⁸ have a provision to the effect that an appearance is equivalent to personal service. Obviously there is a need for legislative action in this area.

Restrictions on service of process within the state create unnecessary procedural difficulties,¹⁰⁹ and give rise to wasteful litigation.¹¹⁰ Every state should have a clear and unequivocal statute providing for service anywhere in the state in any action filed anywhere in the state.

Joinder of Parties, Service of Process and Venue

Joinder of parties becomes a venue problem when the venue of the plaintiff's action is the county where the defendant resides or is summoned and the defendants do not all reside in, or are not all available for service in, the same county. Forty-one states have provisions in their venue statutes by virtue of which venue may be laid in the county where any one of the defendants resides or may be summoned.¹¹¹ A

¹⁰³ Ohio §11282.

¹⁰⁴ Wyo. §3-807.

¹⁰⁵ Ala. Tit. 7 §54; Ark. §27-614, 27-615, 27-616; Ga. §81-503; Ky. §§79, 80; Miss. § 1881; Tenn. § 8751; Va. §§6080, 6103.

¹⁰⁶ Ark. §27-614, 27-615, 27-616; Ga. §81-503; Ky. §§79, 80.

¹⁰⁷ Cal. §416; Idaho §5-512; Ill. c. 110 §144; Ind. §2-803; Iowa Rule 65; Kan. §60-2515; Minn. §543.15; Miss. §1872; Mont. §9106; Neb. §25-516; Nev. §8590; N.J. Rule 3:4-6; N.Y. §237; N.C. §1-103; N.D. §28-0617; Ohio §11287; Okla. §162; Ore. §1-617; S.C. §441; S.D. §33.0817; Tex. Rules 120 through 122; Utah §104-5-8; Wash. §238; Wis. §262.17; Wyo. §3-1011.

¹⁰⁸ Kan., Miss., Neb., Ohio, Okla., and Wyo.

¹⁰⁹ In addition to the restrictions pointed out in the text, such statutes even limit the plaintiff's choice of venue as, for example, Mich. §27.757 which affects §27.641(2), (3), (4), and (5), where venue is based on the county of plaintiff's residence, and Va. §6056 which limits §6050 where venue is based upon the county where the cause of action or any part arose.

¹¹⁰ Meehl v. Barr Transfer Co., 305 Mich. 276, 9 N.W. (2d) 540 (1943); State ex rel. Minihan et al. v. Judge of the Circuit Court, 350 Mo. 309, 165 S.W. (2d) 404 (1942); Mutzig v. Hope, 176 Ore. 368, 158 P. (2d) 110 (1945).

¹¹¹ Ala. Tit. 7 §54 (actions on contracts and all other personal actions), §61 (suits by or for the use of the State), §294 (equity suits); Ariz. §21-101(7) (general provision),

comparison of these provisions with the provisions wherein defendant's residence or service of process on a defendant is the basis of venue shows that, unfortunately, the states have not always taken care of the joinder of defendant's possibility.¹¹²

Difficulty also arises out of the terminology of statutes which provide that the venue may be laid in the county where either party¹¹³ or one of the parties¹¹⁴ resides. Was the legislative intent to establish residence of the plaintiff as a proper venue, or was it to provide for joinder of parties defendant, or both? Clarification is definitely in order.

With respect to service of process, twenty-six states have specifically provided for service in different counties where there are two or more

see also §21-101(9), (10), (11), (15), and (16); Ark. §27-612 (nonresidents), §27-613 (every other action); Cal. §395(1) (in all other cases); Colo. Rule 98(c) (venue for tort, contract and other actions); Conn. §7749 (action for partition or sale of property), §7753 (action by foreign corporation); Fla. §46.02 (general provision), §46.05 (action on promissory note); Const. of Ga. §2-4904 ¶IV (suits against joint obligors, corporations, etc.); Ga. §3-204 (joint or joint and several obligors, etc.); Idaho §5-404 (in all other cases); Ill. c. 110 §131 (general provision); Ind. §2-707 (personal actions); Iowa §616.17 (personal actions), §616.18 (motor vehicle damage actions), §616.19 (negotiable paper); Kan. §60-509 (in all other actions), §60-510 (specific performance of land contracts); Ky. §73 (common carrier), §78 (transitory actions, but note the words, "defendants who may be properly joined"); La. Art. 165(6) (joint or solidary obligors); Me. c. 99 §9 (personal and transitory actions); Md. Art. 75 §168 (action against heirs and devisees), Art. 16 §96 (chancery cases); Minn. §542.09 (all actions not enumerated), §542.095 (auto vehicle cases); Miss. §1274 (chancery cases), §1433 (civil actions), §1437 (nonresidents), §2843 (replevin); Mo. §871(2), (3) and (5) (suits instituted by summons), §8410.11 (motor vehicles); Mont. §9096 (in all other cases); Neb. §25-403 (specific performance of land contract), §25-409 (action for tort and every other action); Nev. §8568(3) (foreclosure of mortgage), §8571 (all other cases); N.M. §19-501(1) (transitory actions), §19-501(5) (suits for trespass on land); N.Y. §184-a (assigned cause of action); N.C. §1-82 (all other cases); N.D. §28-0405 (all other cases); Ohio §11270 (specific performance of real property contracts), §11277 (every other action), §11282 (action against maker, acceptor, etc.); Okla. §132 (specific performance of land contracts), §139 (every other action); Ore. §1-403 (all other cases); R.I. c. 511 §2 (all other actions), §3 (personal or transitory actions by or against corporations); S.C. §422 (all other cases); S.D. §33.0304 (all other cases); Tex. Tit. 42 Art. 1995(4) (defendants in different counties), (15) (breach of warranty), (24) (carriers), (29) (libel or slander), (29a) (two or more defendants—"any and all necessary parties"); Utah §104-4-5 (transitory actions arising without the state), §104-4-7 (all other actions); Vt. §1604 (suit by a domestic railway corporation); Va. §6049(1) (any action at law or suit in equity); Wash. §205-1 (any action), §308-1, Rules of Practice, Rule 1 (any action); W.Va. §5517(a) (all actions, except land actions), §5517(d) (nonresidents), §5518(b) (venue based on where cause of action or part arose); Wis. §261.01(12) (other actions); Wyo. §3-803 (specific performance of land contracts), §3-808 (all other actions).

¹¹² See, for example: Conn. §7747; Const. of Ga. §2-4906 and Ga. §3-201; Md. Art. 75 §157; N.H. c. 384 §1; N.J. Rule 3:3-2; Tex. Art. 1995(9); Vt. §1286.

¹¹³ Me. c. 99 §11 (debt on judgment); Vt. §1604 (any action).

¹¹⁴ Mass. Vol. 7 c. §223 §1 (transitory actions); Mich. §27.641(2) (all actions founded upon wrongs and contracts, except as otherwise provided) and §27.641(12) (chancery cases, if not local); N.Y. §182 (transitory actions).

defendants.¹¹⁵ This group includes fourteen of the eighteen states referred to in the previous section which do not have definite and broad service provisions.¹¹⁶ Consequently, statutory coverage of service of process in the joinder of defendant cases where venue is based on the residence of one of the defendants or where one of the defendants is served is fairly complete.

However, the nasty problem in this area arises out of the possibility of abuse of venue provisions based on the residence of a defendant or where a defendant is served by adding a defendant to the case in order to control the venue. Only six states have statutes bearing directly on this problem.¹¹⁷ Three of them provide that where an action is commenced in the county where one or more defendants reside or is summoned, and venue is based on residence or where a defendant is summoned, and the action is dismissed as to the resident defendant or the defendant summoned in the county of suit, or judgment is rendered in their favor, or there is a failure to obtain judgment against such defendants, no judgment shall be rendered for the plaintiff against a defendant summoned in any other county¹¹⁸ unless he, having appeared in the action, failed to object¹¹⁹ before judgment is rendered against him.¹²⁰ This provision is in line with the result reached by the majority of courts which have dealt with the problem in the absence of statute.¹²¹

¹¹⁵ Ala. Tit. 7 §185; Ariz. §21-302; Ark. §27-312, 27-612, 27-615; Cal. §406; Conn. §7771; Ga. §81-215; Ill. c. 110 §134; Kan. §60-2502; Ky. §§41, 80; La. Art. 184; Md. Art. 75 §§153, 157; Mich. §27.757; Miss. §1274, 1437, 1847; Mont. §9106; Neb. §§25-504; N.C. §1-89; Ohio §§6308, 11282; Okla. §§154, 157; Ore. §1-601; Tenn. §8653; Utah §104-5-4; Va. §6056 (in the venue where cause of action arose situation); Wyo. §3-1005, 3-1007.

¹¹⁶ Ala., Ark., Ga., Kan., Ky., La., Mich., Miss., Mont., Neb., Ohio, Okla., Tenn., and Wyo. All except Conn., Del., Iowa and Pa.

¹¹⁷ Ark., Ill., Iowa, Ky., Minn. and S.D.

¹¹⁸ Ark. §27-615 (residence or service); Iowa §616.20 (residence); Ky. §80 (residence or service).

¹¹⁹ Ark. §§27-615, 27-616; Iowa §616.20; Ky. §80.

¹²⁰ Ark. §27-615; Iowa §616.20.

¹²¹ See, for example, *Brown v. Bennett*, 157 Mich. 654, 122 N.W. 305 (1909); *Bucurenciu v. Ramba*, 117 Ohio St. 546, 159 N.E. 565 (1927). For a collection of cases, see 93 A.L.R. 949 (1934). For a discussion of the problem see: Andrews, "Annotations to Restatement of Conflicts," 11 *UNIV. CIN. L. REV.* 398 at 418-419 (1937); Miller, "Some Problems in Venue and Jurisdiction," 49 *W.VA. L.Q.* 112 (1943); Sunderland, "Observations on the Illinois Civil Practice Act," 28 *ILL. L. REV.* 861 (1934); Recent cases—Venue—Parties—Necessary Parties under Subdivision 29a of the Venue Statutes, 26 *TEX. L. REV.* 233 (1947); Recent Cases—Venue—Joinder of Nonresident Defendant, 26 *TEX. L. REV.* 358 (1948); Note: Courts—Jurisdiction—Nonresident Solidary Obligor, 19 *TULANE L. REV.* 458 (1948). Note that joinder of defendants is no problem where venue is based on some ground other than where a defendant resides or is summoned. See, for example, *Fisher v. Rumler*, 239 Mich. 224, 214 N.W. 310 (1927), where the venue was laid in the county where the fact happened.

Such a rule is unfair to the plaintiff who with probable cause and in good faith joined the defendant upon whose residence or service venue was based for the purpose of obtaining a judgment against him. Recognizing this possibility, one state with a provision substantially the same in effect as that set forth above further provides that even if a defendant not residing in the county appears generally and defends the action on the merits, no judgment may be rendered against him where no judgment was rendered against the resident defendant "unless it appears from the record or the evidence that the defendant residing within the county was joined with probable cause and in good faith for the purpose of obtaining a judgment against him and was not joined solely for the purpose of fixing the venue of the action in that county."¹²²

A valid criticism of such statutes, and of the case law, lies in the wastefulness of the procedure. Why should there be a hearing on the merits resulting in a verdict for the plaintiff against one of the defendants, only to be set aside because the defendant upon whose residence or service venue was based escaped liability? The time to raise and decide the issue of good faith, proper venue and jurisdiction over the person is at the outset of the action, not at its conclusion. Two states have provisions apparently adopting this approach.¹²³

Although the problem presents difficulties, a solution is possible. It is quite obvious from this study that no defendant has an inherent right to trial in the county of his residence. Each state should enact a statute by virtue of which a defendant, served in a county other than the county of venue when venue is based upon residence of or service upon a defendant, may raise the question of the good faith of the plaintiff. The statute should require that the attack be made by motion, that it be taken before answer, and that unless so taken it be forever waived. The statute should further provide that if the objection is properly taken in a timely manner and the court finds that the resident or served defendant was joined merely to control venue, the case should not be dismissed but should be transferred to a proper county for further proceedings. And if the court finds probable cause for joining the defendant upon whose residence or service venue was based, the court should

¹²² Ill. c. 110 §131.

¹²³ Minn. §542.11(2) (when it is made to appear on motion that any party has been made a defendant for the purpose of preventing a change of venue); S.D. §33.0304 (whenever the plaintiff in any action adds to the real party defendant the name of any other party for the purpose of controlling the venue, the court shall upon motion of the proper party defendant, dismiss the action). But, even such statutes as these are not sufficient to prevent cases of this sort from going to the Supreme Court. See, for example, *Roesler v. Union Hay Co.*, 131 Minn. 489, 154 N.W. 789 (1915).

deny the motion. Finally, the statute should provide that the court's decision is final unless there is a flagrant violation of discretion.

PART III

A Model Venue Code

A Model Venue Code should avoid those provisions of present day codes which have caused serious difficulties, and it should include several provisions, the absence of which from present day codes have made for unnecessary litigation and at times real hardship. Its provisions should be clear, precise and concise. It should cover all possible cases involving all possible parties,¹²⁴ and, negatively, there should be no special or general venue provisions in any other part of the statute law of the state.

This Code should be broad and general in its approach and coverage, rather than narrow and restricted. Detailed regulation of specific parties or types of actions should be avoided wherever possible. The number of grounds of venue should be reduced to a minimum, thus eliminating unnecessary distinctions which all too frequently give rise to confusion and litigation.

Every place of trial provision of this Code should be based upon convenience—of one of the parties, or of the witnesses or of the court. Balancing of conveniences within this group should be avoided, for a law suit is always inconvenient to some, if not all, of the participants. A provision which allows a party to move for a change of venue properly laid because of convenience of *his* witnesses will not help the overall picture and may well open the door to delaying tactics.¹²⁵

Part I of this study shows that thirteen different grounds of venue are presently employed in the United States, and suggests that in a model venue code the number of grounds employed should be reduced to five. The five grounds which are based on trial convenience are "where the subject of action or part thereof is situated," "where the

¹²⁴ For example, the Michigan code makes no provision for venue in law actions by nonresidents against nonresidents on causes of action arising outside the state. The Ohio Supreme Court in *Loftus v. P.R.R. Co.*, 107 Ohio St. 352, 140 N.E. 94 (1923), dismissed; 266 U.S. 639 (1924) held that since no venue provision covered an action by a nonresident against a foreign corporation in an action for wrongful death arising outside the state, the lower court had no jurisdiction over the action.

¹²⁵ Seventeen states have a provision allowing a change of venue properly laid, "When the convenience of witnesses and the ends of justice would be promoted by the change." Ariz. §21-104(2); Cal. §397(3); Colo. Rule 98(f)(2); Idaho §5-406(3); Ind. §2-1401(5); Minn. §542.11(4); Mont. §93-2906(3); Nev. §8572(3); N.Y. §187(3) (material witnesses); N.C. §1-83(2); Ore. §1-404(4) (witnesses and parties); S.C. §426(3); S.D. §33.0306; Utah §104-4-9(3); Wash. §209(3); Wis. §261.04(3); Wyo. §3-1901(7).

cause of action, or part thereof, arose or accrued," "where the defendant resides," "where the plaintiff resides," and "where the seat of government is located." The six grounds which should be eliminated for the reasons discussed in Parts I and II are venue based upon "where some fact is present or happened," "where the plaintiff is doing business," "where the defendant may be found," "where the defendant may be summoned or served," "in the county designated in the plaintiff's complaint," and "in any county." The remaining two grounds—"where the defendant is doing business" and "where defendant has an office or place of business, or an agent, or representative or where an agent or officer of defendant resides"—serve a purpose and should be retained, but not as separate provisions. Absorption into the "residence of defendant" provision preserves their value while reducing the grounds of venue.

Next, the effect and treatment of venue improperly laid should be covered. The language of the Code should make it clear beyond any possible doubt, and in language that no court or lawyer can possibly misconstrue, that venue, not jurisdiction, is involved. Negatively, no jurisdictional limitations or restrictions should be included in the Venue Code in any way, shape or form. Nor should there be any service of process provisions or restrictions in the Venue Code.

The Code should provide for proper venue where joinder of causes of action or joinder of parties are involved. And, it should cover the effect and treatment of failure to comply.

It should provide for change of venue properly laid in those instances where such a move is necessary to assure a fair trial.

Finally, it should cover the right to review, and, where granted, provide for a speedy decision of the appeal.

The Venue Code hereinafter set forth was constructed with the above factors in mind. It is not suggested that it is a perfect Venue Code — but it is hoped that it will serve as a Model for those who are interested in eliminating needless confusion in this field.¹²⁶

MODEL VENUE CODE

Chapter 1. Venue — Place of Trial

Section 1. *Venue. — Place of Trial:* The following provisions relate to venue — the place of trial — of civil actions within the state.

¹²⁶ *Gober v. Federal Life Ins. Co.*, 255 Mich. 20, 237 N.W. 32 (1931) points out that venue is a problem for the legislature and within its control. See also, comments, 33 MICH. L. REV. 398 (1935).

They are not, and are not to be construed to be, jurisdictional provisions or limitations under any circumstances whatsoever.

Comment: It is hoped that this provision will eliminate attacks on venue provisions on the theory that they are jurisdictional. It should make the legislative intent quite clear.¹²⁷

(1) The county in which the subject of action or part thereof, is situated is the proper county for the trial of the following actions:

- (a) For the recovery of real property, or of an estate or interests therein, or for the determination in any form of such right or interest;
- (b) For the partition of real property;
- (c) For the foreclosure of all liens and mortgages on real property; and
- (d) For the recovery of specific personal property.

Comment: As pointed out in Part I, venue based upon "where the subject of action or part thereof is situated" has been employed generally where local actions are involved. The problem frequently arises as to what type of suit or action is local. To eliminate this difficulty, it is suggested that the venue provision avoid such terminology as "in all local actions." In this instance it is sounder to list as specifically as possible those actions and suits which are to be brought in the county where the subject of action or part thereof is situated than to employ general terminology. This approach has the advantage of flexibility and avoids the difficulties of determining what are local actions. Trespass to land, it should be noted, is not covered by the above list.

Replevin actions are included in this group because of expedience in seizure of the chattel at the outset of the suit by the sheriff of the county in which the action is brought. Note that later provisions give the plaintiff an option to lay the venue elsewhere in this type of case if the facts fit.

(2) The county in which the wrongful act, or part thereof, occurred, or in which the act, or part thereof, which was omitted, should have been performed, or in which the loss resulted from such omission, is a proper county for trial, except for actions listed under subsection (1) (a), (b) and (c).

Comment: It is suggested that this type of provision be used rather than the terminology "where the cause of action or part thereof arose or accrued." There is still considerable difficulty with the term "cause of action." Add to this the "or part thereof" provision and the difference between "arose" and "accrued"¹²⁸ and a difficult problem of interpretation is presented. Generally speaking, for

¹²⁷ *Davis v. Davis*, 179 N.C. 185, 102 S.E. 270 (1920).

¹²⁸ See for example, *State ex rel. Northwestern Mutual Life Insurance Co. v. The Circuit Court*, 165 Wis. 387, 162 N.W. 436 (1917).

purposes of venue, courts have interpreted such provisions to mean the act or omission or some part thereof.¹²⁹ Statutes in many of the states have attempted to avoid such problems by stressing the wrongful act or omission factor. But, in doing so, they have tended to deal with specific cases rather than to create a general provision. See Appendix, Paragraph B. It is suggested that the above provision would provide a venue at the place where witnesses are most likely to be available and where a view, if helpful, could be had, without encountering the difficulties of interpreting venue based upon "where the cause of action or part thereof arose or accrued."

(3) The county in which the defendant, or defendants, or any one of them reside at the commencement of the action is a proper county for trial except for actions listed under subsection (1) (a), (b) and (c). For purposes of this subdivision:

(a) Persons — residence as used in this section means a dwelling place or dwelling places within the state. It does not include transient or temporary lodging;

(b) Corporations — both domestic and foreign corporations shall be deemed to be residents of any county in which the corporation (1) has an office, (2) has a place of business, or (3) is actually doing business;

(c) Nonresidents doing business in the state—partnerships composed of residents, nonresidents, or both doing business in the state, unincorporated associations composed of residents, nonresidents or both, doing business in the state, and nonresidents doing business in the state through agents in the state, shall be deemed to be residents of the county in which they are actually doing business.

Comment: By the use of the article "a" rather than "the" in subsections (1) and (2), it is intended to make it clear that the plaintiff has an option as to the place of venue where his facts fit either provision. This terminology is employed throughout this code. The purpose of subsection (3) (a) is to define residence. It makes it clear that a person may possibly have two places of residence within the state.¹³⁰ Subsection (3) (b) eliminates the need for venue based upon "where defendant has an office, etc." It makes unnecessary the mass of detailed regulation found under this heading in Appendix, Paragraph F. Subsection (3) (c) eliminates the need for venue based upon "where the defendant is doing

¹²⁹ See for example, *Horne v. City of Buffalo*, 49 Hun. 76, 1 N.Y.S. 801 (1888), and *Guaranty State Bank of Tishomingo v. First Nat. Bank of Ardmore*, 127 Okla. 292, 260 P. 508 (1927).

¹³⁰ See for examples of the problem, *Moore v. Epstein*, 258 Mich. 425, 242 N.W. 779 (1932); *Reaume and Silloway, Inc. v. Tetzloff*, 315 Mich. 95, 23 N.W. (2d) 219 (1946). *Moorehead, Note: Venue under Act 314—Residence Required*, 2 *ARK. L. REV.* 250 (1948).

business, etc.” and yet provides a place of trial for cases involving parties of this description. Do not confuse this provision which relates to venue with the more difficult problem of how to acquire jurisdiction over the person of such parties. The object of subsection (3) (c) is simply to provide a place of trial in those cases where jurisdiction over the person can be successfully obtained by some proper service or where the case may be transformed into a *quasi in rem* proceeding by attachment and service by publication.

(4) The county in which the plaintiff or plaintiffs, or any of them reside at the commencement of the action is a proper county for trial when all of the defendants are nonresidents except for actions listed under subsection (1)(a), (b) and (c). For purposes of this subdivision:

(a) Persons—residence as used in this section means a dwelling place or dwelling places within the state. It does not include transient or temporary lodging;

(b) Corporations—both domestic and foreign corporations shall be deemed to be residents of any county in which the corporation (1) has an office, (2) has a place of business, or (3) is actually doing business;

(c) Nonresidents doing business in the state—partnerships composed of residents, nonresidents, or both doing business in the state, unincorporated associations composed of residents, nonresidents, or both doing business in the state, and nonresidents doing business in the state through agents in the state shall be deemed to be residents of the county in which they are actually doing business.

Comment: In many states the plaintiff may elect to bring his action in the county where either a defendant or a plaintiff resides. Since the plaintiff controls the bringing of a lawsuit, it is suggested that this provision, which is highly favorable to the plaintiff, be limited to situations not covered by subsections (1) and (3) above. It will give a plaintiff an election as to venue if the facts fit subsection (2) above. It provides a place of trial within the state, based on convenience of the plaintiff, where a foreign cause of action is involved. Many states cover this last situation by providing a venue based upon “where the defendant is found or served,” or “in any county designated in the plaintiff’s complaint,” or “in any county.” None of these provisions are based on trial convenience. They should be discarded for the reasons discussed in Parts I and II of this study.

(5) The county in which the seat of government is located is the proper county for the trial of the following actions:

(a) Where all of the parties to the action are nonresidents and

the venue cannot be laid under subsection (1)(a), (b), (c), (d), or (2) hereof;

(b) Where the action is against the state;

(c) Where the action is against a county, city or other political subdivision.

For the purposes of this subdivision: In an action under subsections (a) or (b), seat of government means the county in which the state government is located; in an action under (c), seat of government means the defendant county or the county in which the appropriate political subdivision is located.

Comment: The question whether or not states must open their courts to actions by nonresidents against nonresidents on foreign causes of action is not within the scope of this study. It is the purpose of this subdivision to provide a venue in the states which allow such actions and to do so in a county where, with a minimum of effort, some check can be made on the number and types of suits of this nature which are being litigated.

(6) For the purposes of Section 1:

(a) The words "is a proper county" mean that plaintiff has an election to use such provision if his facts fit and there is no exception.

(b) The words "is *the* proper county" mean that plaintiff has no election unless his facts fit into one of the other provisions and there is no exception.

Comment: For example, the plaintiff may have an election in a replevin action to lay his venue under subsection (1)(d), or (2), or (3) or (4).

Section 2. *Venue improperly laid, objection, waiver.*—An action brought in the wrong county may nevertheless be tried therein, unless a defendant before the time for answer has expired, or at the time he makes his general appearance in the case by answer, demurrer or otherwise, whichever comes first, moves for its change to a proper county. If such a motion is made in a timely manner, the court shall order the change at plaintiff's cost, which may include reasonable compensation for defendant's trouble and expense, including attorney's fees, in attending in the wrong county, and shall direct the clerk to forward all papers to the clerk of the court in the proper county for further proceedings. If such a motion is not made within this time limit, the venue irregularity shall be deemed to have been waived.

Comment: The purpose of this provision is to implement the suggestions made in Part II of this study.

Section 3. *Change of venue by stipulation or consent.*—All the parties to an action, after it is commenced, may agree by stipulation or by consent in open court, entered on the record, that the place of trial may be changed to any county in the state. Thereupon, the court must order the change as agreed upon.

Section 4. *Change of venue by contract, effect of.*—All contracts, agreements or stipulations, made before an action is commenced, whereby the venue herein prescribed is altered, changed, waived or otherwise affected, are valid, subject however to the power of the court, on motion made under Section 2 above to order the cause removed to a proper county if the court is of the opinion that convenience of witnesses and the ends of justice would be promoted by the change. Where an action is brought in a proper county under this code, despite a contract, agreement or stipulation providing for venue in a different county, the defendant may by motion under Section 2 above request the court to order the cause removed to the county agreed upon. If the court is of the opinion that convenience of witnesses and the ends of justice would be promoted by the change, the judge should order the case removed to the county agreed upon, otherwise not. The decision of the court on either type of motion shall not be subject to review.

Comment: Sections 3 and 4 codify the suggestions made in Part II hereof. The danger to be guarded against in agreements as to venue is economic duress or fraud. Do not confuse contracts limiting or changing venue with contractual attempts to limit the jurisdiction of courts over subject matter which are void for reasons of public policy.

Section 5. *Joinder of causes of action, proper venue.*—Where causes of action requiring different places of trial are joined whether properly or not, the venue may be laid in any county in which either cause of action, if sued upon separately, could have been brought. Where the trial of these actions together would be inexpedient, the defendant, before the time for answer has expired, or at the time he makes his general appearance in the case by answer, demurrer or otherwise, whichever comes first, may move the court to separate the causes of action so joined and to remove the cause or causes of action joined to a proper county for further proceedings. If the causes of action so joined were improperly joined, and require different places of trial, the court must, on timely motion, order the cause or causes of action so joined removed to a proper county for further proceedings, at plaintiff's cost. If the causes of action were properly joined, but require different places of trial, the

court may in its discretion order the separation requested. If such a motion is not made within the above time limit, any objection on any of these grounds shall be deemed to be waived. If none of the causes of action so joined could be brought in the county where the venue was laid, the provisions of Section 2 shall control.

Comment: This provision implements the suggestions made in Part II under the heading "Joinder of Causes of Action and Venue."

Section 6. *Joinder of parties, proper venue.*—When two or more defendants are joined and venue is laid at the residence of one of them, the other or any of the other defendants, before the time for answer has expired, or at the time he makes his general appearance in the case by answer, demurrer or otherwise, whichever comes first, may make a motion for change of venue to a proper county on the ground that the joinder of the resident defendant was not made in good faith, but was made solely to control the venue of the action. Affidavits in support of the motion setting forth the facts upon which the moving party relies must be submitted when the motion is made. Plaintiff may submit affidavits in answer thereto within three days after notice of motion is served upon him or his attorney. If the objection is properly taken in a timely manner and if the court is of the opinion, on the basis of the affidavits submitted and after argument, that the resident defendant was joined merely to control venue, the court must order the case removed at plaintiff's cost, which may include reasonable compensation for defendant's trouble and expense, including attorney's fees, in attending in the wrong county, to a proper county for further proceedings. If the court is of the opinion that the plaintiff joined the resident defendant in good faith, the motion should be denied. The decision of the court on a motion on this ground shall not be subject to review unless there is a flagrant violation of discretion. Unless the defendant objects on this ground in the manner herein provided and within the time limit set forth, he will be deemed to have waived the objection.

Comment: This provision is in line with and implements the suggestions made in Part II of this study.

Section 7. *Change of venue properly laid.*—The venue of any civil action may be changed by order of the court on motion by the party aggrieved when an impartial trial cannot be had in the county wherein the action is pending. The right to make such a motion shall be deemed to be waived if not taken before trial.

Section 8. *Number of changes of venue restricted.*—Neither party is entitled to more than one change of venue for any reason.

Comment: The purpose of this provision is to prevent abuse of motions for change of venue by either plaintiff or defendant. A tendency to use this device for purposes of delay is appearing. It should be squelched.

Section 9. *Transfer of judgments in actions affecting real property.*—When an action or proceeding affecting the title to or possession of real estate has been brought in or transferred to a court of a county other than the county in which the real estate, or some portion of it, is situated, the clerk of such court must, after final judgment therein, certify, under his seal of office, and transmit to the corresponding court of the county in which the real estate affected by the action is situated, a copy of the judgment. The clerk receiving such copy must file, and record the judgment in the records of the court, briefly designating it as a judgment transferred from court (naming the proper court).

Section 10. *Appeals.*—An appeal may be taken from an order granting or refusing to grant a motion to change the place of trial of an action or proceeding unless the right to appeal is specifically denied. Where the decision to grant a motion lies within the discretion of the court, an appeal may be taken only when there has been a flagrant abuse of this discretion. Notice of appeal in either instance must be filed within two days after the order granting or refusing to grant the motion is entered. Unless so filed, any objection to such ruling is forever waived. If a notice of appeal is properly filed, further proceedings in the case shall be stayed pending decision on the appeal.

Comment: The purpose of this provision is to provide for an immediate appeal on venue technicalities. This section must be implemented, if it is to be effective, by a provision under which the appellate court will hear such cases within ten days. It is felt that the present practice under which objections to venue go to appeal, after a decision of the case on the merits, is extremely wasteful and must be eliminated.

Section 11. *Improper venue, not jurisdictional.*—No order, judgment or decree shall be deemed void or voidable for want of jurisdiction because rendered in the wrong venue.

Comment: The object of this section is to implement the material discussed in Part II hereof under the heading "Jurisdiction and Venue."

* * * * *

The above code will not be effective, and in fact will give considerable trouble, unless the state planning to use it has a broad service of process provision. The reasons are set forth in Part II of this study. A provision, if it is to accomplish the desired result, should read as follows: "All process may be served anywhere within the territorial limits of the state."

The problems of venue can be simplified and the uncertainty of venue irregularity can be eliminated. It is hoped that this study may awaken some interest in and activity towards reform and modernization in this needlessly troublesome spot in procedure.

APPENDIX

Grounds of Venue

Par. A. Where the subject of action or part thereof is situated. The most common provision for venue in the county in which the subject of action is situated is when the action is for the recovery of real property, or of an estate or interest therein. A provision to this effect is found in thirty-five states, twenty stating that the action "must" be brought in such county,¹ eleven that it "shall" be brought there,² two that it "may" be brought,³ and two that such county "is" the proper county.⁴

¹ Ala. Title 7 §54; Ark. §27-601 (First); Idaho §5-401(1); Ind. §2-701 (First); Iowa §616.1; Kan. §60-501 (First); Ky. §62(1); Mont. §9093(1); Neb. §25-401(1); N.Y. §183(1) and (9); N.C. §1-76(1); N.D. §28-0401(1); Ohio §§11268, 11272 (if a domestic corporation is defendant), §11276 (if a nonresident or foreign corporation is a defendant); Okla. §131(1); S.C. §420(1); S.D. §33.0301(1); Tex. Title 42 Art. 1995(14); Utah §104-4-1(1); W.Va. §5517(a) and (c); Wyo. §3-801(1).

² Ariz. §21-101(12); Colo. Rule 98; Fla. §46.01; Ill. c. 110 §133(1); Mich. §27.641; Minn. §542.02; Mo. §873; Nev. §8568(1); N.J. Rule 3:3-2; Ore. §1-401(1); Wash. §204(1).

³ Pa. Rule 1052; Va. §6049 (Fourth).

⁴ Cal. §392(2); Wis. §261.01(1)(a). See also Cal. Const. Art. VI §5.

Variations on this same theme are found in states providing for venue in the county in which the subject of action is situated when the action concerns realty (3 states),⁵ when the action is one in which the title to realty may be tried and determined (8 states),⁶ and equitable actions involving realty, such as suits to quiet title, to remove cloud on title, or to enforce or set aside an agreement to sell land (thirteen states).⁷

⁵ "Shall" be brought, Colo. Rule 98; N.M. §19-501 (Fourth); R.I. c. 511 §1.

⁶ "Must" be brought, Ind. §2-701 (First); Iowa §616.1; "shall" be brought, Conn. §7747; Ga. Const. §2-4902; Ga. §3-203; Minn. §542.02; Mo. §873; N.J. Rule 3:3-2; R.I. c. 511 §1.

⁷ Four states say it "must" be brought, Ala. Title 7 §294; N.Y. §183(3), (5), (6), (7) and (8); Okla. §131(4); Tex. Title 42 Art. 1995(14). Five states say it "may" be brought, Kan. §60-510; Neb. §25-403, if all defendants are nonresidents of the state; Ohio §§11270, 11272, 11276; Okla. §132; Pa. Rule 1062. Four states say it "shall" be brought, Ariz. §21-101(12); Ill. c. 110 §133(1); Mich. §27.641(12), if subject matter is local; Miss. §1274. See also, Cal. Const. Art. VI §5 (quieting title, shall).

Actions for the partition of real property "must" be brought in the county in which the subject of the action is situated in eighteen states.⁸ Seven states say such a suit "shall" be brought in such county,⁹ four say "may",¹⁰ and two say such county "is" the proper county.¹¹

⁸ Ark. §27-601 (Second); Idaho §5-401(2); Ind. §2-701 (Second); Iowa §616.1; Kan. §60-501 (Second); Ky. §62-2; La. Art. 165(1); Mont. §9093(2); Neb. §25-401(1); N.Y. §183(2); N.C. §1-76(2); N.D. §28-0401(3); Ohio §§11268(2), 11272 (Domestic corporation defendant), §11276 (nonresident or foreign corporation defendant); Okla. §131(2); S.C. §420(2); S.D. §33.0301(2); Utah §104-4-1(2); Wyo. §3-801(2).

⁹ Ariz. §21-101(12); Ill. c. 110 §133(1); Md. Art. 16 §95; Minn. §542.02; Miss. §961; Nev. §8568(2); Wash. §204(1).

¹⁰ Conn. §7749 (where parties are nonresidents); Mich. §27.2013; Pa. §101; Tex. Tit. 42 Art. 1995(13).

¹¹ Cal. §392(b); Wis. §261.01(1)(b).

Actions for the foreclosure of a mortgage or other lien on real property "must" be brought in the county in which the subject of action is situated in seventeen states.¹² Eight states say such an action "shall" be brought there,¹³ two states say "may",¹⁴ and two say such county "is" the proper county.¹⁵

¹² Ark. §27-601 (Third); Idaho §5-401(3); Ind. §2-701 (Third); Kan. §60-501 (Third); Ky. §62(3); Mont. §9093(3); Neb. §25-401; N.Y. §183(4); N.C. §1-76(3); N.D. §28-0401(4); Ohio §11268(3); Okla. §131(3); S.C. §420(3); S.D. §33.0301(3); Utah §104-4-1(3); W.Va. §5517(c); Wyo. 3-801(3).

¹³ Ariz. §21-101(12); Conn. §7750; Ill. c. 110 §133; Md. Art. 16 §95; Minn. Part 4 §542.02; Nev. §8568(3); Tenn. §8642; Wash. §204(1).

¹⁴ Tex. Tit. 42 Art. 1995(12); Va. §6049 (Fourth).

¹⁵ Cal. §392(c); Wis. §261.01(1)(c). See Cal. Const. Art. VI §5.

When trespass to land is the subject matter of the action, the venue "must" be laid in the county where the land lies in twelve jurisdictions.¹⁶ In fifteen states the statute provides that such an action "shall" be brought in such county;¹⁷ two states say "may",¹⁸ and two say such county "is" the proper county.¹⁹ It should be noted that in eight states²⁰ the plaintiff has an election in some²¹ or all²² trespass to land cases to lay the venue in a county other than that in which the land lies, and in two states the venue is properly laid in the county where the land lies only when parties are nonresidents²³ or the defendant is a domestic corporation,²⁴ respectively. There is no specific venue provision covering trespass to land cases in fifteen states.²⁵

¹⁶ Ala. Tit. 7 §54; Ark. §27-601 (Fourth); Idaho §5-401(1); Ind. §2-701 (First); Ky. §62(4); La. Art. 165(8); N.C. §1-76(1)(1); N.D. §28-0401(2)(2); S.C. §429(1); S.D. §33.0301(1); Tex. Tit. 42 Art. 1995(14); Utah §104-4-1(1).

¹⁷ Ariz. §21-101(12); Conn. §77.47; Mich. §27.641; Minn. §542.02; Miss. §1433 (where defendant is a domestic corporation); Mont. §9093(1); Neb. §25-401; Nev. §8568(1); N.J. Rule 3:3-2; N.M. §19-501 (Fifth); Ore. §1-401(1)(1); R.I. c. 511 §1; Tenn. §8642; Vt. §1604 (if neither party resides in the state); Wash. §204(1).

¹⁸ Iowa §616.2; Pa. §101.

¹⁹ Cal. §392(a); Wis. §261.01(1)(a).

²⁰ Ill., Iowa, Md., Minn., Neb., N.J. N.M., and Wis.

²¹ Ill. c. 110 §132(3) (action against any public, municipal, governmental or quasi-governmental corporation to recover damages to real estate in the county where such land is situated or where such corporation is located); Md. Art. 75 §158 (where defendant is found, if not found in county where the land lies); Minn. §542.07 (by the state, for trespass, any county selected); Neb. §25-401 (if defendant is a railroad, then in any county where service of summons can be had); Wis. §261.01(8) (by the state, trespass upon public lands, when the amount in controversy exceeds two hundred dollars, in any county).

²² Iowa §616.2 (or where defendant resides); N.J. Rule 3:3-2 (or where the cause of action arose); N.M. §19-501 (Fifth) (or where defendant or some of them reside, or where defendant is found in the district in which the defendant resides, or where the cause of action arose or where plaintiff or some of the plaintiffs reside.)

²³ Vt. §1604.

²⁴ Miss. §1433.

²⁵ Colo., Del., Fla., Ga., Kan., Me., Mass., Mo., N.H., N.Y., Ohio, Okla., Va., W.Va. and Wyo.

Twenty states provide that an action for the recovery of personal property "must" (six states),²⁶ "shall" (six states),²⁷ or "may" (seven states)²⁸ be brought in the county where the subject of action is situated, or that such county "is" the proper county for such an action (one state).²⁹

²⁶ N.C. §1-76(4); N.D. §28-0402(1); S.C. §420(4); S.D. §33.0301(4); Wash. §204(2); W.Va., §5517(a).

²⁷ Colo. Rule 98; Mass. Vol. 7 c. 223 §4; Mich. §27.641(1); Mo. §872; Ore. §1-401(2); Tenn. §8642.

²⁸ Ariz. §21-101(11); Ill. c. 119 §3; Minn. §542.06; Miss. §2843; N.M. §19-501 (Third); Pa. Rule 1072(b); Tex. Title 42 Art. 1995(10).

²⁹ Wis. §261.01(1)(d).

Where the action is against a nonresident or foreign corporation, twelve states provide that the action may be brought in any county in which there is property of, or debts owing, to the defendant.³⁰ Similar legislation is found in ten states where the suit is commenced by attachment.³¹

³⁰ Ala. Title 7 §294 (Equity cases); Ark. §27-608 (actions other than local); Ind. §2-708 (foreign corporations only); Kan. §60-507; Ky. §75; Md. Art. 16 §98; Neb. §25-408; N.C. §1-80 (foreign corporations only); Ohio §11276; Okla. §137; Va. §6049; W.Va. §5517(d).

³¹ Conn. §7747 (if neither plaintiff nor defendant is an inhabitant); Iowa §616.4; La. Art. 163; Me. c. 99 §12; Mich. §§27.641 and 27.1761 (where debtor has no property in county of his residence, or is a nonresident of the state); Minn. §542.05; Mo. §872; N.J. Rule 3:3-2; Tenn. §8642; Tex. Tit. 42 Art. 1995(8).

In addition to these more common provisions venue statutes in from one to four states provide for trial of actions in the following situations in the county in which the subject of action is situated—any local action against a domestic or foreign corporation;³² any action made local by any statute, in the county designated;³³ if neither party resides in the state (chancery cases);³⁴ actions for an injunction to stay proceedings at law, in the county in which the proceedings at law are had;³⁵ action upon return of "no property found", in the county in which the judgment is rendered;³⁶ action for the enforcement of the lien of any special tax bill on real estate;³⁷ suit commenced upon a bond filed in probate court, where bond filed;³⁸ injuries occurring *on* real estate;³⁹ suit involving inheritance, where such estate lies;⁴⁰ in a suit where a domestic or foreign corporation is defendant, where the property in litigation is located;⁴¹ all actions affecting property, franchise or utilities;⁴² in divorce, where property affected or sought to be affected is located;⁴³ actions against insurance companies, where injured property is located;⁴⁴ surety companies, for any building or improvement, where such building or improvement is located;⁴⁵ operators of coal mines, on any contract or tort, in any manner connected with or growing out of construction, use or operation of said mine;⁴⁶ and actions against municipal corporations or counties or public agencies or officials, in the county in which the property affected is situated.⁴⁷

³² Md. Art. 23 §110.

³³ Ill. §133(2); Tex. Tit. 42 Art. 1995(30) (special venue).

³⁴ Vt. §1286.

³⁵ Ala. Title 7 §294; Ariz. §21-101(14); Colo. Rule 98(d); Ga. §3-202; Ill. §133(3).

³⁶ Ky. §70.

³⁷ Mo. §873.

³⁸ Mich. §27.641(10).

³⁹ Pa. §106.

⁴⁰ Md. Art. 75 §168; Tex. Tit. 42 Art. 1995(11).

⁴¹ Fla. §46.04; Md. Art. 23 §110(a), (b).

⁴² Colo. Rule 98.

⁴³ N.M. §25-703.

⁴⁴ N.D. §28-0402(2); Pa. Rule 2179(b)(2); S. D. §33.0301(5); Tex. Tit. 42 Art. 1995(28).

⁴⁵ Iowa §616.15.

⁴⁶ Iowa §616.13.

⁴⁷ N.J. Rule 3:3-2.

Where property which is the subject matter of the action lies in two or more counties, and venue is based on the location of the property, forty-one states provide that the action may be brought in either county,⁴⁸ either by a separate provision to this effect (twelve states),⁴⁹ or by inserting such words as "or some part thereof" after the word "property" in the specific venue statute (thirty-four states).⁵⁰ Five states employ both methods.⁵¹ One state limits the election to situations where a "substantial" part of the property is located in the other county,⁵² another says that it must be a "material portion," if real estate be the subject of the suit.⁵³ A provision in yet another state is to the effect that if the land lies in two or more counties, and defendant resides in either of them, the action shall be brought in the county of his residence.⁵⁴ Finally, seven states limit this election by specific statutory provision to the situation where the property is a single or entire tract.⁵⁵

⁴⁸ Ala. Title 7 §294; Ariz. §21-101(12); Ark. §27-601; Cal. §392; Colo. Rule 98; Conn. §§7748, 7749, 7750; Ga. Const. §2-4902; Idaho §5-401; Ill. c. 110 §133(1); Ind. §2-701; Iowa §§616.1, 616.15, 616.4; Kan. §§60-502, 60-510; Ky. §62; Md. Art. 16 §95; Art. 75 §168; Mass. Vol. 7 c. 223 §12; Mich. §§27.641(12), 27.2013; Minn. §542.02; Miss. §§961, 1274, 1433, 2843; Mo. §873; Mont. §9093; Neb. §§25-401, 25-402, 25-403; Nev. §8586; N.M. §19-501; N.C. §1-76; N.D. §28-0401, 28-0402; Ohio §11269; Okla. §132; Ore. §1-401; Pa. §102; Pa. Rule 1052, 1062; R.I. c. 511 §1; S.C. §420; S.D. §33.0301; Tenn. §8642; Tex. Tit. 42 Art. 1995 (12), (13), (14); Utah §104-4-1; Vt. §1286; Va. §6049; Wash. §204(1); W.Va. §5517; Wis. §261.01(1); Wyo. §3-802.

⁴⁹ Conn. §7748; Ga. Const. §2-4902; Kan. §60-502; Md. Art. 16 §95; Mass. Vol. 7 c. 223 § 12; Mich. §27.641(12), 27.2013; Neb. §25-402; Ohio §11269; Okla. §132; Pa. §102; R.I. c. 511 §1; Wyo. §3-802.

⁵⁰ Ala. Title 7 §294; Ariz. §21-101(12); Ark. §27-601; Cal. §392; Colo. Rule 98; Conn. §§7749, 7750; Idaho §5-401; Ill. c. 110 §133(1); Ind. §2-701; Iowa §616.1, 616.15, 616.4; Kan. §60-510; Ky. §62; Md. Art. 75 §168; Minn. §542.02; Miss. §§961, 1274, 1433, 2843; Mo. §873; Mont. §9093; Neb. §25-401, 25-403; Nev. §8568; N.M. §19-501 (Fourth), (Fifth); N.C. §1-76; N.D. §§28-0401, 28-0402; Ore. §1-401; Pa. Rule 1052, 1062; S.C. § 420; S.D. §33.0301; Tenn. §8642; Tex. Tit. 42 Art. 1995(12), (13), (14); Utah §104-4-1; Vt. §1286; Va. §6049; Wash. §204(1); W. Va. §5517; Wis. §261.01(1).

⁵¹ Conn., Kan., Md., Neb., and Pa.

⁵² Colo. Rule 98.

⁵³ Ala. Title 7 §294.

⁵⁴ Miss. §1433.

⁵⁵ Conn. §7748; Ga. Const. §2-4902; Kan. §60-502; Mass. Vol. 7 c. 223 §12; Ohio §11269; Okla. §132; Wyo. §3-802.

Par. B. Where the cause of action, or part thereof, arose or accrued. Only six states make use of this type of venue provision for civil actions of any and all kinds.⁵⁶ In the vast majority of states, venue on this ground is limited to certain types of actions,⁵⁷ such as for the recovery of a fine, forfeiture or penalty imposed by statute,⁵⁸ or an action for the recovery of personal property;⁵⁹ or suits against certain kinds of defendants,⁶⁰ such as against a public officer,⁶¹ or a railroad;⁶² or a combination of these two factors,⁶³ such as an action on the official bond or undertaking of a public officer,⁶⁴ or a contract action against a resident of the state.⁶⁵

⁵⁶ Fla. §46.01 (suits shall be begun only in the county . . . or where the cause of action accrued, or . . .); Ill. c. 110 §131 (Every civil action shall be commenced . . . or in which the transaction or some part thereof occurred out of which the cause of action arose . . .); N.J. Rule 3:3-2 (any civil action in New Jersey may be brought in the county where the cause of action arose); Utah §104-4-7 (In all other cases the action must be tried in the county in which the cause of action arises, or . . .); Va. §6050 [An action or suit may be brought in any county or city wherein the cause of action, or any part thereof, arose, although none of the defendants reside therein (provided service can be had in such county)]; W.Va. §5518 [An action, suit or proceeding may be brought in any county wherein the cause of action, or any part thereof, arose, although none of the defendants reside therein . . . (b) When the defendant, or if more than one defendant, one or more of the defendants, are served in such county with process or notice commencing such action, suit or proceeding.]. Note that in Virginia and West Virginia the usefulness of this provision is limited by the service requirement.

⁵⁷ The statute reads, "where the cause of action, or some part thereof arose," unless otherwise indicated:

Assault and battery actions, Wis. §261.01(11b);

Assigned causes of action, where contract sued on was made or to be performed or where cause of action or some part thereof otherwise arose, N.Y. §184-a;

Damages resulting from attachment, sequestration, etc., Tex. Tit. 42 Art. 1995(8);

Automobile accident actions, Iowa §616.18 (in the county in which the injury or damage is sustained); Minn. §542.095; Ohio §6308 (in the county where the injury occurs); Pa. §738, 1098; Wash. §205(3); Wis. §261.01(11);

Action on book account or for goods sold and delivered, where goods were sold, Colo. Rule 98(c);

Action on bills or notes, where made payable, Colo. Rule 98(c);

Action on promissory note, in which such instrument was actually signed by the maker, or one of several makers, Fla. §46.05;

Action on fidelity bond, where the default or defalcation occurred, and actions on surety bonds, or bonds of indemnity or liability, where such liability or loss indemnified occurred, S.D. §33.0302;

Action upon contracts, in county in which contract was to be performed, Cal. §395(1); Colo. Rule 98(6); Mont. §9096; N.M. §19-501; or in which the contract was in fact entered into, Cal. §395(1); or was made, or where the cause of action originated or indebtedness sued on was incurred, N.M. §19-501(1);

Contract in writing, expressly naming a particular county as place of performance, in such county, Ariz. §21-101(5); Iowa §616.7; Tex. Tit. 42 Art. 1995(5); Utah §104-4-4;

Action for conversion of personal property, S.D. §33.0304;

Action based upon a crime, offense or trespass, where committed, Ariz. §21-101(10); N.M. §19-501 (Second) (crime only), whether committed by the defendant or by his agent or representative, Tex. Tit. 42 Art. 1995(9);

Damages for distraint of chattels, N.Y. §184(3);

Divorce or alimony, Ohio §11980;

Failure, in which the failure has been declared, La. Art. 165(3);

Forfeited recognizance, bond or undertaking of bail, S.D. §33.0303;

Fraud, where fraud committed, Tex. Tit. 42 Art. 1995(7);

Action for defect in way and for negligence, where alleged injury or damage received, Mass. c. 223 §7; and N.H. c. 188 Part 18 §34;

Injunctions to stay proceedings, where judgment rendered or suit pending, Ala. Tit. 7 §294; Tex. Tit. 42 Art. 1995(17);

Insurance, in the parish where the loss occurred, or in the case of accident insurance, in the parish where the accident occurred, or in the parish where the policy was written, La. Art. 165(10);

Libel, county in which article was composed or printed, or in which circulated or published, Ill. c. 110 §131; and, in addition, or in which the transaction, or act or declaration to which the publication relates is stated, or purported to have been done or taken place, Ky. §74;

Patent rights, where sold, Vt. §1605;

All other personal actions (except on contract) in the county where act or omission complained of may have been done or may have occurred, Ala. Tit. 7 §54;

Damages for personal injury or death by wrongful act, where the accident occurred, Ark. §27-610;

Action for injury to person, personal property, wrongful death, negligence, where injury occurs, or where injury causing death occurs, Cal. §395(1);

Damages to person or property, where damages inflicted or cause of action arose, S.D. §33.0304;

Railway personal injuries, where the injury occurred, Tex. Tit. 42 Art. 1995(25);

Railroad wages, where such labor was performed, or in which the cause of action, or part thereof, accrued, Tex. Tit. 42 Art. 1995(26);

Revision of Probate, where such proceedings were had, Tex. Tit. 42 Art. 1995(18);

Action or suit involving stocks and bonds, where cause of action or some part thereof arose, or where contract is violated or is to be performed, Neb. §25-405(3);

Action on tort, where cause of action arose, Ore. §1-403, where tort committed, Colo. Rule 98(c), Mont. §9095;

Trespass, where damage is done, La. Art. 165(9);

Trespass to land, where the cause of action originated, N.M. §19-501 (Fifth);

Action for wages, where such labor was performed, Minn. §542.08;

Action for work and labor done, where labor done, Ala. Tit. 7 §55;

Warranty, in which demands in warranty arise, La. Art. 165(4).

⁵⁸ This is the most common provision in this venue category: Ark. §27-602 (First); Cal. §393(a); Colo. Rule 98(b)(1); Idaho §5-402(1); Ind. §2-702 (First); Iowa §616.3(1); Kan. §60-503 (First); Ky. §63(1); Minn. §542.03; Mont. §9094(1); Neb. §25-404(1); Nev. §8569(1); N.Y. §184(1); N.C. §1-77; N.D. §28-0403(1); Ohio §§11271, 11272, 11276; Okla. §133(1); Ore. §1-402(1); S.C. §421(1); S.D. §33.0303(1); Utah §104-4-2(1); Wash. §205(1); Wis. §261.01(2)(b); Wyo. §3-804(1). Provision is made in the statutes of each of these states to the effect that when the offense for which the claim made was committed on a watercourse or road which is the boundary of two counties, the action may be brought in either of them. In these additional states language other than "where the cause of action arose" is employed, and no boundary election provision is found: Me. c. 9 §14 (Where the offense was committed, unless a different provision is made by statute); Mass. Vol. 7 c. 223 §14 (Where the offense was committed, unless the statute imposing the forfeiture otherwise provides); Mich. §27.641(9) (Where the act was done, or where the act omitted was required, in whole or in part to be done, upon which the penalty or forfeiture attached).

⁵⁹ The language of the statute is "where the cause of action arose" unless otherwise indicated: Minn. §542.06 (in which the taking occurred); N.M. §19-501 (Third); N.Y. §184(3).

⁶⁰ Action against a bank or insurance company, if it arises out of a transaction with an agent of such corporation, in the county in which such transaction took place, Ky. §71;

Contractor for public work, in the county wherein the labor, or most of it, is done, or wherein the material, or supplies, or most thereof, are furnished, Ky. §77;

Actions against a corporation, where the cause of action accrued, Mo. §874; where the cause of action, or any part thereof, arose, Ariz. §21-101(18); Tex. Tit. 42 Art. 1995(23); W.Va. §5518; Wis. §261.01(6); in which the transaction or some part thereof occurred out of which the cause of action arose, Ill. c. 110 §132(1); against a domestic corporation,

where cause of action accrued, Fla. §46.04; Idaho §5-404; occurred or accrued, Miss. §1433; where the cause of action, or some part thereof, arose, Okla. § 134;

Against a foreign corporation, where the cause of action arose, N.C. § 1-80; Wyo. §3-807; where the cause of action, or some part thereof, arose, Ohio §11276; where the cause of action accrued, Fla. §46.04; where the cause of action or part accrued, Tex. Tit. 42 Art. 1995(27); where plaintiff is a nonresident, where the cause of action accrued within the state, in the county where the cause of action accrued, Mich. §27.641(5);

Bridge company, in which the transaction or some part thereof occurred out of which the cause of action arose, Ill. c. 110 §132(1);

Insurance company, where loss has occurred, Iowa §616.10; S.C. §423; Tex. Tit. 42 Art. 1995(28); or in which contract of insurance made, Iowa §616.10; or in which the cause of action, or a part thereof, arose, Ariz. §21-101(18); where the death occurred or the loss was sustained, Idaho §5-404;

Domestic insurance company, where the cause of action, or some part thereof, arose, Kan. §60-504; Neb. §25-405(2); Ohio §11272; Wyo. §3-805; or a loss may occur, Miss. §1435; or where contract is violated or is to be performed, Neb. §25-405(2);

Foreign insurance company, where the cause of action, or some part thereof, arose, Kan. §60-507; Neb. §25-408; Okla. §137; Wyo. §3-807; where the loss occurred, Miss. §1435;

Fraternal benefit society, where the cause of action arose, Tex. Tit. 42 Art. 1995(29);

Joint common carriers, from or into which shipment shall be made, Iowa §613.4;

Joint stock companies, where the cause of action, or a part thereof, arose, Ariz. §21-101(18);

Telegraph or telephone companies, where the cause of action, or a part thereof, arose, Ariz. §21-101(18);

Transportation or transmission companies, where the cause of action, or some part thereof, may have accrued, Okla. 135;

Associations, where the cause of action, or a part thereof, arose, Tex. Tit. 42 Art. 1995(23), where the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose, Pa. Rule 2156(a); Partnership, where the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose, Pa. Rule 2130(a); where the obligation was entered into, La. Art. 165(2);

Nonresident, or nonresident engaged in business, where cause of action arose, Pa. Rule 2077(a)(1), (2);

Nonresident, where the cause of action arose, Wyo. §3-807; where the cause of action, or some part thereof, arose, Ohio §11276.

⁶¹ In the county where the cause of action, or some part thereof, arose, for an act done by him in virtue of or under color of his office, or for neglect of his official duty; Ark. §27-602 (Second); Kan. §60-503 (Second); Ky. §63(2); Neb. §25-404(2); N.Y. §184(2); Ohio §11271(2); Okla. §133(2); Ore. §1-402(2); Wyo. §3-804(2). The following states add to the above provisions "or against a person who by his command or in his aid does anything touching the duties of such office": Cal. §393(b); Colo. Rule 98(b)(2); Idaho §5-402(2); Ind. §2-702 (Second); Iowa §616.3(2); Minn. §542.03 (In which the cause of action arose); Mont. §9094(2); Nev. §8569(2); N.C. §1-77(2); N.D. §28-0403(2); S.C. §421(2); S.D. §33.0303(2); Utah §104-4-2(2); Wash. §205(2); Wis. §261.01(2)(a).

Mich. §27.641(8) provides that suits against public officers, or persons appointed to execute orders of such officers, for an act done by them, by virtue of their offices respectively, or against persons who by command or in aid of such officers, do anything touching the duties of such office, or against any surety or sureties on the official bonds of such officers or appointees, shall be commenced and tried in the county where the fact happened.

⁶² In the county where the cause of action arose, N.C. §1-81; Wis. §261.01(4); where the cause of action, or some part thereof, arose, Ariz. §21-101(18); Ohio §11273; where the transaction or some part thereof occurred out of which the cause of action arose, Ill. c. 110 §131.

⁶³ Action against any captain, master or owner of any steamboat or other vessel for non-delivery or injury of goods or chattels, where goods or chattels were received, or where delivery was by the contract to be made, Md. Art. 75 §159; Common carrier, upon a contract to carry property, where contract made or where carrier agrees to deliver property, Ky. §73;

Common carrier, tort to person or property, where plaintiff or his property is injured, Ky. §73;

Construction company, engaged in construction of railway, canal, telegraph or telephone line, oil, gas or gasoline transmission lines, highway or public drainage improvement, or any contract relating thereto, or for damages growing out of the contract or work thereunder, in any county where contract made, or performed in whole or in part, or where work was done out of which the damage claimed arose, Iowa §616.9;

Contractor for public work, for labor done, or materials or supplies furnished, in the county where labor, or most of it, is done, or where materials or supplies, or most thereof, are furnished, Ky. §77;

Against corporations, action upon contract, where contract is made or to be performed, Ky. §72;

Against corporations, if it be for tort, in which the tort is committed, Ky. §72;

Corporation, organized for purpose of mining or operating for petroleum or gas, where the corporation owns or operates a mine or a well for petroleum oil or gas and the cause of action, or part thereof, arose, Ohio §11272;

Domestic corporations, for personal injuries, where the injury occurred, Ala. Title 7 §60;

Defalcation by public officers, where the defalcation occurred, Tex. Tit. 42 Art. 1995(7);

Against executors and administrators, in the county where bonds were given, if the principal or any surety on the bond is in the county, N.C. §1-78;

Against any surety or sureties on the official bonds of public officers or appointees, where the fact happened, Mich. §27.641;

Against the sureties on a public contractor's bond, where the cause of action arose, Minn. §542.12;

Insurance company, action growing out of negligent operation of a motor vehicle, where the cause of action arose, Wis. §261.01(5);

Nonresident operator of motor vehicle, where the cause of action accrues, Mo. §8410.11; where the cause of action arose, Wyo. §60-1101;

All civil actions for recovery of damages against a nonresident, where the accident occurred which caused the injury, or death, Ark. §27-612; in the county in which the action accrued, Miss. §1437;

Actions ex delicto, defendants nonresidents, nor carrying on regular business in, nor habitually engaged in any avocation or employment in one county, in the county where the cause of action arose, Md. Art. 75 §157;

Against a resident, injury to person or character, where the injury is done, Ky. §74;

All other personal actions, against a resident, where the act or omission complained of may have been done or may have occurred, Ala. Tit. 7 §54;

Tort actions against resident, where the cause of action arose, Neb. §25-409;

Against persons who have contracted a debt or obligation in one county and thereafter remove to another county, Ariz. §21-101(4).

⁶⁴ Where the cause of action, or part thereof, arose: Ark. §27-602 (Third); Iowa §616.3(3); Kan. §60-503 (Third); Ky. §63(3); Neb. §25-404(3); Ohio §11271(3); Okla. §133(3); Wyo. §3-804(3).

⁶⁵ Iowa §616.3(3), where the contract was to be performed.

Par. C. Where some fact is present or happened. Several states provide that actions on certain types of bonds may be brought in the county where the bond is filed,⁶⁶ that actions by an assignee shall be brought where the maker or assignor or original claimant resided, or in which the original creditor might have maintained his action,⁶⁷ that actions against executors, administrators, guardians and trustees may be brought in the county where appointed,⁶⁸ that actions against insurance companies under certain types of insurance may be brought in the county where the insured resided at the date of his death or sickness or at the date of the policy or at the time the loss occurred,⁶⁹ that an action against a married woman may be brought in the county in which her husband resides,⁷⁰ that

actions against railroads be brought in some county adjoining that in which the cause of action arose,⁷¹ that in railway personal injury actions, when the injury occurs within one-half mile of the boundary line dividing two counties, suit may be brought in either county, or in the county in which the plaintiff resided at the time of the injury,⁷² that libel or slander actions may be brought in the county where plaintiff resided at time of publication,⁷³ or that actions for personal injury or death or for damages to personal property be brought in the county where the person resided when the cause of action arose.⁷⁴

Statutes in several states provide that venue in actions against corporations engaged in transportation or transmission activities may be laid in any county through or into which the lines, roads, structures, or the like, of such company may be, may run, extend, pass, operate, be located, or lie⁷⁵ or through which shipment shall be made.⁷⁶ Several states with somewhat similar statutes limit this wide choice by providing that actions shall be brought in the county of the claimant's residence, if the line or road traverses the county of plaintiff's residence,⁷⁷ or as another state puts it, the county in which the claimant for injuries to person or property or one whose wrongful death was caused resided at the time when the cause of action arose,⁷⁸ or either in the county of plaintiff's residence or where the cause of action arose, if such road extends into either county,⁷⁹ or in the county where plaintiff resides or has an agent, if the defendant operates in such county,⁸⁰ but if the road or line does not extend into such county, then two states provide for venue in any county into which its road does extend,⁸¹ one allows an election to sue where the injury occurred,⁸² and two provide for venue in the county nearest that in which plaintiff resided and in which the defendant operates.⁸³ One state provides that if a corporation has no agency or representative in the county in which the plaintiff resided at the time the cause of action arose, then suit may be brought in the county nearest that in which the plaintiff resided at said time in which the corporation then had an agency or representative.⁸⁴

One state provides that an action against a railroad company, insurance company, telegraph or telephone company, joint stock company and other corporations, may be brought in the county in which the defendant owns any property.⁸⁵

One state provides that where the charter of a corporation created under the laws of the state prescribes the place where suit must be brought, such provision shall govern⁸⁶ and another provides for venue in actions against corporations in the county in which the corporation is located by its charter.⁸⁷ One state provides that in an action against a corporation organized in the state, with no office or place of business in the state, where the cause of action arose in the state or grew out of rights of stockholders with respect to corporate management, the action may be brought in the county in which the seat of government is located.⁸⁸ Another provides that domestic or foreign corporations, subject to suit but with no principal office in the state and which are not regularly doing business in the state, may be sued in the city of Baltimore.⁸⁹ One state provides that

actions against corporations or associations may be brought in the county where the plaintiff resides at the time the cause of action arose, if the corporation has an agency in such county.⁹⁰

Three states make special provision of this general nature for actions by or against a political entity.⁹¹ One state provides that a proceeding to establish or set aside a will must be brought in the county in which the will, if valid, ought to be recorded.⁹² Two states provide that where any action is made local by any statute, or venue is expressly prescribed, respectively, suit shall be commenced in the county designated.⁹³

⁶⁶ Action on official bonds, where bond is filed, Wis. §261.01(10); action on all other bonds for or authorized by law (except official bonds of a public officer and bonds of executor or guardian) where such bond was filed and approved, Iowa §616.3(5); action upon bonds for cost, and upon any recognizance, where such bond or security is filed, Minn. §542.05; action on bonds of executor or guardian, where appointment was made and such bond filed, Iowa §616.3(4); action upon sheriff's bond, where sheriff is commissioned, Me. c. 99 §10; all actions upon official bonds, where bonds were given, if the principal or any surety on the bond is in the county, N.C. §1-78; action upon contracts, surety bonds, or bonds of indemnity or liability (except fidelity bonds), where the indemnified resides at the time said action is commenced, S.D. §33.0302; action against a domestic or foreign insurance corporation, surety on any bond required by law to be filed, where such bond is filed, Md. Art. 23 §110(c); action against a surety company, where the principal resides at time of suit, or where principal did reside at time bond was executed, Iowa §616.15.

⁶⁷ Action by assignee, where maker or assignor resided, Mass. c. 223 §1; where the original claimant resides at commencement of the action, N.Y. §184-a; or might have maintained his action, Me. c. 99 §9.

⁶⁸ Ohio §11277; Wyo. §3-808.

⁶⁹ Action to recover under a policy of insurance, where the person whose life was insured resided at the date of his death or at the date of the policy, Va. §6049; W.Va. §5517(e); action against an insurance company, in case of insurance against death or disability, in the county of the domicile of the insured at the time the loss occurred, Iowa §616.10; action against an insurance company for sick benefit, where claimant resides at time of his sickness, La. Art. 165(10); action on life, health or accident insurance policy issued by a domestic company, where the insured resided at the time a liability is alleged to have accrued under the policy, S.D. §33.0302; against insurance company, in action arising out of negligent operation of motor vehicle, where the person or persons, covered by an insurance policy by reason of which such insurance company is sued or made a party to the action, resides, Wis. §261.01(5).

⁷⁰ Against married woman, Ariz. §21-101(2) (unless she is living separate and apart from him); Tex. Art. 1995(1).

⁷¹ N.C. §1-81.

⁷² Tex. Art. 1995(25); action against railroads, where the plaintiff resided at the time the cause of action arose, N.C. §1-81; action against common carrier, if brought by personal representative, residence of the decedent shall control, Ky. §73.

⁷³ Libel, where plaintiff resided at time of publication, Ariz. §21-101(10); libel or slander, where plaintiff resided at time of accrual of the cause of action, Tex. Art. 1995(29).

⁷⁴ Action for personal injury or death, where the person injured or killed resided at the time of injury, Ark. §27-610 and 27-612 (same provision, against nonresident); action for damages to personal property, residence of the person who was the owner of the property at the time the cause of action arose, Ark. §27-611.

⁷⁵ Bus companies: Neb. §25-46; Wyo. §3-806;

Canal corporations or companies: Ind. §2-705; Iowa §616.8;

Express companies: Ind. §616.8; Miss. §1434;

Interurban railway: Kan. §60-505;

Line of cars: Iowa §616.8;

Motor transportation line: Miss. §1434;

Pipe line: Kan. §60-505;

Power, super-power corporation; Miss. §1434;

Railroads: Ark. §27-606 (upon which the cause of action arose passes); Ind. §2-705; Iowa §616.8; Kan. §§60-505, 60-506; Miss. §1434; Mo. §874; Neb. §25-406; Tex. Tit. 42 Art. 1995(23); Vt. §1604 (domestic corporation); Wyo. §3-806;

Stage line or coaches: Ark. §27-606 (upon which the cause of action arose passes); Ind. §2-705; Iowa §616.8; Kan. §60-505; Neb. §25-406; Wyo. §3-806;

Steamboat and other river craft: Iowa §616.8; Miss. §1434; Telegraph and telephone companies: Iowa §616.8; Kan. §60-505; Miss. §1434;

Transmission companies: Iowa §616.8; Okla. §135;

Transportation companies: Okla. §135;

Turnpike companies: Ark. §27-607; Neb. §25-407; Okla. Stat. Ann. (1936) §136.

⁷⁶ Iowa §613.4.

⁷⁷ Mich. §27.641(3) (street railway or railroad company, any individual, motor bus or any transportation company).

⁷⁸ Ohio §11273 (owner or lessee of a line of mail stages or other coaches, a railroad company, interurban railroad company, suburban railroad company, or street railroad company, or a transportation company owning or operating an electric traction road located upon either bank of a canal belonging to the state).

⁷⁹ Wis. §261.01(4) (railroad).

⁸⁰ Tex. Tit. 42 Art. 1995(25) (railroad corporation).

⁸¹ Mich. §27.641(3); Wis. §261.01(4).

⁸² Tex. Tit. 42 Art. 1995(23).

⁸³ Ohio §11273; Tex. Tit. 42 Art. 1995(25).

⁸⁴ Tex. Tit. 42 Art. 1995(23).

⁸⁵ Ariz. §21-101(18).

⁸⁶ Kan. §60-504. Ohio §11275 to the same effect was repealed in 1949.

⁸⁷ R.I. c. 511 §3.

⁸⁸ W.Va. §5517(b).

⁸⁹ Md. Art. 23 §110(b).

⁹⁰ Tex. Tit. 42 Art. 1995(23).

⁹¹ By the state, in any county permitted by Rule of the Supreme Court, Pa. Rule 2103; by a county or city and county, against a city, in any county or city and county not a party, Cal. §394; by a county against a county, in a county not a party thereto, Cal. §394; Mont. §9095; Nev. §8570; Utah §104-4-3; against a city in the county nearest to where the cause or subject of action originated, Iowa §616.16; against the City of New York, in the county within the city in which the cause of action arose, N.Y. §182-b.

⁹² Ky. §64.

⁹³ Ill. §133(2); Tex. Tit. 42 Art. 1995(30).

Par. D. Where the defendant resides. Statutes in eleven states are so worded as to indicate an intention on the part of the legislature to establish the place of defendant's residence as the normal place of trial of civil actions where the defendant is a resident of the state.⁹⁴ In twenty-five states, after providing venue for local and certain other actions, a residuary provision, usually "in all other cases," establishes the defendant's residence as the proper place of trial for the vast majority of civil actions.⁹⁵ Ten states have a somewhat similar provision covering a broad group of actions, such as "torts, contracts, and other actions,"⁹⁶ actions founded upon "wrongs and contracts,"⁹⁷ "where the foundation of the action is crime, offense or trespass,"⁹⁸ "Personal actions"⁹⁹ or "Tort actions" respectively.¹⁰⁰ Another group of six states provides that the proper venue of "transitory actions" is the county of the defendant's residence.¹⁰¹

One state provides that if the plaintiff and defendant both reside in the same county, a transitory action shall be brought in the county of their residence.¹⁰² Another establishes the venue of transitory actions arising without the state at the defendant's residence.¹⁰³

One state provides that all civil cases at law (except as otherwise provided) shall be tried in the county wherein the defendant resides¹⁰⁴ and five states provide that equitable proceedings are properly brought in such county.¹⁰⁵

The popularity of venue at the residence of the defendant is further evidenced by its use in a wide variety of specifically named actions,¹⁰⁶ such as, assault and battery,¹⁰⁷ specific performance of contracts to convey land,¹⁰⁸ partition of land,¹⁰⁹ trespass to land,¹¹⁰ and divorce;¹¹¹ in suits against particular kinds of defendants usually on certain named causes of action,¹¹² as for example, against an executor for trespass to land,¹¹³ or a common carrier, upon a contract to carry property,¹¹⁴ or in actions where defendant is about to depart from the state,¹¹⁵ and, finally, in suits brought by certain classes of plaintiffs, such as corporations,¹¹⁶ domestic railroad corporations,¹¹⁷ foreign corporations,¹¹⁸ the state¹¹⁹ or a county.¹²⁰

Four states have specifically defined the residence of a corporation for purposes of venue based upon residence of a party.¹²¹

⁹⁴ Ariz. §21-101—"No person shall be sued out of the county of his residence, except" (then follow nineteen exceptions). Fla. §46.01—"Suits shall be begun only in the county . . . where the defendant resides, or . . ."; Iowa §616.5—"Resident . . . in the county of his residence, or . . ."; La. Art. 162—"It is a general rule in civil matters that one must be sued before his own judge, that is to say, before the judge having jurisdiction over the place where he has his domicile or residence, . . ."; Md. Art. 75 §157—"No person shall be sued out of the county in which he resides until the sheriff or coroner of the county in which he resides shall have returned a *non est* on a summons issued in such county . . ."; Mo. §871—"Suit instituted by summons . . . (1) either in the county within which defendant resides . . ."; Tex. Tit. 42 Art. 1995—"No person who is an inhabitant of this State shall be sued out of the county in which he has his domicile except" (then follow thirty exceptions); Vt. §1604—"In county court . . . shall be brought in the county in which one of the parties resides, if either resides in the state . . ."; Va. §6049—"Any action at law or suit in equity . . . may be brought in any county or corporation: First, Wherein any of the defendants may reside"; Wash. §205-1—"An action may be brought in any county in which the defendant resides . . ."; W.Va. §5517(a)—"Any action at law or suit in equity . . . may be brought in any county or corporation: First, Wherein any of the defendants may reside, except. . ."

⁹⁵ Ark. §27-613; Cal. §395(1); Conn. §7747; Ga. Const. §2-4906; Idaho §5-404; Ill. c. 110 §131; Kan. §60-509; Ky. §78; Minn. §542.09; Mont. 9096; Neb. §25-409; Nev. §8571; N.J. Rule 3:3-2; N.Y. §182; N.C. §1-82; N.D. §28-0405; Ohio §11277; Okla. §139; Ore. §1-403; R.I. c. 511 §2; S.C. §422; S.D. §33.0304; Utah §104-4-7; Wis. §261.01(12); Wyo. §3-808.

⁹⁶ Colo. Rule 98(c).

⁹⁷ Mich. §27.641.

⁹⁸ Ariz. §21-101(10); Tex. Tit. 42 Art. 1995(9).

⁹⁹ Ala. Title 7 §54; Ind. §2-707; Iowa §616.17; Me. c. 99 §9; R.I. c. 511 §3.

¹⁰⁰ Neb. §25-409.

¹⁰¹ Ky. §78; Me. c. 99 §9; Mass. c. 223 §1; N. Hamp. c. 384 §1; N.M. §19-501 (First); R.I. c. 511 §3.

¹⁰² Tenn. §8641.

¹⁰³ Utah §§104-4-5 and 104-4-6.

¹⁰⁴ Ga. §3-201.

¹⁰⁵ Ala. Tit. 7 §294; Ga. Const. §2-4903; Ga. §3-202; Mich. §27.641 (if subject matter is not local); Miss. §1274 (in all cases not otherwise provided for); Vt. §1286.

¹⁰⁶ Actions on an assigned cause of action, Ind. §2-707; Mass. c. 223 §1; N.Y. §184-a; Okla. §139;

Automobile accident actions, Iowa §616.18; Minn. §542.095; Mo. §8410.11; Wash. §205(3); Wis. §261.01(11);

All actions on contracts, Ala. Title 7 §54;

- Actions on written contracts, Tex. Tit. 42 Art. 1995(5); Utah §104-4-4;
 Contract to perform an obligation in a particular county, Cal. §395(1);
 Persons who have contracted a debt or obligation, Ariz. §21-101(4);
 Debt on a judgment, Me. c. 99 §11;
 Foreclosure of mortgage, where injunction asked, Nev. §8568(3);
 Fraud and defalcation of public officers, Ariz. §21-101(9); Tex. Tit. 42 Art. 1995(7).
 Libel, Ill. c. 110 §131(a);
 Libel or slander, Tex. Tit. 42 Art. 1995(29);
 Negotiable paper, Fla. §46.05; Iowa §616.19; S.D. §33.0304;
 Non-life insurance assessments, Iowa §616.11;
 Non-life insurance premiums or notes, Iowa §616.12;
 Upon return of "no property found," Ky. §70;
 Patent rights, Vt. §1605;
 Injury to person or character, Ky. §74;
 Injury to person, or to personal property, or for death from wrongful act, or negligence,
 Cal. §395(1);
 Recovery of personal property, N.M. §19-501 (Third); Tex. Tit. 42 Art. 1995(10);
 Trespass, La. Art. 165(9);
 Breach of warranty, Tex. Tit. 42 Art. 1995(15).
 107 Wis. §261.01(11b).
 108 Kan. §60-510; Neb. §25-403; Ohio §11270; Okla. §132; Wyo. §3-803.
 109 Conn. §7749; Tex. Tit. 42 Art. 1995(13).
 110 Iowa §616.2; N.M. §19-501 (Fifth); Vt. §1604 (Unless neither party resides in
 the state).
 111 Ala. Title 34 §28; Colo. c. 56 §6; Ga. Const. §2-4901(1); Ill. c. 40 §6; Kan.
 §60-508; Me. c. 153 §55; Md. Art. 16 §38; Mass. Vol. 6 c. 208 §6; Mich. §25.86; Miss.
 §2738; Nev. §9460; N.J. Rule 3:83 (If plaintiff not domiciled in state); N.M. §25-703;
 N.C. §50-3; Pa. Rule 1122; Va. §5105; W.Va. §4709; Wis. §261.01(3); Wyo. §3-5905.
 112 Common carriers, for injury to a passenger, or to other person or his property, Ky.
 §73;
 Executors, administrators, guardians or trustees, any action, Ohio §11277; Wyo §3-808;
 Members and officers of the general assembly, upon a cause of action which accrued ten
 days before the first day of the session of the general assembly of which he is an officer or
 a member, Ohio §11278;
 Against a person confined in the penitentiary or a lunatic asylum (other than local),
 in which he resided or claimed residence prior to his confinement, Ark. §27-604; Ky. §69;
 Persons constructively summoned, Ky. §75.
 113 Md. Art. 75 §158.
 114 Ky. §73.
 115 Cal. §395(1); Idaho §5-404; Mont. §9096; Nev. §8571; Utah §104-4-7.
 116 Me. c. 99 §13; Mass. c. 223 §8(4); R.I. c. 511 §3.
 117 Vt. §1604.
 118 Conn. §7753.
 119 Ala. Tit. 7 §61; Mass. c. 223 §5.
 120 Mo. §871(5).
 121 Minn. §542.09: "A domestic corporation other than railroad companies, street
 railway companies, and street railroad companies whether the motive power is steam, elec-
 tricity, or other power used by these corporations or companies, also telephone companies,
 telegraph companies, and all other public service corporations, shall be considered as residing
 in any county wherein it has an office, resident agent, or business place. The above enu-
 merated public service corporations shall be considered as residing in any county wherein
 the cause of action shall rise and wherein any part of its lines of railway, railroad, street
 railway, street railroad, without regard to the motive power of the railroad, street railway,
 or street railroad, telegraph or telephone lines or any public service corporation shall extend,
 without regard to whether the corporation or company has an office, agent, or business
 place in the county or not." N.J. Rule 3:3-2: "For the purpose of this rule, a domestic or
 foreign corporation shall be deemed to be resident in any county in which it is actually
 doing business; if it is not actually doing business in the state, but has a registered office in
 the state, then the county in which that office is located. . . ." Utah §104-4-5: ". . . and

if such defendant is a corporation, any county in which such corporation has an office or place of business shall be deemed the county in which such corporation resides, within the meaning of this section." Utah §104-4-7: "All other actions [defines residence of corporation] where it has its principal office or place of business." Wash. §205-1: "Venue where defendant resides—residence of corporation . . . For the purpose of this act, the residence of a corporate defendant shall be deemed to be in any county where the corporation transacts business or has an office for the transaction of business or transacted business at the time the cause of action arose, or where any person resides upon whom process may be served upon the corporation."

Par. E. Where the defendant is doing business. A few states provide that in certain types of actions against certain classes of defendants, the county in which the defendant is doing business is the proper venue, as for example, suit against a partnership,¹²² an association,¹²³ a corporation,¹²⁴ an individual on a claim other than local,¹²⁵ or against a nonresident,¹²⁶ or an insurance company¹²⁷ in an action arising out of business done in the state, or against a person or company engaged in maritime commerce within the state.¹²⁸

¹²² Pa. Rule 2130(a) (where it regularly conducts business).

¹²³ Ala. Title 7 §57 (where such organization or association does business); Pa. Rule 2156(a) (where it regularly conducts business).

¹²⁴ Ala. Title 7 §60 (foreign corporation, in which it does business by agent); Ariz. §21-101(18) (in which it conducts any business); Ill. c. 110 §132(1) (in which it is doing business); Md. Art. 23 §110 (where it regularly does business); N.C. §1-80 (foreign corporation, in which the corporation usually did business); N.D. §28-0404 (domestic corporation, in the county designated in plaintiff's complaint if such corporation transacts business in that county); Pa. Rule 2179(a)(2) (where it regularly conducts business); W.Va. §5517(b) (or if its principal office be not in the state, and its mayor, president or other chief officer do not reside therein, wherein it does business); Bridge company, is doing business, Ill. c. 110 §132(1);

Common carrier, where either does business, Tex. Tit. 42 Art. 1995(24);

Insurance company, where it regularly conducts business, Pa. Rule 2179(b)(1); where they do business, Ala. Title 7 §56; conducts any business, Ariz. §21-101(18);

Joint stock company, or conducts any business, Ariz. §21-101(18);

Maritime commerce, persons or companies engaged in, in the county in which the boats of such person, firm or corporation call and do business, Mich. §27.641(7);

Railroad corporation, is doing business, Ill. c. 110 §132(1); or conducts any business, Ariz. §21-101(18);

Telegraph or telephone company, or conducts any business, Ariz. §21-101(18).

¹²⁵ Md. Art. 75 §157. Any person who resides in one county but carries on any regular business, or habitually engages in any avocation or employment in another county, may be sued in either county.

¹²⁶ Pa. Rule 2077(a)(2).

¹²⁷ Ala. Title 7 §56; Pa. Rule 2179(b)(1).

¹²⁸ Mich. §27.641(7).

Par. F. Where defendant has an office or place of business, or an agent, or representative, or where an agent or officer of defendant resides. The following breakdown illustrates the extent to which states have carried this type of venue provision.

1. *Against a domestic corporation.* Action against a domestic corporation may be brought in the county where such corporation is situated,¹²⁹ is domiciled,¹³⁰ has its principal office or place of business,¹³¹ has its principal place of business,¹³² has or had its principal office or place of business,¹³³ has had its principal office or place of business,¹³⁴ have or usually keep an office for transaction of its customary business,¹³⁵ has an office or agency for the transaction of business,¹³⁶ has an office or agent,¹³⁷ transacts business in the county designated in plaintiff's complaint,¹³⁸ was doing business by agent at time the cause of action arose,¹³⁹ or in the county in which such corporation's principal office in the state is located,¹⁴⁰ such corporation's chief officer resides,¹⁴¹ any of the principal officers reside,¹⁴² or any person resides upon whom process may be served against such corporation.¹⁴³

2. *Against a foreign corporation.* An action against a foreign corporation may be brought in the county where its principal office in the state is located,¹⁴⁴ in which the principal office may be situated,¹⁴⁵ in which it may have an agent or other representative,¹⁴⁶ in which it may have an agency or representative,¹⁴⁷ wherein its statutory agent resides,¹⁴⁸ where service of process may be had on an agent of such a corporation,¹⁴⁹ or in which it does business by agent.¹⁵⁰

3. *Against a corporation.* In a few states, an action against a corporation, without reference to whether it be domestic or foreign, may be brought in the county where its registered office or principal place of business is located,¹⁵¹ in which the corporation is located by its charter,¹⁵² or if not so located, in which its annual meetings are required to be, or if not required to be, are actually, holden,¹⁵³ in which either corporation has a usual place of business, or in which it held its last annual meeting or usually holds its meetings,¹⁵⁴ in which they have an established place of business,¹⁵⁵ in which its principal office is situated,¹⁵⁶ where it has its principal office,¹⁵⁷ wherein its principal office is,¹⁵⁸ where the office or agency is located (when a corporation has an office or agency in any county for the transaction of business, any action growing out of or connected with the business of such office),¹⁵⁹ in which such office or place of business is situated,¹⁶⁰ where such corporation shall have or usually keep an office or agent for the transaction of their usual and customary business,¹⁶¹ where the corporation has an office or place of business,¹⁶² if a chief officer or agent reside in the state, in which such officer or agent resides,¹⁶³ or in which defendant has an agent or representative.¹⁶⁴

4. *Against defendants other than corporations.* a. *Associations.* An action against an association may be brought in the county where its registered office or principal place of business is located,¹⁶⁵ in which its principal office is situated,¹⁶⁶ where such organization or association has in existence a branch or local organization,¹⁶⁷ or in which it has or maintains any office, branch office, sub-office or place of business.¹⁶⁸

b. *Partnerships.* An action against a partnership may be brought in the county where it is established,¹⁶⁹ or in which it has or maintains any office, branch office, sub-office or place of business.¹⁷⁰

c. *Individuals.* An action against an individual may be brought in the county in which defendant is engaged in business, if the cause of action arises out of the business, and the defendant is a nonresident,¹⁷¹ in which defendant carries on any regular business, or habitually engages in any avocation or employment,¹⁷² where either party has his usual place of business,¹⁷³ or in which defendant has or maintains any office, branch office, sub-office or place of business.¹⁷⁴

5. *Against corporations, companies, individuals, engaged in certain types of business.* Statutes providing for the venue of actions against corporations, associations, partnerships, companies or individuals engaged in certain activities are quite common:

Bank: county in which principal office or place of business is situated;¹⁷⁵

Domestic bank: county in which there is a branch of the bank, where the cause of action arises out of a transaction of such branch;¹⁷⁶

Bridge company: county in which it has its principal office;¹⁷⁷

Common carrier: county in which is located the principal office or place of business of such company;¹⁷⁸ county in which it has an agent or representative;¹⁷⁹

Express company: county in which any such company maintains an office for the transaction of business;¹⁸⁰

Fraternal benefit society and state-wide mutual assessment company: in the county of the principal office of such association;¹⁸¹

Insurance companies: county in which its registered office or principal place of business is located;¹⁸² where the principal place of business may be;¹⁸³ in which the principal office or place of business is situated;¹⁸⁴ in which defendant has its principal office;¹⁸⁵ where the home office is located;¹⁸⁶ at the domicile of the company or at the place where its principal agency is established;¹⁸⁷ where they issue policies or certificates;¹⁸⁸ in which defendant has an agent or representative;¹⁸⁹ in which there is an agency of the company, where the cause of action arises out of a transaction of such agency;¹⁹⁰

Foreign insurance company: where such company has an agent;¹⁹¹

Joint stock company: in the county in which the defendant has an agent or representative;¹⁹²

Maritime commerce, persons or companies engaged in: in the county in which the boats of such person, firm or corporation call and do business;¹⁹³

Railroads: in the county in which such corporation has its principal office;¹⁹⁴ where the principal office of such company within the state may be situated;¹⁹⁵ where such corporation has an agent or representative;¹⁹⁶ any county where lines are;¹⁹⁷

Street railroads: where the principal office within the state may be situated;¹⁹⁸

Corporation operating an interurban: any county where lines are;¹⁹⁹

Individual, motor bus or transportation company: where the principal office within the state may be situated;²⁰⁰

Surety company: in the county in which the principal place of business is maintained, or wherein is maintained its general office for transaction of business within the state;²⁰¹

Telegraph or telephone company: in the county in which defendant has an agent or representative;²⁰² in any county within which any such company maintains an office, or exchange, for the transaction of business;²⁰³

Transmission companies: in which is located the principal office or place of business of such railway company;²⁰⁴

6. *In certain kinds of actions.* A few states have special venue provisions covering certain kinds of actions in which this classification is employed:

Action for defect in way and for negligence: where the defendant has his usual place of business;²⁰⁵

Libel: where defendant has his or its principal office;²⁰⁶ in which the principal publication office is located;²⁰⁷

Libel or slander: at the domicile of any corporate defendant;²⁰⁸

Railway personal injuries: if the plaintiff is a non-resident, in the county in which the defendant railroad corporation has its principal office;²⁰⁹

Railroad wages: in the county in which the principal office of such railroad company is situated;²¹⁰

Trespass: at the domicile of such person, firm or corporation.²¹¹

Finally, one state provides that actions *by the state* may be brought in the county where the defendant has his usual place of business.²¹²

129 Ark. §27-605; Kan. §60-504; Neb. §25-405 (transitory actions); Ohio §11272; Okla. §134; Wyo. §3-805.

130 Miss. §1433.

131 Ark. §27-605; Kan. §60-504; Neb. §25-405 (transitory actions); Okla. §134.

132 Idaho §5-404.

133 Ohio §11272.

134 Wyo. §3-805.

135 Fla. §46.04.

136 Ind. §2-706.

137 Ohio §11272.

138 N.D. §28-0404.

139 Ala. Title 7 §60.

140 Md. Art. 23 §110 (of the corporation act).

141 Ark. §27-605; Va. §6049 (Second); and W.Va. §5517(b) (wherein its mayor, rector, president or other chief officer resides).

142 Kan. §60-504; Okla. §134.

143 Ind. §2-706.

144 Md. Art. 23 §110 (corporation act).

145 Tex. Tit. 42 Art. 1995(27).

146 Fla. §46.04.

147 Tex. Tit. 42 Art. 1995(27).

148 Va. §6049 (Fourth).

149 Miss. §1435.

150 Ala. Title 7 §60.

151 Pa. Rule 2179(a)(1).

152 R.I. c. 511 §3.

153 R.I. c. 511 §3.

154 Mass. c. 223 §8(2) (if both parties are corporations).

155 Me. c. 99 §13 (all other corporations, local and transitory actions).

156 Tex. Tit. 42 Art. 1995(23).

157 Ill. c. 110 §132(1); Wis. §261.01(6) (against other corporations).

158 Va. §6049 (Second); W.Va. §5517(b).

159 Ind. §2-703; Iowa §616.14; Tenn. §8643.

160 Ky. §72.

161 Mo. §874.

162 Utah §104-4-6 (transitory actions, arising outside the state).

163 Ky. §72.

164 Ariz. §21-101(18).

165 Pa. Rule 2179(b)(1).

166 Tex. Tit. 42 Art. 1995(23).

167 Ala. Title 7 §57.

168 Ark. §27-609.

169 La. Art. 165(2).

170 Ark. §27-609.

171 Pa. Rule 2077(a)(2).

172 Md. Art. 75 §157.

173 Mass. c. 223 §1 (transitory actions, with assignee exception).

174 Ark. §27-609.

175 Ky. §71.

176 Ark. §27-605.

177 Ill. c. 110 §132(1).

178 Kan. §60-505.

- 179 Tex. Tit. 42 Art. 1995(24).
 180 Mich. §27.641(6).
 181 Tex. Tit. 42 Art. 1995(28a).
 182 Pa. Rule 2179(b)(1).
 183 Miss. §1435.
 184 Ky. §71.
 185 Wis. §261.01(5) (except auto accident cases).
 186 Tex. Art. 1995(28) (policies of life, accident, etc.).
 187 La. Art. 165(10).
 188 Ala. Title 7 §56 (unincorporated organizations or associations).
 189 Ariz. §21-101(18).
 190 Ark. §27-605.
 191 Okla. §137.
 192 Ariz. §21-101(18).
 193 Mich. §27.641(7).
 194 Ill. c. 110 §132(1).
 195 Mich. §27.641(3).
 196 Ariz. §21-101(18).
 197 Wis. §261.01(4).
 198 Mich. §27.641(3).
 199 Wis. §261.01(4).
 200 Mich. §27.641(3).
 201 Iowa §616.15.
 202 Ariz. §21-101(18).
 203 Mich. §27.641(6).
 204 Kan. §60-505.
 205 Mass. c. 223 §7.
 206 Ill. c. 110 §131.
 207 Ariz. §21-101(10).
 208 Tex. Tit. 42 Art. 1995(29).
 209 Tex. Tit. 42 Art. 1995(25).
 210 Tex. Tit. 42 Art. 1995(26).
 211 La. Art. 165(9).
 212 Mass. c. 223 §5.

Par. G. Where the plaintiff resides. Although broad statutory language is rare, one state does have a very broad provision for venue on this basis²¹³ and five states include the possibility in their residuary venue provisions.²¹⁴ Several states provide for venue on this basis in chancery cases,²¹⁵ transitory actions,²¹⁶ personal and transitory actions,²¹⁷ criminal actions creating civil liability,²¹⁸ or all actions founded upon wrongs and contracts.²¹⁹

Another group of statutes provides that venue may be laid in the county of the plaintiff's residence if the defendant or any of several defendants are summoned²²⁰ or found²²¹ in such county, or if no defendant resides in the state,²²² or where the residence of the defendant is unknown.²²³

One state provides that transitory actions arising outside the state in favor of a resident may be brought in the county of the plaintiff's residence.²²⁴

Venue at the residence of the plaintiff is provided for in the following classes of actions — on book account or for goods sold and delivered,²²⁵ for defect in way,²²⁶ for negligence other than defect of way,²²⁷ for debt on a judgment,²²⁸ for divorce,²²⁹ for insurance cases,²³⁰ for libel²³¹ for partition or sale of property,²³² for recovery of personal property²³³ and for trespass to land.²³⁴

Actions against the following defendants may be brought in the county where the plaintiff resides — executors and administrators,²³⁵ nonresident motorists,²³⁶ defendants about to depart from the state,²³⁷ corporations,²³⁸ domestic or foreign corporation with no regular place of business in the state,²³⁹ foreign corporation,²⁴⁰ foreign corporation with no agent or representative in the state,²⁴¹ and foreign insurance companies.²⁴²

Several statutes allow venue to be laid in the county where the plaintiff resides where certain parties and certain classes of action are both present — thus, personal or transitory actions against a corporation,²⁴³ local and transitory actions against all other corporations,²⁴⁴ action against a domestic corporation with no office in the state where the cause of action arose in the state or grew out of rights

of stockholders with respect to corporate management,²⁴⁵ against foreign and domestic insurance companies, fraternal cooperative and mutual benefit associations, and against foreign and domestic surety and bonding companies, in the county in which the plaintiff resides and in which such company is authorized to issue policies or take risks,²⁴⁶ against domestic corporations for personal injuries if the corporation does business by agent in such county,²⁴⁷ against a common carrier for tort to person or property if the plaintiff resides in a county into which the carrier passes,²⁴⁸ against a railroad if the road of such corporation extends into such county,²⁴⁹ against a corporation if the action is by a corporation,²⁵⁰ any action, local or transitory, in which a county is plaintiff, in the county suing if the defendant may be found therein.²⁵¹

²¹³ Vt. §1604.

²¹⁴ Conn. §7747 (all other civil actions); N.J. Rule 3:3-2 (all other transitory actions); N.Y. §182 (all other transitory actions); N.C. §1-82 (in all other cases); R.I. c. 511 §2 (all other actions).

²¹⁵ Mich. §27.641(12) (if subject matter is not local); Vt. §1286.

²¹⁶ Mass. c. 223 §1; N.H. c. 384 §1; N.M. §19-501 (First).

²¹⁷ Me. c. 99 §9.

²¹⁸ N.M. §19-501 (Second).

²¹⁹ Mich. §27.641(2).

²²⁰ Colo. Rule 98; Neb. §25-409 (tort actions against residents).

²²¹ Mo. §871 and §8410.11 (nonresident motorist); Mont. §9096 (in all other actions).

²²² Ariz. §21-101(1); N.C. §1-82; Tex. Tit. 42 Art. 1995(3); Wyo. §3-807.

²²³ Ariz. §21-101(1); Tex. Tit. 42 Art. 1995(3).

²²⁴ Utah §104-4-6.

²²⁵ Colo. Rule 98.

²²⁶ Mass. Vol. 7 c. 223 §7.

²²⁷ Mass. Vol. 7 c. 223 §7.

²²⁸ Me. c. 99 §11.

²²⁹ Kan. §60-508; Ohio §11980; Okla. §138; Tex. Tit. 42 Art. 1995(16); Va. §5105 (if defendant not a resident); W. Va. §4709 (if defendant not a resident); Wis. §261.01 (3).

²³⁰ Ill. c. 110 §132(2); Iowa §616.10; Kan. §60-504; La. Art. 165(10) (in case of life insurance, at the domicile of the deceased or his beneficiary; in case of accident insurance, at the domicile of the insured); Mich. §27.641(4); Miss. §1435 (if on a life policy, in the county in which the beneficiary resides); Pa. Rule 2179 (b) (3) (in county where plaintiff resides, in actions on policies of life, accident, health, disability, and live stock insurance); Tex. Tit. 42 Art. 1995(28) and (28)(a) (life accident; life and accident; health and accident; life, health and accident insurance companies, where the policyholder or beneficiary instituting such suit resides); Wis. §261.01(5) (except automobile cases).

²³¹ Ky. §74.

²³² Conn. §7749.

²³³ Minn. §542.06; N. M. §19-501

(Third).

²³⁴ N. M. §19-501 (Fifth).

²³⁵ N. C. §1-78.

²³⁶ Mo. §8410.11 (if defendant may be found there); Wyo. §60-1101.

²³⁷ Cal. §395(1); Colo. Rule 98; Idaho §5-404; Mont. §9096; Nev. §8571; Utah §104-4-7.

²³⁸ Mass. Vol. 7 c. 223 § 8(1), (2), (3), (4) (by a corporation against a corporation); Utah §104-4-6.

²³⁹ Md. Art. 23 §110(b).

²⁴⁰ Mich. §27.641 (5); N. C. §1-80; Wyo. §3-807.

²⁴¹ Tex. Tit. 42 Art. 1995(27).

²⁴² Miss. §1435; Okla. §137; Wyo. §3-807.

²⁴³ R. I. c. 511 §3 (in which a plaintiff dwells).

²⁴⁴ Me. c. 99 §13 (in which plaintiff, if a natural person, lives).

²⁴⁵ W. Va. §5517(b).

²⁴⁶ Mich. §27.641(4).

²⁴⁷ Ala. Title 7 §60.

²⁴⁸ Ky. §73.

²⁴⁹ Wis. §261.01(4).

²⁵⁰ Mass. Vol. 7 c. 223 §8(2).

²⁵¹ Mo. §871(5).

Par. H. Where the plaintiff is doing business. Two states have statutes which provide for venue in the county where the plaintiff is doing business. In one state a transitory action may be brought in the county where either party has his usual place of business.²⁵² This state also provides that in actions by and against corporations, the venue may be laid where either is situated.²⁵³ The provision in the other state is limited to actions brought by domestic railroad corporations. It provides for venue in such an action in the county in which such corporation has its principal office for the transaction of business.²⁵⁴

²⁵² Mass. c. 223 §1.

²⁵³ Mass. c. 223 §8(2).

²⁵⁴ Vt. §1604.

Par. I. Where the defendant may be found. Only one state, Tennessee, employs this theory as its major approach.²⁵⁵ One other state uses this type of venue in "civil actions"²⁵⁶ and in "all other chancery cases".²⁵⁷ Another employs it in transitory actions,²⁵⁸ and two states use this venue provision in their residuary sections.²⁵⁹

Statutes in most of the states using venue of this kind limit it to particular classes of actions,²⁶⁰ such as trespass on land²⁶¹ or recovery of personal property;²⁶² or to particular parties,²⁶³ such as foreign corporations,²⁶⁴ transient persons²⁶⁵ or persons having no known place of residence;²⁶⁶ or a combination of the two,²⁶⁷ such as personal actions against nonresidents.²⁶⁸

²⁵⁵ Tenn. §8640.

²⁵⁶ Miss. §1433.

²⁵⁷ Miss. §1274.

²⁵⁸ N. M. §19-501 (First) (where defendant may be found in the judicial district where the defendant resides).

²⁵⁹ Ore. §1-403; R. I. c. 511 §2.

²⁶⁰ Action arising out of crime, offense or trespass, Ariz. §21-101(10); cases of fraud and defalcation of public officers, Ariz. §21-101(9); civil action arising from criminal act, N. M. §19-501 (Second).

²⁶¹ Md. Art. 75 §158 (when person leaves county where land lies or cannot be found in such county); N. M. §19-501 (Fifth) (where defendant may be found in the judicial district where defendant resides).

²⁶² Ariz. §21-101(11); Miss. §2843; N. M. §19-501 (Third) (where the defendant may be found in the judicial district where defendant resides).

²⁶³ Nonresidents: Colo. Rule 98(c); Conn. §7747; Ohio §11276; foreigners: La. Art. 165(5); where defendant absconds from justice in the county where he lives: Md. Art. 75 §157.

²⁶⁴ Ohio §11276 (except as otherwise provided).

²⁶⁵ Ariz. §21-101(3); Ga. §3-206 (person not a citizen, passing through or sojourning temporarily); Tex. Tit. 42 Art. 1995(2).

²⁶⁶ La. Art. 165(5).

²⁶⁷ Against persons who have contracted a debt or obligation outside the state, Ariz. §21-101(6); personal actions against persons having no permanent residence in the state, Ind. §2-707; transitory actions against nonresidents, Kan. §60-507; Neb. §25-408; Okla. §137; transitory actions against foreign corporations, Kan. §60-507; Neb. §25-408; Okla. §137.

²⁶⁸ Ind. §2-707; Iowa §616.17.

Par. J. Where the defendant may be summoned, or served. Such a provision is found in the residuary venue sections of six states,²⁶⁹ and in the transitory actions section of another.²⁷⁰

However, as in the previous subdivision, most states have limited this type of venue to particular classes of actions,²⁷¹ such as specific performance of contract to sell land,²⁷² or trespass;²⁷³ or to particular parties,²⁷⁴ such as nonresidents²⁷⁵ or defendants about to depart from the state,²⁷⁶ or a combination of the two,²⁷⁷ such as nonresidents engaged in business in the state,²⁷⁸ or trespass to land by a railway corporation.²⁷⁹

²⁶⁹ Ark. §27-613; Kan. §60-509; Neb. §25-409; Ohio §11277; Okla. §139; Wyo. §3-808.
²⁷⁰ Ky. §78.

²⁷¹ Assumpsit: Pa. Rule 1006; divorce: Kan. §60-508; upon return of no property found: Ky. §70; replevin: Pa. Rule 1072 and 1006.

²⁷² Specific performance of contract to sell land: Okla. §132.

²⁷³ Trespass: Pa. Rule 1042 and 1006.

²⁷⁴ Domestic corporations, in the county in which any of the principal officers thereof may be summoned, Kan. §60-504; Okla. §134; domestic corporations, in the county in which summons may be served upon the president, chairman, president of the board of directors or trustees or other chief officer, Ohio §11272; domestic corporations, where any person resides upon whom process may be served against such corporation, Ind. §2-706; foreign insurance company or corporation, where service of process may be had on an agent of such company or corporation, Miss. §1435; transportation and transmission companies, where any person resides upon whom service of summons is authorized to be made, Okla. §135.

²⁷⁵ Iowa §616.4; Pa. Rule 2077(a)(1) and 2078 (a)(1); Va. §6049 (Fourth); Wash. §205-2; W. Va. §5517(d).

²⁷⁶ Cal. §395(1); Colo. Rule 98(c); Idaho §5-404; Mont. §9096; Nev. §8571; Utah §104-4-7.

²⁷⁷ N.J. Rule 3:3-2 (in all other transitory actions against nonresident defendants); W. Va. §5518 (in the county where the cause of action arose, when defendant or one of them are served with process in such county).

²⁷⁸ Pa. Rule 2077 (a)(2) and 2078 (b)(1).

²⁷⁹ Neb. §25-401.

Par. K. In the county designated in the plaintiff's complaint. For the most part, such a provision is limited to cases where all the defendants are nonresidents, or all parties are nonresidents, or, if residents, the county of residence is unknown, with the further provision in some states that this provision applies only to cases not specifically taken care of in other venue sections.²⁸⁰ One state provides for this type of venue where defendant is a foreign corporation and no other specific provision applies.²⁸¹ Another uses it where the action is upon an assigned cause of action and no county qualifies under the specific provisions of the statutes.²⁸²

²⁸⁰ All defendants nonresidents: Cal. §395(1); Ore. §1-403; S. D. §33.0304; all parties nonresidents: N.Y. §182; in all other cases, all defendants nonresidents: Colo. Rule 98 (c); Mont. §9096; Nev. §8571; Utah §104-4-7; Wis. §261.01(12); in all other cases, all parties nonresidents: Minn. §542.09; N. C. §1-82; N. D. §28-0405; S. C. §422; if resident, county of residence unknown: Cal. §395(1); Idaho §5-404; Mont. §9096; Nev. §8571; in all other actions, none of the parties be found in the state: Minn. §542.09.

²⁸¹ Minn. §542.09. ²⁸² N.Y. §184-a.

Par. L. In any county. Where used, this venue provision is limited to actions against nonresidents, either generally²⁸³ or in certain types of cases,²⁸⁴ to personal or transitory actions against foreign corporations,²⁸⁵ to actions against foreign insurance companies,²⁸⁶ to actions by political units, either state or county,²⁸⁷ or to where the defendant is about to depart from the state.²⁸⁸

²⁸³ All defendants nonresidents: Ill. c. 110 §131; Mo. §871; N.M. §19-501 (Sixth); transients: N.M. §19-501 (Sixth).

²⁸⁴ All parties nonresidents, transitory actions: N.H. c. 384 §1; Mass. c. 223 §1; all parties nonresidents, subject matter not local, chancery cases: Mich. §27.641(12); Vt. §1286; all parties nonresident, all actions except ejectment and trespass to land; Vt. §1604; all parties nonresidents, all other actions: R.I. c. 511 §2; nonresident parties, personal or transitory actions: R.I. c. 511 §4.

²⁸⁵ Foreign corporation, personal or transitory action: R.I. c. 511 §4.

²⁸⁶ Foreign insurance company: Okla. §137.

²⁸⁷ Action by the state: Me. c. 99 §15; Minn. §542.07 (civil action for trespass); Wis. §261.01(8) (actions to recover damages for trespass upon public lands, amount in controversy over \$200); by a county against a county: Idaho §5-403.

²⁸⁸ Idaho §5-404.

Par. M. Where the seat of government is located. In eight states statutes provide that actions by the state either in any action²⁸⁹ or in certain specific suits²⁹⁰ be brought in the county where the seat of government is located. In two states statutes provide that actions against the state be brought in such county.²⁹¹

One state provides that in actions by a county the venue may be laid in the county suing.²⁹² Seven states have statutes providing for venue in the county sued where the action is against a county.²⁹³ Where the action is by a county against a county, four states provide that the action may be brought in any county not a party thereto,²⁹⁴ and one provides that it may be brought in any county.²⁹⁵

In actions against cities, statutes of six states provide for venue in the county where the city is located.²⁹⁶ Where the city is in more than one county, statutes in two states provide for venue in the county where the seat of government is located.²⁹⁷

In actions by²⁹⁸ or against²⁹⁹ various governmental agencies, boards or public officers, statutes in seven states provide for venue at the seat of government³⁰⁰ or in the county where the agency, board or officer is acting.³⁰¹

One state has a statute providing for venue in the county in which the seat of government is located in actions or suits against a domestic corporation which has its principal office located outside the state, and no office or place of business within the state, where the cause of action arises in the state or grows out of the rights of stockholders with respect to corporate management.³⁰²

²⁸⁹ Ariz. §21-101(17); Ark. §27-603 (First); Mass. c. 223 §5; Pa. Rule 2103; Va. §6049 (Fifth); W. Va. §5517(f).

²⁹⁰ Ala. Title 7 §61 (for breach of official bond by named public officers); Tex. Tit. 42 Art. 1995(21) (for the purpose of forfeiting the charter of a private corporation, or canceling the permit authorizing a foreign corporation to transact business in the state, and for the purpose of restraining corporations from exercising powers not conferred, and for the purpose of preventing persons from engaging in business in the state contrary to law); Tex. Tit. 42 Art. 1995(22) (to forfeit land fraudulently or colorably alienated by railway companies in fraud of the rights of the State).

²⁹¹ Ark. §27-603 (Third); Wis. §261.01(9).

²⁹² Mo. §871 (provided defendant or one of them may be found in such county).

²⁹³ Ariz. §21-101(15); Cal. §394; Idaho §5-403; Mont. §9095; Nev. §8570 (in a district court embracing said county); Tex. Tit. 42 Art. 1995(19); Utah §104-4-3.

²⁹⁴ Cal. §394; Mont. §9095; Nev. §8570; Utah §104-4-3.

²⁹⁵ Idaho §5-403.

²⁹⁶ Cal. §394; Ill. c. 110 §132(3) (all actions, including damages to real estate); Mass. c. 223 §7, §8(1), (3), (4); Mo. §875; N.M. §19-502; N.Y. §182-a.

²⁹⁷ Mo. §875; N.Y. §182-b.

²⁹⁸ Ark. §27-603 (Second) (at seat of government).

²⁹⁹ Ariz. §21-101(16); Ark. §27-603 (Third); Ky. §69; La. Art. 165(7); N.M. §19-501 (Seventh), 19-502; Tex. Tit. 42 Art. 1995(20); Va. §6049 (Sixth).

³⁰⁰ Ark. §27-603 (Third); Ky. §69; N.M. §19-501 (Seventh); Tex. Tit. 42 Art. 1995 (20); Va. §6049 (Sixth).

³⁰¹ Ariz. §21-101(16) (public officer holds his office); La. Art. 165(7) (public officers exercise the duties of their office); N.M. §19-502 (in county for which such board is acting).

³⁰² W. Va. §5517(b).