COMMENTS

THE EFFECT OF THE NEW JERSEY SUPREME COURT'S SERVICE RULE ON THE COMPETENCE OF THE COUNTY DISTRICT COURTS AND THE ENFORCEABILITY OF DEFAULT JUDGMENTS

INTRODUCTION

Prior to the amendment which became effective on September 8, 1975, the New Jersey supreme court rule governing the manner of service of process for the county district courts provided that "[s]ervice of process shall be made in accordance with R. 4:4–4 or, if applicable, R. 4:4–5 [service rules for the superior court], except . . . in landlord and tenant actions."[1] Apparently because the county district court service rule incorporated by reference certain provisions of the superior court service rules, the issue arose as to whether the county district courts could *generally* obtain jurisdiction over out-of-state defendants.[2] Then, in *Beca Realty, Inc. v. Eisberg*,[3] the Bergen County District Court concluded that the references in the county district court service rule to the superior court rules merely provided for substituted or constructive service in this state, and did not give the county district courts the ability to obtain jurisdiction over out-of-state defendants.[4] In addition, the *Beca Realty* court was of the opinion that adoption of the superior court long-arm rule would change the county district courts from legislative courts of limited jurisdiction to courts coequal to the constitutional courts of general jurisdiction.[5]

Although one commentator had characterized the *Beca Realty* opinion as "persuasive,"[6] the case was overruled by the appellate division in *Sears, Roebuck & Co. v. Katzmann*.[7] The *Sears* court rejected the *Beca Realty* analysis, relying instead on what was termed

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[1] N.J.R. 6:2–3(b).

[2] *Cf.* Roth v. Jackson, 99 N.J. Super. 546, 549–50, 240 A.2d 687, 689 (App. Div.), *cert. denied*, 52 N.J. 161, 244 A.2d 293 (1968).

The county district courts were already able to obtain jurisdiction over defendants residing outside of the county pursuant to specific statutory exceptions. *See* notes 57–61 *infra* and accompanying text.

[3] 125 N.J. Super. 575, 312 A.2d 516 (Bergen County Dist. Ct. 1973).

[4] *Id.* at 582, 312 A.2d at 520.

[5] *Id.* at 584, 312 A.2d at 520–21.

[6] R. MCDONOUGH, COUNTY DISTRICT AND MUNICIPAL COURTS, 17 N.J. PRACTICE § 252 (Supp. 1974).

[7] 137 N.J. Super. 106, 109, 348 A.2d 193, 195 (App. Div. 1975).

the "purely procedural" nature of the long-arm rule.[8] By thus characterizing the rule, the appellate division was able to conclude that jurisdiction over a nonresident defendant could constitutionally be obtained by county district courts under *Winberry v. Salisbury*,[9] which held that the supreme court's rulemaking power over practice and procedure "is not subject to overriding legislation."[10] The *Sears* court buttressed its conclusion by quoting the service rule amendment, which, although not yet effective at that time, was in accord with the *Sears* interpretation.[11] The rule governing the manner of service of process for the county district courts, as amended, now provides that

> [s]ervice of process within this State shall be made in accordance with R. 4:4–4 (a), (b), or (c) as applicable, or as otherwise provided by court order consistent with due process of law, or in accordance with R. 4:4–5, except . . . in landlord and tenant actions . . . . Substituted or constructive service outside this State may be made pursuant to the applicable provisions in R. 4:4–4 or R. 4:4–5.[12]

The purpose of this Comment is to discuss the validity and the ramifications of this result. If the service rule amendment is "purely procedural," then the supreme court's ability to treat the subject by rule is beyond dispute. If, however, the service rule amendment is outside of the scope of procedure, then the supreme court's service rule amendment is invalid, and its approval by the *Sears* court is incorrect. In order to analyze and evaluate the true nature of the service rule amendment, and how the amendment interacts with the statutory scheme of the county district courts, this Comment will speak in terms of the "competence" of courts as opposed to the jurisdiction of courts.

Competence is defined as "the power of a court to adjudicate a particular controversy."[13] This concept, which is more often used in civil law countries[14] although gaining acceptance in the United States,[15] is further subdivided into general competence and specific

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[8] *Id.* at 109, 348 A.2d at 194.

[9] 5 N.J. 240, 74 A.2d 406, *cert. denied*, 340 U.S. 877 (1950).

[10] 137 N.J. Super. at 109, 348 A.2d at 194–95 (citing 5 N.J. at 255, 74 A.2d at 414).

[11] 137 N.J. Super. at 109–10 n.1, 348 A.2d at 195.

[12] N.J.R. 6:2–3(b).

[13] Address by Hans Smit, American Foreign Law Association Annual Meeting, April 14, 1961, 10 AM. J. COMP. L. 164, 167 (1961). *See* Nussbaum, *Jurisdiction and Foreign Judgments*, 41 COLUM. L. REV. 221, 221–22 (1941).

[14] Smit, *Common and Civil Law Rules of In Personam Adjudicatory Authority: An Analysis of Underlying Policies*, 21 INT'L & COMP. L.Q. 335, 338–40 (1972).

[15] *Id.* at 340. *See* RESTATEMENT OF JUDGMENTS § 7 (1942); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 105 (1971).

competence.[16] General competence "defines generally when the courts have *in personam* powers."[17] In this respect it is equivalent to a consideration of what parties can be subjected by the *state* to the processes of its courts within the confines of due process of law. General competence, therefore, can be properly conceptualized as in personam jurisdiction.[18] Specific competence, on the other hand, describes "what *particular* court may hear a *particular* controversy."[19] Since specific competence has reference to a particular court's power, this concept is composed of the particular subject matter that a court has within its cognizance, *and* the particular parties that a court may bind by its decisions.[20] Thus, specific competence is a hybrid concept by virtue of its reference to both the subject matter and the persons who may be properly brought before a particular court.[21] This Comment will use the term "competence" rather than "specific competence"; however, it will be essential to keep in mind that the focus of "competence" is on the particular court, and not upon the general judicial power of the state, which is general competence or jurisdiction.

There are many reasons which may motivate a state to limit the competence of particular courts:

> Among these are the desire to have an adjudicating body with special knowledge and expertise, the historical development of a special court for certain matters, [or] the desire to relegate relatively minor matters to special courts with simplified proceedings . . . .[22]

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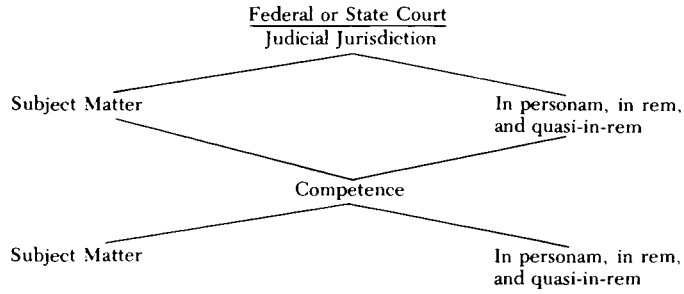
[16] Smit, *supra* note 13, at 167; Smit, *supra* note 14, at 340.

[17] Smit, *supra* note 14, at 340 (emphasis in original).

[18] *See id.*

[19] Smit, *supra* note 13, at 167 (emphasis added).

[20] M. ROSENBERG, J. WEINSTEIN & H. SMIT, ELEMENTS OF CIVIL PROCEDURE 144 (2d ed. 1970) [hereinafter cited as ROSENBERG, WEINSTEIN & SMIT]; Nussbaum, *supra* note 13, at 221 n.1. In ROSENBERG, WEINSTEIN & SMIT, *supra* at 145, the following conceptual chart is given:



[21] ROSENBERG, WEINSTEIN & SMIT, *supra* note 20, at 144.

[22] *Id.* at 147.

Therefore, a court may lack the competence to hear cases involving particular matters or persons, not because the state is without power to decide the controversy, but because the state has not delegated that power to that court.[23] This is more than mere semantics. The *Restatement of the Law of Judgments* and the *Restatement (Second) of the Conflict of Laws* both state that unless a judgment is rendered by a competent court, that judgment is void and subject to collateral attack in the state of rendition and in sister states.[24]

HISTORY AND PURPOSE OF THE COUNTY DISTRICT COURTS

New Jersey has long placed the judicial power in both constitutional and legislative courts.[25] For example, the state constitution of 1844 vested the judicial power in certain specified courts

> and such inferior courts as now exist, and as may be hereafter ordained and established by law; which inferior courts the legislature may alter or abolish, as the public good shall require.[26]

City district courts, the forerunners of the present county district courts, were such inferior courts created by the legislature.[27]

The first city district courts, the District Courts of the City of Newark, were esablished in 1873.[28] These courts were vested with "the civil jurisdiction heretofore exercised by or conferred upon justices of the peace, within the corporate limits of the city of Newark" under certain enumerated acts: "the trial of small causes," landlord

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[23] RESTATEMENT OF JUDGMENTS § 7, comment *a* at 41 (1942). Indeed, the state need not have delegated that power to any of its courts. *Id.*

[24] *Id.* at 41–42; RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 105 & comment *a* at 316 (1971). For a discussion of the term "collateral attack" see note 92 *infra*.

[25] A constitutional court is one which is created and its jurisdiction expressly conferred by the constitution. Its powers and its jurisdiction are, therefore, "immutab[le] . . . except by a change in the organic law itself." Mayor & City Council v. Hussey, 70 N.J.L. 244, 247–48, 57 A. 1086–88 (Ct. Err. & App. 1904). *See also* Flanigan v. Guggenheim Smelting Co., 63 N.J.L. 647, 651, 44 A. 762, 763 (Ct. Err. & App. 1899). A legislative or inferior court is one established by the legislature pursuant to a general constitutional grant of power. The legislature's ability to establish and control the character of such courts "includes the authority to enlarge or diminish the powers of any such inferior court." *In re* Kellner, 11 N.J. Misc. 201, 206, 165 A. 585, 588 (Essex County Sur. Ct. 1932).

[26] N.J. CONST. art. 6, § 1, ¶ 1 (1844).

[27] Perhaps an even earlier ancestor of the county district courts was the Mercantile Court of the City of Newark. *See* Law of Apr. 9, 1868, ch. 414, [1868] N.J. Laws 942 (repealed 1869). The territorial jurisdiction of this court was the city limits. *Id.* § 3. It administered the same functions previously exercised by the justices of the peace, including hearing all small claims, *id.* § 9, at 944, and cases brought to recover a penalty for violation of Newark ordinances, *id.* § 10.

[28] R. MCDONOUGH, COUNTY DISTRICT AND MUNICIPAL COURTS, 17 N.J. PRACTICE § 3, at 4 (1971). *See* Law of Mar. 4, 1873, ch. 119, [1873] N.J. Laws 245 (repealed 1898).

and tenant matters, "relief of creditors against absconding and absent debtors," and "forcible entries and detainers."[29] Significantly, the civil jurisdiction of these district courts was "exclusive of all other courts whatsoever . . . where the parties, plaintiff and defendant, both reside within the corporate limits of the city of Newark."[30] Thus, the statute made it clear that the legislative intent in establishing these courts was to provide a forum for local litigants to bring and defend actions of a strictly local nature. The Newark district court system apparently worked so well that in 1877 the legislature provided for the establishment of similar courts in other cities with a specified minimum population.[31]

During the following twenty-one years the legislature passed numerous acts and amendments affecting the district court system.[32] Because these laws were sprinkled throughout the various statute books, a major revision of the district court legislation was executed in 1898.[33] The "sundry acts relative to district courts" were all repealed,[34] and the revision became the sole exposition regarding practice in the district courts.

The scheme of the district courts under the revision of 1898 was not significantly different from that which had evolved prior to that date. All district courts already in existence were continued; two district courts were established in cities having over one hundred thousand inhabitants and one court for cities having over twenty thousand inhabitants.[35] In addition, the legislature established the boundaries of the jurisdiction of these courts in various manners. First, the legislature specifically defined the territorial jurisdictional

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[29] Law of Mar. 4, 1873, ch. 119, § 5, [1873] N.J. Laws 246.

[30] *Id.* § 6, at 246–47.

[31] Law of Mar. 9, 1877, ch. 150, [1877] N.J. Laws 234 (repealed 1898). This act provided that one city district court be established in every city having fifteen thousand inhabitants, and two courts in cities having one hundred thousand inhabitants. *Id.* § 2.

[32] Many of these acts merely changed the minimum population requirements for the establishment of a district court. *See, e.g.*, Law of Mar. 26, 1896, ch. 108, [1896] N.J. Laws 161 (repealed 1898) (twenty thousand inhabitants); Law of Mar. 8, 1892, ch. 43, [1892] N.J. Laws 64 (repealed 1898) (nineteen thousand inhabitants). Other amendments dealt with procedural or administrative matters such as the manner of taking an appeal or the terms of office for judges. *See, e.g.*, Law of Mar. 24, 1892, ch. 148, [1892] N.J. Laws 257 (repealed 1898) (procedure for appeal); Law of Mar. 2, 1891, ch. 27, [1891] N.J. Laws 64 (repealed 1898) (appointment of judges for five-year term). One significant change broadened the jurisdiction of the city district courts to the boundaries of the county in which the court was located. Law of Feb. 9, 1886, ch. 7, [1886] N.J. Laws 16 (repealed 1898).

[33] Law of June 14, 1898, ch. 228, [1898] N.J. Laws 556 (repealed 1951).

[34] Law of June 14, 1898, ch. 229, [1898] N.J. Laws 638.

[35] Law of June 14, 1898, ch. 228, § 1, [1898] N.J. Laws 556.

boundaries as "co-extensive with the limits of the county wherein the city is situated in which such district court is established."[36] Second, the subject-matter jurisdiction was extended to "[e]very suit of a civil nature at law," provided that the recovery was limited to $300.[37] The courts were precluded from hearing actions concerning the title to land, but were given jurisdiction over landlord and tenant matters, actions of forcible entry and detainer, and suits for replevin and attachment.[38] In addition, the district court judges were delegated the power to make uniform rules for practice within their courts.[39]

Subsequent amendments to this act effected only minor changes in the district courts. For example, the most frequent type of amendment merely changed the threshold population requirement necessary to have district courts established in a particular city or judicial district.[40] By the time of the judicial reorganization in 1948, district courts had been established in every county of the state.[41] In 1948 the constitutional court system was substantially overhauled. But, as in 1844, the new Judicial Article, in the section dealing with "legislative control over inferior courts," provided in part that "[t]he inferior courts and their jurisdiction may from time to time be established, altered or abolished by law."[42] Pursuant to an exercise of this grant of power, the legislature continued the previously existing district courts, and all such courts became known as county district courts.[43]

The present county district courts reflect the same legislative intent to provide courts of a local character as those created a century ago. The number of judges appointed to the district court bench is

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[36] *Id.* § 29, at 564.

[37] *Id.* § 30.

[38] *Id.*

[39] *Id.* § 16, at 559.

[40] *See, e.g.*, Law of June 24, 1929, ch. 353, [1929] N.J. Laws 789 (one court in cities having 17,000 inhabitants; two courts in cities having 135,000 inhabitants); Law of Mar. 4, 1924, ch. 31, [1924] N.J. Laws 66–67 (one court in cities having 22,000 inhabitants; two courts in cities having 150,000 inhabitants); Law of Mar. 22, 1899, ch. 91, [1899] N.J. Laws 220–21 (one court in cities having 20,000 inhabitants; one court in cities having less than 20,000 inhabitants, with city council approval; two courts in cities having 100,000 inhabitants).

Judicial districts were first used in 1908. *See* Law of Apr. 1, 1908, ch.49, [1908] N.J. Laws 70. Pursuant to this act, one or more municipalities within a county could combine to meet the population requirement for the establishment of a district court and petition the legislature for approval by special act. *Id.* § 1, at 70–71.

[41] Law of July 27, 1948, ch. 264, § 2, [1948] N.J. Laws 1146.

[42] N.J. CONST. art. 6, § 1, ¶ 1. *Compare id. with* N.J. CONST. art. 6, § 1, ¶ 1 (1844).

[43] Law of Sept. 10, 1948, ch. 384, [1948] N.J. Laws 1564 (corresponds to N.J. STAT. ANN. § 2A:6–1 (1952)).

determined by the class and population of the county in which the district court sits.[44] The amount in controversy in civil suits is limited to $3,000.[45] Some district courts are now subdivided to include a division of small claims and a landlord and tenant division.[46] The jurisdictional limitation on the amount in controversy in the small claims division is set at $500.[47] The landlord and tenant division provides an easily accessible forum in which to bring summary dispossess actions.[48] The procedures followed in both divisions are purposely informal so that lay citizens can often prosecute their own claims.[49]

The character of the district courts is further evidenced by the cost schedule and the practice rules established for these courts. The legislature controls the costs in all courts,[50] and the filing fees in county district court are significantly lower than those in the superior court.[51] Time and expense are saved by statutes discouraging the use of stenographers and juries on this level.[52] In addition, the supreme court has also helped to streamline practice in the county district courts by providing for substantially shorter time periods for most phases of litigation than those available in the superior court.[53] As the

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[44] N.J. STAT. ANN. § 2A:6–2.1 *et seq.* (Supp. 1975–76).

[45] *Id.* § 2A:6–34. The county district courts are granted

> jurisdiction in such cases where several distinct separate claims are made and asserted in one action on separate counts or otherwise, notwithstanding that the said claims in the aggregate shall exceed $3,000.00 exclusive of costs, provided none of the separate distinct claims shall exceed $3,000.00.

Id. § 2A:6–34.1. Where the "amount really due or recoverable" is greater than $3,000, recovery of $3,000 in a county district court "shall bar the recovery of the residue . . . in any court whatsoever." *Id.* § 2A:6–35(a).

[46] A division of small claims can be created within a county district court by the county freeholders. *Id.* § 2A:6–41 (1952). Landlord and tenant actions fall within the court's general jurisdiction. *Id.* § 2A:6–34(b) (Supp. 1975–76).

[47] Law of May 1, 1975, ch. 72, [1975] N.J. SESS. L. SERV. 102, *amending* N.J. STAT. ANN. § 2A:6–43 (Supp. 1975–76).

[48] *See* N.J. STAT. ANN. § 2A:18–51 *et seq.* (1952), *as amended*, (Supp. 1975–76).

[49] *See* N.J. Dep't of Community Affairs, Small Claims: How to File and Defend a Suit in the New Jersey Small Claims Division, rev. ed. July 1973.

[50] *See* N.J. STAT. ANN. § 22A:1–1 *et seq.* (1969), *as amended*, (Supp. 1975–76).

[51] *Compare id.* § 22A:2–37 (Supp. 1975–76) (complaints $8 to $10, counterclaims $7 to $9 in county district court) *with id.* § 22A:2–6 (complaints $60, other papers $30 in superior court, law division).

[52] *See id.* § 2A:18–15 (1952) (party requesting stenographer must bear expense); *id.* § 22A:2–37 (Supp. 1975–76) (party demanding jury trial must pay fee).

[53] For example, in the county district courts, N.J.R. 6:3–1(2) provides for a 30-day period to raise certain defenses by motion or to institute cross-claims. In the superior court, N.J.R. 4:6–3 provides for certain defenses to be raised by motion within 90 days of filing an answer, and N.J.R. 4:7–5(c) provides for the assertion of cross-claims within 90 days.

N.J.R. 4:6–1(a) requires that a defendant in the superior court file an answer within 20 days, or 35 days if service of the summons and complaint is made out of state.

appellate division summarized in *Andriola v. Galloping Hill Shopping Center, Inc.*,[54]

> [t]he statutory scheme for the county district courts, as supplemented by the court rules, is designed to establish a streamlined structure and practice for the inexpensive and expeditious disposition of the many relatively minor personal injury, property damage and commercial causes which make up the vast bulk of the litigation in this State.[55]

Therefore, when these attributes are coupled with the subject-matter jurisdiction of the county district courts, it is clear that the legislature intended these courts to be a forum wherein small matters could be adjudicated in a manner requiring less time, less money, and less formality than is mandated by the character and practice of the constitutional courts.

In addition, it is clear the legislature intended that the matters heard by the county district courts should be of a local nature since service of process is generally limited to the county borders[56] with only specific statutory exceptions. One such exception provides that where there are multiple defendants, one of whom can be properly served within the county limits, codefendants and third-party defendants can be served in another county.[57] A second statutory exception exists by which out-of-county defendants may be brought into court by substituted service upon various state officials.[58] Finally, other

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Further, N.J.R. 4:6–1(c) permits the parties to consent to an extension of up to 30 days in which to file a responsive pleading. In the county district courts, N.J.R. 6:3–1(1) prohibits the parties from consenting to extensions for answers, and N.J.R. 6:3–1(3) permits a defendant litigating pro se to answer merely by appearing. In addition, N.J.R. 6:3–1(4) prohibits the filing of answers in landlord and tenant summary actions and certain actions brought in the small claims division.

In the superior court, "interrogatories shall be served within 40 days after the expiration of the time allowed for service of the last permissible responsive pleading as to each defendant." N.J.R. 4:17–2. Answers to interrogatories must be made within 60 days. N.J.R. 4:17–4(b). In the county district court, the periods for serving and answering interrogatories are each shortened to 30 days. N.J.R. 6:4–3(a). To reinstate an action dismissed for failure to answer interrogatories within the prescribed time period, a party must pay a $25 fee in the county district court, N.J.R. 6:4–3(a), and a $50 fee in the superior court, N.J.R. 4:23–5(a). Discovery must be completed in a superior court action within 150 days, N.J.R. 4:24–1, while this time limit in the county district court is reduced to 100 days, N.J.R. 6:4–5.

[54] 93 N.J. Super. 196, 225 A.2d 377 (App. Div. 1966).

[55] *Id.* at 200, 225 A.2d at 380.

[56] N.J. STAT. ANN. § 2A:6–32 (1952).

[57] *Id.* § 2A:6–33 (Supp. 1975–76).

[58] *See id.* § 2A:15–35 (jurisdiction over foreign corporations and associations may be obtained by serving the Secretary of State or the Commissioner of Banking and In-

statutes allow service, in limited instances, upon out-of-county landlords who own rental property in the county where suit is brought.[59] These legislative exceptions only extend service out of county, not out of state. Nowhere does the legislature explicitly or implicitly authorize service of process directly upon out-of-state parties.[60]

THE COMPETENCE OF THE COUNTY DISTRICT COURTS: JUDICIAL TREATMENT

Contrary to the legislative scheme discussed above, the service rule amendment for the county district courts expressly provides for service of process out of state. This conflict admits of no easy resolution since it involves two separate constitutional grants of power. On the one hand, the legislature is constitutionally granted the power to create and change inferior courts such as the county district courts,[61] while on the other hand, the supreme court is constitutionally granted the unchecked power over practice and procedure.[62] Although one might tend to overlook such a problem since the service rule does embody a rational state policy,[63] this conflict must be resolved

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surance); *id.* § 39:7–1 *et seq.* (1973) (jurisdiction over nonresident motorists may be obtained by serving the Director of the Division of Motor Vehicles).

[59] Law of Oct. 15, 1975, ch. 227, [1975] N.J. SESS. L. SERV. 598 (service of process allowed upon individual out-of-county landlord in action for return of security deposit); N.J. STAT. ANN. § 46:8–31 (Supp. 1975–76) (in tenant's action against landlord for failure to comply with the statement-of-information requirements of N.J. STAT. ANN. §§ 46:8–28, –29, service may be made by mail "upon the record owner at the last address listed in the tax records of either the municipality or county" and is effective against the landlord whether or not he is served in the county where the court is sitting).

[60] Where out-of-state parties are brought into county district court proceedings, it has been done by means of substituted service made upon in-state public officials. *See* note 58 *supra* and accompanying text.

[61] N.J. CONST. art. 6, § 1, ¶ 1.

[62] *Id.* art. 6, § 2, ¶ 3. This is the interpretation given the provision in Winberry v. Salisbury, 5 N.J. 240, 74 A.2d 406, *cert. denied*, 340 U.S. 877 (1950).

[63] On its face, the new rule establishes a system whereby out-of-state defendants may be served with process from the plaintiff's home county district court, whereas an in-state defendant residing in a county other than that in which the suit was instituted may not be so served. In the extreme, this creates a situation where service may be made upon a defendant thousands of miles away while it might be impossible to effect service upon a defendant residing in a neighboring community. Although this appears to be an anomalous result, it does reflect a rational state policy, *i.e.*, favoring in-state litigants over nonresidents. In-state defendants are favored in that they need only defend county district court suits in their home county, while in-state plaintiffs are given priority in that they are now entitled to bring suit in their home county district courts against out-of-state defendants. The nature of the suits brought in these courts is amenable to this policy. In such minor actions, the in-state defendant need not be inconvenienced by having to defend in a foreign forum. On the other hand, the state has little

because the enforceability of county district court default judgments is directly in issue.

In an action brought to enforce a foreign judgment in a defendant's home forum, the judgment must be accorded full faith and credit[64] unless it can be attacked for lack of competency of the rendering court[65] or for other defects.[66] In this regard, it is essential to keep in mind the distinction between the concepts of jurisdiction and competency. Jurisdiction refers to the power of a *state* to subject a person or property to its legal process.[67] Competency, however, is the power of a *particular court* to decide an action.[68] The crux of the problem presented by the service rule amendment is the competency of the county district courts; unless a particular court is granted the power over both the subject matter *and* the person, a procedure providing for the assertion of that power is meaningless.

The competency of all New Jersey courts is conferred directly or indirectly by the constitution. The competency of the constitutional courts is conferred by the document itself, whereas the competency of the inferior courts is conferred by the legislature, acting pursuant to a constitutional grant of power.[69] Therefore, to determine the competency of an inferior court to decide a particular matter, inquiry

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concern for the convenience of an out-of-state party who passes through the state leaving behind a trail of minor actions.

[64] U.S. CONST. art. IV, § 1 provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." The purpose of this provision is to place "the Constitution behind a judgment instead of the too fluid, ill-defined concept of 'comity.' " Williams v. North Carolina, 325 U.S. 226, 228 (1945) (footnote omitted).

[65] RESTATEMENT OF JUDGMENTS § 7 & comment *a* at 42 (1942).

[66] *See, e.g.*, Estin v. Estin, 334 U.S. 541, 549 (1948) (lack of in personam jurisdiction); Industrial Comm'n v. McCartin, 330 U.S. 622, 627–28 (1947) (judgment in first state not conclusive of rights of parties); Williams v. North Carolina, 325 U.S. 226, 230 (1945) ("state of domicilliary origin" of parties to divorce rendered in sister state not bound by latter's judicial finding of domicile in sister state); Fall v. Eastin, 215 U.S. 1, 10–11 (1909) (state cannot affect title to land not located therein); Huntington v. Attrill, 146 U.S. 657, 666, 668–69 (1892) (judgment penal in nature). *See generally* H. GOODRICH & E. SCOLES, HANDBOOK OF THE CONFLICT OF LAWS § 208 *et. seq.* (4th ed. 1964) [hereinafter cited as GOODRICH & SCOLES]; Reese & Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 COLUM. L. REV. 153 (1949); Sumner, *Full Faith and Credit for Judicial Proceedings*, 2 U.C.L.A.L. REV. 441 (1955).

[67] *See* RESTATEMENT OF JUDGMENTS § 5 (1942).

[68] *See* text accompanying note 23 *supra*. *See also* RESTATEMENT (SECOND) OF CONFLICT OF LAWS, § 79, Introductory Note (c), at 101 (1971).

[69] *See* N.J. CONST. art. 6, §§ 1–4. The New Jersey supreme court has recognized that subject-matter jurisdiction "rests solely upon the court's having been granted such power by the *Constitution* or by valid legislation." State v. Osborn, 32 N.J. 117, 122, 160 A.2d 42, 45 (1960) (emphasis in original). *Accord*, Petersen v. Falzarano, 6 N.J. 447, 454, 79 A.2d 50, 54 (1951).

must be made into the scope of the legislative grant of adjudicatory authority.[70] This question should seemingly be resolved by an examination of the pertinent statutes. However, when faced with the issue of the competency of the county district courts, one court alluded to such an analysis, while another totally disregarded it.

The first case dealing with the county district courts' power to effect service of process out of state was *Beca Realty, Inc. v. Eisberg*.[71] In that case, a realtor sued to recover a brokerage commission allegedly due from the sale of the defendants' property. After the sale of their home, the Eisbergs moved to Florida. Since the defendants could no longer be served with process in New Jersey, service by registered mail was attempted. Upon defendants' failure to respond, a default judgment was entered for plaintiff. Subsequently, the Eisbergs moved to have the judgment vacated and the service of process quashed.[72] The Bergen County District Court granted the motion and held that the manner of service of process employed by the plaintiff was not available to obtain jurisdiction over out-of-state defendants in suits instituted in the county district courts.[73]

In *Beca Realty*, Judge Huot first considered the due process requirements for maintaining a suit in New Jersey and concluded that the " 'minimum contacts' " test was clearly met.[74] The defendants argued that although the suit could properly be brought in New Jersey, "the county district court [was] not the proper forum"; thus, the court found that

> the question raised [was] whether the manner of service of process used by the plaintiff in this case [was] sufficient for *this* court to have jurisdiction.[75]

Therefore, although the court spoke in terms of jurisdiction, it was apparently analyzing the issue in terms of the competency of the county district courts.

Judge Huot began the competency analysis by noting that the county district court's territorial boundaries are determined solely by the legislature and that these courts generally lack "jurisdiction to serve process beyond the territorial boundary of the county."[76] Ex-

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[70] *Cf.* Smit, *supra* note 14, at 339.

[71] 125 N.J. Super. 575, 312 A.2d 516 (Bergen County Dist. Ct. 1973).

[72] *Id.* at 577, 312 A.2d at 517.

[73] *Id.* at 582–84, 312 A.2d at 520–21.

[74] *Id.* at 578, 312 A.2d at 517 (quoting from International Shoe Co. v. Washington, 362 U.S. 310, 316 (1945)).

[75] 125 N.J. Super. at 578, 312 A.2d at 517 (emphasis added).

[76] *Id.* at 579, 312 A.2d at 518. The court noted that this principle "has been given limited expansion by the Legislature." *Id.*

amining the service rule from this perspective, the court concluded that "the rule is silent on the question of out-of-state service by the county district court because no out-of-state service is contemplated."[77] Thus, according to the legislative design, the county district courts are seemingly not competent to decide cases involving out-of-state defendants.

The court did not take an absolutist position, however, but went on to consider the effect of the *Winberry* decision which had held that the rule-making power of the supreme court in the areas of practice and procedure was paramount and could not be superseded by the legislature.[78] Recognizing that service of process is such a matter,[79] and reasoning that the supreme court would not knowingly contravene an obvious legislative intent, Judge Huot felt duty-bound to interpret the rule and the statutes in a complementary manner.[80] From such an analysis, the court concluded that only an interpretation of the service rule which limited service to within the county borders would accomplish this aim.[81] Moreover, an expansive interpretation of the service rule would have the effect of changing the character of the county district courts from a legislative court of limited competency to a court coequal to the constitutional courts of general jurisdiction.[82] The court concluded, therefore, that before it would

> destroy the geographic boundaries established by the Legislature for its jurisdiction, a clear expression of such determination should be made by the Supreme Court of this State.[83]

The "clear expression" Judge Huot requested before he would assume that the county district courts had the power to acquire in personam jurisdiction over out-of-state defendants came in the form of the service rule amendment at issue here, rather than a supreme court adjudication. However, in *Sears, Roebuck & Co. v. Katzmann*,[84] decided subsequent to the rule amendment but interpreting the prior rule, *Beca Realty* was overruled by the appellate division.[85] In *Sears*, the plaintiff instituted suit against Mrs. Katz-

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[77] *Id.* at 581, 312 A.2d at 519.

[78] *Id.* at 582–83, 312 A.2d at 520. *See* text accompanying notes 9–10 *supra*.

[79] 125 N.J. Super. at 583, 312 A.2d at 520 (citing Kappish v. Lotsey, 76 N.J. Super. 215, 221, 184 A.2d 17, 20 (Warren County Dist. Ct. 1962)).

[80] 125 N.J. Super. at 583, 312 A.2d at 520.

[81] *Id.*

[82] *Id.* at 584, 312 A.2d at 520–21.

[83] *Id.* at 584, 312 A.2d at 521.

[84] 137 N.J. Super. 106, 348 A.2d 193 (App. Div. 1975).

[85] *Id.* at 109, 348 A.2d at 195.

mann in the Hudson County District Court to recover the amount due on certain items. Claiming that the debt was her former husband's responsibility, Mrs. Katzmann served him in New York by certified mail with a summons and third-party complaint. Defendant husband moved to quash the service of process. The trial judge granted the motion, relying upon the authority of *Beca Realty*, and the appellate division granted leave to appeal.[86] The *Sears* court, in a short opinion, found "no constitutional impediment to the application of our long-arm rule to the county district courts."[87] The court noted that under *Winberry* the supreme court's rule-making power over practice and procedure was exclusive and "not subject to overriding legislation."[88] Since the court viewed the long-arm rule as "purely procedural," it simply concluded that "[i]ts application to the county district court pursuant to [supreme court rule] cannot be nullified by our Legislature."[89] *Beca Realty*'s holding was criticized as controverting "the purpose and philosophy of our long-arm rule."[90] The court further supported its decision by pointing out that the new rule amendment was only intended to clarify the issue.[91]

Thus, as a result of the action of the appellate division, the highest court in New Jersey to discuss the effect of the service rule amendment to date, the county district courts can obtain jurisdiction over, and are competent to hear, cases involving out-of-state defendants. This result was reached solely through consideration of the supreme court's unchecked power over procedure recognized in *Winberry*. Therefore, according to the *Sears* court, the supreme court has the power to change the competency of the county district courts, if such can be accomplished through the enactment of a procedural rule. The enforceability of county district court default judgments rendered against out-of-state defendants, however, turns upon whether such a result is *in fact* legitimate according to the laws of this state.

Enforceability of County District Court Default Judgments: A Question of Local Law

The *Restatement of Judgments* provides that in order for a judgment to be valid it must meet certain requisites: (1) the state must

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[86] *Id.* at 107–08, 348 A.2d at 193–94.
[87] *Id.* at 109, 348 A.2d at 194.
[88] *Id.*
[89] *Id.* at 109, 312 A.2d at 194–95.
[90] *Id.* at 109, 312 A.2d at 195.
[91] *Id.* at 109–10 n.1, 348 A.2d at 195.

have jurisdiction over both the subject matter and the parties; (2) reasonable notice and an opportunity to be heard must be provided; (3) the state's procedural requirements for an exercise of the court's power must be met; and (4) the court rendering the judgment must be competent to do so. If a judgment fails to meet any of these requisites it is subject to collateral attack in a sister state.[92] Thus, the

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[92] RESTATEMENT OF JUDGMENTS § 4 (1942); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 92 (1971). The distinction between direct and collateral attack is a fine one. *See generally* Comment, *The Value of the Distinction Between Direct and Collateral Attacks on Judgments*, 66 YALE L.J. 526 (1957). *See also* 1 A. FREEMAN, A TREATISE OF THE LAW OF JUDGMENTS § 304 (5th ed. 1925) [hereinafter cited as FREEMAN]. A direct attack consists of

> [t]he taking of proceedings in the action in which a judgment is rendered to have the judgment vacated or reversed or modified by appropriate proceedings either in the trial court or in an appellate court [or] the taking of independent proceedings in equity to prevent the enforcement of the judgment. . . .

RESTATEMENT OF JUDGMENTS § 11, comment *a* at 65 (1942). *See also* 1 FREEMAN, *supra*, §§ 307–08; Comment, *supra* at 530–31.

Any other "attempt to avoid the effect of a judgment" is considered a collateral attack. *Id.* at 533; *see* RESTATEMENT OF JUDGMENTS § 11, comment *a* at 65–66 (1942). A collateral attack on a void judgment will lie both in the state of rendition and in sister states. *Id.* § 11. A collateral attack most often arises where the holder of a judgment attempts to enforce it and the defendant pleads the lack of jurisdiction of the court rendering judgment. Comment, *supra* at 533–34; 1 FREEMAN, *supra*, § 309.

To be successful, a collateral attack must show more than a mere error of fact or law; a collateral attack must show that the judgment is void for lack of jurisdiction or that there is a valid defense to the judgment, such as fraud. GOODRICH & SCOLES, *supra* note 66, §§ 209, 210–16; F. JAMES, CIVIL PROCEDURE §§ 11.6–.8 (1965) [hereinafter cited as JAMES]. In addition, a defendant may not collaterally attack a judgment for lack of jurisdiction if he appeared in the court which rendered the adverse judgment to contest its jurisdiction, and the jurisdictional issue was litigated and decided against him. A court's ruling on its own jurisdiction then, even if erroneous, is binding upon the parties to the proceeding and not subject to collateral attack. Durfee v. Duke, 375 U.S. 106, 111–12 (1963); Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371, 376 (1940); Baldwin v. Iowa State Traveling Men's Ass'n, 283 U.S. 522, 525–26 (1931). In *Baldwin*, the Court stated:

> Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties. We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard, and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his cause.

Id.; *see* GOODRICH & SCOLES, *supra* note 66, § 217; JAMES, *supra*, § 11.6, at 537–38; RESTATEMENT OF JUDGMENTS § 9 (1942); Comment, *supra* at 527-28. *But see* RESTATEMENT OF JUDGMENTS § 10(1) (1942) (suggesting exception when "policy underlying the doctrine of res judicata is outweighed by the policy against permitting the court to act beyond its jurisdiction").

Thus, in the *Sears* case, since third-party defendant Katzmann contested the validity of the service of process issuing out of the county district court, he is precluded from collaterally attacking the judgment for lack of jurisdiction in another state, regardless of the correctness of the appellate division's decision. Although persons in Katzmann's

competency of the county district courts is an essential requisite to the enforceability of default judgments in sister states.

Competency—the power of a particular court to decide an action—"is a question of the local law of the State in which the judgment is rendered."[93] If under the local law a court is competent "to render the judgment, the judgment is valid and cannot be collaterally attacked in that State or in another State."[94] But if the court is not competent, the judgment is void, collaterally attackable, and not entitled to full faith and credit in sister states.[95] Thus, "[a] judgment will not be given greater effect in other states than it has in the state of rendition."[96]

A state's constitution, its statutes, and its decisional law are the sources normally examined to determine whether a particular court is competent to render a valid judgment under the local law.[97] Perhaps the leading example is *Thompson v. Whitman*.[98] This case arose under the New Jersey Oyster Law which made it illegal for a nonresident "to rake or gather clams, oysters, or shell-fish" within New Jersey waters.[99] This statute imposed a duty on the sheriff to seize violating vessels and immediately inform "two justices of the peace of the county where such seizure shall have been made" so that a trial could be held, and if a violation were found, the vessel sold.[100]

Thompson, the sheriff of Monmouth County, seized and sold a sloop belonging to Whitman, a New York resident, and Whitman later brought an action in trespass in New York against Thompson for the wrongful taking of his vessel.[101] Thompson defended on the ground that the seizure was authorized by statute and pleaded the New Jersey judgment which he contended was entitled to full faith and credit and not subject to collateral attack.[102] Whitman, however, disputed the jurisdictional facts on the face of the judgment, contending that the seizure did not in fact occur in the waters of Monmouth County and that therefore the justices of the peace who heard the

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position would be limited to a direct attack, county district court default judgments could still be collaterally attacked by a defendant who had not challenged the competency of these courts in New Jersey.

[93] RESTATEMENT OF JUDGMENTS § 7, comment *a* at 41 (1942).

[94] *Id.*

[95] *Id.* at 41–42.

[96] RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 105, comment *a* at 316 (1971).

[97] *See* RESTATEMENT OF JUDGMENTS § 7, comment *a* at 42 (1942).

[98] 85 U.S. (18 Wall.) 457 (1873).

[99] Law of Apr. 14, 1846, § 7, [1846] N.J. Laws 181 (repealed 1931).

[100] *Id.* § 9, at 181–82.

[101] 85 U.S. (18 Wall.) at 458–59.

[102] *Id.* at 459.

case were acting outside of their jurisdiction.[103] The New York court instructed the jury that the record of the judgment "was only *primâ facie* evidence of the facts therein stated" but refused to charge that the judgment barred the action.[104] The jury found that the seizure was not in fact made in Monmouth County, gave judgment for Whitman, and Thompson appealed to the United States Supreme Court.[105]

In an opinion by Justice Bradley, the Court declared that it is

> clear that the jurisdiction of the court by which a judgment is rendered in any State may be questioned in a collateral proceeding in another State, notwithstanding [the full faith and credit clause], and notwithstanding the averments contained in the record of the judgment itself.[106]

Applying this principle to the facts of the case, the Court concluded that since the jury found that the vessel was seized in state waters, but not in the waters of Monmouth County, and since the statute specifically provided that the two justices of the peace to hear the case must be from the county where the vessel was seized, "the justices had no jurisdiction, and the record had no validity."[107] Thus, upon collateral attack in another state, the judgment was not entitled to full faith and credit since the Monmouth County justices of the peace, under the legislative grant, were not a competent tribunal to decide the case.

In order to determine the proper powers of a New Jersey court, one must not only examine the constitution, statutes, and case law, but also the rules promulgated by the supreme court since that court has, by virtue of the 1947 constitution, been delegated certain powers over the character of inferior courts.[108] An analysis of one of these constitutional grants of power shows that it is very limited and does not include the ability to change the competence of inferior courts. For example, under the 1947 constitution the superior court is granted "original general jurisdiction throughout the State in all causes."[109] And it is constitutionally prescribed that the superior court be divided into three sections: the appellate division, the law

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[103] *Id.*

[104] *Id.*

[105] *Id.* at 460.

[106] *Id.* at 469.

[107] *Id.* at 469–70.

[108] *See, e.g.*, Abbott v. Beth Israel Cemetery Ass'n, 13 N.J. 528, 537–38, 100 A.2d 532, 537 (1953); State v. Bigley Bros., 53 N.J. Super. 264, 268–69, 147 A.2d 52, 54–55 (App. Div. 1958).

[109] N.J. CONST. art. 6, § 3, ¶ 2.

division, and the chancery division.[110] The supreme court is granted the power to make rules governing the parts, the number of judges, and the causes to be heard by each division.[111] In addition, the constitution provides that the law division and the chancery division may, to achieve the ends of justice and to dispose of all matters under the single-unit-of-controversy theory, "exercise the powers and functions of the other division" and grant both "legal and equitable relief" pursuant to rules promulgated by the supreme court.[112]

Although the supreme court is constitutionally mandated to promulgate rules which will have an effect upon the character of the divisions of the superior court, this grant of power cannot be construed as allowing the supreme court to change the competence of those courts. The constitution created the superior court, gave the court the power to hear *all* causes, gave the court *statewide* jurisdiction, and provided for the interrelationship between the law division and the chancery division as precisely as practicable. It is within these constitutionally prescribed boundaries that the supreme court may promulgate rules.

Pursuant to this constitutional mandate the supreme court has, by rule, provided that

> [i]n actions in the Superior Court if the plaintiff's primary right or the principal relief sought is equitable or probate in nature, he shall bring the action in the Chancery Division even though legal relief is demanded in addition or alternative to equitable or probate relief.[113]

This exercise of power is not jurisdictional in nature, but is perhaps more properly characterized as administrative. In *O'Neill v. Vreeland*,[114] Chief Justice Vanderbilt held that it was error for a law division judge to dismiss a plaintiff's case on the ground that the plaintiff may have an action in equity but did not have a claim cognizable at law.[115] It was noted that "the Superior Court is but a single court" and that "[t]he jurisdiction of the Law and Chancery Divisions is the

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[110] *Id.* art. 6, § 3, ¶ 3.

[111] *Id.*

[112] *Id.* art. 6, § 3, ¶ 4.

[113] N.J.R. 4:3-1(a)(1). This rule further provides:

> All other actions in the Superior Court shall be brought in the Law Division, including all actions in lieu of prerogative writs . . . and all habeas corpus applications and actions, other than those relating to the custody of infants.

Id.

[114] 6 N.J. 158, 77 A.2d 899 (1951).

[115] *Id.* at 168, 77 A.2d at 904.

same."[116] After setting forth the supreme court rule which divided the actions between the law and chancery divisions,[117] the court concluded:

> Needless to say this rule does not go to the jurisdiction of the respective divisions of the Superior Court, for the jurisdiction of the Superior Court is fixed by the Constitution and can be altered neither by rule of this court nor by act of the Legislature. The rule is carefully designed to provide a simple mechanism for determining the proper division in which a case should be tried . . . .[118]

In addition, this mechanism was intended to be so informal that the choice of which division to bring a claim in is almost completely in the hands of the attorney.[119]

Thus, while the 1947 constitution allows the supreme court some power to change the scope of the actions a court may hear, this grant of power is specific, limited, and clearly does not extend to the competence of a court. But the New Jersey practitioner or a sister state called upon to decide the competence of the county district courts as a matter of New Jersey law must be concerned with the omnipresence and power of *Winberry*, which held that when a court-promulgated rule conflicts with a statute, the rule prevails.[120] The only restriction upon its rule-making power that the court has recog-

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[116] *Id.* at 165, 77 A.2d at 902.

[117] The rule quoted in *Vreeland* provided:

> All actions which were on September 14, 1948 maintainable in the Court of Chancery or before the Chancellor, or in the Prerogative Court or before the Ordinary, shall be brought in the Chancery Division, and all other actions in the Superior Court shall be brought in the Law Division; but this rule shall not apply to any appeal or matter which is cognizable in the Appellate Division. All causes on habeas corpus, other than those having to do with the custody of children, shall be brought in the Law Division. If the primary right of the plaintiff is equitable or the principal relief sought is equitable, the action is to be brought in the Chancery Division, even though legal relief is demanded in addition or as an alternate to equitable relief.

N.J.R. 3:40–2 (1948). Compare the present rule, which is reprinted at note 113 *supra* and accompanying text.

[118] 6 N.J. at 165–66, 77 A.2d at 902.

[119] *Id.* at 166–67, 77 A.2d at 903 (quoting from Steiner v. Stein, 2 N.J. 367, 377–78, 66 A.2d 719, 724 (1949)); Government Employees Ins. Co. v. Butler, 128 N.J. Super. 492, 495, 320 A.2d 515, 517 (Ch. 1974).

[120] 5 N.J. at 255, 74 A.2d at 414; *see* George Siegler Co. v. Norton, 8 N.J. 374, 381–82, 86 A.2d 8, 12 (1952). *Norton* involved a statute which required the submission of the issue of contributory negligence to a jury in cases involving accidents at railroad crossings which were not properly protected. *See* Law of Apr. 12, 1910, ch. 278, § 1, [1910] N.J. Laws 490–91. The court held that this law was superseded by the court rules dealing with motions for judgments. 8 N.J. at 381–83, 86 A.2d at 12. *See* N.J.R. 3:41–2 (1948) (involuntary dismissal); N.J.R. 3:50 (1948) (directed verdict).

nized is that such power is limited to matters of practice and procedure and therefore the court may not "make substantive law wholesale."[121] Since there is no clear line of demarcation between the substantive law and the procedural law,[122] and "[a] rule of procedure may have an impact upon the substantive result and be no less a rule of procedure on that account,"[123] it is difficult to predict the limits of the court's rule-making power. In fact, in *Busik v. Levine*,[124] when confronted with a challenge to a court rule, the plurality opinion went so far as to suggest that "the Court may treat [a] subject by a rule rather than by a judicial decision despite the substantive aspect of the subject."[125]

Despite the fact that procedure and substance are not clearly definable, and taking cognizance of the attitude of the plurality in *Busik*, the service rule amendment still appears to be outside of the *Winberry*-type analysis which focuses upon the distinction between procedure and substance. Jurisdiction occupies a unique position in the law; it "is neither procedural law nor substantive law."[126] Under the *Winberry*-type analysis, as propounded in *Busik*, the court will look to whether it is "palpably inappropriate to think of [the subject of a court rule] as a matter of procedure in the context of law-making";[127] however, "jurisdiction over subject matter [or competence] is conspicuously beyond the procedural realm, resting exclusively on statute or constitution."[128] Thus, the theory of the *Winberry* decision has no application where the competence of a court is involved. But *Winberry*'s influence is evident when one examines the appellate division's decision in *Sears*.

The *Sears* decision, unlike *Beca Realty*, did not address the competence of the county district courts. Instead, the *Sears* court's analysis was based solely upon the procedural nature of the long-arm

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[121] 5 N.J. at 248, 74 A.2d at 410.

[122] *See, e.g.*, Busik v. Levine, 63 N.J. 351, 364, 307 A.2d 571, 578 (1973); State v. Otis Elevator Co., 12 N.J. 1, 24, 95 A.2d 715, 727 (1953) (Jacobs, J., dissenting). *See also* Hanna v. Plumer, 380 U.S. 460, 471 (1965); Levin & Amsterdam, *Legislative Control Over Judicial Rule-Making: A Problem in Constitutional Revision*, 107 U. PA. L. REV. 1, 14–15 (1958).

[123] Busik v. Levine, 63 N.J. 351, 364, 307 A.2d 571, 578 (1973).

[124] 63 N.J. 351, 307 A.2d 571 (1973).

[125] *Id.* at 373, 307 A.2d at 583.

[126] Gavit, *Jurisdiction of the Subject Matter and* Res Judicata, 80 U. PA. L. REV. 386, 386 (1932). The author notes:

> Jurisdiction has nothing to do with either the creation or recognition of substantive rights; it is simply a limitation on the power of a court to act *as a court*.

Id. (emphasis in original).

[127] 63 N.J. at 371, 307 A.2d at 581.

[128] State v. Bigley Bros., 53 N.J. Super. 264, 268, 147 A.2d 52, 54 (App. Div. 1958).

rule.[129] Such an analysis is indisputably correct when the long-arm rule is applied to the constitutional courts of statewide jurisdiction, since the purpose of the long-arm rule is to exercise the sovereign's adjudicatory authority to its fullest extent, subject only to the requirements of due process of law.[130] But an application of the long-arm rule to the county district courts is significantly different; it fails to take into account the fact that these courts have legislatively prescribed jurisdictional boundaries. The *Sears* decision, when viewed in this manner, is of limited precedential value in the eyes of a sister state called upon to decide the validity of a county district court default judgment rendered against one of its citizens. In addition, the precedential value of *Sears* is further undermined when one considers that the appellate courts are bound by holdings or rules of the supreme court.[131]

The *Sears* decision inadequately deals with the relationship between the structure of the legislatively created court system and an extension of jurisdictions; therefore, it may not be an accurate statement of New Jersey law. The present situation involves a court rule, but in a prior instance when the district courts were faced with a statutory long-arm provision, the judicial response was similar to the position taken by the court in *Beca Realty*. In 1930, the New Jersey legislature enacted a long-arm statute which provided that nonresident motorists involved in an accident within the state would, by virtue of their acceptance of the privilege of driving upon the state's roads, "make and constitute the Commissioner of Motor Vehicles . . . their agent for the acceptance of process in any civil suit . . .

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[129] 137 N.J. Super. at 109, 348 A.2d at 194.

[130] Avdel Corp. v. Mecure, 58 N.J. 264, 268, 277 A.2d 207, 209 (1971); Corporate Dev. Specialists, Inc. v. Warren-Teed Pharmaceuticals, Inc., 102 N.J. Super. 143, 148, 245 A.2d 517, 520 (App. Div.), *cert. denied*, 52 N.J. 535, 247 A.2d 16 (1968).

For examples of applications of this standard see Cooke v. Yarrington, 62 N.J. 123, 129, 299 A.2d 400, 403 (1973) (contact through possession of New Jersey automobile license and registration); Roche v. Floral Rental Corp., 95 N.J. Super. 555, 563, 232 A.2d 162, 167 (App. Div. 1967), *aff'd*, 51 N.J. 26, 237 A.2d 265 (1968) (contact through probability that product would be used in New Jersey); Young v. Gilbert, 121 N.J. Super. 78, 86–88, 296 A.2d 87, 91–92 (L. Div. 1972) (contact by serving drinks to New Jersey patrons).

[131] *See In re* Essex County Grand Jury, 110 N.J. Super. 24, 27, 264 A.2d 253, 254 (App. Div. 1970) (appellate division not free to declare unconstitutional a rule of the supreme court); Newmark v. Gimbel's, Inc., 102 N.J. Super. 279, 290, 246 A.2d 11, 17 (App. Div. 1968), *aff'd*, 54 N.J. 585, 258 A.2d 697 (1969) (appellate division cannot overrule decisions of supreme court); Kream v. Public Serv. Coordinated Transp., 42 N.J. Super. 307, 308–09, 126 A.2d 385, 386 (App. Div. 1956), *aff'd*, 24 N.J. 432, 132 A.2d 512, *cert. denied*, 355 U.S. 864 (1957) (appellate division bound by supreme court's adherence to a doctrine).

by any resident."[132] The statute further provided that process so served would be deemed "of the same legal force and validity as if served . . . personally."[133] The statute did not specify, however, which courts could hear actions brought against nonresident defendants served in such a manner. In *MacPhail v. Nassau*,[134] the Second District Court of Paterson, relying upon two prior cases[135] and at length criticizing another,[136] concluded that so far as the district courts were concerned, the Commissioner's agency merely allowed the nonresident to be sued in Mercer County, the county where the office of the Commissioner is located, and no other.[137] Recognizing that the district courts were not constitutional courts but legislative courts whose territorial jurisdiction "the legislature may, in a limited number of cases, or in all cases, increase," the court framed the issue as whether the legislature, by the passage of the long-arm statute, intended to increase the territorial jurisdiction of the district

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[132] Law of Apr. 7, 1930, ch. 69, [1930] N.J. Laws 295. This act was later amended to allow the Commissioner to send the summons and complaint and the notice of service to a process server in the defendant's jurisdiction so that service could be made upon the nonresident in a manner other than by registered mail. Law of Mar. 16, 1933, ch. 69, [1933] N.J. Laws 130–31.

[133] Law of Apr. 7, 1930, ch. 69, [1930] N.J. Laws 296.

[134] 14 N.J. Misc. 292, 184 A. 633 (2d Dist. Ct., Paterson 1936).

[135] One case was Valentine v. Franklin Surety Co., 11 N.J. Misc. 822, 168 A. 35 (Sup. Ct. 1933) (per curiam), in which the court denied the validity of service of process upon the Commissioner of Banking and Insurance where the suit was brought in the District Court of the City of Orange. The court concluded:

> The jurisdiction of the District Court was co-extensive with the confines of the county of Essex, and its process did not run into the county of Mercer.

Id. at 822, 168 A. at 36. The second case was Makohon v. Millers Nat'l Ins. Co., 12 N.J. Misc. 282, 283–85, 171 A. 513, 513–14 (Hudson County Cir. Ct. 1934), which followed the *Valentine* holding.

[136] Gabriel v. Mason Art, Inc., 2 N.J. Misc. 50, 125 A. 125 (Sup. Ct. 1924) (per curiam) upheld the validity of service of process upon the secretary of state as giving all district courts, and not just those in Mercer County, jurisdiction over nonresident defendants. *Id.* at 53, 125 A. at 127. At issue was the service provision of a statute passed in 1900 whereby any domestic corporation or foreign corporation doing business in the state, upon failing to file a mandatory report or upon the unavailability of that corporation's agent, could be subjected to suit if service were made upon the secretary of state. Law of Mar. 23, 1900, ch. 124, [1900] N.J. Laws 314–15. The *Gabriel* court reasoned that the territorial limits of a court were irrelevant as long as the court had subject-matter jurisdiction. 2 N.J. Misc. at 53, 125 A. at 126. In support of this position the court stated:

> To take any other view would require us to read into the statute a provision that it should only apply to process issuing out of the Supreme Court. The territorial jurisdiction of both the Circuit and Common Pleas Courts is limited to the counties in which such courts are. Such a construction would tend to defeat the plain legislative intent.

Id. at 53, 125 A. at 126–27.

[137] 14 N.J. Misc. at 294, 184 A. at 634.

courts.[138] The *MacPhail* court concluded that the statute was remedial in nature and that the legislature's intent was "to designate an agent for service of summons" and not "to enlarge the territorial jurisdiction of District Courts for the service of summons in this class of cases."[139]

A denial of the validity of service of process upon the Commissioner by the First Judicial Court of the county of Burlington was affirmed by the supreme court in *Wall Rope Works, Inc. v. Sperling*.[140] Sixteen days after the *Sperling* decision, and as a direct response to it,[141] the legislature amended the district court jurisdictional provision to make it clear that the long-arm provisions providing for service upon the Commissioner of Motor Vehicles was intended to extend the territorial jurisdiction of the district courts.[142] Thus, prior to *Sears*, when courts were faced with the question of whether a procedure extending the power of the state over nonresident defendants applied to the district courts, the judicial response was to hold that the procedure was applicable to the courts of general jurisdiction, but inapplicable to the district courts absent an express legislative extension of jurisdiction.

The law of New Jersey, then, seems to show that the service rule amendment promulgated by the supreme court is an invalid extension of county district court competence with the result that default judgments will be subject to collateral attack both in this state and in sister states. The legislature has never purported to give the county district courts the competence to hear cases involving out-of-state defendants other than in limited circumstances, as is amply demonstrated by the statutes which created and structured these courts. The supreme court's service rule amendment cannot accomplish what the legislature never intended. While this fact should be apparent from the 1947 constitution's grant of power to the legislature which provided that "[t]he inferior courts and their jurisdiction may from time to time be established, altered or abolished by law,"[143] the supreme court's unchecked power over practice and procedure has confused the issue, and one must resort to a historical analysis to buttress this conclusion.

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[138] *Id.* at 293, 184 A. at 634.

[139] *Id.* at 295, 184 A. at 635.

[140] 116 N.J.L. 449, 450, 185 A. 477, 477–78 (Sup. Ct. 1936).

[141] *See* Mann v. Shelzi, 4 N.J. Super. 316, 318, 66 A.2d 886, 887 (App. Div. 1949); Mohr v. Sonnet, 17 N.J. Misc. 226, 227, 8 A.2d 109, 110 (Perth Amboy Dist. Ct. 1939).

[142] Law of June 20, 1936, ch. 170, [1936] N.J. Laws 405–06, 408, *amending* Law of June 14, 1898, ch. 228, § 29, [1898] N.J. Laws 564 (repealed 1951). *See* N.J. STAT. ANN. § 2A:18–7 (1952).

[143] N.J. CONST. art. 6, § 1, ¶ 1.

As has been demonstrated, wherever the supreme court was granted the power to promulgate rules effecting the character or business of a court, the grant has come directly from the constitution, and the grant has been specific and limited. Moreover, the power granted has not been of a jurisdictional nature; the court's power has only included the ability to allocate judicial business between two divisions of a single court of the same jurisdiction. Thus, examining the constitution, there is no provision which can be construed as granting the supreme court the power to change the competence of a court.

Winberry, while a significant factor to overcome when arguing against the validity of rules promulgated by the supreme court, is not applicable to an analysis of the service rule amendment. The *Winberry*-type analysis turns upon the shadowy dichotomy between procedure and substance. But this type of analysis is inapposite when dealing with a provision effecting the competence of a court. Competence is neither procedural nor substantive, but a unique concept wholly within the legislative domain.

Finally, in a somewhat analogous situation where the courts were faced with a general statutory extension of court jurisdiction, the courts decided that a general long-arm statute could not be applied to the district courts absent an express legislative extension of jurisdiction. The legislature's response to this oversight was to immediately amend the jurisdictional provision of the district court act in order to make it clear that all of the district courts were authorized to obtain jurisdiction over nonresident defendants by service of process upon the Commissioner of Motor Vehicles.

From this historical analysis it seems clear that the county district courts do not have the competence to hear all cases involving out-of-state defendants. Therefore, default judgments rendered by these courts against out-of-state defendants will be subject to collateral attack until the legislature authorizes such a result by statutorily extending the competence of the county district courts.

CONCLUSION

This Comment has concluded that the supreme court's service rule amendment which attempted to provide the county district courts a means by which to exercise jurisdiction over out-of-state defendants is invalid and that default judgments rendered against such defendants pursuant to this rule are collaterally attackable in sister states. Such a result is mandated since service of process in this context is more than procedure; it is an extension of the competence of the county district courts. For this reason, the solution to the prob-

lem of the unenforceability of county district court default judgments should be forthcoming from the legislature since that is the only body empowered to change the character of these courts.

In this regard, it is vital to keep the supreme court's rule-making power in perspective. The court has undertaken a large responsibility in declaring itself the sole arbiter in matters of practice and procedure. Incumbent in this responsibility is the duty to stay within the bounds of that power as it was established in *Winberry*. In fulfilling this duty, it would be wise for the court to be mindful of the principles of comity, for as Justice Jacobs noted in his dissenting opinion in *State v. Otis Elevator Co.*:[144]

> [T]he doctrine of judicial supremacy in rule-making ought, as a matter of comity towards the Legislature, be accompanied by fair recognition of important statutory policies in fields which are of special legislative concern.[145]

It was with such an idea in mind that the New Jersey rules of evidence were promulgated.[146] Rather than decide whether evidentiary rules were solely within the province of the court's rulemaking power or wholly a legislative matter,[147] a State Rules of Evidence Review Commission was created and "authorized to systematically review and make recommendations to the Legislature concerning rules of evidence proposed by the Supreme Court, prior to their taking effect."[148] The avowed purpose of this commission was to enhance "[c]o-operation between the legislative and judicial branches of government, and the orderly operation of our judicial system."[149]

Apparently this system worked so well for the rules of evidence[150] that in 1970, the commission was changed to the State Rules of Court Review Commission.[151] Its new function was not only to examine rules of evidence but also

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[144] 12 N.J. 1, 95 A.2d 715 (1953).

[145] *Id.* at 25, 95 A.2d at 727 (Jacobs, J., dissenting).

[146] *See* 63 N.J. at 367–68, 307 A.2d at 580.

[147] *See id.*

[148] Law of July 19, 1968, ch. 183, [1968] N.J. Laws 584–85, *as amended*, Law of Nov. 2, 1970, ch. 258, [1970] N.J. Laws 878 (codified at N.J. STAT. ANN. § 2A:84A–39 *et seq.* (1976)).

[149] Law of July 19, 1968, ch. 183, preamble, [1968] N.J. Laws 585, *as amended*, Law of Nov. 2, 1970, ch. 258, [1970] N.J. Laws 878 (codified at N.J. STAT. ANN. § 2A:84A–39.1 *et seq.* (1976)).

[150] *Cf.* 63 N.J. at 374–75, 307 A.2d at 584 (Hall, J., concurring).

[151] Law of Nov. 2, 1970, ch. 258, [1970] N.J. Laws 878 (codified at N.J. STAT. ANN. § 2A:84A–39.1 *et seq.* (1976)).

> any rule of court in effect, or proposed, which the commission considers may call for legislative action to aid in the achievement of the intended purpose, or the solution of a problem, by means of amendatory, supplemental, revisory or new legislation.[152]

Such a permanent commission would seem to be a satisfactory solution to potential problems with court rules; however, this commission is, at the present time, inoperative.[153]

Justice Hall, in his concurrence in *Busik v. Levine*, suggested that the use of this commission could resolve future problems in the gray area between procedure and substance.[154] This would not result in a return to a pre-*Winberry* rulemaking system. There is no suggestion that the court should give up its "exclusive power in those fields in which there can be no reasonable contention that substantive law is predominantly involved."[155] While this exclusive power is still not accepted in all quarters,[156] it must be admitted that the court rules

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[152] N.J. STAT. ANN. § 2A:84A–39.3 (1976).

[153] Letter from New Jersey Legislative Services Agency to author, Apr. 19, 1976, on file at the *Seton Hall Law Review*.

[154] 63 N.J. at 374–75, 307 A.2d at 583–84 (Hall, J., concurring). Justice Hall stated what approach he felt the court should take when dealing with such areas:

> It seems to me . . . that it would be more appropriate in the future for rules proposed by the court in these overlapping areas to be worked out in advance cooperatively between the three branches of government, as was done so successfully in the case of the evidence rules. The court would still retain exclusive power in those fields in which there can be no reasonable contention that substantive law is predominantly involved, as well as, of course, in the areas of administration of the courts and admission to and regulation of the bar. The Legislature, by [statute], has provided an adaptable mechanism for this process by creating a permanent legislative commission called the State Rules of Court Review Commission "to study and review * * * any rule of court in effect, or proposed, which the commission considers may call for legislative action to aid in the achievement of the intended purpose, or the solution of a problem, by means of amendatory, supplemental, revisory or new legislation." . . . Indeed, in the light of the substantive aspects of [the rule], the Commission might well review and consider it with the court, with the view to making a recommendation to the Legislature thereon. In this particular situation I would defer to ultimate legislative action. In the meantime, the rule should stand.

Id. at 374–75, 307 A.2d at 584 (citations omitted).

[155] *Id.* at 375, 307 A.2d at 584.

[156] *See, e.g.*, N.J. Senate Con. Res. No. 38 (prefiled for introduction in the 1976 session), which would amend the state constitution to make the supreme court's rulemaking power subject to overriding legislation. This proposed legislation would change article 6, section 2, paragraph 3 to read:

> The Supreme Court shall make rules governing administration of all courts in the State and the practice and procedure in all such courts, *subject, however, to such laws as may be enacted by the Legislature governing the said administration, practice and procedure*. . . .

Id. § 1 (emphasis in original).

since *Winberry* have been extremely progressive and have "stood the State in good stead."[157] It is merely maintained that the court observe principles of comity when creating court rules that have a substantive effect, because "[o]ur form of government works best when all branches avoid staking out the boundaries which separate their powers."[158]

Michael J. Holub

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[157] 63 N.J. at 387, 307 A.2d at 590 (Mountain, J., dissenting).
[158] *Id.* at 373, 307 A.2d at 583.