
Jurisdiction - Torts - Application of "Single Act" Statute by Forum State when Actual Damage Occurred in Sister State

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Fear of destruction of state sovereignty³⁰ is the principal motivation in reaching this decision. According to Justice Gunnar, this catastrophe can result if Congress transgresses beyond the confines specifically delegated to it by the Constitution.³¹ But his reasoning is faulty when he declares:

If, as interstate commerce Congress can prohibit a state tax on net income derived from interstate commerce, then, Congress can prohibit all state taxation under its broad power to regulate intrastate affairs affecting interstate commerce.³²

Justice Gunnar fails to realize that it is not the purpose of Congress in passing P.L. 86-272 to deprive the states of any revenue. It is designed to protect foreign corporations from inequities that have resulted from the variety of tax systems devised in the many states. This certainly does not indicate that Congress has as its objective further legislation that will completely destroy the states' power to tax.

It remains to be seen what direction this interesting controversy will take. With two such sharply conflicting opinions there is a compelling need for resolution and clarification in a higher forum. In addition Congress in its study of the problem, which is still in process, may decide to amend or completely replace P.L. 86-272 thus rendering the ultimate question moot. However, because of the courts' hesitance to interfere with the acknowledged plenary power of Congress to regulate interstate commerce, it is likely that this statute will remain in force unaltered.

Dennis Carlin

³⁰ Smith, Kline & French Laboratories v. State Tax Commission, 5 State Tax Cases ¶250-116 (Ore. Tax 1964), the Oregon Tax Court writes "Stripped of the power to tax, the Sovereignty of states is a hollow shell."

³¹ Mr. Justice Gunnar also makes mention of Mr. Justice Frankfurter's words in Freeman v. Hewit, 329 U.S. 249 (1946), where he points out interstate commerce should be regulated but not at the expense of state sovereignty.

³² Smith, Kline & French Laboratories v. State Tax Commission, 5 State Tax Cas. ¶250-116 (Ore. Tax 1964).

JURISDICTION—TORTS—APPLICATION OF "SINGLE ACT" STATUTE BY FORUM STATE WHEN ACTUAL DAMAGE OCCURRED IN SISTER STATE

Estwing Manufacturing Company, an Illinois corporation, manufactured hammers marked unbreakable and shipped them, f.o.b. Rockford, Illinois, to the defendant, Walker's Minerals, for subsequent resale. The dealer's purchases were made by mail order using Estwing's catalogue. Plaintiff's

aunt purchased one such hammer from Walker's in New York and presented it to plaintiff, a ten year old. Plaintiff was in Connecticut on a field trip when the hammer broke, resulting eventually in the loss of his eye. Suit was commenced in New York pursuant to a New York statute¹ providing for in personam jurisdiction of foreign corporations committing a tortious act within the state. Plaintiff sought damages for his injury alleging breach of warranty² and negligence. Defendant moved to vacate service of summons and complaint. The trial court granted the motion which was reversed by the Supreme Court, Appellate Division. *Singer v. Walker*, 21 App. Div. 2d 285, 250 N.Y.S. 2d 216 (1964).

The case was decided in accordance with the New York "single act" statute conferring jurisdiction over a foreign corporation where a tort is committed within the forum state. The issue resolves itself into a question of whether the resulting damage came within the meaning of the "tortious act" section of the statute. The underlying issue, however, is how far the "last event" doctrine may be extended—in other words, how important is the fact that the damage occurred in Connecticut rather than in New York where the action was brought? One further facet which merits discussion is the dangerous propensity of the hammer and to what extent it influenced the court's decision.

When the question of whether a court can exercise jurisdiction over a foreign defendant arises, the constitutional question of due process is often involved. Under the holding in *Pennoyer v. Neff*,³ physical control over the person of the defendant is necessary to satisfy due process. In order to liberalize this rule, the courts have resorted to the fictional theories of "consent,"⁴ "presence,"⁵ and "doing business."⁶ The Court, in *International*

¹ N.Y. CIV. PRAC. R. § 302(a) (2) (1963) which states: "A court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, as to a cause of action arising from any of the acts enumerated in this section, in the same manner as if he were a domiciliary of the state, if, in person or through an agent, he: . . . 2. commits a tortious act within the state . . ."

² It is interesting to note that although plaintiff brought the action alleging both negligence and breach of warranty, the court decided the issue of negligence but failed to render an opinion as to whether the New York court had jurisdiction on the breach of warranty. This is due to the fact that the New York "single act" statute makes no mention of breach of warranty but requires only that defendant either commit a tortious act in the state or that he transact business in the state. Since the court found that it had jurisdiction under the tortious act section, whether or not a breach of warranty had, in fact, been committed would have been purely academic and would have no additional import in conferring jurisdiction.

³ 95 U.S. 714, 731 (1877).

⁴ The consent thesis rests on the proposition that, since a foreign corporation could not carry on business within a state without the permission of that state, the state could impose as a condition of engaging in business within its borders a requirement that the corporation appoint an agent to receive service of process within the state. See *Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court of Wash-*

Shoe Co. v. Washington,⁷ attempted to do away with the existing confusion by holding that in order to obtain in personam jurisdiction over a defendant, it is necessary that the defendant have certain "minimum contacts" with the forum state. By virtue of the authority of their decisions, many states were quick to pass statutes generally enumerating the "minimum contacts" doctrine. These are referred to as the "single act" statutes.

Many of the recent decisions concerning a tortious act by a foreign defendant are based on interpretations of these so called "single act" statutes, which have placed within the hands of the courts a means whereby they can vastly extend their jurisdiction over foreign corporations. These statutes do not require proof of continuous activity—a single tortious act is sufficient. Some of these jurisdictions have a clause stating that a foreign corporation is subject to the court's jurisdiction on a cause of action arising out of tortious conduct in this state, "whether arising out of repeated activity or single acts."⁸ Other jurisdictions require "the commission of a tortious act within this state,"⁹ and still others declare that "if such foreign

ington, 289 U.S. 361 (1933); *Pennsylvania Fire Ins. Co. v. Gold Issue Mining and Milling Co.*, 243 U.S. 93 (1917); *Lafayette Ins. Co. v. French*, 59 U.S. (18 How.) 404 (1855).

⁵ The presence theory, unlike the consent doctrine, sustains jurisdiction against corporations on claims which do not arise out of business done within that state. See *People's Tobacco Co. v. American Tobacco Co.*, 246 U.S. 79 (1918); *Tauza v. Susquehanna Coal Co.*, 220 N.Y. 259, 115 N.E. 915 (1917); *Philadelphia & Reading Ry. v. McKibbin*, 243 U.S. 264, 265 (1917), where the court said, "A foreign corporation is amenable to process to enforce a personal liability, in the absence of consent, only if it is doing business within the state in such manner and to such extent as to warrant the inference that it is present there." See generally *McBaine, Jurisdiction Over Foreign Corporations: Actions Arising Out of Acts Done Within, the Forum*, 1946 CALIF. L. REV. 331 (1946).

⁶ The term "doing business" is often used to describe the legal conclusion that the corporate activities within a state are sufficient to subject the corporation to the jurisdiction of that state. Not all acts of a corporation amount to "doing business" in the legal sense, however, and in the policy matter of balancing the conflicting interests, the courts have developed various meanings for "doing business." An example can be found in *Green v. Chicago, Burlington & Quincy Ry.*, where a corporation whose agents within a state did no business other than solicit orders was not "doing business" in the state. 205 U.S. 530 (1907). See *International Harvester Co. v. Kentucky*, 234 U.S. 579 (1914); see also *Hutchinson v. Chase & Gilbert*, 45 F.2d 139 (C.A.2, 1930) where Judge Learned Hand stated that it was necessary to develop a reasonable test based on "some continuous dealings in the state of the forum; enough to demand trial away from its home."

⁷ 326 U.S. 310 (1945).

⁸ CONN. REV. GEN. STAT. § 33-411 (1962); N.C. GEN. STAT. § 55-145 (1960).

⁹ IDAHO CODE ANN. § 5-514 (Supp. 1963); ILL. REV. STAT. ch. 110 § 17 (1963); ME. REV. STAT. ch. 112 § 21 (Supp. 1963); MINN. STAT. ANN. § 303.13 (Supp. 1963); N.M. STAT. ANN. § 21-3-16 (Supp. 1963); N.Y. CIV. PRAC. R. § 302; WASH. REV. STAT. ANN. § 4.28.185 (1962); W.VA. CODE ANN. § 3080 (1961); WIS. STAT. ANN. § 262.05 (Supp. 1963).

corporation commits a tort in whole or in part, in [the state], against a resident of [the state], such act shall be deemed to be doing business in [the state]."¹⁰

There is general agreement that when a tort is committed wholly within the forum state, the requirements of due process are met.¹¹ The fact that the witnesses to the incident usually reside in the state and that the corporation enters the state voluntarily for financial gains explains this conformity of opinion.¹²

There is, however, a good deal more variation in decisions where the tort is committed partially within the state, such as a case in which a manufacturer, not licensed to do business within the forum, delivers a faulty product and a resident is thereby injured. The Minnesota¹³ and Illinois¹⁴ Supreme Courts have supported the "last event" doctrine by agreeing that "the place of wrong is in the state where the *last event* necessary to make an actor liable for an alleged tort takes place"¹⁵ and, therefore, the wrong was committed at least in part within the state where the injury occurred. However, a number of decisions have denied jurisdiction where the conduct occurred entirely outside the forum state even though the damage occurred within the court's jurisdiction.¹⁶

The facts in *Anderson v. Penncraft Tool Co.*¹⁷ are similar to those in

¹⁰ IOWA CODE ANN. § 617.3 (Supp. 1963); TEX. CIV. STAT. ANN. art. 3021b (Supp. 1960); VT. REV. STAT. tit. 12 § 855 (1959).

¹¹ *Hutchinson v. Boyd & Sons Press Sales, Inc.*, 188 F. Supp. 876 (D. Minn. 1960); *John v. Bay State Abrasive Prod. Co.*, 89 F. Supp. 654 (D. Md. 1950).

¹² See generally Note, 50 MICH. L. REV. 763 (1952).

¹³ *Ehlers v. U.S. Heating & Cooling Mfg. Corp.*, 124 N.W.2d 824 (Minn. 1963); *Atkins v. Jones & Laughlin Steel Corp.*, 258 Minn. 571, 104 N.W.2d 888 (1960).

¹⁴ *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961); *Nelson v. Miller*, 11 Ill. 2d 378, 143 N.E.2d 673 (1957).

¹⁵ RESTATEMENT, CONFLICT OF LAWS, § 377 (1958). *But see Mueller v. Steelcase, Inc.*, 172 F. Supp. 416 (D. Minn. 1959), where the court reached an opposite decision. The non-resident manufacturer sold a chair to a retailer in Minnesota who in turn sold it to the plaintiff. The faulty construction caused plaintiff's injury. The court held that the tort occurred where the chair was manufactured and, therefore, plaintiff couldn't obtain an in personam judgment. 172 F. Supp. 416 (D. Minn. 1959).

¹⁶ *Muraco v. Ferentino*, 42 Misc. 2d 104, 247 N.Y.S.2d 598 (1964); *Mueller v. Steelcase, Inc.*, 172 F. Supp. 416 (D. Minn. 1959); *Hardy v. Bankers Life and Casualty Co.*, 19 Ill. App. 2d 75, 153 N.E.2d 269 (1958); *Rensing v. Turner Aviation Corp.*, 166 F. Supp. 790 (N.D. Ill. 1958); *Putnam v. Triangle Publications*, 245 N.C. 432, 96 S.E.2d 445 (1957); *Hellriegel v. Sears Roebuck & Co.*, 157 F. Supp. 718 (N.D. Ill. 1957); *Johns v. Bay State Abrasive Prod. Co.*, 89 F. Supp. 654 (D. Md. 1950).

¹⁷ 200 F. Supp. 145 (N.D. Ill. 1961). *Accord*, *McMahon v. Boeing Airplane Co.*, 199 F. Supp. 908 (N.D. Ill. 1961); *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961); *Hutchinson v. Boyd & Sons Press Sales*,

the instant case. Plaintiff was injured by an instrumentality manufactured and sold outside the forum state by a company whose only contact with Illinois was the presence of the product at the occurrence of the accident. There, as here, defendant did no business in Illinois and had no agent physically present within the state. It was held that the state court had jurisdiction because the injury came within the meaning of the statute providing for jurisdiction over non-domiciliaries committing a tortious act within the state.¹⁸ The Illinois statute referred to is very similar to the New York statute in the instant case.¹⁹

A dissimilarity between *Singer v. Walker* and the *Anderson* case is the place where the injury occurred. In the *Anderson* case the damage occurred in the state where the action was brought, while in the instant case plaintiff purchased the hammer in the forum state but suffered injury in another state. The court disposes of this seemingly significant problem by declaring it to be unimportant.²⁰ The court has, by this decision, extended the meaning of the "last event" doctrine. Previous cases have involved only two states, one being the state of manufacture and the second the state where the article was purchased, where the damage occurred and where the suit was filed. In the instant case, however, three states were involved. The article was manufactured in Illinois, sold and the action brought in New York, and the damage occurred in Connecticut. Hence for the first time a tortious act was found to have been committed in the state where plaintiff purchased the article, in spite of the fact that the actual damage to plaintiff occurred in a third state.

The court goes one step further in stating that, "of paramount importance, no doubt, is the fact that an instrument dangerous to human life and health, if defective, is involved."²¹ As dictum the court implied that if this case had not involved a dangerous instrument there would be no liability

188 F. Supp. 876 (D. Minn. 1960); *Atkins v. Jones & Laughlin Steel Corp.*, 258 Minn. 571, 104 N.W.2d 888 (1960). *Smyth v. Twin State Improvement Corp.*, 116 Vt. 569, 80 A.2d 664, 25 A.L.R.2d 1193 (1955); See generally Note, 9 DE PAUL L. REV. 106 (1959). *Contra*, *Mann v. Equitable Co.*, 209 F. Supp. 571 (N.D.W.Va. 1962); *Moss v. City of Winston-Salem*, 254 N.C. 480, 119 S.E.2d 445 (1961); *Penzimas v. Eastern Metal Products Corp.*, 218 F. Supp. 524 (D. Minn. 1961).

¹⁸ ILL. REV. STAT. CH. 110 § 17 (1) (b) (1963).

¹⁹ N.Y. CIV. PRAC. R. § 302(a)2.

²⁰ ". . . the place or places to which the infant plaintiff took the hammer in his use of it is of less relevance. Thus, it happened that it was in Connecticut that the defective hammer broke under the strain to which it was subjected and caused the harm. It could just as well have been in New York or in any other place that this would have happened." 21 App. Div. 2d 285, 290, 250 N.Y.S.2d 216, 221 (1964).

²¹ *Singer v. Walker*, 21 App. Div. 2d 285, 292, 250 N.Y.S. 2d 216, 221 (1964).

under the "single act" statute in spite of the fact that a tort had been committed.

An era of rapid technological achievements has enabled corporations to extend the scope of their activities. It has also become increasingly less burdensome to defend actions in jurisdictions foreign to the corporation.²² The Supreme Court has applied a flexible standard of reasonableness and fair play to the requirements of due process, providing both latitude and limitation to the exercise of state court jurisdiction over foreign corporations.²³ The outermost limits of jurisdiction on the commission of a tortious act have not been clearly defined, but it is apparent that the application of "single act" statutes to impose jurisdiction over a foreign corporation on the basis of a single tort without prior business in the state satisfies due process.²⁴

The holding in the present case is an attempt by the New York court to extend its jurisdiction over a foreign corporation. While previous cases have upheld jurisdiction when the damage occurs in the state where the action is brought, in this case jurisdiction was allowed in spite of the fact that the damage occurred in another state. It remains to be seen whether or not other courts will uphold the decision that "the occurrence of the harm in Connecticut was incidental for jurisdictional purposes."²⁵

Harold Stotland

²² The doctrine of relative inconveniences has been applied in cases involving in personam jurisdiction over foreign corporations. See *Chovan v. E. I. Dupont De Nemours & Co.*, 217 F. Supp. 808 (E.D. Mich. 1963); *Dahlberg Co. v. American Sound Products, Inc.*, 179 F. Supp. 928 (D. Minn. 1959); *Johns v. Bay State Abrasive Prod. Co.*, 89 F. Supp. 654 (D. Md. 1950).

²³ 326 U.S. 310 (1945).

²⁴ *McMahon v. Boeing Airplane Co.*, 199 F. Supp. 908 (N.D. Ill. 1961); *Hutchinson v. Boyd & Sons Press Sales, Inc.*, 188 F. Supp. 876 (D. Minn. 1960).

²⁵ 21 App. Div. 2d 285, 286, 250 N.Y.S.2d 216, 218 (1964).

PATENTS—ORIGINALITY OF INVENTION—SUGGESTIONS TO INVENTORS

Polye, the junior party in an interference proceeding had isolated the cause of failure in a certain type of electric switch. Uhl, the senior party in interference, had discussed the problem with Polye and suggested the incorporation of a certain chemical compound into the switch to obviate the difficulty. Polye experimented with the idea of Uhl, reduced to practice the improved version, and filed a patent application. The Court of