

In Personam Jurisdiction in Illinois: A New Concept

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IN PERSONAM JURISDICTION IN ILLINOIS: A NEW CONCEPT

On January 1, 1956, the new Illinois Civil Practice Act will go into effect. Section 17 of this act which takes a large step forward in the modern trend to expand jurisdiction over nonresidents reads as follows:

ACTS SUBMITTING TO JURISDICTION—JUDGMENT IN PERSONAM

(1) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the Courts of this State as to any cause of action arising in this State from the doing of any of said acts.

(a) The transaction of any business within this State.

(b) The commission of a tortious act within this State.

(c) The ownership, use, or possession of any real estate situated in this State.

(d) The insuring of any person, property or risk located within this State, whether the policy is delivered by mail or otherwise.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the summons and a copy of the complaint upon the defendant outside this State, as provided in this Act, with the same force and effect as though summons had been personally served within this State.

(3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

(4) Nothing herein contained shall limit or affect the right to serve any process in any other manner now or hereafter provided by law.¹

There is no doubt that this section will bring about many controversies although it is in line with our modern concepts of jurisdiction.

In early common law the appearance of the defendant was essential and there would be no jurisdiction over the defendant unless he was within reach of the sheriff or voluntarily appeared.² Because of this fact, the early courts in determining the validity of foreign judgments in the local courts assumed that physical power over the defendant's person was a necessary prerequisite to the validity of the judgment.³

If a court renders a judgment over property or a person beyond its jurisdiction, the fundamental principles of the conflict of laws would be disregarded, and that decision would be reversed in the federal courts, for these principles are protected by two provisions of the United States Con-

¹ Ill. Rev. Stat. (1955) c. 110, § 17.

² 2 Holdsworth, *History of English Law* 105 (3d ed., 1923).

³ *Pennoyer v. Neff*, 95 U.S. 714 (1877).

stitution. A question involving Article IV, section 1, that full faith and credit shall be given in each state to the judicial proceedings of every other state, would arise when an action is brought on such a judgment in a state other than where the judgment was rendered.⁴ The enforcement of a judgment against a defendant over whom the court had no jurisdiction involves a violation of the due process clause of the Fourteenth Amendment.⁵ Supreme Court decisions on the question of jurisdiction over the defendant are binding upon the states because of these provisions.

Jurisdiction is based on control by the state.⁶ To render a judgment in rem or quasi in rem, the court must have control over the property. For a long time, it has been held that there must be control of some physical power over the person of the defendant, in order to get an in personam judgment. States are not allowed to give authority to their courts to reach beyond the state limits. To do this would be regarded as an impertinence by the other states. Mr. Justice Field said in the famous case of *Pennoyer v. Neff*:⁷

The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established. Any attempt to exercise authority beyond those limits would be deemed in every other forum, as has been said by this court, an illegitimate assumption of power, and be resisted as mere abuse.⁸

As to parties domiciled in another state, a state could not compel them to leave the state of their domicile to respond to proceedings brought against them or impose liabilities upon them because of their failure to appear. Of course, once a state has acquired jurisdiction over the person of the defendant, this jurisdiction continues throughout all stages of the action, although the defendant may in the meantime have left the state, acquired a domicile or citizenship elsewhere, or attempted to withdraw his consent.⁹

In an in personam action, it is immaterial whether or not the claim upon which a judgment was entered arose within the state or that the defendant had property in the state.¹⁰ Constructive service of process of any type was held insufficient, including personal service upon the nonresident de-

⁴ *Old Wayne Life Ass'n v. McDonough*, 204 U.S. 8 (1907); *Dull v. Blackman*, 169 U.S. 243 (1898).

⁵ *Simon v. Southern Ry. Co.*, 236 U.S. 115 (1915); *Dewey v. Des Moines*, 173 U.S. 193 (1899).

⁶ *McDonald v. Mabee*, 243 U.S. 90 (1917).

⁷ 95 U.S. 714 (1877).

⁸ *Ibid.*, at 720.

⁹ *Michigan Trust Co. v. Ferry*, 228 U.S. 346 (1913); *Nations v. Johnson*, 65 U.S. 195 (1860).

¹⁰ *De Arman v. Massey*, 151 Ala. 639, 44 So. 688 (1907); *Easterly v. Goodwin*, 35 Conn. 273 (1868).

fendant outside of the jurisdiction of the court.¹¹ In order to satisfy due process, not only actual notice and an opportunity to be heard must be given but the state also must have some power over the person of the defendant.

Control or power by the state to satisfy the in personam judgment arises in three basic ways: first, when the defendant is present within the state; second, when he has consented to the jurisdiction of the state; third, when he is a citizen or resident of the state.

Personal service can never be dispensed with in an in personam judgment unless there is a voluntary appearance by the defendant.¹² A personal judgment based on constructive service on a nonresident who does not appear or otherwise consent to a mode of service is opposed to due process, and is void in the state where rendered or elsewhere. This rule applies to any type of constructive or substituted service, whether service by publication,¹³ or by personal service out of the jurisdiction in which the judgment is rendered.¹⁴ As can be seen, the difficulty in obtaining jurisdiction over the person of a nonresident does not arise from the inability to give him notice, but from the principle that process from the tribunals of one state cannot run into another state and summon parties there domiciled to leave their territory and respond to proceedings against them.

Some of the earlier cases allowed a judgment in personam over a nonresident by constructive service to be valid within its own territory not recognizing the rule as a violation of due process.¹⁵ It has been uniformly regarded, after the case of *Pennoyer v. Neff*,¹⁶ that a personal judgment against a nonresident who was not served within the state, and who did not appear or consent, expressly or impliedly, to the mode of constructive or substituted service adopted, is invalid, even in the state where rendered.¹⁷

The doctrine laid down in the *Pennoyer* case was treated as authority

¹¹ *Wilson v. Seligman*, 144 U.S. 41 (1892); *Harkness v. Hyde*, 98 U.S. 476 (1878); *Denny v. Ashley*, 12 Colo. 165, 20 Pac. 331 (1889); *Rand v. Hanson*, 154 Mass. 87, 28 N.E. 6 (1891); *Scott v. Streepy*, 73 Tex. 547, 11 S.W. 532 (1889).

¹² *Knowles v. Logansport Gaslight & Coke Co.*, 86 U.S. 58 (1873); *Bank of China v. Morse*, 168 N.Y. 458, 61 N.E. 774 (1901).

¹³ *McDonald v. Mabee*, 243 U.S. 90 (1916); *Baker v. Baker*, 242 U.S. 394 (1916); *Griffin v. Cook County*, 369 Ill. 380, 16 N.E. 2d 906 (1938); *Nelson v. Chicago, B. & Q. R. Co.*, 225 Ill. 197, 80 N.E. 109 (1907).

¹⁴ *Riverside & Dan River Cotton Mills v. Menefee*, 237 U.S. 189 (1915); *Old Wayne Mut. Life Ass'n v. McDonough*, 204 U.S. 8 (1906); *Pennoyer v. Neff*, 95 U.S. 714 (1877).

¹⁵ *Galpin v. Page*, 85 U.S. 350 (1873); *Phelps v. Brewer*, 9 Cush. (Mass.) 390 (1852).

¹⁶ 95 U.S. 714 (1877).

¹⁷ *Minnesota Commercial Men's Ass'n v. Benn*, 261 U.S. 140 (1923); *Pennington v. Fourth Nat'l Bank*, 243 U.S. 269 (1917); *Cella Commission Co. v. Bohlinger*, 147 Fed. 419 (C.A. 8th, 1906).

on due process. Gradually there developed exceptions to this hard rule. Recently, in the case of *Tardiff v. Bank*,¹⁸ the court stated:

The landmark case of *Pennoyer v. Neff* . . . sets up the requirements of due process respecting the jurisdiction of a court to render a judgment in personam against a defendant. One of those requirements is service of process on the defendant within the state. The doctrine of *Pennoyer v. Neff*, however, though venerable and long-revered, is primarily of historical importance today. After suffering substantial erosion from a series of subsequent decisions, finally, in *International Shoe Co. v. State of Washington* . . . the Supreme Court gave it a decent burial and found that a due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."¹⁹

The new Section 17 of the Illinois Civil Practice Act is a growth of the doctrine set down in *International Shoe Co. v. Washington*.²⁰ The Act refers to any person, which includes individuals as well as corporations. Since the *International Shoe Co.* case decided the question of jurisdiction over the corporation, anything said about individuals is necessarily dictum. In the opinion, the discussion of jurisdiction over foreign corporations was introduced by references to jurisdiction over individuals. It was stated:

[N]ow that the *capias ad respondendum* has given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.²¹

The jurisdiction over the corporation was held not to be based upon consent, as was originally the basis for taking jurisdiction over nonresident corporations "doing business" within the state. The jurisdictional power over nonresident corporations because of "doing business" within the state has arisen on three theories. First, jurisdiction has been said to rest upon the theory of "implied" consent.²² This line of reasoning is undoubtedly sound enough in cases in which it is really possible to find evidence of a valid consent. In most cases, the implication of consent involves a fiction; but the corporation does not escape on that account. Because of the difficulty that arose where there was actually no real consent, a second theory was devised whereby corporations were made subject to a state's jurisdiction. The corporation was held to be present in the state wherever it did business, and because of such presence it was subject to the state's jurisdiction.²³ Even under the "presence" theory, one is in doubt whether

¹⁸ 127 F. Supp. 945 (E.D. La., 1954).

²⁰ 326 U.S. 310 (1945).

¹⁹ *Ibid.*, at 947.

²¹ *Ibid.*, at 316.

²² *Mutual Life Insurance Co. v. Spratley*, 172 U.S. 602 (1899); *Lafayette Insurance Co. v. French*, 18 How. (U.S.) 404 (1855).

²³ *Bank of America v. Whitney Cent. Nat. Bank*, 261 U.S. 171 (1923); *Rosenberg*

this explanation does not itself involve fiction in assuming corporate presence. The third theory, and perhaps the most satisfactory upon which to base a foreign corporation's liability to suit in the state where it is doing business, is the one used by Judge Learned Hand in *Smolik v. Philadelphia and Reading Coal & Iron Co.*,²⁴ and *Hutchinson v. Chase & Gilbert*.²⁵ Professor Scott, in discussing these decisions, stated:

If a foreign corporation voluntarily does business within the state it is bound by reasonable regulations of that business imposed by the state, not because it is found there, not because it has consented to those regulations, but because it is reasonable and just to subject the corporation to those regulations as though it had consented.²⁶

Under these theories, the corporation must be "doing business" within the state before it could be subjected to the state's jurisdiction. As to what is "doing business," the policy of the state, as to how much activity is necessary to be considered as "doing business," is the important factor. The *International Shoe Co.* case has changed the "doing business" concept to one of the "doing of an act." Jurisdiction in personam was constitutionally acquired because its operation had established "sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice."²⁷ This new test of reasonableness and justice involves a balancing of conflicting interests in the same way *forum non conveniens* is applied.

Because of the doctrine of the *International Shoe Co.* case, the acts listed under the new Section 17 of the Illinois Civil Practice Act would be sufficient to submit a corporation to jurisdiction. The new section applies to any person, including individuals as well as corporations. Jurisdiction over nonresident individuals, it is said, cannot be based on the same theory as corporations because of the privileges and immunities clause of the United States Constitution which forbids a state from denying nonresidents the rights and privileges of its own citizens. The new Section 17 submits "Any person, whether or not a citizen or resident of this state," which would seem to mean that nonresident individuals are not to be discriminated against, for both residents and nonresidents are subject to the same rule as to jurisdiction by the doing of the acts specified.

It has been previously stated, that in order for a state to get jurisdiction over an individual, he must be physically present within the state, domiciled within the state, or he must have consented to the jurisdiction.²⁸

Bros. & Co. v. Curtis Brown Co., 260 U.S. 516 (1923); *Philadelphia & R.R. Co. v. McKibbin*, 243 U.S. 264 (1917).

²⁴ 222 Fed. 148 (S.D.N.Y., 1915).

²⁵ 45 F. 2d 139 (C.A. 2d, 1930).

²⁶ Scott, *Jurisdiction over Nonresidents Doing Business Within a State*, 32 Harv. L. Rev. 871, 883 (1919).

²⁷ 326 U.S. 310, 320 (1945).

²⁸ See Goodrich, *Conflict of Law* § 73 (1949).

Consent in this sense pertained to an appearance²⁹ by the defendant or by his consent in advance such as the common judgment note.³⁰

Jurisdiction over individuals is also based on the doing of certain acts by the individual within the state. The common law would never allow jurisdiction because a person committed a tort³¹ or made a contract³² within the state.

It can be easily seen that a corporation or other legal entity can be forced to consent to the court's jurisdiction or the state would forbid the corporation from doing business within the state. A question arises as to whether a nonresident individual, as distinguished from a foreign corporation or other legal entity, in doing business within the state, creates any exception to the principle of constitutional law that a nonresident cannot be subjected to a judgment in personam by form of service of process other than personal service within the state, voluntary appearance or other forms of consent.

The early decisions held that a statute providing for services of process other than personal in an action against a nonresident doing business in the state, without seizure of his property within the state, is unconstitutional and void.³³ The courts held that such nonresident persons, unlike a corporation, carry on business in the state not by virtue of consent, but by virtue of the Federal Constitution which guarantees to the citizens of each state all privileges and immunities of citizens of the several states; hence, it cannot be implied from the fact that a person does business within the state that he consents to submit himself to the jurisdiction of its courts in personal action on service of process upon his agents.³⁴

The United States Supreme Court ruled that a state statute permitting the service of process on any agent or clerk employed in an office or agency maintained in the state by a nonresident, in all actions growing out of or connected with the business of that office or agency, does not abridge the privileges and immunities or equal protection clauses of the Federal Constitution.³⁵ The statutes requiring one who does business within the state to consent to service of process upon an agent in actions

²⁹ *National Coal Co. v. Cincinnati Gas, Coke, Coal & Mining Co.*, 168 Mich. 195, 131 N.W. 580 (1911).

³⁰ *Hamilton v. Schoenberger*, 47 Iowa 385 (1877).

³¹ *Sirdar Gurdial Singh v. The Rajah of Faridkote*, [1894] A.C. 670.

³² *Emanuel v. Symon*, [1908] 1 K.B. 302 (C.A.).

³³ *Flexner v. Farson*, 248 U.S. 289 (1919); *Hensley v. Green*, 36 F. Supp. 671 (W.D.S.C., 1940); *Cabanne v. Graf*, 87 Minn. 510, 92 N.W. 461 (1902).

³⁴ *Hensley v. Green*, 36 F. Supp. 671 (W.D.S.C., 1940); *Cabanne v. Graf*, 87 Minn. 510, 92 N.W. 461 (1902).

³⁵ *Doherty & Co. v. Goodman*, 294 U.S. 623 (1935).

arising out of that business are said to fall within the police power of the state.³⁶

Provisions for substituted service of process on a nonresident motorist while operating the automobile within the state are deemed constitutional.³⁷ In the case of *Kane v. New Jersey*,³⁸ as a condition to the use of the highways of the state, the actual appointment of a state official as the agent of the nonresident motorist was required. Also, it has been said that the using of the highway by the nonresident motorist was deemed the equivalent of actual appointment of such an official to accept service of process for the nonresident.³⁹

The validity of the nonresident motorist statute is based on the theory that these statutes are valid exercises of the state's police power. The operation of motor vehicles is said to be fraught with danger and economic harm to the general public and therefore the state has the right under its police power to require the submission of a nonresident to substitute service of process when the nonresident uses the highway.

The police power of the state has been held to extend to make valid statutes which give the state jurisdiction over the sellers of corporate securities⁴⁰ and also over persons who insure a resident of the state or an interest in property within the state.⁴¹ Illinois has a nonresident motorist statute⁴² and a provision in the Illinois Insurance Code which permits an Illinois purchaser of insurance to obtain good service against nonresident defendant vendors.⁴³

Section 10 of the Illinois Securities Law of 1953 provides:

. . . The sale or delivery of securities in Illinois whether effected by mail or otherwise, by any person . . . shall be equivalent to and shall constitute an appointment by such person of the Secretary of State of Illinois, or his successors in office, to be the true and lawful attorney for such person upon whom may be served all lawful process in any action or proceeding against such person, arising out of the sale of such securities.⁴⁴

³⁶ See Scott, *Jurisdiction over Nonresidents Doing Business Within a State*, 32 Harv. L. Rev. 871 (1919). As to what constitutes "doing business" see: *Kaffenberger v. Kremer*, 63 F. Supp. 924 (E.D. Pa., 1945); *Tennessee Publishing Co. v. C. L. Walker & Co.*, 205 Ky. 420, 265 S.W. 941 (1924); *Melvin Pine & Co. v. McConnell*, 298 N.Y. 27, 80 N.E. 2d 137 (1948); *Miller v. Swann*, 176 Misc. 607, 28 N.Y.S. 2d 247 (N.Y. City Ct., 1941).

³⁷ *Wuchter v. Pizzutti*, 276 U.S. 13 (1928); *Hess v. Pawloski*, 274 U.S. 352 (1927); *Davidson v. Doherty & Co.*, 214 Iowa 739, 241 N.W. 700 (1932).

³⁸ 242 U.S. 160 (1916).

³⁹ *Hess v. Pawloski*, 274 U.S. 352 (1927).

⁴⁰ *Doherty & Co. v. Goodman*, 294 U.S. 623 (1935).

⁴¹ *Dubin v. City of Philadelphia*, 34 Pa. D. & C. 61 (1938).

⁴² Ill. Rev. Stat. (1955) c. 94½ § 23.

⁴³ Ill. Rev. Stat. (1955) c. 73, § 724.

⁴⁴ Ill. Rev. Stat. (1955) c. 121½ § 137.10.

Statutes of this nature all have been held constitutional under the theory that they are a valid exercise of a state's police power in protecting its own citizens. The Restatement of the Law of Conflict of Laws states:

A court by proper service of process may acquire jurisdiction over an individual not domiciled within the state who does acts or owns things in a state which are of a sort dangerous to life or property, as to causes of action arising out of such acts or such ownership, if a statute of the state so provides at the time when the cause of action arises.⁴⁵

The Restatement goes further and states that a nonresident individual who does business within the state is subject to jurisdiction of the state for causes of action arising out of business done within the state if a statute so provides.⁴⁶ These two sections cover the theory that individual nonresidents can be subject to suit within the state because of acts they have done within the state. The driving of an automobile is dangerous to life and property, therefore nonresident motorists are subject to suit.

In *Doherty & Co. v. Goodman*,⁴⁷ Mr. Justice McReynolds stated: "Iowa treats the business of dealing in corporate securities as exceptional and subjects it to special regulation."⁴⁸ Both the sale of securities and the operation of motor vehicles are dangerous to the general public, and for that reason it has been held that special regulation by a state can subject a nonresident doer of those acts to in personam jurisdiction. The courts, by holding such acts to create jurisdiction for suits arising therefrom in the state where the acts are committed, are merely affording a further protection to the injured. The idea that a state cannot acquire jurisdiction over a nonresident unless it is for acts done by the nonresident that are dangerous to life or property or where the state feels that these specific acts are exceptional and require special legislation as in the *Doherty & Co.* case, is one that could be inferred to cover almost any type of suit. The injuries done to a person or to property are the basis for most of our legal actions, such as tort and contract. Because a nonresident drives a motor vehicle on Illinois highways he is subject to suit.⁴⁹ The nonresident vendor of securities⁵⁰ and the nonresident insurer⁵¹ are subject to the jurisdiction of the Illinois courts by proper legislation. Why cannot the same rules be applied to any acts of a nonresident which may create a lawsuit when the legislature specifies such acts? There is no logical reason why this cannot be so.

Other states have statutes similar to Section 17 of the Illinois Civil

⁴⁵ Rest., Conflict of Laws § 84 (Supp., 1948).

⁴⁶ *Ibid.* § 85.

⁴⁸ *Ibid.*, at 627.

⁴⁷ 294 U.S. 623 (1935).

⁴⁹ Ill. Rev. Stat. (1955) c. 95½, § 23.

⁵⁰ Ill. Rev. Stat. (1955) c. 121½, §§ 137.8 and 137.10.

⁵¹ Ill. Rev. Stat. (1955) c. 73, § 724.

Practice Act which have been upheld. In the case of *Compañia De Astral, S.A. v. Boston Metals Co.*,⁵² in determining the validity of a Maryland statute that subjected any person to its jurisdiction in any cause of action arising out of a contract made within the state or liability incurred for acts done within the state, the court stated:

The nonresident motorist cases have shattered any argument to the effect that a single transaction by a nonresident may not be made the basis for amenability to suit in the state where the transaction occurred. The Doherty & Co. case has rendered untenable any contention that a contract made within a state cannot serve as the basis for a suit in that state against a nonresident party to the contract.⁵³

When Vermont was considering its statute subjecting a nonresident to its jurisdiction for making a contract with a resident of Vermont to be performed in Vermont or committing a tort in whole or in part in Vermont against the resident of Vermont, the court held the statute constitutional.⁵⁴

It may be said that the doctrine of *forum non conveniens* is applicable in balancing the respective interest of the local plaintiff and the nonresident defendant.⁵⁵ With regard to contacts or ties inside the state, most of the witnesses are within the state and the law of the local state should govern the acts of the nonresident when done within the state. Besides the desire the state has to see that justice is done to its own residents, the state may also contend that its courts are in a better position than those of any other state to arrive at a correct decision in the case, since the law to be applied is the local law of which its courts alone have judicial notice, and the facts are local facts, which means that the witnesses will probably be more readily available in the local state than elsewhere.

There is no real injustice to the nonresident defendant if he causes or engages in acts within the state to cause him to submit to the jurisdiction of the state courts for injuries he has caused. The English courts have made rules for the assumption of jurisdiction over absent nonresidents in substantially all cases where the cause of action arose in England.⁵⁶

The case of *Flexner v. Farson*,⁵⁷ which once blocked the assertion of jurisdiction over a nonresident individual not present within the state, has long been distinguished.⁵⁸ The fact that a state does not have the power to

⁵² 205 Md. 237, 107 A. 2d 357 (1954), cert. denied 348 U.S. 943 (1955).

⁵³ *Ibid.*, at 366.

⁵⁴ *Smyth v. Twin State Improvement Corp.*, 116 Vt. 569, 80 A. 2d 664 (1951).

⁵⁵ *Compañia De Astral, S.A. v. Boston Metals Co.*, 205 Md. 237, 107 A. 2d 357 (1954), cert. denied 348 U.S. 943 (1955).

⁵⁶ See Rules of Court 1883 Order XI, v. 1 and amendments.

⁵⁷ 248 U.S. 289 (1919).

⁵⁸ Scott, *Jurisdiction over Nonresidents Doing Business Within a State*, 32 Harv. L. Rev. 871, 890-91 (1919).

exclude a nonresident individual because of the privileges and immunities clause is of no consequence, for the power of a state to exclude a corporation from intrastate business no longer has any bearing on jurisdiction over a foreign corporation in the absence of express consent, the doctrine of "implied consent" being dead.⁵⁹

It is reasonable to expect that a statute, providing for proper service of process on nonresident individuals who do the acts specified in the statute within the state and for jurisdiction over the nonresidents with respect to causes of action arising out of those activities, would be found constitutional. In the case of *Gillioz v. Kincannon*⁶⁰ the Arkansas Supreme Court relied on the *International Shoe Co.* decision and held that the statute⁶¹ did not violate any constitutional right of the nonresident individual defendant.

In speaking of their statute, the court said:

It does not violate the due process clause since it requires a legal basis for jurisdiction, that is the nonresident, defendant, must have done some business, work or service within the State. It does no violence to the privileges and immunities clause because it does not discriminate between nonresidents but places them upon the same basis as residents.⁶²

Although the *International Shoe Co.* case involved jurisdiction over a nonresident corporation, the doctrine is being applied to nonresident individuals.⁶³ In the light of all of these cases, the acts which submit a nonresident individual as well as a corporation to the Illinois jurisdiction under Section 17 of the new Civil Practice Act appear to be sufficient to acquire jurisdiction and appear to be constitutional.

Part two of Section 17 allows service of process outside of Illinois on the nonresidents who have submitted to the court's jurisdiction for causes of actions arising out of the acts they have done inside the state. This substituted service will have the same force and effect as personal service within the state. In *Milliken v. Meyer*,⁶⁴ a resident of Wyoming was served outside the state under a state statute providing for such service on residents of the state who cannot be found within the state.⁶⁵ The service

⁵⁹ For the death of the doctrine of "implied consent" see the opinion of Judge L. Hand in *Smolik v. Philadelphia & Reading Coal and Iron Co.*, 222 Fed. 148 (S.D.N.Y., 1915); Beale, *Conflict of Laws* § 89.7 (1935); Henderson, *The Position of Foreign Corporations in American Constitutional Law* 87-96 (1918).

⁶⁰ 213 Ark. 1010, 214 S.W. 2d 212 (1948).

⁶¹ Ark. Acts (1947) No. 347.

⁶² *Gillioz v. Kincannon*, 213 Ark. 1010, 214 S.W. 2d 212, 216 (1948).

⁶³ *Ritholz v. Dodge*, 210 Ark. 404, 196 S.W. 2d 479 (1946); *Wein v. Crockett*, 113 Utah 301, 195 P. 2d 222 (1948); *Interchemical Corporation v. Mirabelli*, 260 App. Div. 224, 54 N.Y.S. 2d 522 (1st Dep't, 1945).

⁶⁴ 311 U.S. 457 (1940).

⁶⁵ Wyo. Comp. Stat. (1920) §§ 5636 and 5641.

outside the state was held sufficient notice to satisfy the due process clause of the Constitution. The court said: "Enjoyment of the privileges of residence within the state and the attendant right to invoke the protection of its laws, are inseparable. . ." ⁶⁶ from the various incidences of state citizenship.

Why cannot it be said that the enjoyment of the privilege to make contracts and do other acts within the state with the right to invoke the protection of the state laws be, as in relation to domicile, the reciprocal right of the State to cause submission to its jurisdiction for actions arising out of these specific acts enumerated in the statute? All the Constitution requires as to service is that it gives "reasonable assurance that the notice will be actual."⁶⁷ The sending of notice by ordinary mail by the Secretary of State after substituted service upon him has been held sufficient.⁶⁸ What would be better notice than service of the summons personally on the defendant?

The struggle by the states to acquire jurisdiction over nonresidents is finally nearing its goal. It seems only fair that a nonresident should be personally liable in the state where he has created the injury. The state where the action arose could try the case better because of its courts having judicial notice of their own laws, and also because the witnesses and evidence in the case would most certainly be in the local state. Section 17 of the Illinois Practice Act is most welcomed as in line with the gradual development of jurisdictional concepts.

⁶⁶ 311 U.S. 457, 463 (1940).

⁶⁷ *International Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945).

⁶⁸ *Wagenberg v. Charleston Wood Products*, 122 F. Supp. 745 (E.D.S.C., 1954).

ADMISSIBILITY OF ILLEGALLY OBTAINED EVIDENCE

Evidence used in convicting the defendant of violating the California gambling laws had been obtained by the concealment of listening devices on defendant's premises and by numerous forcible entries and seizures without warrants. In reversing his convictions, the California Supreme Court, in *People v. Caham*,¹ declared that the evidence used in convicting the defendant was seized in violation of both the California and U.S. constitutional provisions regarding search and seizure, and that such illegally obtained evidence should not have been entertained. The court expressly overruled its previous decisions (of some thirty-five years) about admission of evidence secured through an unlawful search and seizure,² laying emphasis on the fact that its new rule is not founded upon constitutional

¹ 282 P. 2d 905 (Cal., 1955).

² *People v. Mayen*, 188 Cal. 237, 205 Pac. 435 (1922); *People v. Le Doux*, 155 Cal. 335, 102 Pac. 517 (1909); and "the cases based thereon."