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In Personam Jurisdiction in Attorney's Suit for Fees

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in Illinois and had communicated there with plaintiff's employees. The court held that "either the making of the alleged contract itself, or the activity in furtherance of it, while defendant was physically present . . . is the business shown to have been transacted by defendant within Illinois. . . . " [47] Since section 302 was modeled on Section 17 of the Illinois Civil Practice Act, the case has direct bearing on the former.

In an action for breach of warranty, a foreign corporation was held subject to in personam jurisdiction under section 302(a)(1).[48] The defendant had contracted to sell two machines to plaintiff. The initial agreement stipulated that the contract was made in New York and that New York law governed the transaction. The defendant was not doing business in New York and the machines were delivered f.o.b. Chicago. The court, in sustaining jurisdiction, found it unnecessary to rely on the recital that the contract was made in New York because the pleaded cause of action (breach of warranty) arose out of the transaction of business in New York. Aside from extensive negotiations in New York, the participation of defendant in the installation and testing of the machines required officials and employees of defendant to be present here. The court held that the constitutional requirements of due process were satisfied "because defendant's contacts with New York were so many and so directly physical."[49]

It is important to note that in both *Iroquois* and *Longines* the court laid great stress on the fact that the activities within the state involved the physical presence of defendant or his agents. Absent these physical activities, the courts might not have upheld jurisdiction; in *Hanson v. Denckla*,[50] it was stated that there must be "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." [51] But if the contract *was made* in New York, that fact in itself might be sufficient. In the cited cases, the courts had more to rely on and did not have to reach that question.

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The fact of defendant's officer's physical presence in New York was deemed significant in *Lewis v. American Archives Ass'n.*[52] A written contract of employment had been executed in New

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[47] *Id.* at —, 186 N.E.2d at 79.
[48] Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., 21 App. Div. 2d 474, 251 N.Y.S.2d 740 (1st Dep't 1964).
[49] *Id.* at 478, 251 N.Y.S.2d at 744.
[50] 357 U.S. 235 (1958).
[51] *Id.* at 253.
[52] 43 Misc. 2d 721, 252 N.Y.S.2d 217 (Sup. Ct. 1964).

York by plaintiff, a New York attorney, and defendant, through its vice-president. Plaintiff had conducted examinations within the state as required by the contract, and on at least one occasion defendant's vice-president entered New York for purposes having a direct relation to plaintiff's employment. The court, holding that there was sufficient contact by defendant with this jurisdiction, stated: "it was the intention of the legislature to make non-domiciliary defendants more accessible to the jurisdiction of our courts, thus affording greater protection to the residents of this state." [53]

A case analogous to *Lewis* is *Orton v. Woods Oil & Gas Co.*,[54] where it was held in a suit for attorney's fees that defendant had *not* transacted business under Section 17 of the Illinois Civil Practice Act. In that case, plaintiffs, a lawyer and an engineer, were hired by one Woods to assist him in the incorporation of his business. Although plaintiffs performed most of their services in Illinois, there was no evidence that any officer or employee of defendant had ever been physically present in Illinois. The court held that "the performance of the professional services by plaintiffs in Illinois . . . standing alone are insufficient to bring defendant within any reasonable construction of the act [Illinois Civil Practice Act Section 17] in question." [55] While the New York *Lewis* case and the Illinois *Orton* case are factually distinguishable, New York might well have sustained jurisdiction on *Orton's* facts. Due process and CPLR 302 would appear to allow it. When *X* hires *Y* to perform services in New York, it is not unjust to make *X* answer in a New York court for the value of those services.

In *Orton* there was apparently no contract of employment made in Illinois between plaintiffs and defendant; nor had there ever been any physical activity in Illinois by defendant through its officers or employees. But the very services rendered by the *plaintiffs* in Illinois, at the instance of defendant, were in furtherance of, and therefore reasonably characterized as a transaction of, the defendant's business. The agents through whom defendant transacted the business were the plaintiffs themselves; but CPLR 302 has no objection to that. In fact, the purpose of section 302 would appear to be frustrated if someone performing services in New York for and at the request of *X* were compelled to seek compensation for these services elsewhere.

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[53] *Id.* at 722, 252 N.Y.S.2d at 219.
[54] 249 F.2d 198 (7th Cir. 1957).
[55] *Id.* at 202.