Foreign Corporation--Jurisdiction Based on Single Tort (Smyth v. Twin State Improvement Corp., 80 A.2d 664 (Vt. 1951))

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the effectiveness of the agreement until the decree was awarded, it
is submitted that the parties probably did not intend the same act
which gave life to the agreement to result also in its death.

FOREIGN CORPORATION—JURISDICTION BASED ON SINGLE TORT.
— A Massachusetts corporation negligently caused damage to the
plaintiff's house in Vermont while repairing the roof. The plaintiff
instituted an action against the corporation in Vermont by serving
process on the secretary of state. Such service was made pursuant
to a statute of that state which subjected to its jurisdiction a foreign
corporation which committed a tort within its borders. The defend-
ant appeared specially and moved to dismiss the complaint on the
ground that the statute was unconstitutional as a violation of due
process in that it made the commission of an isolated act a basis of
in personam jurisdiction. Held, motion denied. A state has the
power to subject to the jurisdiction of its courts by statute a foreign
corporation which commits a tort within its borders. Smyth v. Twin
State Improvement Corp., 80 A. 2d 664 (Vt. 1951).

The rudiments of due process require that a court, in order to
render an in personam judgment, must have jurisdiction over the
person of the defendant. If such jurisdiction is lacking, the judg-
ment is void.2

Traditional concepts of due process permit jurisdiction to be
based on presence,3 consent,4 or submission to the jurisdiction.5 The
presence of an individual defendant presents no difficulties since he
has an actual physical existence in the jurisdiction. However, a cor-
poration, being a creature of the law, presents a problem in that it is
deemed to have no existence outside the jurisdiction which gave it
life.6 Notwithstanding this concept of limited existence, a corpora-
tion is permitted to carry on its business in other jurisdictions through
agents.7 As a consequence, the corporation enters into a series of

1 Vt. STAT. § 1562 (1947): "If a foreign corporation makes a contract
with a resident of Vermont to be performed in whole or in part by either party
in Vermont, or if such foreign corporation commits a tort in whole or in part
in Vermont against a resident of Vermont, such acts shall be deemed to be
doing business in Vermont . . . and shall be equivalent to the appointment by
such foreign corporation of the secretary of the state . . . to be its true and
lawful attorney upon whom may be served all lawful process in any actions
. . . arising from or growing out of such contract or tort."
4 Morris & Co. v. Skandinavia Ins. Co., 81 F. 2d 346 (7th Cir. 1936).
1934).
6 See Waters-Pierce Oil Co. v. Texas, 177 U. S. 28 (1900).
jural relations therein. This result necessarily demands that these
other jurisdictions have some means of enforcing the legal obliga-
tions of such foreign corporation.

In the absence of consent or submission, jurisdiction of the court
must be based on the "presence" of the corporation within the state.
Since, as has been previously indicated, a corporation has no existence
outside the confines of the state which gave it birth, the courts have
based a finding of "presence" on the nature and extent of business
conducted by the corporation within their jurisdiction.\(^8\) Thus, the
question developed whether the corporation was "doing business" in
such a way as to result in its submission to jurisdiction. Generally,
the courts have required that the transaction of business be of a con-
tinuous and systematic nature.\(^9\) A determination of whether a for-
eign corporation is so engaged depends upon the facts and circum-
stances of each case. However, it is clear that single, isolated, and
occasional acts or business transactions are not sufficient to subject
a corporation to jurisdiction.\(^10\)

This has been the traditional view. Presumably the case of
*International Shoe Co. v. Washington*\(^11\) announced a more liberal
rule; whether the operation of the corporation "... established suf-
icient contacts or ties with the state of the forum to make it rea-
sonable and just, according to our traditional conception of fair play
and substantial justice, to permit the state to enforce the obligations
which the appellant [foreign corporation] has incurred there."\(^12\)
The pronouncement of this rule made the basis of *in personam* jur-
sidiction a mere balance of equities. In the instant case, the court
relying on this expression of a rule, found, not unnaturally, that the
equities favored its own resident and assumed jurisdiction.

That the court extended the rule beyond its natural bounds may
be seen from an evaluation of the facts in the *International Shoe Co.*
case. There, it was specifically found that the defendant had been
doing a systematic business in the State of Washington. This being
so, it can hardly be argued that the decision intended a revolutionary
change in the established rule, its words to the contrary notwith-
standing. Further, the question in that case involved the right of a
state to tax. Words spoken with reference to the favored status of
a sovereign should not be stretched so as to encompass situations in-
volving only private individuals.

With these facts in mind, it may be said that the court in the
instant case adopted too enthusiastically the words of the *Interna-
tional Shoe Co.* case. Although concepts of jurisdiction have become
more lenient, it does not seem likely that the Supreme Court speaking

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\(^8\) Banow Steamship Co. v. Kane, 170 U. S. 100 (1897).
\(^10\) Ibid.
\(^11\) 326 U. S. 310 (1945).
\(^12\) Id. at 320.
with reference to the fact situation in the International Shoe Co. case, said anything that would justify the basing of jurisdiction on a single act, be it contractual or tortious in nature.\(^3\)

A practical criterion also will establish that the court in the instant case overextended the rule to protect its residents. By predicting jurisdiction on a single tortious act, an interesting anomaly develops. Initially the court assumes jurisdiction over the defendant because he has been charged with a tort. Upon litigation of the facts it may appear that no tort had been committed. Thus, the court after having caused the parties to litigate the facts before it, must admit that it had no jurisdiction in the first place. The result is tantamount to basing jurisdiction on the allegations contained in the plaintiff's complaint.

It is submitted that the instant case in basing jurisdiction on the commission of a single tort has made too deep an inroad on the traditional concept of jurisdiction. It erred in applying the rule of the International Shoe Co. case to a situation never contemplated by the Court in that decision.

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NEGOTIABLE INSTRUMENTS — CONVERSION — FORGED ENDORSEMENT.—On February 1, 1946, a firm of stockbrokers drew its check on defendant bank as drawee payable to plaintiff. One Savitt, to whom the check was entrusted for delivery, presented the check at defendant bank and received payment for it upon the forged indorsement of plaintiff. The check was never certified by the defendant. Plaintiff, alleging she received no notice of the forgery until 1949, made demand and brought an action against the bank. Special Term granted defendant's motion to dismiss. Held, affirmed. As to the first cause of action,\(^1\) it is clear that plaintiff would have been entitled

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\(^3\) Other statutes which subject to jurisdiction a person doing a single act are distinguishable from the statute in the instant case. For instance, a statute which subjected to jurisdiction a non-resident motorist whose use of the state's highways resulted in the commission of a tort was upheld in Hess v. Pawloski, 274 U. S. 352 (1927). But, in that case the statute, directed against a specific inherently dangerous type of conduct, ultimately based "jurisdiction" on the consent of the non-resident which was implied from his voluntary use of the highways. In the instant case the statute, directed against generally undefined conduct, purports to base jurisdiction on "presence" by making a tort tantamount to doing business within the state.

\(^1\) In the same complaint, plaintiff alleged a second cause of action based on a check drawn on the Security Trust Company, and also cashed by Savitt at the defendant bank. The court affirmed the action of Special Term in denying defendant's motion to dismiss.

In relation to the second check, the defendant was a collecting bank. The liability of a collecting bank which pays a check on a forged indorsement is beyond the scope of this article.