

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.¹ The defendant 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 judgment 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 corporation, 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 corporation 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."

² *Pennoyer v. Neff*, 95 U. S. 714 (1887).

³ *International Shoe Co. v. Washington*, 326 U. S. 310 (1945).

⁴ *Morris & Co. v. Skandinavia Ins. Co.*, 81 F. 2d 346 (7th Cir. 1936).

⁵ *Simons v. Inecto, Inc.*, 242 App. Div. 275, 275 N. Y. Supp. 510 (3d Dep't 1934).

⁶ See *Waters-Pierce Oil Co. v. Texas*, 177 U. S. 28 (1900).

⁷ See *Bank of Augusta v. Earle*, 13 Pet. 519 (U. S. 1839).

jural relations therein. This result necessarily demands that these other jurisdictions have some means of enforcing the legal obligations 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 continuous and systematic nature.⁹ A determination of whether a foreign corporation is so engaged depends upon the facts and circumstances 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 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, 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* jurisdiction 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 notwithstanding. 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 involving 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 *International Shoe Co.* case. Although concepts of jurisdiction have become more lenient, it does not seem likely that the Supreme Court speaking

⁸ *Banow Steamship Co. v. Kane*, 170 U. S. 100 (1897).

⁹ *Rosenberg Bros. v. Curtis Brown Co.*, 260 U. S. 516 (1923).

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.¹³

A practical criterion also will establish that the court in the instant case overextended the rule to protect its residents. By predicated 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.



NEGOTIABLE INSTRUMENTS — CONVERSION — FORGED INDORSEMENT.—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

¹³ 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.