Personal Jurisdiction in Minnesota over Absent Defendants

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NOTE

PERSONAL JURISDICTION IN MINNESOTA OVER ABSENT DEFENDANTS

Since the beginning of this century the power of a state to render an in personam judgment against an absent defendant has been continually expanded. As modern methods of transportation and communication have broken down geographical barriers, the courts and legislatures have gradually broken down state jurisdictional barriers.

The most recent development has been the enactment of so-called isolated or single act statutes in several states. In 1957, Minnesota became the sixth state to enact a statute of this type. Under the Minnesota act, a personal judgment may be entered against a foreign corporation in either a tort or contract action when the corporation's only contact with the state was a single transaction or occurrence. This statute makes a considerable change in the "minimum contacts" required before a court may assert jurisdiction. Further, it changes the method of service by authorizing process to be served on the Secretary of State in an action against any foreign corporation. Previously, if a corporation had not qualified to "do business" in Minnesota, it was necessary to locate an agent of the corporation within the state in order to serve process. In view of these two changes, the statute is certain to have an important effect on Minnesota practice.

The United States Supreme Court has never directly passed on the constitutionality of such a statute and, therefore, the primary emphasis of this Note will be on the constitutional questions involved. Although the Minnesota isolated act statute applies only to corporations, many of the problems raised are equally applicable to partnerships and individuals. Thus, the question of whether a statute covering these two classifications would be constitutional and if so, whether such a statute would be desirable, will also be considered.


2. See Minn. Stat. Ann. § 543.08 (1949); Minn. R. Civ. P. 4.03(c); Wright, Minnesota Rules 22-23 (1954).
I. FOREIGN CORPORATIONS

The Minnesota single act statute provides:

If a foreign corporation makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if such foreign corporation commits a tort in whole or in part in Minnesota against a resident of Minnesota, such acts shall be deemed to be doing business in Minnesota by the foreign corporation and shall be deemed equivalent to the appointment by the foreign corporation of the secretary of the State of Minnesota . . . to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings against the foreign corporation arising from or growing out of such contract or tort. 3

This statute presents two constitutional questions of due process under the fourteenth amendment of the United States Constitution. The first is whether a state has the power to render a valid judgment and the second is whether the provisions for notice to the defendant are adequate. The former is by far the most complex and consequently will receive the most attention.

A. DEVELOPMENT OF THE LAW PRIOR TO INTERNATIONAL SHOE

A fundamental change in the basis upon which a state court may assert jurisdiction was made in 1945 by the decision of the United State Supreme Court in International Shoe Co. v. Washington. 4 Because of this change only a brief summary of the development of the law prior to that case will be given. 5

At common law a personal judgment against a foreign corporation could not be rendered unless the corporation voluntarily submitted to the jurisdiction of the court. 6 As corporate activity increased, this rule became unworkable and the theory was developed that a state had the power to require a foreign corporation doing business within the state to appoint an agent upon whom service of process could be made. 7 The rationale on which this theory was based was that since a state could forbid a corporation from doing business within its boundaries, 8 it had the power to require the

3. Minn. Stat. Ann. § 303.13(3) (Supp. 1957). The statute also makes provision for giving notice of the action to defendant. This problem will be discussed later in the text.


5. For a detailed discussion of this subject see Foster, Personal Jurisdiction Based on Local Causes of Action, 1956 Wis. L. Rev. 522, 527-39; Scott, Jurisdiction Over Nonresidents Doing Business Within a State, 32 Harv. L. Rev. 871, 880-84 (1919).


appointment of an agent as a condition precedent to allowing the corporation to enter the state. Because a corporation might avoid the effect of this rule by refusing to appoint an agent, a doctrine based on a fictional consent was developed. If a corporation did certain acts within a state the corporation was deemed to have "impliedly consented" to be sued there.9

A second theory used to subject a corporation to a state's jurisdiction was based on the concept of "presence." The theory was that a personal judgment against a foreign corporation could be entered "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."10 Relying on either the "consent" or "presence" theories, a large body of case law gradually developed dealing with what types of transactions constituted "doing business."11

Although the "doing business" concept was gradually expanded, the general rule remained that a single, isolated contact was insufficient to allow a personal judgment to be entered against a foreign corporation.12 However, quite early it was held that a single act might constitute a sufficient basis for jurisdiction over an individual. In Hess v. Pouloski, 13 the Supreme Court upheld the constitutionality of the Massachusetts Nonresident Motorist Statute.14 This statute provided that service of process could be made on a nonresident motorist by serving the State Registrar in any action arising out of the negligent operation of an automobile in Massachusetts. The Court reasoned that motor vehicles are dangerous machines and that the state, in the exercise of its police power, could make and enforce regulations reasonably calculated to promote safety on its highways.

The police-power rationale of Hess was applied in Doherty & Co. v. Goodman, 15 to allow service on a nonresident partnership engaged in the business of selling corporate securities within the state of Iowa. Prior to this case a state could not validly assert jurisdiction over a nonresident partnership because of the Supreme

11. See 49 A.L.R.2d 669, n.5 (1956), for a list of annotations regarding the various aspects of what constitutes "doing business."
Court's refusal to apply the "implied consent" theory to partnerships.\textsuperscript{16} However, in \textit{Doherty} the Court reasoned that since the state had an extremely strong interest in regulating the sale of corporate securities it could assert jurisdiction.

\section*{B. The International Shoe Doctrine}

In the \textit{International Shoe} case, the defendant, a Delaware corporation engaged in the business of manufacturing and selling shoes, had its principal place of business in St. Louis, Missouri. It maintained no office in Washington but did employ from eleven to thirteen salesmen who resided and solicited orders in that state. The salesmen had no authority to enter into contracts or to make collections but would merely forward orders to St. Louis where they would be accepted or rejected. The defendant failed to make payments to the Washington unemployment fund and a notice of deficiency was given by service on one of its agents in that state. Defendant contended that since it was not doing business within the state, the court had not acquired personal jurisdiction. The Washington court rejected this contention and affirmed a judgment for the plaintiff.

On appeal, the United States Supreme Court discarded both the fictions of corporate presence and implied consent as proper bases of jurisdiction.\textsuperscript{17} It substituted a new test based on reasonableness and fairness.\textsuperscript{18}

\begin{quote}
[D]ue process requires only that in order to subject a defendant to a judgment \textit{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.'\textsuperscript{19}
\end{quote}

The Court indicated that the demands of due process may be met "by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there. An 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection."\textsuperscript{20} The Court then attempted to define more precisely the limitations of due process:

\begin{quote}
It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a
\end{quote}

\begin{thebibliography}{99}
\bibitem{18} See \textit{Goodrich, Conflict of Laws} 216 (3d ed. 1949).
\bibitem{20} \textit{Id.} at 317.
\end{thebibliography}
corporation to suit, and those which do not, cannot be simply mechanical or quantitative. . . . Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.21

In discussing the question of the isolated act the Court stated:

[A]lthough the commission of some single or occasional acts of of the corporate agent in a state sufficient to impose an obligation or liability on the corporation has not been thought to confer upon the state authority to enforce it, . . . other such acts, because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit.22

In support of the latter part of this quotation the Court cited Hess and two other cases based on the police-power doctrine. This alone would appear to support the conclusion that a state may validly assert jurisdiction based on an isolated act only in exceptional cases, where the state has a peculiar interest in regulating the particular conduct of the nonresident.23 However, previously in the opinion the Court had stated that "it has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there." 24 This statement at least intimates that an isolated act may be a sufficient basis for jurisdiction if the cause of action is based on activities occurring within the state. However, in view of the conflicting dicta, the opinion did not make it clear whether the police-power doctrine was a limitation on the power of a state to assert jurisdiction based on a single transaction.

The Court then turned to the facts of International Shoe and held that Washington could validly assert personal jurisdiction. The Court emphasized the continuous and systematic activity of the defendant corporation over a period of years and the fact that there had been a continuous flow of defendant's goods into the state. Reasoning that while defendant was engaging in this activity it received the benefit and protection of the laws of the state of Washington and that since the obligation sued on arose out of activities occurring within the state, the Court held that it was not unreasonable to allow the maintenance of the suit.

Justice Black, while concurring in the result, sharply dissented

21. Id. at 319.
22. Id. at 318.
24. 326 U.S. at 317. (Emphasis added.)
from the Court's approach by characterizing the appeal as "frivolous" and "unsubstantial," and urged that it be dismissed.26 He took the view that it is not the function of the Supreme Court to judge the constitutionality of a state court's assertion of jurisdiction by "any such elastic standards".27

[A]ppllication of this natural law concept, whether under the terms 'reasonableness,' 'justice,' or 'fair play,' makes judges the supreme arbiters of the country's laws and practices. . . . This result, I believe, alters the form of government our Constitution provides. I cannot agree.

True, the State's power is here upheld. But the rule announced means that tomorrow's judgment may strike down a State or Federal enactment on the ground that it does not conform to this Court's idea of natural justice.27

In summary, it would appear that the test of the majority under International Shoe involves a problem of balancing the conflicting interests of the plaintiff against the nonresident defendant, a procedure similar to that used in applying the doctrine of forum non conveniens.28 The relevant question is whether the state has sufficient contacts or ties with the occurrence so that it would not be unreasonable or unfair to require the nonresident to defend the suit. Such things as the nature and extent of defendant's activities, where the obligation in question arose, the residences of the parties, the location of witnesses and evidence, and the particular law which will control liability are all relevant.29

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25. Id. at 322.
26. Id. at 325.
27. Id. at 326. (Emphasis added.)
28. See Kilpatrick v. Texas & P. Ry. Co., 166 F.2d 788, 790-91 (2d Cir. 1948); Note, The Growth of the International Shoe Doctrine, 16 U. Chi. L. Rev. 523, 524 (1949); Note, 5 De Paul L. Rev. 106, 110, 114 (1955). Although the type of factors considered in both questions may be the same, the weight given to these factors may be different. Thus when the issue is jurisdiction, the quality and nature of defendant's activities is probably the most important factor. However, when the issue is forum non conveniens, the "convenience" factors such as location of witnesses and evidence will be of prime importance.
29. It should be noted that International Shoe does not require a state to assert its maximum jurisdiction. A state may insist upon minimum contacts requirements that are more stringent than those required by due process under the federal constitution. See, e.g., Partin v. Michaels Art Bronze Co., 202 F.2d 541 (3d Cir. 1953); Kenny v. Alaska Airlines, Inc., 132 F. Supp. 838 (S.D. Cal. 1955); 40 Minn. L. Rev. 715 (1956). However, it appears likely that the Minnesota Supreme Court will assert its maximum jurisdiction. In Schilling v. Roux Distributing Co., 240 Minn. 71, 59 N.W.2d 907 (1953), the question was whether the court could assert jurisdiction over a foreign corporation which had not qualified to do business in Minnesota. The court stated that "since this problem involves a determination of due process under the federal constitution, we are governed by the decisions of the United States Supreme Court." Id. at 81, 59 N.W.2d at 912. It then proceeded to apply the test of International Shoe without making mention of any local limitation. It thus seems quite clear that the only constitutional problem regarding the Minnesota statute will be under the federal constitution.
C. State Legislative and Judicial Response to International Shoe

Following the decision in *International Shoe*, several state courts passed on the validity of single act statutes, applying the new test of reasonableness and fairness. Since the Minnesota statute applies to both tort and contract cases and because the problems involved in these two classes are not identical, separate consideration will be given to each.

Statutes relating to tort actions.

The constitutionality of a Vermont statute, which is almost identical to Minnesota's, was challenged in 1951 in *Smyth v. Twin State Improvement Corp.* A tort action was brought against a Massachusetts corporation which allegedly had damaged the roof of plaintiff's home while attempting to repair it. This was the only activity defendant had ever carried on in Vermont.

The court first discussed *International Shoe* and concluded that the Supreme Court had left undecided the question of whether isolated tortious activity is sufficient to subject a foreign corporation to in personam jurisdiction. It then proceeded to apply the test of that case by balancing the conflicting interests to determine whether it was reasonable to allow the suit. The court noted that the tort had occurred within Vermont and reasoned that since the corporation voluntarily elected to act within the state and received the protection of Vermont laws while carrying on its activity, it was not unfair to require the corporation to be sued in Vermont for liability arising out of that conduct. Furthermore, plaintiff was a resident of Vermont and to require him to sue in a foreign jurisdiction and to transport his witnesses there might make the cost of suit prohibitive in many cases. In addition, in a tort action most of the witnesses will probably be residents of Vermont and the law which governs liability in the suit will be the law of Vermont. In regard to the statement in *International Shoe* that the relative inconvenience to the defendant is a factor, the court noted that it was quite easy for a Massachusetts corporation to defend in a Vermont court. In the rare case when there is a hardship on defendant, the doctrine of

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32. The court quoted *International Shoe* to the effect that certain isolated acts, because of their nature and quality, may be sufficient to render the corporation liable to suit. The court failed, however, to discuss the fact that the cases cited in support of this statement were all based on the police-power concept.
One objection to the decision in Smyth is that it may place an unduly heavy financial burden on a foreign corporation which carries on occasional activities in several states. A second objection is that it may place the corporation at the mercy of plaintiffs who file spurious claims for moderate amounts. Thus, it might be cheaper for the defendant to pay the spurious claim than to defend the suit in a local court. This latter objection could be remedied in Minnesota by an amendment to the statute allowing defendant to recover his traveling expenses as part of costs, and requiring plaintiff to post a suitable bond to cover these costs. The bond should be set at a reasonable figure so as not to be unfair to the plaintiff.

Even without such an amendment, the factors listed by the court in the Smyth case appear to outweigh the potential disadvantages and the case seems to be a sound application of the doctrine of International Shoe. It may be just as great a financial burden for the plaintiff to prosecute a foreign suit as for the defendant to defend a local one. If jurisdiction is denied there is the possibility that some corporations may refuse to pay legitimate claims because they know it will not be worthwhile for a plaintiff to sue in a foreign court.

The reasons given by the court in Smyth in support of its decision will be equally applicable in a tort action under the Minnesota isolated act statute. Like the Vermont statute, the Minnesota act is limited to Minnesota residents and to causes of action arising out of torts committed within the state. Minnesota also follows the traditional conflicts of law rule for torts, that the law of the place of injury determines liability. Since 1954 Minnesota has recognized the doctrine of forum non conveniens.

Although the suit in Smyth was in tort, its basis was a business transaction. This raises the question of whether a state may assert jurisdiction based on a non-business, isolated tort. It has been suggested that in this situation, and absent the "exceptional circum-

34. Ibid.
35. See 54 Mich. L. Rev. 1026, 1028 (1956). A similar amendment was suggested for the Illinois single act statute.
36. It might also be desirable to give the court the discretion to waive the bond in hardship cases where plaintiff is financially unable to meet the bond requirements, and can convince the court that its claim is not "spurious."
37. The Smyth case received widespread comment, most of which was favorable. See, e.g., 36 Minn. L. Rev. 264 (1952); 37 Cornell L. Q. 458 (1952). But see 27 Notre Dame Law. 117 (1951); 26 St. John's L. Rev. 166 (1951).
stance" type of case such as Hess, the single contact is not enough to make the assumption of local jurisdiction reasonable under the doctrine of International Shoe. Where the transaction does involve business activity a stronger argument can be made for asserting jurisdiction, since the cost of defending a local suit may be considered as merely a legitimate expense of furthering the business interest. However, it is doubtful if this factor is of such importance that it alone should prevent a court from validly asserting jurisdiction. Under the test of International Shoe the emphasis is no longer on what constitutes "doing business" but rather on adjudging the activity carried on in relation to the purpose for which it is sought to assert jurisdiction. Under this test the presence or absence of business activity should be merely one factor to be considered and should not be controlling.

Some constitutional difficulties may be encountered in applying the broad language of the Minnesota and Vermont statutes which provide that a court may assume jurisdiction if a tort is committed "in whole or in part" within the state. Thus, the statute could apply when the causal factors of the injury occur outstate but the injury occurs within the forum. This situation was present in Putnam v. Triangle Publications, Inc. North Carolina has a statute which provides that foreign corporations, though not doing business in the state, are subject to suit on claims arising from a sale of goods no matter where consummated, if the seller had reasonable expectation that the goods would be used in that state and if the goods were, in fact, so used. A libel action was brought under this statute against a Delaware corporation whose magazines were sold within North Carolina by independent distributors. Defendant's other activities within the state consisted of occasionally sending an agent to discuss circulation figures with the North Carolina distributors, and soliciting subscriptions from without the state by mail and by

41. Ibid.
42. See Goodrich, op. cit. supra note 18, at 209-16.
43. Judge Goodrich takes the position that the presence or absence of business activity is immaterial. See Goodrich, op. cit. supra note 18. However, there is a statement in a recent United States Supreme Court decision which indicates that this factor may be given considerable weight. In McGee v. International Life Ins. Co., 355 U.S. 220 (1957), the Court stated that "modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity." Id. at 223. (Emphasis added.) For a full discussion of this case see text at notes 58-65, infra.
45. 245 N.C. 432, 96 S.E.2d 445 (1957).
means of coupons attached to the magazines. Admitting that the case fell within the language of the statute, the court held that to assert jurisdiction would be a denial of due process. The court reasoned that the occasional visits of defendant's sales representatives were not sufficiently substantial contacts to meet the requirements of International Shoe.

Unlike the court in Smyth, the North Carolina court apparently made no attempt to consider all the relevant factors bearing on the issue of whether it was reasonable to allow the suit. The court did not mention that in a libel action brought by a resident of North Carolina, many of the witnesses will probably be found within that state, and that the law of North Carolina would probably control liability. Further, since defendant voluntarily elected to have his magazines sold in North Carolina, it does not seem unfair to require him to defend a local suit for liability arising out of his publications. Thus the court probably could have asserted jurisdiction under International Shoe. In comparing the Putnam and Smyth decisions, both the analysis and result reached by the court in Smyth seem more consistent with the International Shoe doctrine.

From the above examples, it can easily be seen that no categorical answer to the question of the constitutionality of a single act statute in tort actions can be given. The courts will have to determine for each of the various types of torts what contacts are sufficient to meet the test of International Shoe. Although there may be situations where an application of the statute violates due process, this will probably be rare and in the great majority of cases the statute may constitutionally be applied.

Statutes relating to contract cases.

The leading case regarding the applicability of single act statutes to contract actions is a Maryland decision, Compania de Astral, S.A. v. Boston Metals Co. A Maryland statute provides:

Every foreign corporation shall be subject to suit in this State by a resident of this State or by a person having a usual place of

47. The decision in Putnam is criticized in 71 Harv. L. Rev. 554 (1958). For an approval, see 26 Fordham L. Rev. 342 (1957).
48. In a subsequent North Carolina decision, Painter v. Home Finance Co., 245 N.C. 576, 96 S.E.2d 731 (1957), another section of the North Carolina statute providing that a foreign corporation may be sued on any cause of action arising out of tortious conduct in the state, whether arising out of repeated activity or single acts, was held constitutional in an action for invasion of privacy and wrongful conversion. The activities of the defendant corporation in Painter were probably no more substantial than those of the defendant in Putnam. It thus might be possible to explain the decision in Putnam on the ground of the courts' traditional mistrust of libel actions.
business in this State on any cause of action arising out of a contract made within this State ... whether or not such foreign corporation is doing or has done business in this State. An action for breach of contract for the sale of three ships was brought against a Panamanian corporation which had its principal place of business in Panama. The corporation's only contacts with Maryland pertained to the contract in issue. These contacts were that the three ships involved had been located in Maryland for several years; defendant's agent had come to Maryland to inspect the ships and part of the negotiations had taken place in Maryland; a provision of the contract was that the substantive law of Maryland should control the interpretation of the contract in the event of a dispute; plaintiff was a resident of Maryland; an escrow fund had been set up within the state; and the place of performance of the contract was in Maryland.

Applying the test of International Shoe, the court held that it had jurisdiction. It noted that although there was only a single transaction involved, the defendant had considerable contact with the state. It expressly rejected defendant's argument that a court could assume jurisdiction based on isolated acts only in the "exceptional circumstance" type case.

In view of the substantial contacts involved in Compania de Astral, the court seems to have properly concluded that it had jurisdiction under International Shoe. Probably considerably less contacts would have been enough to satisfy due process. A strong argument can be made that even if the only contact is that the state

51. The validity of the Maryland statute was also upheld in Johns v. Bay State Abrasive Co., 89 F. Supp. 654 (D. Md. 1950), although the action against a co-defendant was dismissed. In a federal district court decision prior to International Shoe, the court discussed the Maryland statute and stated: "[T]he difficulties are seen only when the broad provisions in the Maryland law ... can be upheld, in the face of the requirements for due process. ..." Edgewater Realty Co. v. Tennessee Coal, I.R. Co., 49 F. Supp. 80, 816 (D. Md. 1943) (dictum).
52. For a criticism of the Compania de Astral case, see 40 Va. L. Rev. 1083 (1954).
53. See S. Howes Co. v. W. P. Milling Co., 277 P.2d 655 (Okla. 1954), where the defendant, a New York corporation, sold a machine to plaintiff through an independent broker. The order was accepted in New York and delivery made f.o.b. the carrier there, so the contract was technically both "made" and "performed" in New York. Defendant's only other acts were to recommend the manner of installation and to send a representative to investigate after the machine had caused a fire. The court upheld service of process made under a statute providing that the foreign corporation must be "doing business" within the state. The contacts of the defendant in Howes were thus considerably less than those of the defendant in Compania de Astral. It is interesting to note that the decision in Howes was reached without the aid of a single act statute, but merely by giving a liberal construction to the phrase "doing business."
is the place of performance, it is sufficient to allow the assertion of jurisdiction. This would be true even though in contract cases the witnesses and evidence may just as likely be located in another state and the conflicts of law rule followed may not always permit the law of the forum to govern liability. Despite these factors, if a nonresident receives the protection of the laws of a state while he is engaged in certain activity, it does not seem unfair to subject him to suit for liability arising out of those activities.

It is possible that a literal application of the Minnesota statute could result in a denial of due process in some cases. This statute provides that a court may assume jurisdiction if the contract is "to be performed in whole or in part... in Minnesota." Suppose that a contract is "made" in another state, negotiations were conducted in that state, all the witnesses and evidence are in that state, and the major part of the contract is to be performed in that state. Minnesota's only contact is that certain goods are to be delivered f.o.b. the carrier within Minnesota. Technically, the contract is being performed in part within Minnesota and the court could assert jurisdiction under the statute. However, this should probably constitute a denial of due process. The constitutional question of jurisdiction should not depend on a technical meaning of "place of performance" but should be determined by analyzing all of the defendant's contacts to see if it would be unfair to require him to defend a local suit. Of course, the above situation is an extreme example, and where there is any substantial performance of the contract in Minnesota, the statute may probably be constitutionally applied.


The most recent development relevant to the constitutionality of the Minnesota statute occurred in December of 1957, when the United States Supreme Court decided the case of McGee v. International Life Ins. Co. In that case plaintiff was a resident of California and the beneficiary of a life insurance policy which had originally been issued by an Arizona corporation. Defendant, a Texas corporation, had agreed to assume the insurance obligations...
of the Arizona company and had issued a reinsurance certificate to the insured. From 1950 until his death the insured paid the premiums by mail from his California home to defendant's office in Texas. When the insured died the defendant refused to make payment under the policy on the ground that the insured had committed suicide. Other than the policy in question neither defendant nor the Arizona corporation had solicited or done any insurance business in California. Plaintiff sued in a California state court under a statute providing a method of substituted service on nonresident insurance companies. A default judgment was entered and suit was brought on this judgment in a Texas court. The Texas court refused to give the judgment full faith and credit on the ground that the California court lacked jurisdiction.

On appeal, the Supreme Court first noted that in a continuing process of evolution it had abandoned the concepts of "consent," "doing business," and "presence" as proper bases of jurisdiction. It stated that there was a clearly discernible trend toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. This has not resulted in unfairness because "modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity." The Court then held that due process did not prevent the California court from asserting jurisdiction. On its face the holding does not appear to be particularly important in determining the constitutionality of single act statutes because insurance cases have been regarded as falling under the "exceptional circumstance" type of case such as Hess and Doherty. The interesting part of the McGee opinion involves the reasons given by the Court in support of its decision and the cases cited. After holding that there was no denial of due process, the Court stated: "It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State." In support of this statement the Court cited three Supreme Court cases, Hess, Doherty, and Pennoyer v. Neff. In addition, both the Smyth and Compania de Astral cases were cited with approval although they were not discussed.

60. 355 U.S. at 223.
61. See Travelers Health Ass'n v. Virginia, 339 U.S. 643 (1950); Parmalee v. Iowa State Travelers Men's Ass'n, 205 F.2d 518 (5th Cir. 1953), cert. denied, 346 U.S. 877 (1953). For a complete discussion of the insurance cases, see Note, 39 Va. L. Rev. 966 (1953).
62. 355 U.S. at 223.
63. 95 U.S. 714 (1877).
64. 355 U.S. at 223, n. 2.
The Court then proceeded to list the contacts which it considered substantial enough to subject this defendant to jurisdiction. It noted that California had a strong interest in providing effective remedies for its residents against foreign insurance companies. It mentioned that the contract was delivered in California, the premiums were mailed from there and the insured was a resident of that state when he died. The Court reasoned that it would be unfair to residents of California to force them to sue in foreign jurisdictions since in the case of small claims it would not be worthwhile to prosecute them, thus making the foreign company in effect judgment proof. Lastly, the witnesses in the case will often be located in the forum state.

With the exception of the state’s interest in regulating insurance transactions, each of the reasons given by the Court will be equally applicable in any contract action, regardless of whether it is based on the type of activity which the state has an interest in controlling. This seems to be an indication that the police-power concept is not a limitation on the jurisdiction of a state over isolated transactions.

The decision in McGee is an important step in the development and clarification of the due process test set forth in International Shoe. The relatively minor and isolated type of contacts which the Court felt were sufficient to meet the test of due process marks the furthest extension of International Shoe to date. The case may also be interpreted to mean that the police-power concept is not a limitation on the assertion of jurisdiction over isolated acts. In view of these factors, and the Court’s approval of the Smyth and Compania de Astral cases, the decision leaves little doubt as to the constitutionality of the Minnesota statute as applied in most circumstances.

Conceivably a more extreme view can be taken of the scope of the holding in McGee. It is at least arguable that as a result of McGee there is now almost no constitutional limitation on a state court’s assertion of jurisdiction, and that Justice Black’s position in International Shoe has prevailed. The opinion itself gives no clear indication of such a result, but in view of the almost complete lack of contacts in McGee it is difficult to imagine a situation where the contacts would be so slight as to constitute a denial of due process if jurisdiction were asserted.65 Of course if this interpretation of

65. A recent federal district court decision is even more extreme than McGee. In Pugh v. Oklahoma Farm Bureau Mut. Ins. Co., 26 U.S.L. Week 2385 (E.D. La. Jan. 22, 1958), suit was brought against a foreign insurance company under Louisiana’s direct-action statute. The insured was not a resident of Louisiana and the defendant’s only contact with the state was that the accident in which the insured was involved occurred in Louisiana. Relying on the decision in McGee, the court held that it could validly assert jurisdiction.
McGee is correct, it is an even stronger argument in favor of the constitutionality of the Minnesota statute.

E. NOTICE PROVISIONS

Even though a state may have the power to render a judgment against an absent defendant, due process still requires that he be given fair notice of the proceedings against him. Actual notice is not required and the procedure used need only be reasonably calculated to give actual notice.

The Minnesota statute provides that notice shall be given in the following manner:

[Process shall be served in duplicate upon the secretary of state ... [who] shall mail one copy thereof to the corporation at its last known address, and the corporation shall have 20 days within which to answer from the date of such mailing, notwithstanding any other provision of the laws.]

In Hess v. Pawloski, the United States Supreme Court upheld a Massachusetts statute which provided that notice could be given defendant by mail. However, the statute expressly provided that registered mail was to be used and that the defendant must sign a return receipt. The Minnesota statute merely uses the word "mail." Probably even the use of "ordinary" mail would be reasonably calculated to give actual notice and would meet the requirements of due process, although this is not entirely clear.

Apart from the question of constitutionality, a requirement for registered mail with return receipt would be a far better procedure than that provided by the Minnesota act. If defendant refused to acknowledge receipt for the process, this of course would be sufficient if reasonable effort was made to reach him. Both West

69. 274 U.S. 352 (1927).
72. See Freedman v. Poirier, 134 Misc. 253, 236 N.Y.S. 96 (1929), where the court refused to give full faith and credit to a Connecticut judgment even though notice was given by registered mail. The court apparently felt that due process required a return receipt. But see Hartley v. Vitiello, 113 Conn. 74, 154 Atl. 255 (1931), where an opposite result was reached regarding the same statute.
Virginia and North Carolina make provision for service by registered mail in their single act statutes. 74 Illinois goes even further and requires that there be personal service on the nonresident defendant. 75 Now that the constitutional protections of due process afforded an absent defendant have been substantially lessened, it is even more important to insure that the procedure for notice be the best available.

II. PARTNERSHIPS AND INDIVIDUALS

The Minnesota isolated act statute makes no provision for service on nonresident partnerships or individuals. This raises the question of whether a statute making such provisions would be constitutional and if so, whether it would be desirable.

The decision in International Shoe involved only a corporation and thus the case did not make it clear whether its holding also applied to partnerships and individuals. 76 However, there are certain indications in the opinion that it was meant to apply to all defendants. 77 The test of due process was set forth without specific reference to corporations: 78

[D]ue process requires only that in order to subject a defendant to a judgment in personam . . . 79

Later in the opinion the Court made specific reference to natural persons when it stated that the due process clause "does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations." 80 Moreover, in the McGee case the Court gave a further indication that the test under International Shoe is not limited to corporations when it stated:

Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. 81

The conclusion that International Shoe applies to all defendants has received almost unanimous support from the writers. 82 The

76. See Foster, supra note 5, at 544.
77. Id. at 545.
78. See Note, 45 Calif. L. Rev. 93, 96 (1957).
80. Id. at 319. (Emphasis added.)
81. 355 U.S. at 222. (Emphasis added.)
82. See, e.g., Stumberg, Conflict of Laws 100 (2d ed. 1951); 54 Mich. L. Rev. 1026, 1027 (1956).
case law in the state courts is also following this conclusion, and the Illinois single act statute expressly provides that it applies to non-resident persons and partnerships as well as corporations.

There does not appear to be any sound policy reason for holding that the test for due process should vary depending on the type of "person" involved. The only argument that may be advanced in support of such a result is based on an early United States Supreme Court case. In *Flexner v. Farson*, the Court refused to apply the "implied consent" theory used as a basis for jurisdiction over corporations to nonresident partnerships. The Court reasoned that unlike the case of a corporation, a state may not lawfully prevent a partnership or individual from doing business within its boundaries. Since the basis for implying consent was not present, there was no jurisdiction. The authority of *Flexner* was greatly weakened by the decision in *Doherty & Co. v. Goodman*. Further, the reasoning of the Court in *Flexner* was purely conceptual. Now that the Supreme Court has expressly abandoned the "consent" theory as a proper basis for jurisdiction, there seems to be no reason to follow the *Flexner* rule.

A Minnesota statute providing for service on partnerships and individuals would be extremely desirable. However, until such time as legislative action is taken, it is possible that a statute originally passed in 1947 may provide an excellent interim solution for partnerships. This statute provides:

> The transaction of any acts, business or activities within the State of Minnesota by any officer, agent, representative, employee or member of any Union or other groups or associations . . . shall be deemed an appointment by such union or other groups or associations of the secretary of state of . . . Minnesota to be the true and lawful attorney of such union or other groups or associations, upon whom may be served all legal processes or other notices in any action or proceeding against or involving said union or other groups or associations growing out of such acts, business or activities within the State of Minnesota resulting in damage or loss to person or property or giving rise to any cause of action under the laws of [Minnesota] . . .

The statute appears to be aimed primarily at service on labor unions. However, in *Minnesota Wood Specialties, Inc. v. George*
S. May Co., a federal district court construed it to allow service on a nonresident partnership. The court noted that the statute was rather ambiguous but felt that the use of the word "or" in the phrase "other groups or associations," plus the fact that the Uniform Partnership Act defines a partnership as "an association of two or more persons," made it logically tenable that the legislature intended to include partnerships within the phrase "other groups or associations."

The legislative history regarding this statute is extremely sketchy. This much, however, may be determined. The bill as originally introduced contained only the word "unions." The phrase "or other groups or associations" was added in a subsequent amendment without any indication as to the reason for the change. The only recorded discussion of the bill is found in the minutes of the House Judiciary Committee. No mention was made of partnerships and the only questions considered were in regard to labor unions.

Probably the question of applicability of the bill to partnerships was never considered. In using the words "or other groups or associations" the authors may have been aiming at nonresident labor organizations which might not technically be classified as unions. It is also possible that the words were designed to apply to nonresident employer organizations. This, however, is mere speculation and the language of the act is certainly broad enough to include partnerships. In view of this language and in the absence of any definite indication of legislative intent, the decision in the May case seems justifiable.

There is also a possibility that the statute may be broad enough to apply to the single act situation. At first glance the words "trans- action of any acts, business or activities," because of the plural terms, would indicate that there must be a series of acts similar to the concept of "doing business" before a court could validly assert jurisdiction under the statute. However, in Zacharakis v. Bunker Hill Mut. Ins. Co., the New York Supreme Court in facing a similar

90. Minn. Stat. § 323.02(8) (1953).
92. House Judiciary Record 52 (1947).
93. Ibid.
94. An example might be an association of labor unions or a "labor council."
95. This is the conclusion reached by Professor Wright. See Wright, Minnesota Rules 22 (1954).
problem reached a different conclusion. The court had to construe a statute which provided:

Any of the following acts in this state ... (1) the issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein, (2) the solicitation of applications for such contracts, (3) the collection of premiums, membership fees, assessments or other considerations for such contracts, or (4) any other transaction of business, is equivalent to and shall constitute an appointment by such insurer of the superintendent ... to be its true and lawful attorney, upon whom may be served all lawful process. ... 97

The court rejected the contention that the statute did not apply to the single act because of the use of plural terms in referring to the delivery of "contracts," to "residents," and the collection of "premiums" for "such contracts." It felt that the word "any" in the opening phrase of the statute signified a singular act falling within the categories stated in plural terms. The court noted that this was a rather common mode of legislative expression.

A similar construction could be used to bring the single act within the meaning of the Minnesota statute. The word "any" could be held to refer to a singular act falling within the categories of "acts," "business," or "activities." Such a construction would be of great value since, as brought out previously, there are no policy reasons nor apparently any constitutional restrictions to prevent a state from asserting jurisdiction over a nonresident partnership.

III. Summary and Conclusion

Within the last four years Minnesota has taken two important steps regarding the assertion of jurisdiction over foreign corporations. The adoption of the single act statute provides an effective remedy for Minnesota residents against foreign corporations for liability arising out of activities of the corporation occurring within Minnesota. The recent decision of the United States Supreme Court in McGee v. International Life Ins. Co. is a strong indication that the Minnesota statute as applied in most situations will meet the constitutional requirements of due process.

The second development was the recognition of the doctrine of forum non conveniens by the Minnesota Supreme Court. This doctrine is a necessary supplement to the isolated act statute since it gives assurance to foreign corporations against unreasonable suit in this state.

97. N.Y. Ins. Law § 59-a(2) (a).
Several desirable changes, however, could still be made. A statute should be passed to cover individuals and partnerships as well as corporations. Until this change is made, a liberal construction of Minn. Stat. Ann. 540.152 (Supp. 1957) could accomplish the same result for partnerships. The procedure for notice should also be changed to expressly provide that registered mail with a return receipt is to be used. This will insure that a defendant will receive notice of a pending action. Lastly, a provision should be inserted allowing a court to assess defendant's travel expenses as part of costs, and plaintiff should be required to post a suitable bond to cover these costs. This will eliminate the objection to the statute that residents may file spurious claims for small amounts in the hope that the corporation will pay them rather than incur the cost of defending a local suit. If these changes are made, Minnesota will have a progressive system for obtaining jurisdiction over absent defendants which is fair to both Minnesota plaintiffs and nonresident defendants.