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Jurisdiction: Constitutional Limitation on Minnesota's Long-Arm Statute

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the evidence would inflict serious harm on the psychiatrist-patient relationship. With this information, the judge would be able to make a decision which would best serve the interests of the defendant, the prosecution, and justice.

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Plaintiff, a Minnesota corporation, offered to sell defendant, a foreign corporation, a truckload of eggs. Defendant's president telephoned the plaintiff in Minnesota, agreeing to accept the eggs and to forward an advance payment. Shortly thereafter defendant discovered a dispute as to the ownership of the goods and stopped payment on its check. Although the defendant neither maintained an office or place of business in Minnesota, nor operated through agents or employees within the state, similar business had been transacted between the parties for a period of several years. Plaintiff attempted to obtain jurisdiction by means of the Minnesota Single Act Statute.[1] The trial court granted defendant's motion to dismiss for lack of personal jurisdiction. The Minnesota Supreme Court affirmed, *holding* that the defendant's contacts with the state were qualitatively insufficient to support jurisdiction and that

1. MINN. STAT. § 303.13 (1965) 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 and successors 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.

The legislature has recently enacted a general jurisdiction statute applicable to both foreign corporations and nonresident individuals. Ch. 427, [1967] Minn. Laws 467; MINN. STAT. § 543.19. It is interesting to note that the old statute (§ 303.13), which is dealt with in this Comment, has not been repealed. Remarks directed to the constitutionality and policy of the old statute should be equally relevant to the new one. While the language differs, the constitutionality and wisdom of applying either law in any given situation will be governed by the same standards. For an analysis of the 1967 enactment, see Comment, 52 MINN. L. REV. 743 (1968). *See generally* Note, *Due Process and Foreign Corporations—The Minnesota Single Act Statute*, 50 MINN. L. REV. 946 (1966); Note, *Personal Jurisdiction in Minnesota Over Absent Defendants*, 42 MINN. L. REV. 909 (1958); 48 MINN. L. REV. 192 (1963); 45 MINN. L. REV. 127 (1961); 43 MINN. L. REV. 569 (1959).

this deficiency could not be remedied by a showing of a continuing series of similar transactions. *Marshall Egg Transport v. Bender-Goodman Company*, 275 Minn. 534, 148 N.W.2d 161 (1967).

The constitutional limits of a state's personal jurisdiction over nonresident corporations under the due process clause[2] have been in a continuing process of expansion. The doctrine enunciated in *Pennoyer v. Neff*,[3] requiring physical presence within the forum for valid service of process, has gradually evolved into the "traditional notions of fair play and substantial justice" test of *International Shoe v. Washington*,[4] requiring only minimum contacts with the forum state to satisfy due process requirements.[5] In *International Shoe* it was stated that the test should not be merely whether there was a little more activity or a little less, "rather personal jurisdiction should depend 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."[6]

Only twice has the United States Supreme Court subsequently dealt, in a significant manner, with this issue. In *McGee v. International Life Insurance Company*,[7] the Court found the requisite minimum contacts where the only connection between the defendant and the forum state was the solicitation and sale of a single contract of insurance through the mail. The Court found that the requirements of *International Shoe* were satisfied because the suit was based on a contract which had a substantial connection with the forum.[8]

While *McGee* gave considerable impulse to the expansive trend in state court jurisdiction, *Hanson v. Denckla*[9] made it clear that there were some limits to which the Supreme Court would continue to adhere. In *Hanson*, Florida attempted to exercise jurisdiction over a Delaware corporate trustee whose only connection with the forum state was that the settlor and some of the beneficiaries of the trust had become domiciliaries of the forum state subsequent to the execution of the trust instrument.[10] The Court refused to sustain jurisdiction holding

2. U.S. CONST. amend. XIV.
3. 95 U.S. 714 (1877).
4. 326 U.S. 310 (1945).
5. *Id.* at 316.
6. *Id.* at 319.
7. 355 U.S. 220 (1957).
8. *Id.* at 223.
9. 357 U.S. 235 (1958).
10. *Id.* at 251-52.

that there must be some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.[11]

From these pronouncements of the Supreme Court there has emerged a rather tentative enumeration of the factors which are to be considered in determining whether the fair play and substantial justice test has been met. Among these are: (1) the interest of the forum in providing effective means of redress for its residents; (2) the inconvenience to the nonresident if he is required to defend in the forum state; (3) the nature and quality of the defendant's contacts; and (4) the relationship between the cause of action and the contacts.[12]

Most of the states,[13] including Minnesota,[14] have enacted "long-arm" statutes to take full advantage of the liberalization of the due process requirements for exercising jurisdiction. However, such jurisdictions have been more willing to exercise jurisdiction in tort cases than in contract actions, since the state arguably has a greater interest in protecting its citizens from physical injury than from "injuries" arising out of contractual difficulties. Nevertheless, the original Minnesota long arm statute, providing in part that a foreign corporation is deemed to be doing business in Minnesota for jurisdictional purposes when it makes a contract with a resident to be performed in whole or in part in Minnesota, was successfully used a number of times.[15]

The problem of a resident seller attempting to obtain jurisdiction over an out-of-state buyer under the single act statute has twice before been dealt with by the Minnesota Supreme Court. In *Dahlberg Company v. Western Hearing Aid Center, Limited*,[16] a contract for the sale of merchandise was executed in Minnesota, the goods were manufactured in the state, promissory notes were executed by the defendant in Minnesota, and

11. *Id.* at 253.

12. *See generally* Comment, 40 TUL. L. REV. 366, 368 (1965); 51 VA. L. REV. 719 (1965).

13. For a recent compilation see 51 VA. L. REV., note 12 *supra*, at 719 n.4.

14. MINN. STAT. § 303.13 (1965).

15. *E.g.*, Adamek v. Michigan Door Co., 260 Minn. 54, 108 N.W.2d 607 (1961) (tort actions); The Dahlberg Co. v. Western Hearing Aid Center, 259 Minn. 330, 107 N.W.2d 381 (1961) (contract actions); Atkins v. Jones & Laughlin Steel Corp., 258 Minn. 571, 104 N.W.2d 888 (1960); Beck v. Spindler, 256 Minn. 543, 99 N.W.2d 670 (1959).

16. 259 Minn. 330, 107 N.W.2d 381 (1961).

agents of the defendant entered Minnesota in connection with performance of the contract. The court found that these facts constituted the requisite minimum contacts to support jurisdiction. In support of its position the *Dahlberg* court noted that the defendant had access to the Minnesota courts to enforce any rights arising from the transaction, and that there was no greater burden upon the defendant in having to defend the action in Minnesota than there would be upon the plaintiff were it forced to bring an action elsewhere.

In *Fourth Northwestern National Bank v. Hilson Industries, Inc.*,[17] the resident plaintiff went to the buyer's state to negotiate and sign the contract, and to engage in discussions concerning a settlement. The action was based on a series of notes which were made outside the state but payable in Minnesota. The supreme court refused to sustain jurisdiction, distinguishing those cases in which the long-arm statute had been successfully invoked by noting that in each of them the nonresident defendant was, in a sense, an aggressor. In each of the distinguished cases there was a substantial contact with the forum such that it could be said that defendant had exercised the privilege of doing business in Minnesota and thus subjected itself to jurisdiction.[18]

In the instant case the trial court and the Minnesota Supreme Court both depended exclusively upon *Hilson Industries*. The supreme court summarily found that it would be unjust to impose jurisdiction on the defendant on the basis of its meager contact with Minnesota.[19] The court flatly refused to consider as relevant the fact that the transaction which gave rise to the controversy was not an isolated act, but one of a series of similar transactions which had taken place over a period of several years.[20] The decision appeared to be based upon the assumption that only the "quality" of the single transaction giving rise to the controversy sued upon should be considered in determining whether a jurisdictional basis exists.

However, the decision in *Marshall Egg* is ambiguous as to whether it is based upon considerations of policy or of constitutional law. In order to analyze the court's holding, it is first necessary to determine whether it would have been constitutionally permissible to exercise jurisdiction under the applicable

17. 264 Minn. 110, 117 N.W.2d 732 (1962).
18. *Id.* at 115, 117 N.W.2d at 735.
19. 275 Minn. 534, 538, 148 N.W.2d 161, 164 (1967).
20. *Id.*

standards of the United States Supreme Court.

It has generally been assumed that the act of buying by a nonresident is considerably less significant from a jurisdictional viewpoint than is a similar transaction where the foreign defendant is a seller.[21] This premise was adopted by the Minnesota court in *Hilson Industries*.[22] There is support for this distinction in the language of *Hanson v. Denckla*[23] which indicates that a jurisdictional act must be in the nature of the exercise of a privilege.[24] The common conception would seem to be that it is a greater privilege to sell than to purchase, because in the isolated transaction it is often true that the seller has an immediate monetary gain, whereas the buyer does not. In such instances, the seller is usually thought of as the initiator or aggressor.[25]

Assuming that the act of buying within the forum state is less significant than the act of selling, it does not necessarily follow that it is of no jurisdictional relevance. Although the Minnesota court indicated in the instant case that it will look only to the "quality and nature" of the single transaction out of which the controversy before the court arises, this position is not supported by the case law. *Hanson v. Denckla*,[26] upon which the Minnesota court depended in *Hilson Industries* (and, by implication, in *Marshall Egg*), stands for the proposition that the defendant must engage in a volitional act by which it can be said that he has placed himself within the jurisdiction of the forum state.[27] In *Hanson* the sole connection of the defendant trustee with the state seeking jurisdiction was the act of a person over whom defendant had no control. In the case of a nonresident buyer, however, there is no such objection since the buyer himself purposely initiates a contact with the forum state. Thus, it would appear that the principles of *Hanson* do not preclude the exercise of jurisdiction under the instant facts.

21. *Cf.* Waltham Precision Instrument Co. v. McDonnell Aircraft Corp., 310 F.2d 20 (1st Cir. 1962).

22. 264 Minn. 110, 116, 117 N.W.2d 732, 735 (1962).

23. 357 U.S. 235 (1958).

24. *Id.* at 253.

25. This common, intuitive analysis ignores the fact that a buyer may subsequently use or resell the article at a substantial profit. Nevertheless, as a matter of common experience, it is the seller who seeks the buyer.

26. 357 U.S. 235 (1958).

27. *Id.* at 251-52; *see* 43 MINN. L. REV. 569, 572 (1959). *Compare* Parmalee v. Iowa State Traveling Men's Ass'n, 206 F.2d 518 (5th Cir. 1953), *with* Parmalee v. Commercial Travelers Mut. Acc. Ass'n, 206 F.2d 523 (5th Cir. 1953).

The refusal of the Minnesota court to permit the exercise of jurisdiction in *Marshall Egg* was probably based upon the declaration in *International Shoe* that the test of jurisdiction is not to be based upon the quantity of the acts involved, but rather upon the quality and nature of such activity in relation to the fair and orderly administration of justice.[28] In *Marshall Egg* the court explicitly refused to recognize any jurisdictional relevance in the fact that there was a continuing series of similar transactions between the parties rather than a single buying transaction. But it would seem extremely doubtful that the Supreme Court intended in *International Shoe* totally to exclude quantity of contacts as a criterion of due process. The law of personal jurisdiction over foreign corporations prior to that case required physical presence within the forum state, as evidenced by continuous and systematic activities.[29] The apparent objective of the Court in *International Shoe* was to initiate a relaxation of due process standards. The Court desired to indicate that the criteria cannot be simply mechanical or quantitative but must *also* be based on the quality and nature of the activity.[30] Indeed, in applying its newly enunciated standards in *International Shoe* itself, the Court specifically relied upon the fact that the activities of the defendant were neither irregular nor casual, but were systematic and continuous throughout the years in question.[31] Moreover, the state and lower federal courts have both implicitly and explicitly regarded the quantity of contacts as constitutionally significant.[32] In its previous decisions the Minnesota Supreme Court had given clear indications that it

28. Although *International Shoe* is not cited in the instant case, the language used by the court in the last substantive paragraph of its opinion clearly indicates that this is what the court had in mind. 275 Minn. 534, 538, 148 N.W.2d 161, 163 (1967).

29. *See* International Harvester v. Kentucky, 234 U.S. 216 (1914); *see also* International Shoe v. Washington, 326 U.S. 310, 319 (1945).

30. 326 U.S. 310, 318-19 (1945).

31. *Id.* at 320; *see* Note, *Personal Jurisdiction in Minnesota Over Absent Defendants*, 42 MINN. L. REV. 909, 913 (1958).

32. *E.g.*, Aftanase v. Economy Baler Co., 343 F.2d 187, 197 (8th Cir. 1965); Waltham Precision Instrument Co. v. McDonnell Aircraft Corp., 310 F.2d 20, 24 (1st Cir. 1962); Pappas v. Steamship Aristidis, 249 F. Supp. 692, 694 (E.D. Va. 1965).

A California court has explicitly held that "there is no distinction for jurisdictional purposes between *regular* selling and *regular* buying." Henry R. Jahn & Son, Inc. v. Superior Court, 49 Cal. 2d 855, 859, 323 P.2d 437, 440 (1958). The court specifically found that a regular course of purchasing activities in a fact situation similar to *Marshall Egg* provided a jurisdictional basis sufficient to comport with the standards of *International Shoe*. *Id.* at 861, 323 P.2d at 441.

would also look to quantity of contacts,[33] and the federal courts which have dealt with the Minnesota Single Act Statute have done likewise.[34]

As has been noted, one of the factors relevant to the constitutional issue is the degree of inconvenience and expense to which the defendant would be exposed by being required to defend outside his own jurisdiction.[35] While the court did not discuss this problem in the instant case, there was nothing in the opinion which revealed any undue burden upon the defendant if it were required to defend in Minnesota. It is unlikely that the defendant would experience any more inconvenience than would the plaintiff were it forced to travel to New York.[36]

The foregoing indicates that it was possible from a constitutional standpoint for the Minnesota court to have allowed the exercise of jurisdiction in *Marshall Egg*.[37] It is at least apparent that if the case was to have been decided on the basis of constitutional issues, the premises of the decision merited a more detailed discussion than they were given.

It is possible that the failure of the court to uphold jurisdiction in *Marshall Egg* was based upon an undefined mixture of constitutional and policy considerations. At one point in the opinion the court mentioned that it would be "harsh justice" to impose jurisdiction, and that "something more *should* exist

33. In Beck v. Spindler, 256 Minn. 543, 99 N.W.2d 670 (1959), the Minnesota Supreme Court stated: "It seems only fair to permit one who has suffered a wrong at the hands of a resident of a foreign state to sue in his own state *irrespective of whether he can show multiple transactions or not.*" *Id.* at 553, 99 N.W.2d at 676 (emphasis added). In *Hilson Industries* the court distinguished *Dahlberg* on grounds that in the latter "there was an extended course of dealings between the concerns and a close business relationship." 264 Minn. 110, 116, 117 N.W.2d 732, 735 (1962).

34. Aftanase v. Economy Baler Co., 343 F.2d 187, 197 (8th Cir. 1965); Bonhiver v. Louisiana Brokers Exch., Inc., 255 F. Supp. 254 (D. Minn. 1966).

35. McGee v. International Life Ins. Co., 355 U.S. 220, 224 (1957); Fourth Northwestern Nat'l Bank v. Hilson Indus., 264 Minn. 110, 117 N.W. 2d 732 (1962).

36. Perhaps one reason the court is more willing to allow jurisdiction in a case like *Dahlberg*, where the nonresident buyer physically entered the state, is that since defendant came to the state for business purposes, it is not unreasonable to expect him to return for a related purpose. *Cf.* Bonhiver v. Louisiana Brokers Exch., Inc., 255 F. Supp. 254 (D. Minn. 1966).

37. *See* Henry R. Jahn & Son, Inc. v. Superior Court, 49 Cal. 2d 855, 323 P.2d 437 (1958).

before jurisdiction *should* be imposed."[38] This language at least suggests that the court was concerned with the wisdom rather than the constitutionality of exercising jurisdiction. This conclusion is buttressed by the language in *Hilson* which expressed concern that an over-willingness to impose jurisdiction on out-of-state buyers might result in discouraging them from transacting business in Minnesota.[39]

Further, the opinion expressed a concern as to which party was the aggressor.[40] While the term "aggressor" has never been explicitly defined, it appears to refer to the party who is the instigator of the contact, or who is in some sense taking advantage of the other party.[41] In the ordinary sale transaction, where the nonresident seller has made an affirmative effort to sell its product to a resident plaintiff, the Minnesota court has had little hesitation in upholding jurisdiction.[42] However, where the defendant is an out-of-state buyer, it is more difficult to conceive of it as an aggressor, as, in the general case, its patronage will have been solicited by the resident seller.[43] It may have appeared to the Minnesota Supreme Court that an out-of-state buyer will not have made the kind of affirmative, purposeful contact that *Han-*

38. 275 Minn. 534, 537-38, 148 N.W.2d 161, 164 (1967) (emphasis added).

39. 264 Minn. 110, 117-18, 117 N.W.2d 732, 736 (1962). However, the concluding substantive paragraph of the opinion speaks in terms of the quality and nature of the acts of the defendant. As has been indicated these words are a part of the constitutional test for due process enunciated in *International Shoe*.

Many state court decisions are similarly ambiguous. *See, e.g.*, Grobark v. Addo Machine Co., Inc., 16 Ill. 2d 426, 158 N.E.2d 73 (1959); Comment, 51 VA. L. REV. 719, 735 (1965). Federal court decisions more often make explicit distinctions between considerations of policy, statutory interpretation and constitutional law. This is perhaps due to their reluctance to reach constitutional issues unless necessary.

40. 275 Minn. 534, 537, 148 N.W.2d 161, 164 (1967).

41. Fourth Northwestern Nat'l Bank v. Hilson Indus., 264 Minn. 110, 117, 117 N.W.2d 732, 735 (1962).

42. *E.g.*, Beck v. Spindler, 256 Minn. 543, 99 N.W.2d 670 (1959).

43. The "aggressor theory" does not appear to be entirely coincident with the question of which party made the first contact, or was the instigator of the relationship. In *Hilson Industries* it was the defendant which made the first contact, but the plaintiff was portrayed as the aggressor. It is possible that the concept of "aggressor" involves an evaluation of which person is the defaulting party. Clearly such a determination has no bearing upon the question of jurisdiction. *Cf.* United Barge Co. v. Logan Charter Serv., Inc., 237 F. Supp. 624, 631 (D. Minn. 1964).

Nevertheless, it is possible that the nonresident buyer could be an "aggressor." For example, the buyer could accrue an appreciable amount of indebtedness to the resident seller, and then refuse to pay.

son v. Denckla requires. The "aggressor theory," however, does not seem to have any valid constitutional basis. The Minnesota Federal District Court has twice stated that it finds no significance in which party makes the first contact or is the aggressor.[44] Regardless of the validity of this position in the case of a single buying transaction, where there has been a regular course of dealings, it is clear that the defendant buyer has made a decision to continue to have contacts with the jurisdiction. Clearly this should satisfy the constitutional requirement.

The Court may also have been influenced in its decision by a conception of the policy objective of the Single Act Statute to protect individuals rather than corporations. The statute was undoubtedly designed to protect small individual claimants who would be financially unable to pursue their claims in a foreign jurisdiction.[45] But the statute as written by the legislature makes no distinction between the rights of resident individuals and resident corporations. If there is no constitutional basis for making such a distinction, there is arguably no room for the court to interpolate it into the statute.

It has been suggested that since the determination of consistency with due process in a single act case is a matter of balancing the various interests of the plaintiff, the defendant, and the forum state, the plaintiff's being an individual rather than a corporation ought to be significant. *Arguendo*, where an individual is involved the state perhaps has a greater interest in exercising jurisdiction in order to better protect its citizens. *Hilson Industries* has been read as implying such an attitude on the part of the Minnesota Supreme Court,[46] and it is arguable that this position is consistent with the basic jurisdictional standards of fair play and substantial justice as set forth in *International Shoe*. Perhaps it is more consonant with fairness and reason to impose jurisdiction on a nonresident where the plaintiff is an individual, but this is a fact determination which must be made in each case. In *Marshall Egg*, where both parties are corporations, such considerations regarding policy would ap-

44. Bonhiver v. Louisiana Brokers Exch., Inc., 255 F. Supp. 254, 258 (D. Minn. 1966); Kornfuehrer v. Philadelphia Bindery, Inc., 240 F. Supp. 157, 160-61 n.7 (D. Minn. 1965).

45. *See* Comment, 48 MINN. L. REV. 119, 192, 194 (1963).

46. Haldeman-Homme Mfg. Co. v. Texacon Indus. Inc., 236 F. Supp. 99, 102n.5 (D. Minn. 1964). *Cf.* Comment, 43 MINN. L. REV. 569, 576 (1959).

Such an attitude with regard to policy may also be relevant to the constitutional question involved.