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COURTS—JURISDICTION—CONSTITUTIONALITY OF STATUTE ESTABLISHING JURISDICTION OVER NONRESIDENT CONDUCTING BUSINESS IN STATE THROUGH RESIDENT AGENT—Defendant, a resident of Utah, sued petitioner, a resident of California, to recover construction costs and contractor's fee for the erection of a building at petitioner's Utah place of business. In accordance with a statute of Utah¹ providing that jurisdiction over a nonresident individual doing business in the state could be obtained in all actions arising out of the conduct of the business by serving process on the resident agent managing the business, summons was served on the petitioner's Utah manager. Petitioner appeared specially and moved to quash the summons for lack of jurisdiction, which motion was denied. He then obtained an alternative writ of prohibition from the Supreme Court of Utah to stop proceedings in the district court. On an order to show cause why the alternative writ should not be made permanent, *held*, the writ should be recalled. The statute did not deny due process; the question of retroactive application was not raised because there was sufficient business activity subsequent to its effective date. *Wein v. Crockett*, (Utah 1948) 195 P. (2d) 222.

Jurisdiction to adjudicate a claim against an individual rests on more than the power of the state to enforce the judgments of its courts. It exists when there is: (1) a relationship between the state and the individual by virtue of which the enforcement of a judgment can be said to be reasonable, and (2) notice to the individual with an opportunity to defend.² "Reasonableness" once required actual physical presence of the individual.³ But juristic theory has gradually

¹ Utah Laws (1947) c. 10.

² Sunderland, "The Problem of Jurisdiction," 4 TEX. L. REV. 429 (1926); I BEALE, CONFLICT OF LAWS, § 42.2 (1935).

³ *Pennoyer v. Neff*, 95 U.S. 714 at 734 (1877).

attenuated presence as a basis by conceding that consent⁴ and domicile⁵ are alone sufficient affiliating circumstances to support jurisdiction.⁶ Is the conduct of an ordinary business an additional basis on which the courts of the state can rest jurisdiction over the nonresident individual without denying him rights assured by due process? The Supreme Court's original answer was in the negative, on the theory that a state could not attach a condition of consent to jurisdiction to the exercise of a privilege guaranteed by the Constitution.⁷ Subsequently, however, the Court found it a reasonable exercise of the police power to make the conduct of a business the basis of jurisdiction.⁸ But, since this conclusion was reached with respect to a business subjected by the state to special regulation, it is not precise authority for the proposition that the conduct of *ordinary* business is a sufficiently reasonable basis.⁹ Despite the absence of exact authority, the treatment of analogous statutes indicates that the Utah court has reached the proper result. The finding that the act of driving a motor vehicle is a reasonable circumstance to which to attach jurisdiction has settled the validity of the statutes subjecting the nonresident motorist to the jurisdiction of the local courts in causes of action arising from the doing of that act.¹⁰ It has likewise been held reasonable for the state to impose its jurisdiction on foreign corporations on the basis of conduct of business within the state though the only business so conducted is in the channels of interstate commerce.¹¹ Finally, mere ownership or use of land has been found

⁴ *Adam v. Saenger*, 303 U.S. 59, 58 S.Ct. 454 (1938); *Gilbert v. Burnstine*, 255 N.Y. 348, 174 N.E. 706 (1931); see 89 A.L.R. 1503 (1934).

⁵ *Milliken v. Meyer*, 311 U.S. 457, 61 S.Ct. 339 (1940); 132 A.L.R. 1361 (1941).

⁶ If jurisdiction can be asserted when the individual is outside the state, service must necessarily be by some substitute method. The due process requisites of substitute service have been established by the nonresident motorist cases. 96 A.L.R. 594 (1935). It was found in *Doherty & Co. v. Goodman*, 294 U.S. 623, 55 S.Ct. 553 (1935), that service on the agent in a manner similar to that provided by the Utah statute involved in the principal case satisfies these requisites.

⁷ *Flexner v. Farson*, 248 U.S. 289, 39 S.Ct. 97 (1918).

⁸ *Doherty & Co. v. Goodman*, 294 U.S. 623, 55 S.Ct. 553 (1935); see *Stoner v. Higginson*, 316 Pa. 481, 175 A. 527 (1934).

⁹ However, the *Restatement of Judgments*, on the authority of the *Doherty* case, seems to reach the broad conclusion that an ordinary business may validly afford the basis of jurisdiction. *JUDGMENTS RESTATEMENT*, § 22 (1942).

Viewed in conjunction with *International Harvester Co. v. Kentucky*, 234 U.S. 579, 34 S.Ct. 944 (1914) (see note 11, *infra*), the limiting effect of *Flexner v. Farson*, 248 U.S. 289, 39 S.Ct. 87 (1918), may be less than the language of that case would indicate. It is also significant that the court in *Doherty & Co. v. Goodman*, 294 U.S. 623, 54 S.Ct. 553 (1935), distinguished *Flexner v. Farson* on a fact basis which had been passed over in the case itself, indicating that it may no longer consider it valid authority for the conclusion that a statute like that in question is invalid.

¹⁰ 99 A.L.R. 130 (1935); 1 BEALE, *CONFLICT OF LAWS*, § 84.2 (1935).

¹¹ *International Harvester Co. v. Kentucky*, 234 U.S. 579, 34 S.Ct. 944 (1914); *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154 (1945). This analogy is particularly pertinent, for the corporation engaged only in interstate commerce is in substantially the same position with respect to state regulation by virtue of the commerce clause, U.S. Const., Art. 1, § 8, as is the individual by virtue of the interstate privileges and immunities clause, U.S. Const., Art. 4, § 2. *Edwards v. California*, 314 U.S. 160, 62 S.Ct. 164 (1941).

to be a sufficient affiliating circumstance to permit the state to assert personal jurisdiction over the nonresident owner or occupant in causes of action arising out of the use of the land.¹² Since these acts of the individual and the conduct of ordinary business by the corporation engaged in interstate commerce are reasonable bases for jurisdiction, it is difficult to see how it can be found that the conduct of ordinary business by the individual is not. That this is a reasonable basis for jurisdiction is indicated by the prevalence of its treatment as such abroad.¹³ Inasmuch as the purpose of a statute like that involved in the principal case is to give more adequate protection to citizens by enabling them to sue in conveniently located courts, it would seem to be in furtherance of that principle to refuse to recognize a limitation that the business conducted must be one subject to special regulation.

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¹² *Dubin v. Philadelphia*, 34 Pa. D. & C. 61 (1938), noted in 87 UNIV. PA. L. REV. 119 (1938). See Pa. Ann. Stat. (Purdon, Supp. 1947) § 331.

¹³ Beale, "The Jurisdiction of Courts over Foreigners," 26 HARV. L. REV. 193, 202, 203 (1913); Sunderland, "The Problem of Jurisdiction," 4 TEX. L. REV. 429 (1926).