JURISDICTION OF COURTS

GEORGE W. STUMBERG
Professor of Law, University of Texas School of Law, Austin, Texas

AUGUST 20, 1949

AS APPLIED to judicial proceedings the term jurisdiction means the power of courts to hear and to determine controversies involving legal relations.[1] While the extent of judicial power depends primarily upon the legal system of the state or country where suit may be brought, under our Anglo-American system of law results of litigation abroad are only recognized as effective at the forum if the litigation takes place in a state or country, the courts of which, according to our notions of permissible exercise of judicial power, have jurisdiction.[2] In addition, in the United States the due process clauses of the fifth and fourteenth amendments have had read into them by the Supreme Court limitations on the exercise of judicial power so that a state or federal court may not, even though authorized to do so by state or federal legislation, exercise power unless it has jurisdiction and unless, also, there has been an acceptable attempt to notify the party sued of the pendency of the suit.[3] Unfortunately, there is no general over-all theme running through

[1] It is believed that there is no over-all fundamental theoretical concept of jurisdistion of courts which will explain why the exercise of power in one type of situation is regarded as acceptable but not in another. In continental Europe the circumstances under which courts may act are provided for in the national codes of civil procedure. There Roman tradition, requirements of expediency, and, in some instances, excessive nationalism have had their influence on legislative thinking. In the United States state legislatures have sought to extend local jurisdiction beyond the presence-power concept of the common law. Under our constitutional system it has been a matter for the courts, particularly the United States Supreme Court, to decide whether particular extensions are valid. The due process clauses of the fifth and fourteenth amendments have been construed as limitations on the exercise of judicial power by state and federal courts. Article IV of the Constitution requires that full faith and credit be given judgments rendered by the courts of sister states. Credit need not be given if there was no jurisdiction. Whether there was must ultimately be decided by the Supreme Court.

[2] See Schibsby v. Westenholz (1870) L. R. 6 Q. B. 155. *Cf.* Buchanan v. Rucker 9 East 192, 103 Eng. Rep. 546 (1808).

[3] For decisions of the Supreme Court discussing due process, see Pennoyer v. Neff, 95 U. S. 714, 24 L. Ed. 565 (1877); Hess v. Pawloski, 274 U. S. 352, 47 S. Ct. 632,71

the decisions of Anglo-American courts which would enable a lawyer always to predict with full assurance what judicial reaction will be in a new type of situation, that is, in one where the courts have not already spoken. The circumstances under which a court may act cannot be described by resort to broad generalities. On the contrary, they vary in a somewhat unrelated manner, with each of the circumstances where exercise of power is permissible standing on its own bottom. In this respect there is no difference between common-law concepts and those of continental law. In both systems, tradition,[4] notions of fair play,[5] and expediency,[6] along with at times excessive nationalism, have each played a part in shaping the circumstances under which exercise of judicial power will be recognized as valid. It is sometimes assumed that the two systems, common law and civil law, are irreconcilable. While the two do have their origins in different theoretical backgrounds, as the result of statute, code provision, and judicial decision their points of contact are surprisingly numerous and their irreconcilable differences comparatively few.

It would probably be shocking to a continental lawyer to learn that temporary presence of a person in a state or country confers power, under Anglo-American concepts of jurisdiction, upon the courts there to render a personal judgment against him.[7] For example, a foreigner in the United States on a temporary visit is amenable to suit here in either a federal or a state court. On the other hand, it would be equally shocking to an American lawyer to find that a Frenchman may sue a foreigner in a French court without regard to the presence or domicil of the latter in France at the time of filing suit.[8]

The explanation of the Anglo-American rule that presence confers jurisdiction is an historical one. Originally, under the English common law, suit was begun by service of process upon the defendant, the process

L. Ed. 1091. (1927). For decisions involving full faith and credit, see Thompson v. Whitman, 18 Wall. 457, 21 L. Ed. 897 (1873); Christmas v. Russel, 5 Wall. 290, 18 L. Ed. 475 (1866). As to the requirement of "fair notice," see Holmes, J., in McDonald v. Mabee, 243 U. S. 90, 37 S. Ct. 343, 61 L. Ed. 608 (1917).

[4] *Cf.* the exercise of jurisdiction by Anglo-American courts because of presence of the defendant. See note 7 *infra*. *Cf.* also the civil law doctrine that a defendant should be amenable to suit at his domicil. See note 26 *infra*.

[5] See the cases involving suits against foreign corporations and even natural persons, notes 20 *et seq. infra*.

[6] See Hess v. Pawloski, note 25 *infra*. Also the foreign corporation-doing business cases, notes 20 *et seq. infra*.

[7] See Fisher, Brown & Co. v. Fielding, 67 Conn. 91, 34 Atl. 714 (1895); Darrah v. Watson, 36 Ia. 116 (1872).

[8] French Civil Code, art. 14.

consisting of an order or command that he, the defendant, appear and answer the plaintiff's claim in the King's court. To permit a plaintiff to sue a defendant only temporarily in a state on a cause of action having no connection whatever with that state has, however, its obvious elements of unfairness. Happily, some American courts, in what is believed to be a growing number, either as the result of statute, or on their own initiative, have declined to exercise power where the cause of action (both parties being nonresidents) is foreign to the forum.[9] Even so, this growing disinclination is usually based on the thought that the local court whose docket may already be crowded should not take time, when the parties are nonresidents, to hear cases that can be more conveniently tried elsewhere. Expediency rather than fairness is the foundation of the limitation. On the other hand, the French rule that permits a French citizen to sue in a French court seems to be based on an excessive nationalistic zeal.

It is not unusual for parties to a transaction which cuts across state or international lines to stipulate in advance that in case of disagreement or dispute the matter will be referred to some particular court or tribunal, such as, for example, a particular trial court in Belgium or in France.[10] In the United States a stipulation is sometimes inserted in a promissory note authorizing the holder to confess, upon nonpayment on the due date, judgment.[11] Agreements to submit to the jurisdiction of some particular tribunal have been upheld by the courts in England not only as conferring jurisdiction upon the designated foreign court but as, under normal circumstances, depriving other courts, including English courts, of jurisdiction when this is also the purpose of the agreement.[12] While willing to accept a principle that consent given in advance suffices to confer jurisdiction, American courts have been reluctant to concede that parties to a transaction may deprive them, the courts, of jurisdiction as the result of agreement or contract.[13] The theory has been that jurisdiction is a matter

[9] See Universal Adjustments Corp. v. Midland Bank, Ltd. 281 Mass. 303, 184 N. E. 152, 87 A. L. R. 1407 (1933); Gulf Oil Corp. v. Gilbert, 330 U. S. 501, 67 S. Ct. 839, 91 L. Ed. 1055 (1947); 46 Col. L. Rev. 413.

[10] *Cf.* Feyerick v. Hubbard [1902] 71 L. J. K. B. 509, 50 W. R. 557, 18 T. L. R. 38. Restatement of the Law of Conflict of Laws (1934) § 81.

[11] Hazel v. Jacobs, 78 N. J. L. 459, 75 Atl. 903 (1910); Note, 33 Col. L. Rev. 735 (1933). In some states such stipulations are prohibited by statute.

[12] *Cf.* Kirchner & Co. v. Gruban [1909] 1 Ch. 413, 78 L. J. Ch. 177, 99 L. T. R. 932. The English doctrine is not a hard and fast one. Jurisdiction will be exercised by an English court if there are special reasons for doing so. Normally, however, at least if the parties are foreigners, the agreement will be enforced.

[13] See Bartlett v. Union Mutual Fire Ins. Co. 46 Me. 500 (1859); Nute v. Hamilton Ins. Co., 72 Mass. 174, 6 Gray 174 (1856); Benson v. Eastern Bldg. and Loan Ass'n.,

of law, in this country local statute or constitution, which cannot be changed by private parties.[14] Somewhat the same situation exists, in the absence of statute, where parties to a transaction stipulate in advance that disputes will be submitted to arbitration. The position in the United States, in the absence of statute, has been that the arbitration agreement is unenforceable.[15] Also, refusal to arbitrate is no defense to an action at law brought by a recalcitrant party. However, with the widespread enactment of compulsory arbitration statutes in the United States, it is to be expected that agreements to submit to foreign arbitration will become enforceable at least through defensive relief when suit is brought by a recalcitrant on the original contract. Should this become the case, American judicial hostility toward agreements to submit disputes only to designated tribunals may lessen.[16] Frequently one of the bargaining points between parties of different nationalities is that disagreements will be adjudicated only by a designated court or tribunal, the objective being protection against having to submit to a foreign tribunal which it is anticipated may be unfriendly or, if not, unfamiliar with the law governing the transaction or in any event to preclude the possibility of having to defend far from home.

One would naturally expect courts generally to accept a principle that there should be one place where a person may be sued without regard to the particularity of the situation. While it is true that the Anglo-American concept of domicil is not always constant from state to state or country to country, it does denote the place where a person has his general headquarters; in a sense it is a focal point of his activities. Until recently the American decisions were indecisive as to whether, from the point of view of due process or full faith and credit, domicil suffices to confer jurisdiction.[17] It is now settled that it does, assuming always adequate steps to notify the defendant of the suit.[18] In the United States there is no legislation conferring jurisdiction upon federal courts because of nationality. Dicta in decisions by the Supreme Court of the United States indicate

174 N. Y. 83, 66 N. E. 627 (1903). But *Cf.* Mittenthal v. Mascagni, 183 Mass. 19, 66 N. E. 425, 60 L. R. A. 812, 97 A. S. R. 404 (1903).

[14] *Cf.* cases cited note 13 *supra.*

[15] *Cf.* Meacham v. Jamestown, F. and C. R. Co., 211 N. Y. 346, 105 N. E. 653 (1914).

[16] *Cf.* Kelvin Engineering Co. v. Blanco, 210 N. Y. Supp. 10 (1925). Note, 25 Col. L. Rev. 1063 (1925). See also Gilbert v. Burnstine, 255 N. Y. 348, 174 N. E. 706 (1931).

[17] See Henderson v. Staniford 105 Mass. 504 (1870). *Cf.* De la Montanya v. De la Mantanya, 112 Cal. 101, 44 Pac. 345 (1896); McDonald v. Mabee, 243 U. S. 90, 37 S. Ct. 343, 61 L. Ed. 608 (1917).

[18] Milliken v. Meyer, 311 U. S. 454, 61 S. Ct. 339, 85 L. Ed. 278 (1940).

that it would recognize as valid exercise of judicial power because of nationality. Of course, a state court in a federation such as that of the United States, would not be conceded the power to act with respect to nonresident nationals.[19]

The extent to which doing business within a state or country confers jurisdiction over natural persons with respect to causes of action arising out of such business is, insofar as American courts are concerned, in a state of flux. There are, however, guideposts which indicate that the Supreme Court of the United States will eventually uphold, from the point of view of due process and full faith and credit, exercise of jurisdiction on this ground. It has long been settled that a corporation doing business within a state submits itself to the jurisdiction of the courts there as to causes of action arising out of its activities there.[20] Originally permissible exercise of jurisdiction over corporations was based upon a theory of consent.[21] Foreign corporations as a condition precedent to permission to do business within one of the states of the United States were required to designate an agent upon whom process could be served. Designation of such an agent by the corporation was regarded as consent to service upon the designated agent. There are statutes in some of the American states which provide that if a corporation fails to designate an agent the corporation may nevertheless be sued. Also, provision is sometimes made for service of process on some state official with further provision for notification by him to the corporation. Statutes of this type have been upheld by the Supreme Court as conforming to notions of due process as long as suit is upon a cause of action arising out of business done within the state.[22] More recently, in the case of *Doherty* v. *Goodman*,[23] the Supreme Court approved exercise of jurisdiction over a natural person doing business within a state through an agent with respect to a cause of action arising out of such business. The court, however, emphasized the fact that the activities of the defendant in the state, selling corporate securities, was within the peculiar regulatory powers of the state. The original theory with

[19] *Cf.* Blackmer v. United States, 284 U. S. 421, 52 S. Ct. 252, 76 L. Ed. 375 (1932).

[20] Comment, 9 Tex. L. Rev. 410 (1931). See also International Shoe Co. v. State of Washington, 326 U. S. 310, 66 S. Ct. 154, 90 L. Ed. 95, 161 A. L. R. 1057 (1945); Chipman, Ltd. v. Thomas B. Jeffrey Co., 251 U. S. 373, 40 S. Ct. 172, 64 L. Ed. 314 (1920); Louisville & N. R. Co. v. Chatters, 279 U. S. 320, 49 S. Ct. 329, 73 L. Ed. 711 (1929).

[21] St. Clair v. Cox, 106 U. S. 350, 1 S. Ct. 354, 27 L. Ed. 222 (1882). *Cf.* Learned Hand, J., in Smolik v. Philadelphia & Reading Coal & Iron Co., 222 F. 148 (1915).

[22] Pennsylvania Fire Ins. Co. v. Gold Issue Mining and Milling Co., 243 U. S. 93, 37 S. Ct. 344, 61 L. Ed. 610 (1917).

[23] Doherty and Co. v. Goodman, 294 U. S. 623, 55 S. Ct. 553, 79 L. Ed. 1097 (1935).

respect to jurisdiction over foreign corporations was that they too are subject to regulation. However, as to them, the only tenable theory at present is that jurisdiction or power exists, unless there has been consent, because of their business activities within the state. It is therefore probable that the Supreme Court will uphold jurisdiction to enter a personal judgment against a nonresident defendant doing business within a state if the cause of action arises out of that business, assuming always proper steps to notify the defendant of the pendency of the suit.[24]

Whether isolated transactions within a state suffice to confer jurisdiction over causes of actions arising out of such transactions, is a field where the American decisions are indecisive. In *Hess* v. *Pawloski*,[25] the Supreme Court upheld the exercise of jurisdiction over a nonresident owner of an automobile where the cause of action arises out of the negligent operation of an automobile within the state. Here, the justification was the peculiar regulatory authority of the state whose courts exercised power.

Extension in the United States of permissible exercise of judicial power so as to have it include, without regard to the presence or domicil of the defendant, causes of action arising out of business within the state and even out of at least certain activities within a state has had as its basis expediency and fairness. To compel a person having a claim against a corporation carrying on a business within a state to go to the state of incorporation to sue, where under our system the corporation might not have any assets whatever, would be obviously unfair. Furthermore, the corporation is likely to have at hand the means of defending suit at a place where it does business. Also, a cause of action arising out of business within a particular state can be satisfactorily tried there because of the probable availability there of witnesses. These same considerations apply to business carried on by natural persons. American statutes making it possible to sue the culpable party at the place where an injury has been inflicted in the operation of an automobile, are probably based upon the thought that the plaintiff, who is likely to be a resident, should not be compelled to go to another jurisdiction to sue. Furthermore because of availability of witnesses, the case can be best tried at the place where the tort occurred. Thus far the Supreme Court of the United States has not had occasion to pass upon the validity of an attempted exercise of jurisdiction in a case or controversy arising out of an isolated business transaction within a state, but at least some of the considerations which justify permissible exercise

[24] See Stumberg, Principles of Conflict of Laws (1937) pp. 89 *et seq.*

[25] Hess v. Pawloski, 274 U. S. 352, 47 S. Ct. 632, 71 L. Ed. 1091 (1927).

of power because of business within a state are equally applicable to isolated transactions within a state.

In continental countries the fundamental rule is that a defendant is subject to suit at his domicil.[26] *Actor sequitur forum rei.* The rule goes back to Roman law. Its basic justification seems to be that suit should ordinarily be brought either at the domicil of the plaintiff or at the domicil of the defendant. Since the plaintiff normally must justify his claim, it is regarded as only just that he should have to sue at the defendant's domicil. There are, however, a number of additional grounds for the exercise of jurisdiction. In France, for example, a cause arising out of a commercial transaction may be brought before a court of the district in which the promise was made or the goods were to be delivered, or where payment was to be made.[27] In addition, suit may under the fundamental notion of jurisdiction be brought at the domicil of the defendant. An action to obtain redress for a tort may in France be brought at the place where the tort was committed as well as at the domicil of the defendant.[28] There are also special rules as to insurance and maritime collisions.[29] Parties may with limited exceptions by stipulation confer jurisdiction and a stipulation conferring exclusive jurisdiction is valid.[30] Foreign corporations are amenable to suit in France if they have a branch office there[31], and a Frenchman may be sued there even though the obligation may have been incurred abroad.[32]

[26] See Lorenzen, "The French Rules of the Conflict of Laws" 36 Yale L. J. 731 (1927). French Code of Civ. Proc., art. 59; semble, art. 13, German Code of Civ. Proc. If a person has no domicil, in Germany or elsewhere, he may be sued at his place of sojourn in Germany.

[27] Art. 420, Code of Civ. Proc. Under article 29 of the German Code of Civil Procedure, following Roman law, suit may be brought at the place where the obligation is to be performed.

[28] Law of Nov. 26, 1923, amending art. 59 of the Code of Civ. Proc. This is also the German rule. *Cf.* German Code of Civ. Proc., art. 32.

[29] Law of Jan. 2, 1902. The insured may sue at his domicil, at the situs of the property in the case of property insurance or at the place where the accident occurred in the case of accident insurance.

[30] Art. 59, § 9, Code of Civ. Proc. This is also the German rule. *Cf.* Code of Civ. Proc., art. 39.

[31] Foreign corporations are regarded as having a domicil in France if they have a branch there. See 12 Clunet (1885) 304; 26 Clunet (1899) 522. Also, art. 14 of the Civil Code permits French citizens to sue foreign corporations in French courts even though the cause of action is foreign, and the corporation has no branch in France. Any person not domiciled in Germany may be sued at a place where he has a business establishment in Germany on causes of action arising out of the business of the establishment, Code of Civil Procedure, art. 21.

[32] Article 15 of the French Civil Code provides that a Frenchman may be called

Reference has already been made to a peculiar feature of French law. By virtue of Article 14 of the Code, any alien may be sued in France on obligations incurred by him in France toward a French person and on obligations incurred in a foreign country toward French "people."

If it is assumed that for purposes of international enforcement or recognition as valid of judgments there should be international agreement[33] as to the circumstances under which jurisdiction exists, what are the present points of agreement as between the Anglo-American and continental systems, what differences may be acceptable to all, what differences are irreconcilable?

As was stated earlier, a fundamental concept of continental law is that the proper place to sue is the domicil of the defendant.[34] The English courts have long since stated that a judgment rendered at the domicil of the defendant is entitled to full faith and credit.[35] While domicil as a permissible jurisdictional factor was until recently a matter of doubt in the United States, it is now settled that a judgment rendered at the domicil of a defendant is as between the states of the United States entitled to recognition.[36] There is no legislation in the United States which provides for exercise of jurisdiction by our courts when suit is brought against an American national. As has already been stated, there have been, however, intimations by the Supreme Court that nationality may be made a basis

before the French courts for obligations contracted by him in a foreign country, even toward an alien.

[33] It would be outside the scope of this paper to discuss the practices in various countries with respect to recognition and enforcement of foreign judgments. In England and in the United States, the theory is that the original claim is merged into a valid judgment. Suit is brought on the judgment and the judgment may be pleaded as a defense if the suit is in the original claim. There must, however, be jurisdiction in the Anglo-American sense of the term. Whether a foreign judgment will be recognized only if it is rendered under circumstances where under the local internal law there is jurisdiction or whether in any event the merits of the original claim are subject to review or whether doctrines of retaliation will be applied, are matters as to which views and practices differ. Insofar as Western Europe, the United Kingdom, the British Dominions, and the United States are concerned, although local law and practice vary, the brand of justice administered is equally high. It would seem then that if parties have had a fair opportunity to litigate their differences the outcome of that litigation, irrespective of local machinery for implementing the results, should be recognized as effective everywhere. Common agreement as to the circumstances constituting jurisdiction, not for internal but for external purposes, would make for better enforcement and recognition of foreign judgments.

[34] See note 26 *supra*.

[35] *Cf.* Schibsby v. Westenholz (1870) L. R. 6 Q. B. 155.

[36] Milliken v. Meyer, 311 U. S. 457, 61 S. Ct. 339, 85 L. Ed. 278. (1940).

for the exercise of judicial power. That it may is an accepted English doctrine.[37] French courts exercise jurisdiction over French nationals as do the courts of other continental countries.[38] Commission of a tort in France confers jurisdiction upon the courts there over the tortfeasor without regard to domicil or nationality.[39] In this country statutory extension of jurisdiction so as to include personal injuries incurred within a state has been largely confined to injuries inflicted in the operation of an automobile. From automobile injuries to torts in general is but a step. In England, France (as well as in other continental countries), and the United States consent given in advance confers jurisdiction.[40] There are, therefore, in summary, four jurisdictional denominators which are common to the legal systems of common-law and civil-law states and countries, i.e., nationality of the defendant, domicil of the defendant, place of tort, consent. These four should, it is believed, be generally acceptable as valid jurisdictional factors for the exercise of judicial power and the recognition abroad of the results reached therefrom.

In the American cases, one sometimes finds statements to the effect that the foundation of permissible exercise of judicial power is power of the court, at least at the beginning of the proceedings, over the person of the defendant.[41] This may have been true in England in the earlier history of our Anglo-American law, at a time when suit was begun by service of process on the person of the defendant. But a theory of jurisdiction which permits suit against a defendant who happens to be present within a state or country at the beginning of the proceedings has, particularly when the cause of action is wholly foreign to the forum, obvious elements of unfairness. The defendant may be forced to defend on unfamiliar territory, even semi-hostile territory, and be put to great expense in making available there evidence or testimony pertaining to his defense. Unless qualified by some requirement that the cause of action, or the plaintiff or the defendant have a definite connection with the state or country where suit is brought, it is not likely that presence as a jurisdictional basis will be acceptable outside of common law jurisdictions. Nor is it likely that the French doctrine that the French character of the plaintiff suffices to confer jurisdiction would be acceptable to other states or countries.

But theoretical power over the defendant at the beginning of the pro-

[37] *Cf.* Schibsby v. Westenholz, note 35 *supra.*

[38] See note 32 *supra.*

[39] See note 28 *supra.*

[40] See notes 10 *et seq.* and note 13 *supra.*

[41] *Cf.* Holmes, J., in McDonald v. Mabee, note 17 *supra.*

ceeding, while an historical justification for exercise of jurisdiction in England and the United States, is no longer the sole justification. Balancing conveniences, expediency, and notions of fair play have also played an important part in developing doctrines of permissible exercise of judicial power. This has been particularly true, whatever may have been the stated reasons, in decisions by the Supreme Court upholding exercise of jurisdiction by state courts of causes of action arising out of business conducted within a state by foreign corporations.[42] No particular hardship is imposed upon a corporation, or indeed upon a natural person, in requiring it or him to defend at a place where he has a settled place of business. If the cause of action arises out of the business there, it can be as well, if not better, tried at that place than at any other. It would seem then that exercise of judicial power over causes of action arising out of business within a state or country should, for external purposes, even though not a part of a local system, be generally acceptable as valid. Whether American lawyers and judges would be willing to accept a thesis that making a promise within a state or country or an obligation to perform within a state or country through delivery of goods there or through payment there suffices to confer jurisdiction as is the case under French law, is problematical. Perhaps the automobile cases point in that direction, but up to the present there is little to indicate what the ultimate judicial reaction in this country will be. In any event, if the undertaking, or performance called for by it, has its origin in business within a state or country, exercise of jurisdiction on this score would under existing decisions be recognized as valid by American courts.

In the case of *Pennoyer* v. *Neff*,[43] the Supreme Court of the United States took the position that the situs of property within a state does not confer jurisdiction upon the courts there to enter a personal judgment against a defendant. However, under the statutes of the various American states, property, movable or immovable, may be seized to satisfy claims against a nonresident owner. Also, a court at the situs of land may in the United States specifically enforce against an absent vendor a contract to convey it.[44] It would seem, in addition, that a court at the situs of immovables[45] should be conceded the authority to entertain jurisdiction over

[42] See notes 20–23 *supra*.

[43] 95 U. S. 714, 24 L. Ed. 565 (1877). But *cf.* art. 23 of the German Code of Civil Procedure. Apparently pecuniary claims against a person not having a domicil in Germany may be sued upon at the place where he owns property or where the object directly affected by the suit is located.

[44] Garfein v. McInnis, 248 N. Y. 261, 162 N. E. 73 (1928).

[45] But see Prudential Ins. Co. v. Berry, 153 S. C. 496, 151 S. E. 63 (1930). The case

any controversy concerning it, even to the extent of entering a judgment *in personam*. Interests in immovables have long been treated in conflict of laws as of peculiar concern to the situs state or country. The interest there has been regarded as a predominant one. The codes of some continental countries provide for jurisdiction in a limited category of transactions even though the suit is not strictly *in rem*.

Jurisdictional concepts in the United States have gone through an evolutionary process. It is a far cry from a theory of power of the defendant at the beginning of the proceedings to *Doherty and Company* v. *Goodman*,[46] in which the Supreme Court upheld the exercise of jurisdiction by a state court over a nonresident defendant doing business in the state, the cause of action arising out of that business. Expediency, tempered by notions of fair play and by balancing the conveniences and inconveniences of the parties, it is believed, has become a controlling factor, replacing earlier nebulous concepts. Thus domicil has become a proper jurisdictional basis because there should be one place where, in any event, an alleged obligor is subject to suit. Normally no particular hardship is imposed upon a defendant in requiring him to defend on his own ground. Anglo-American courts which have declined to exercise jurisdiction upon a doctrine of *forum non conveniens* have done so not only because of the inconvenience to the court but also, so it is believed, because of the unfairness to the defendant which would result in his having to litigate away from home at the instance of a nonresident a case or cause which has no connection whatever with the state or country where the court sits. Nationality as a basis for jurisdiction is justifiable upon theories of allegiance but it would seem that, in part at least, it would be justifiable also upon the considerations which apply to domicil. Consent in advance is a concession to freedom of contract. There is nothing unfair in holding a person to his agreement. A person who does business within a state should be as well equipped there to defend there as he might be elsewhere. Furthermore, the probabilities are that the controversy, arising out of business there, can be more conveniently tried there than elsewhere. Somewhat the same considerations apply where the cause of action concerns some transaction concerning land located at the forum.

of Dubin v. City of Philadelphia, 34 Pa. D. & C. 61 (1938) is interesting in this connection. Suit against a nonresident owner of property was upheld. The cause of action grew out of personal injury. In France judgments *in personam* can under certain circumstances be rendered because of the location of immovables there.

[46] See note 23 *supra*.

In any event expediency, convenience of the court and of the parties to the suit, and fairness should be the controlling factors. They have become increasingly so as between the American states. Also, as a result of broadening jurisdictional concepts in the United States the differences between common law and civil law jurisdictional concepts have become surprisingly few.