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Antitrust-Venue-Time of Venue Under Section 12 of the Clayton Act Refers to Time When Action Accrued-*Eastland Construction Co. v. Keasbey & Mattison Co.*

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RECENT DEVELOPMENTS

ANTITRUST—VENUE—Time of Venue Under Section 12 of the Clayton Act Refers to Time When Action Accrued—*Eastland Construction Co. v. Keasbey & Mattison Co.**

In 1964, plaintiff brought a treble damage suit under the Clayton Act in the Federal District Court for the Northern District of California, alleging that defendant had violated the antitrust laws while doing business in that district.[1] Defendant, a Pennsylvania corporation which formerly had conducted a portion of its business in California but which had ceased all activities there in 1962, moved for dismissal, arguing that venue was improper because it was not transacting business in the Northern District of California at the time suit was instituted. On appeal from a ruling by the district court granting the motion for dismissal, *held*, reversed. The proper temporal reference for venue under the Clayton Act is the time when the cause of action accrued and therefore venue was proper because defendant had been transacting business in California when the alleged antitrust violations occurred.

Section 12 of the Clayton Act, under the heading "District in which to sue corporation," provides: "Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business . . . ."[2] There has been some question as to the proper application of this venue provision when a corporation has ceased doing business in a district before it has become a defendant in a private antitrust action.[3] The case authority is almost equally divided: some decisions reflect the "narrow view" that a corporation must be "found" or "transacting business" in a district on the *day the complaint is filed* for venue to be proper in that district,[4] while others

* 358 F.2d 777 (9th Cir. 1966) [hereinafter referred to as principal case].

1. Keasbey & Mattison and its co-defendant, Johns-Manville Corporation, were charged with violations of §§ 1 and 2 of the Sherman Act in the production and sale of asbestos-cement pipe and couplings.

2. 38 Stat. 736 (1914), 15 U.S.C. § 22 (1964).

3. Cases involving corporations which have been dissolved are not treated here. Most states have statutes prolonging the capacity of a dissolved corporation to sue or be sued. See 19 AM. JUR. 2D *Corporations* §§ 1669, 1672, 1673 (1965); Annots., 47 A.L.R. 1288 (1927), 97 A.L.R. 477 (1935).

4. Sunbury Wire Rope Mfg. Co. v. United States Steel Corp., 230 F.2d 511 (3d Cir. 1956); City of Philadelphia v. Morton Salt Co., 248 F. Supp. 506 (E.D. Pa. 1965); School Dist. v. Kurtz Bros., 240 F. Supp. 361 (E.D. Pa. 1965); Gem Corrugated Box Corp. v. Mead Corp., 189 F. Supp. 584 (S.D.N.Y. 1960); Schreiber v. Loew's Inc., 147 F. Supp. 319 (W.D. Mich. 1957); 2 TOULMIN, ANTITRUST LAWS § 24.5 (1949); Note, 37 N.Y.U.L. REV. 268 (1962).

adopt the "broad view" and hold that a corporation "found" or "transacting business" in the forum district at the *time of the alleged antitrust violation,* although not at the commencement of the action, is nevertheless amenable to suit there.[5]

Although the court in the principal case adopted the broad view, some support can be found for the proposition that the venue requirements must be fulfilled as to a corporate defendant at the time an action is begun. Arguably, the fact that section 12 of the Clayton Act is phrased in the present tense[6] gives rise to the inference that Congress intended venue to be determined by the location of the parties at the beginning of suit. Furthermore, since venue is only a "forum-selecting" device, it may be argued that it should be easily determinable.[7] However, to force a court first to decide when a cause of action accrued and then whether a defendant corporation satisfied the venue requirements at that time—as is required under the broad view—would, in effect, necessitate a separate trial on these venue questions alone. Thus the narrow interpretation has the advantage of specifying an exact day—the day the complaint is filed—on which the venue requirement must be satisfied. Moreover, support for the narrow view is found in the contention that venue requirements are, and should be, based upon the convenience of both parties *at the time of suit.*[8] If this is, in fact, the guiding principle underlying the venue requirements, venue should be governed by the parties' positions at the commencement of the action. Finally, proponents of the narrow view point to the legislative history of section 12's venue provision. They argue that the requirements have not been changed since they were established in 1914 and that at that time Congress intended that a private party should go to a foreign jurisdiction in order to sue a corporation which had injured him if that corporation was no longer transacting business where the injury occurred.[9]

However, upon closer analysis, the congressional intent inferred from the legislative history of section 12 seemingly supports the broad view rather than the narrow.[10] It is evident from the Congressional Record that Congress' concern was not for the con-

5. Sharp v. Commercial Solvents Corp., 232 F. Supp. 323 (N.D. Tex. 1964); R. J. Coulter Funeral Home, Inc. v. National Burial Ins. Co., 192 F. Supp. 522 (E.D. Tenn. 1960); Ross-Bart Port Theatre, Inc. v. Eagle Lion Films, Inc., 140 F. Supp. 401 (E.D. Va. 1954).

6. A suit "may be brought" where a corporation "*may be* found" or "*transacts* business." 38 Stat. 736 (1914), 15 U.S.C. § 22 (1964). (Emphasis added.)

7. City of Philadelphia v. Morton Salt Co., 248 F. Supp. 506 (E.D. Pa. 1965).

8. 1 BARRON & HOLTZOFF, FEDERAL PRACTICE & PROCEDURE § 80 (Wright ed. Supp. 1965).

9. See cases thus interpreting the legislative history cited note 4 *supra.*

10. The relevant passages in the Congressional Record include: 51 CONG. REC. 9190, 9414-17, 9466-67, 9607-08, 9663, 9682, 16274, 16342 (1914).

venience of *both* antitrust plaintiffs and defendants. Rather, the purpose of section 12 was to facilitate the maintenance of antitrust suits by injured parties; the possible burdens on corporate defendants was not deemed to be a consideration of equal importance.[11] The debates surrounding the passage of section 12 indicate that Congress intended to aid private parties by allowing them to maintain suits in the district in which they were injured by a corporation's antitrust violations.[12] Such favoritism was prompted by the idea that government enforcement of the Sherman and Clayton Acts should be supplemented by an army of private policemen, which army would constitute an additional deterrent to antitrust violations.[13] Although the Supreme Court has never passed on the precise issue facing the court in the principal case, it has indicated that its interpretation of congressional intent is coincident with that underlying the broad view,[14] for it has concluded that section 12

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11. This attitude is also reflected in the recent cases interpreting § 5(b) of the Clayton Act, 38 Stat. 731, as amended, 15 U.S.C. § 16(b) (1964). In Michigan v. Morton Salt Co., BNA ANTITRUST & TRADE REG. REP. No. 265 (D. Minn. July 28, 1966), the court, finding a strong policy favoring treble damage plaintiffs, held that the Clayton Act's statute of limitations tolled during government prosecutions both as to persons who were defendants in the government action and as to non-defendants. The latter class of persons had previously been held exempt from the tolling provisions, but the court in Morton Salt felt that, to insure an effective remedy, private plaintiffs must be given the benefit of government litigation to establish their prima facie case even against persons not participating in the earlier action.

12. Representative Cullop stated: "I want him to sue at home in the jurisdiction where the cause of action arose." 51 CONG. REC. 9416 (1914). "We are liberalizing the procedure in the courts in order to give the individual who is damaged the right to get his damages anywhere—anywhere you can catch the offender." 51 CONG. REC. 16274 (1914) (remarks of Representative Webb). Representative Dickinson, in support of his suggested addition of a "doing business" phrase, expressed a desire to correct the situation where "those who have suffered damages at the hands of a corporation shall be compelled to bring suit in the remote State or district of which the corporation is an inhabitant by virtue of its incorporation therein . . . while it goes forth in remote sections of the country, and where its greed for unlawful gain willfully disregards the rights of others." 51 CONG. REC. 9190 (1914).

13. Quemos Theatre Co. v. Warner Bros. Pictures, Inc., 35 F. Supp. 949, 950 (D. N.J. 1940): "Section 7, the three-fold damage clause . . . was designed to supply an ancillary force of private investigators to supplement the Department of Justice in law enforcement."

14. The Supreme Court has discussed the Congressional purpose for enacting the special venue clause of the Clayton Act in three noteworthy opinions. In Eastman Kodak Co. v. Southern Photo Materials Co., 273 U.S. 359, 373-74 (1927), the Court stated:

> [T]his section [12] supplements the remedial provision of the Anti-Trust Act . . . by relieving the injured person from the necessity of resorting for the redress of wrongs committed by a non-resident corporation, to a district, however distant, in which it resides or may be "found"—often an insuperable obstacle—and enabling him to institute the suit in a district, frequently that of his own residence, in which the corporation in fact transacts business.

Dictum in the 1948 case of United States v. Scophony Corp. of America, 333 U.S. 795 (1948), is often cited as authority for the liberal interpretation of venue. The Court said in that case: "A foreign corporation no longer could come to a district, perpetrate there the injuries outlawed, and then by retreating or even without retreating to its headquarters defeat or delay the retribution due." *Id.* at 808. Both of these cases are

was intended to make more forums available to an injured plaintiff than were available before the enactment of that section.[15]

The court in the principal case (the first court of appeals in ten years[16] to rule on the temporal reference problem) felt constrained to adopt the broad view in light of the policy considerations underlying the Clayton Act. The court reasoned that the procedural impact of a ruling that venue was improper as to a corporate defendant which allegedly had committed antitrust violations in the forum district and which had departed before the institution of a suit against it there ran counter to the intent of Congress.[17] Where a private party plaintiff is attempting to bring an action against a single corporate defendant which has left the district, a denial of proper venue in the plaintiff's home district might deter him from further prosecuting the suit. Surely factors such as the distance he must go in order to find a district in which the defendant is transacting business, the amount of money and time needed to maintain a distant action, and the anticipated difficulties in the production of evidence at distant forums would weigh heavily against his initial decision to prosecute. Furthermore, in those treble damage actions based upon antitrust violations which are conspiratorial in nature, it will frequently be necessary, or at least advantageous, for an injured party to bring a single action against all the alleged offenders. However, pursuant to the narrow interpretation of section 12, if some of the co-conspirators have left the district in which the injury occurred, venue in that district would be deemed to be improper as to them. The plaintiff would then be forced to maintain

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cited in United States v. National City Lines, Inc., 334 U.S. 573 (1948), where the Court again expressed its view concerning the purpose of the Act:

> Congress' concern was . . . to provide broader and more effective relief, both substantively and procedurally, for persons injured by violations of its antitrust policy. Insofar as convenience in bringing suit and conducting trial was involved, the purpose was to make these laws less inconvenient for plaintiffs or, as was said in the *Eastman* opinion, to remove the "often insuperable obstacle" thrown in their way by the existing venue restrictions.

Id. at 581.

15. For discussions of Supreme Court interpretation of the Clayton Act in cases taking the broad view, see Sharp v. Commercial Solvents Corp., 232 F. Supp. 323, 327 (N.D. Tex. 1964); R. J. Coulter Funeral Home, Inc. v. National Burial Ins. Co., 192 F. Supp. 522, 523 (E.D. Tenn. 1960); Ross-Bart Port Theatre, Inc. v. Eagle Lion Films, Inc., 140 F. Supp. 401, 402 (E.D. Va. 1954).

16. Sunbury Wire Rope Mfg. Co. v. United States Steel Corp., 230 F.2d 511 (3d Cir. 1956), adopted the narrow approach, requiring that the defendant be transacting business in the forum district at the time of suit in order to establish proper venue under the Clayton Act. That case, however, involved a corporation which had filed a certificate of withdrawal from the state of Pennsylvania, by which it waived venue objections to suits concerning its outstanding obligations. The court held that venue was proper because of this waiver and did not reach the question facing the court in the principal case. The Ninth Circuit Court of Appeals, in the principal case, states only that it does not consider the *Sunbury* case controlling. Principal case at 779.

17. Principal case at 780-81.

several actions in order to sue all of the co-conspirators unless, at the time of suit, there existed a fortuitous situation in which all were "found" or "transacting business" in the same district. Consequently, the deterrent effect upon a plaintiff's action that was mentioned above in connection with cases involving only a single offender is multiplied. Moreover, because of the expense generally involved in antitrust litigation, it is unrealistic to expect a private party to bring more than one action. Therefore, if the army of private enforcers is to be effective, the holding in the principal case, which allows a single suit to be brought against all the departed co-conspirators in the district where the violation occurred, is required.[18]

While both congressional intent and practical considerations thus support the adoption of the broad view, several problems remain concerning the scope of the holding in the principal case. First, there is the question whether a corporation which left a district for valid business reasons, as well as one which fled expressly to avoid suit, is amenable to suit in that district. As a general rule, a corporation's motives for departing have received little if any consideration when a motion to dismiss because of improper venue has been made,[19] and it would be prudent to continue this approach. To consider motivation would only becloud the venue question and necessitate an extended inquiry totally unrelated to the merits of the plaintiff's claim. In order to give effect to the congressional intent to aid treble-damage plaintiffs and also to make

18. This policy argument can also be employed in urging that the commission of an unlawful, overt act within the forum district by one co-conspirator establishes proper venue in that district for all conspirators on the theory that one corporation is an agent for its co-conspirators, but the majority of the cases hold otherwise. See Bankers Life & Cas. Co. v. Holland, 346 U.S. 379, 384 (1953):

> While a criminal action under the antitrust laws lies in any district where the conspiracy was formed or in part carried on or where an overt act was committed in furtherance thereof, Congress by 15 U.S.C. § 15 placed definite limits on venue in treble damage actions . . . . It must, therefore, have contemplated that such proceedings might be severed and transferred or filed in separate districts originally.

Accord, Independent Prod. Corp. v. Loew's, Inc., 148 F. Supp. 460, 462 (S.D.N.Y. 1957):

> [I]n a private anti-trust suit, the mere allegation of conspiracy [does not] make an alleged co-conspirator, as such, a foreign corporation's "agent" for purposes of venue under Section 12 of the Clayton Act in any district where such co-conspirator is amenable to suit and the conspiracy is alleged to have had an impact.

Contra, Giusti v. Pyrotechnic Indus., Inc., 156 F.2d 351 (9th Cir. 1946); Haleiwa Theatre Co. v. Forman, 37 F.R.D. 62 (D. Hawaii 1965). However, it is noteworthy that the principal case was decided by a court in the one circuit which adopts the minority view on the co-conspirator question. Thus in the Ninth Circuit, a plaintiff may not only sue a since-departed defendant in the district where the injury occurred, but he may also sue his co-conspirators regardless of their location at the time of suit.

19. As a rule, there is no discussion of this issue in the typical short opinions written in these cases. In Sharp v. Commercial Solvents Corp., 232 F. Supp. 323 (N.D. Tex. 1964), an antitrust case stemming from the activities of Billie Sol Estes in Texas, the court, when discussing the venue question, employed the term "elude," which may indicate some judicial cognizance of a defendant's motive for leaving a state. *Id.* at 329.

venue as easily determinable as possible without adopting the narrow view, it is submitted that the broad view should be applied regardless of a corporation's subjective reasons for leaving a given district.[20]

A second problem in delineating the boundaries of the broad view adopted by the court in the principal case is whether the acts which give rise to the cause of action must have taken place in the forum district in order for venue to be proper after a corporation has departed. That is, should a corporation that has left state X still be amenable to suit there for antitrust violations committed in state Y? In every case previously decided on the basis of the broad interpretation, the allegedly violative acts had taken place in the forum district and in connection with the general business being carried on there.[21] Furthermore, to be consistent with the courts' interpretation of Congress' purpose (to help injured plaintiffs sue *in their own home districts*), venue should be upheld after the corporation leaves the district only in those situations where the defendant's acts occurred within that district.

A third question that remains unanswered is how long after the alleged violation, or after a corporation's departure from the forum district, is venue still proper there. No express time limit was mentioned by the court in the principal case or in the cases it cited.[22] The corporation could be held amenable to suit in the district for the full four-year period provided in the Clayton Act's

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20. A contrary conclusion would give a plaintiff the nearly impossible task of proving the broad negative that the defendant corporation sold a branch or ceased transacting business in a district for the purpose of discouraging antitrust suits, rather than for one of a plethora of justifiable business reasons. Of course, this problem of proof could be solved by shifting the burden to the defendant.

21. Sharp v. Commercial Solvents Corp., 232 F. Supp. 323 (N.D. Tex. 1964). The acts in question are described as "defendant's said extensive and prolonged business activity *there*, to the alleged undoing of the plaintiff . . . ." *Id.* at 329. (Emphasis added.) In Ross-Bart Port Theatre, Inc. v. Eagle Lion Films, Inc., 140 F. Supp. 401 (E.D. Va. 1954), the court held:

> The result is that if the Defendant was participating in any business combination or conspiracy *in this* district in 1948 in such a manner as to violate the antitrust acts, it was suable here in 1953 no matter its then location.

Id. at 402. (Emphasis added.) In R. J. Coulter Funeral Home, Inc. v. National Burial Ins. Co., 192 F. Supp. 522 (E.D. Tenn. 1960), the court restricted its holding to situations where the "transaction of business *within a district* by a corporation violated the proscribed provisions." *Id.* at 523. (Emphasis added.) None of these cases implies, however, that a corporation cannot be sued where it *is* doing business at the time of suit for antitrust violations committed in other districts. The textual statement and supporting authority deal only with suits wherein the defendant corporation is not transacting business in the forum district at the time of suit. It is submitted that amenability to suit in these latter cases should be limited to situations where the violative acts were committed in the forum district.

22. In the reported cases, the longest time span between the commission of the violative acts and the commencement of suit was five years. Ross-Bart Port Theatre, Inc. v. Eagle Lion Films, Inc., 140 F. Supp. 401 (E.D. Va. 1954).

statute of limitations.[23] In the event of the tolling of this statute of limitations during the pendency of a government suit against the defendant,[24] proper venue could be limited to a reasonable period in excess of four years if the court concludes that continued amenability to suit would be an undue hardship on the defendant. Another possibility is that the "reasonable" time limit be imposed in *all* cases in which the "departing corporation situation" is encountered, notwithstanding the fact that the corporation's amenability to suit might terminate before the statute of limitations has run.[25] However, an evaluation of these possibilities indicates that the corporation should be subject to suit for the full period provided by the statute of limitations, even when extended by the tolling provision, rather than for a shorter "reasonable" time. The statutory period is preferable both because it provides a greater advantage to the treble damage plaintiff and because it is objective and uniform.

However, an alternative solution to this problem of the duration of amenability to suit may be found in the corporate licensing procedures of the individual states. In many states, a licensed corporation may be sued there on claims arising out of local business even after the corporation departs; either consent to suit is a condition of the license itself, or a corporation may have to agree to waive venue objections when it files a certificate of withdrawal.[26] Thus it would seem that a state can itself determine, within the boundaries of the Clayton Act's statute of limitations,[27] how long after a corporation stops transacting business in a district it will continue to be amenable to antitrust suits in local federal district courts. While a liberal venue definition admittedly favors plaintiffs, theoretically some protection will be afforded defendants by the

23. 69 Stat. 283 (1955), 15 U.S.C. § 15(b) (1964), under the heading "Limitation of Action" provides: "Any action to enforce any cause of action under sections 15 or 15a of this title shall be forever barred unless commenced within 4 years after the cause of action accrued."

24. 69 Stat. 283 (1955), 15 U.S.C. § 16(b) (1964):

> Whenever any civil or criminal proceeding is instituted by the United States . . . [under] the antitrust laws . . . the running of this statute of limitations in respect of every private right of action arising under said laws . . . shall be suspended during pendency thereof and for one year thereafter: *Provided, however,* that whenever the running . . . is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

25. Sharp v. Commercial Solvents Corp., 232 F. Supp. 323 (N.D. Tex. 1964), suggests this limitation, although in reference to the General Venue Statute, 62 Stat. 935 (1948), 28 U.S.C. § 1391(c) (1964).

26. See Sunbury Wire Rope Mfg. Co. v. United States Steel Corp., 230 F.2d 511 (3d Cir. 1956). In that case, the defendant had filed a certificate of withdrawal according to Pennsylvania's Business Corporation Law, PA. STAT. ANN. tit. 15, § 2852-1001 (1958), by which it consented to waive venue objections to suit on its outstanding obligations.

27. PA. STAT. ANN. tit. 15, § 2852-1004(6) (1958): "so long as any liability remains outstanding against the corporation in this Commonwealth."

forum non conveniens provision of the General Venue Statute,[28] which is applicable to Clayton Act suits,[29] and which would allow a transfer in cases where venue, although proper, results in extreme inconvenience or hardship. In practice, however, the location of the events and witnesses are strong factors in the choice of the more convenient forum and will normally mitigate toward the suit being brought in the district where the allegedly violative acts took place —usually the plaintiff's residence.

An alternative[30] to attempting to justify adoption of the broad view of section 12 by means of legislative history and various practical considerations is to incorporate into that section the liberal notions of venue which have evolved under the General Venue Statute.[31] As that provision is generally interpreted, if a defendant corporation charged with tort or contract liability has left a jurisdiction before the time of suit, the temporal reference for venue is the time of the wrongful acts.[32] It would appear that Congress' aim in passing the General Venue Statute was similar to its purpose in enacting section 12—to facilitate suits against corporations and to enable plaintiffs to sue where the claim arose.[33] This interpretation of the legislative intent was borne out by the recent amendment

28. 62 Stat. 937 (1948), 28 U.S.C. § 1404(a) (1964): "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

29. Held applicable to antitrust suits. United States v. National City Lines, 337 U.S. 78 (1949); *Ex parte* Collett, 337 U.S. 55 (1949), 10 A.L.R.2d 921 (1950); Greve v. Gibralter Enterprises, 85 F. Supp. 410 (D.N.M. 1949).

30. The principal case does not consider this approach, since it was not argued by the parties to the district court. Principal case at 779 n.5.

31. 62 Stat. 935 (1948), 28 U.S.C. § 1391(c) (1964):

> Venue generally. A corporation may be sued in an judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.

The General Venue Statute applies to all civil actions. Its relation to certain specific venue statutes, among them the Clayton Act, is as yet undecided, but a recent decision by the Supreme Court, Pure Oil Co. v. Suarez, 86 Sup. Ct. 1394 (1966), suggests that, in light of the congressional purpose to liberalize venue in antitrust actions, the statute soon will be held to supplement the Clayton Act. See note 15 *supra* and accompanying text. In *Pure Oil*, the Court overruled Leith v. Oil Transport Co., 321 F.2d 591 (3d Cir. 1963), which held that § 1391(c) did not supplement the Jones Act. It also limited Fourco Glass Co. v. Transmirra Prods. Corp., 353 U.S. 222 (1957), involving patent infringement cases, to that specific subject-matter. The Court concluded that § 1391(c) *did* supplement the venue provision of the Jones Act because Congress' purpose in enacting § 1391(c) was expansive. See 62 MICH. L. REV. 897 (1964).

32. Great Am. Ins. Co. v. Louis Lesser Enterprises, 353 F.2d 997 (8th Cir. 1965); Farmers Elevator Mut. Ins. Co. v. Carl J. Austad & Sons, 343 F.2d 7 (8th Cir. 1965); Houston Fearless Corp. v. Teter, 318 F.2d 822 (10th Cir. 1963); Electrical Equip. Co. v. Daniel Hamm Drayage Co., 217 F.2d 656 (8th Cir. 1954); L'Heureux v. Central Am. Airways Flying Serv., Inc., 209 F. Supp. 713 (D. Md. 1962). *Contra*, Dixie Carriers, Inc. v. National Maritime Union of America, 35 F.R.D. 365 (S.D. Tex. 1964); 1 MOORE, FEDERAL PRACTICE ¶ 0.142 [5.-3] (2d ed. 1964).

33. Farmers Elevator Mut. Ins. Co. v. Carl J. Austad & Sons, *supra* note 32, at 11-12; L'Heureux v. Central Am. Airways Flying Serv., Inc., *supra* note 32, at 715.

of the General Venue Statute, which now states explicitly that suit may be brought against a corporation in a district "in which the claim arose."[34] If the amended General Venue Statute is applied directly to Clayton Act cases or if its interpretation is carried over to section 12, all corporations "found" or "transacting business" within a district at the time of allegedly violative acts will be subject to suit there.[35] However, the problem with using the General Venue Statute to establish venue for antitrust cases is that it requires that a corporation at least be *"doing business"* in the district and more contacts with the forum district are necessary to satisfy the "doing business" concept than are required under the Clayton Act's *"transacting business"* test.[36] Supplementing the Clayton Act by the General Venue Statute would thus leave in doubt the venue standards which are to be applied to those corporations which fail to meet the more substantial "doing business" test but which do satisfy the "transacting business" test at the time of the acts although not at the time of suit. Thus, the recognition of the General Venue Statute's time standards in connection with the Clayton Act appears preferable to the mechanical addition of the General Statute to the Clayton Act if only because the former course of action leaves fewer unanswered questions than does the latter.

The principal case reinforces the broad interpretation of section 12 of the Clayton Act by holding that venue is proper if a corporation, although it had left the forum district before the suit was instituted, was transacting business in that district when the acts in question occurred there. However, a split of authority still exists regarding the proper temporal reference under section 12. A third alternative, suggested herein, would appear to avoid the extensive controversy which has developed over the interpretation of the statute. Having accepted the premise that section 12 expanded the choice of forums beyond those available before its enactment,[37] it should follow that the General Venue Statute's temporal standards ought to be applied to treble damage actions. Thus the same result could be reached as in the principal case—a result consistent with both congressional intent and policy.

34. As amended in 1966, 62 Stat. 935 (1948), 28 U.S.C. § 1391(b) (1964) now reads:
A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, *or in which the claim arose*, except as otherwise provided by law. [Emphasis added.]

35. See generally Hoffman Motors Corp. v. Alfa Romeo, S.p.A., 244 F. Supp. 70 (S.D.N.Y. 1965); Fooshee v. Interstate Vending Co., 234 F. Supp. 44, 47-48 (D. Kan. 1964); American Football League v. National Football League, 27 F.R.D. 264 (D. Md. 1961); Bertha Bldg. Corp. v. National Theatres Corp., 103 F. Supp. 712 (E.D.N.Y. 1952); Anderson-Friberg, Inc. v. Justin R. Clary & Son, 98 F. Supp. 75 (S.D.N.Y. 1951).

36. "The courts have held that the terms 'transact business' refer to a lesser degree to commercial activity than that required to establish the usual jurisdiction concept of 'doing business.'" Gem Corrugated Box Corp. v. Mead Corp., 189 F. Supp. 584, 586 (S.D.N.Y. 1960).

37. See note 31 *supra*.