

## Motor Vehicle Area Provides Impetus For Further Expansion Of In Personam Jurisdiction - Davis v. St. Paul-Mercury Indemnity Company

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# Comments and Casenotes

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## Motor Vehicle Area Provides Impetus For Further Expansion Of In Personam Jurisdiction

*Davis v. St. Paul-Mercury Indemnity Company*<sup>1</sup>

The insured, a resident of Texas, purchased and registered an automobile in her name for the use of her minor son while stationed as a marine in North Carolina. The defendant automobile insurer had extended coverage not only to the named insured, but to anyone driving with the latter's permission. The insured owner expressly gave her son permission to let a third party drive the vehicle. Negligent driving of the insured vehicle by a marine friend of the owner's son caused the death of a North Carolina resident on a highway of that state. By substituted service of process pursuant to North Carolina's Non-resident Motor Vehicle Statute,<sup>2</sup> jurisdiction was obtained over the insured owner, *although she was never present in the state*, and a default judgment was entered against her. A judgment against the sub-permittee driver being uncollectible, the plaintiff brought suit in the United States District Court against the insurance company to recover under the default judgment against the insured owner. An adverse judgment having been entered against the defendant insurer, the defendant's appeal collaterally attacked the judgment on the basis of lack of jurisdiction over the person of the insured.<sup>3</sup> The Circuit Court of Appeals, Sobeloff, Chief Judge, held, affirming the District Court's ruling, that since substituted service of process upon an absent nonresident automobile owner was authorized by the North Carolina statute, that Court obtained jurisdiction over the owner and afforded her due process of law.

On the issue of authorization of service of process under the North Carolina statute upon a nonresident owner of a

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<sup>1</sup> 294 F. 2d 641 (4th Cir. 1961).

<sup>2</sup> 1A GEN. STATE OF N.C. (Supp. 1959) Ch. 1, § 1-105 [authorization of substituted service of process] "in any action or proceeding against him, growing out of any accident or collision in which said nonresident may be involved *by reason of the operation by him, or under his control or direction, express or implied, of a motor vehicle on such public highway of this State, . . .*" (emphasis added); *in re* purpose of section, Hart v. Queen City Coach Co., 241 N.C. 389, 85 S.E. 2d 319 (1955); *in re* constitutionality, Davis v. Martini, 233 N.C. 351, 64 S.E. 2d 17 (1951).

<sup>3</sup> The question of jurisdiction was not *res judicata*, as no appearance was made by the insured to contest jurisdiction in the North Carolina court. For the constitutional basis of this type of process see 32 Mich. L. Rev. 325 (1934).

vehicle driven by a sub-permittee, the District Court construed the statute on the strength of three North Carolina cases. In *Pressley v. Turner*,<sup>4</sup> the Court upheld substituted service over a nonresident corporation where the driver-owner was acting as its agent, and stated: "Neither ownership nor physical presence in the motor vehicle is necessary for valid service. It is sufficient if the nonresident had the legal right to exercise control at the moment the asserted cause of action arose."<sup>5</sup> The Court also cited *Ewing v. Thompson*,<sup>6</sup> which upheld service over a nonresident owner of an automobile operated by his son, on the basis of the family-purpose doctrine of vicarious tort liability. Countering the latter case's strict holding, Judge Sobeloff reasoned: "This [family-purpose] doctrine is not determinative in interpreting the jurisdictional statute where 'control or direction' are the standards . . . the decision [*Ewing v. Thompson*]<sup>7</sup> does not stand as authority to limit 'control or direction' to that precise situation."<sup>8</sup> In *Howard v. Sasso*,<sup>9</sup> which presented a factual situation similar to the noted case, the Court's reasoning was the result of plaintiff's pleadings, which alleged that the driver of the vehicle was the agent of the defendant owner, acting in the scope of the latter's employ. In order to sustain service of process, where the sub-permittee user of the vehicle loaned it to another in direct violation of specific instructions to the contrary given by the owner's son, the Court relied on a North Carolina statute<sup>10</sup> which makes proof of ownership prima facie evidence that the vehicle was being operated by and under the control of the person for whose conduct the owner was legally responsible.<sup>11</sup> In ruling that substituted service of process was authorized by the motor vehicle statute, the Circuit Court in the instant case stated: "The statute does not require that the owner be physically in a position to

<sup>4</sup> 249 N.C. 102, 105 S.E. 2d 289 (1958).

<sup>5</sup> *Id.*, pp. 291-292.

<sup>6</sup> 233 N.C. 564, 65 S.E. 2d 17 (1951).

<sup>7</sup> *Supra*, n. 6.

<sup>8</sup> 294 F. 2d 641, 644 (4th Cir. 1961).

<sup>9</sup> 253 N.C. 185, 116 S.E. 2d 341 (1960).

<sup>10</sup> 10 GEN. STAT. OF N.C. (1953) Ch. 20, § 20-71.1.

<sup>11</sup> The Court, nevertheless, emphasized that § 20-71.1 (*supra*, n. 10) was a *rule of evidence*, not a *rule of law*, applicable whenever a factual determination as to alleged agency is to be made. Maryland has no such statute, although it is a well established Maryland rule of evidence that proof of ownership of the motor vehicle by defendant raises a rebuttable presumption that at the time of the accident the operator of the vehicle was an agent, servant, or employee of the owner, and was acting within the scope of his employment, on the owner's business or for his purposes. See 3 M.L.E. § 215 and cases cited. No case has been found, however, where the Maryland rule has been utilized to sustain substituted service of process upon a nonresident.

direct the driver's every move. \* \* \* The words 'express or implied' suggest only a minimal connection between the driver and the owner which is satisfied if the owner, as in this case, has a legal right to control the operation of the automobile."<sup>12</sup>

In view of the above cases, and although the North Carolina statute does not expressly so indicate on its face, it is evident that authorization of substituted service of process necessarily requires an affirmative finding as to some form of privity between the nonresident defendant and the negligent driver.<sup>13</sup> It appears that the holding of the noted case has not gone beyond the extreme limit of *Howard v. Sasso*,<sup>14</sup> where (1) the defendant's evidence showed a direct violation of the instructions not to lend the vehicle to the offending driver and (2) the Court invoked the aid of a proof of ownership statute to sustain service of process.

As a guide to a state's satisfaction of procedural due process in the application of statutory enactments for subjecting a nonresident to a court's jurisdiction, the milestone decision of *Pennoyer v. Neff*<sup>15</sup> established two basic methods for acquiring *in personam* jurisdiction: (1) sufficient notice and opportunity for the nonresident to be heard and (2) personal service within the forum. Mr. Justice Holmes in *McDonald v. Mabee*<sup>16</sup> expressed in dictum that physical power is the foundation of a court's jurisdiction. At present, state legislation has broadened the *in personam* jurisdiction requirements for the satisfaction of procedural due process in such areas as automobile,<sup>17</sup> insurance,<sup>18</sup> and securities.<sup>19</sup> In the corporate area, concepts underlying *in personam* jurisdiction have been re-evaluated in light of modern needs; and theories such as the "fiction of implied consent" have yielded to a legal tone sounding in "activities within the state" as the true basis of jurisdiction<sup>20</sup> as announced in the *International Shoe* case by Justice Stone. Recognizing that the basic requirements for jurisdiction over foreign corporations thereby are reduced to: (1) statutory provision for adequate notice and (2)

<sup>12</sup> *Supra*, n. 1, 645.

<sup>13</sup> *Supra*, n. 9, 344.

<sup>14</sup> *Supra*, n. 9.

<sup>15</sup> 95 U.S. 714 (1877).

<sup>16</sup> 243 U.S. 90, 91 (1917).

<sup>17</sup> *Hess v. Pawloski*, 274 U.S. 352 (1927) in which the decision is grounded on police power principles rather than reasonableness of the process.

<sup>18</sup> *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957).

<sup>19</sup> *Henry L. Doherty and Co. v. Goodman*, 294 U.S. 623 (1935).

<sup>20</sup> *International Shoe Co. v. Wash.*, 326 U.S. 310 (1945).

sufficient contact with the state to make the assertion of jurisdictional power reasonable, the Court in the instant case reasoned that applicability of these requirements to a private individual was equally justified.<sup>21</sup> Utilization of the familiar "weighing approach" in defining the reasonableness of a state's exercise of statutory jurisdiction by means of its police power necessitates the balancing of such factors as, (1) the interests of the defendant, including the expense of going to the forum, (2) the interests of the plaintiff in adjudicating the case where the cause of action arose and (3) the necessity that the forum have some interest in opening its courts to the action.<sup>22</sup> Adding public policy grounds to precedent, the Court in the noted case reasoned: "We merely hold that ownership of property, particularly that which is capable of inflicting serious injury, may fairly be coupled with an obligation upon the owner to stand suit where the property is or has been taken with his consent. Of course, this is so only if the state chooses by appropriate law to assert its jurisdiction over him in respect to liability arising out of the use of his property in that state."<sup>23</sup>

The pertinent wording of the North Carolina Non-Resident Motor Vehicle Statute reads: (in reference to an action growing out of any accident in which a nonresident may be involved) "by reason of the operation *by him, for him, or under his control or direction, express or implied.* . . ."<sup>24</sup> In comparison, the Maryland statute employs the terms "*while operating or causing to be operated*"<sup>25</sup> in reference to the conditions upon which substituted service of process may be made upon a nonresident. *Query*: Would the Maryland statute apply to the factual situation of the noted case? Only one case has been discovered interpreting the phrase "*causing to be operated*" as used in the Maryland statute,<sup>26</sup> but the ruling is clearly based on the master-servant relationship coupled with the "scope of employ-

<sup>21</sup> See 73 H.L.R. 909 (1960).

<sup>22</sup> See noted case, *supra*, n. 1, 648; *Hess v. Pawloski*, 274 U.S. 352, 356 (1927); *Eckman v. Baker*, 224 F. 2d 954, 53 A.L.R. 2d 1167 (1955); *Cf. Young v. Masci*, 289 U.S. 253 (1933).

<sup>23</sup> 294 F. 2d 641, 648 (4th Cir. 1961); See *Pizzutti v. Wuchter*, 103 N.J.L. 130, 135, 134 A. 727, 729 (1926); *Cf. Hess v. Pawloski*, *supra*, n. 17 where formal consent is ruled not a requirement to satisfy due process.

<sup>24</sup> 1A GEN. STAT. of N.C. (Supp. 1959) Ch. 1, § 1-105 (emphasis added).

<sup>25</sup> 6 MD. CODE (1957) Art. 66½, § 115(a) [authorization of substituted service of process upon Secretary of State in any action or proceeding] "growing out of any accident or collision in which said nonresident may be involved, *while operating or causing to be operated*, a motor vehicle on such public highway . . . within . . . Maryland . . . ." (emphasis added).

<sup>26</sup> *State of Maryland for use of Kropiunik v. Mast*, 144 F. Supp. 946 (D. Md. 1956) which held that a truck owner, who directed his employee

ment" factor and hardly suggestive of a probable Maryland ruling on the issue at point. Since the statutes under discussion call for substituted service of process on nonresident motorists, they are in derogation of common law and require strict statutory construction, necessarily eliminating interpretations not expressly stated or necessarily implied.<sup>27</sup>

In other jurisdictions, the courts have found no difficulty in applying agency principles where the grounds for such application are expressly indicated on the face of the statute. In *Fidler v. Victory Lumber Co.*,<sup>28</sup> arising under the Florida statute which then authorized service of process against a non-resident who "by himself, his servant, employee, or agent"<sup>29</sup> operates a motor vehicle, service upon the nonresident auto-owner corporation was quashed where the latter's president turned the car over to a waitress for her pleasure and she alone induced a third party to operate the car for her purpose. The Court, in accordance with the agency terms of the statute, found no such relation. The "form of agency" is apparently easily satisfied under the North Carolina statute. However, the Mississippi Court in litigation arising under the Mississippi statute employing the single phrase "while operating a motor vehicle,"<sup>30</sup> applied agency principles in upholding substituted service on a nonresident buyer-owner of two cars being towed through that state by a driver for the latter's behalf.

With the ever increasing flow of traffic upon the highways and the resulting variety of litigation, the state motor vehicle statutes, once adequate, became in many cases outmoded. The United States Court of Appeals, in reversing the District Court in *Eckman v. Baker*,<sup>31</sup> undoubtedly furnished the impetus for the amendment of the Pennsylvania Nonresident Motor Vehicle Statute in 1959.<sup>32</sup> Construing

to go into Maryland for a load of freight, and the employee entered a single lease trip for carrying freight out of the state on behalf of the owner and was involved in a collision in Maryland, *caused the vehicle to be operated* under the Maryland statute; 3 M.L.E., Automobiles, § 193; 1 Md. L. Rev. 222, 227 (1937).

<sup>27</sup> 5 AM. JUR. 830, "AUTOMOBILES", § 591; In accord, Commonwealth for use of Kern v. Maryland Casualty Co., 112 F. 2d 352 (6th Cir. 1940); Kerr v. Greenstein, 213 Ark. 447, 212 S.W. 2d 1 (1951).

<sup>28</sup> 93 F. Supp. 656 (D. Fla. 1950).

<sup>29</sup> 2 FLA. STAT. ANNO. (1943) § 47.29 (emphasis added). A 1949 amendment, however, greatly liberalizing § 47.29 was held not retroactive in this case.

<sup>30</sup> *Tanksley v. Dodge*, 181 F. 2d 925 (5th Cir. 1950) arising under GEN. L. OF MISS. (1946) Ch. 266, § 61; 7 MISS. CODE (1960 Supp.) § 9352-61.

<sup>31</sup> *Supra*, n. 23.

<sup>32</sup> 75-76 PURDON'S PA. STAT. ANNO. (1960) Title 75, Ch. 2, § 2001(a) which presently states:

"any nonresident of this Commonwealth, being the operator or owner of any motor vehicle [or being a person in whose behalf a motor

the Pennsylvania statute which limited substituted service to a nonresident "operator" or "owner" (and in opposition to prior Pennsylvania lower court reasoning), the Federal court held that a nonresident defendant whose agent was driving on the defendant's behalf an automobile owned by the agent's wife was an "operator" within the meaning of the statute. In *Larsen v. Powell*,<sup>33</sup> in which the plaintiff was injured while riding in a car owned by the nonresident defendant and driven by the nonresident defendant owner's son with permission, the Court held that substituted service was valid against the son, but invalid as against the nonresident owner as he was not personally operating the car at the time under the Colorado statute which reads: "in which such nonresident may be involved while operating a motor vehicle. . . ."<sup>34</sup> Illinois courts have expressed the view that nonresident motor vehicle statutes would be inapplicable if the driver of the offending vehicle was a lender or bailee without any agency relationship to the owner.<sup>35</sup>

If Maryland should look to New York for guidance in this area, the related provisions of the New York Vehicle and Traffic Law<sup>36</sup> use the phraseology, "while using or operating" and "while being used or operated in this state in the business of such nonresident or *with the permission,*

vehicle is being operated whether or not such person is the operator or owner] who shall accept the privilege . . . of operating a motor vehicle, or of having the same operated, . . . ." Note: The bracketed portion arose by amendment in 1959 P.L. 1459 § 1.

<sup>33</sup> 117 F. Supp. 239 (D. Colo. 1953).

<sup>34</sup> 2 COLO. REV. STAT. ANNO. (Cum. Supp. 1952) Ch. 16, § 48(1); 2 COLO. REV. STAT. ANNO. (1953) Ch. 13, Art. 8, § 2 repealed by L. 1961, Ch. 75, § 2; the present statute appears in 2 COLO. REV. STAT. ANNO. (Supp. 1961) Ch. 13, Art. 8, § 7 and defines a driver as an "owner or operator."

<sup>35</sup> *Dalton v. Alexander*, 10 Ill. App. 2d 273, 135 N.E. 2d 101 (1956) arising under ILL. REV. STAT. (1953) Ch. 95½, § 23 which stated: "The use and operation by any person of a motor vehicle . . . (and an accident resulting) growing out of such use or resulting in damage or loss to person and property." Note: Through a change in the Illinois Motor Vehicle Law, effective January 1, 1958, ILL. REV. STAT. (1953) Ch. 95½, Art. 111, § 9-301, the statute now reads: "The use and operation by any person or his duly authorized agent or employee of a motor vehicle . . . (providing for substituted service) and . . . such process against him which is so served, shall be of the same legal force and validity as though served upon him personally . . . or in the event said motor vehicle . . . is owned by a nonresident and is being operated over and upon the highways of this State with said owner's express or implied permission." (emphasis added). Query: (1) Would not this statute easily encompass the North Carolina situation? (2) Would not a question be raised as to the validity of the conclusion reached by *Dalton v. Alexander*? Cf. The Maryland statute ends after the above-quoted words "as though served upon him personally"; the cases are collected in 53 A.L.R. 2d 1164 (1962).

<sup>36</sup> 62A MCKINNEY'S CONSOL. LAWS OF N.Y., A Vehicle & Traffic Law, Art. 3, § 253 derived from § 52(1) of Vehicle & Traffic Law 1929 as so amended by Laws 1958, Ch. 568, § 1.

*express or implied.*"<sup>37</sup> The latter terms resulted from an amendment. Prior to this amendment, if an accident occurred through the negligence of a third party who was operating the car with permission of an absent nonresident owner, personal service upon the owner was a requisite for valid *in personam* jurisdiction.<sup>38</sup> In *Beard v. Clark*,<sup>39</sup> which traces the New York struggle with the term "operate", the Court states: "It would seem that under these amended statutes in New York and Texas the actual owner of a motor vehicle, even though not physically operating it himself, may be properly sued and served there, if it [the automobile] is being operated by his agents, servants, or employees, or with his permission express or implied. . . ."<sup>40</sup>

The particular words "*causing to be operated*" in the Maryland statute,<sup>41</sup> if interpreted liberally so that ownership of the vehicle, which was originally placed in the hands of a permittee, even though its whereabouts may be unknown would raise a strong inference that the operation of such vehicle at the particular time and place of the accident was a necessary result of such ownership, or implied ability to control one's property, then perhaps the North Carolina situation would fit easily into the Maryland statute.<sup>42</sup> Conversely, if *causing* or *causing to be operated* would receive a more direct causal construction, then possibly the Maryland courts would find difficulty in absorbing the North Carolina situation. The dictates of legislation designed to protect residents could be deemed to outweigh

<sup>37</sup> Emphasis supplied. The latter terms resulted from a revision of the old § 52 of Vehicle & Traffic Law of 1929 to extend application of that section to actions arising out of the use of the vehicle in New York where the occurrence of the accident is not technically an "operation" of the vehicle under the narrow construction afforded that term by former decisions.

<sup>38</sup> See *O'Tier v. Sell*, 252 N.Y. 400, 169 N.E. 624 (1930); *Haughey v. Mineola Garage*, 174 Misc. 332, 20 N.Y.S. 2d 857 (1940); *Wallace v. Smith*, 238 App. Div. 599, 265 N.Y.S. 253 (1933) (discussing the New York struggle). See 7 *Syracuse L. Rev.* 312 (1955-56); *Gesell v. Wells*, 229 App. Div. 11, 240 N.Y.S. 628, aff'd 254 N.Y. 604, 173 N.E. 885 (1930).

<sup>39</sup> 83 S.W. 2d 1023 (1935). Extreme case, *reversed on appeal*, where defendant neither owned nor drove the motor vehicle nor was ever in Oklahoma, yet the lower Oklahoma court acquired jurisdiction over defendant by substituted service under C.O.S. (1921) § 10137-1 as amended by Session Laws (1931) Art. 12, Ch. 50 which strictly required the non-resident himself to be the operator of the vehicle. The present statute, OKLA. STAT. ANNO. tit. 47, § 391 and § 392, is framed in agency terms.

<sup>40</sup> *Id.*, 1025.

<sup>41</sup> 6 MD. CODE (1957) Art. 66½, § 115(a).

<sup>42</sup> Some nonresident motorist statutes are not as explicit as New York's § 52 but rather employ terms such as "operator," causing various courts to interpret "operator" to mean not just the driver but the person on whose behalf a motor vehicle is driven, even though that person be not the owner. See *Eckman v. Baker*, *supra*, n. 23, 957; *ex rel. Maryland* has no *family purpose doctrine* statute.

the narrow construction suggested because of the inherent derogation of the common law by statutes of this nature. It could be argued that "causing to be operated" is capable of a more liberal construction than "permission, express or implied" as expressed by the North Carolina statute, yet the singular Maryland interpretation connotes "on the owner's behalf."

*Query:* Should the Maryland statute envelop the North Carolina situation, would it be constitutional in application? The trend away from the "physical presence" test of *Pennoyer v. Neff*<sup>43</sup> for valid assertion of *in personam* jurisdiction, to the result reached by the North Carolina court in the noted case, received its impetus from cases involving the corporate entity. Confronted with the perplexing problem as to when a corporation itself could be subjected to *in personam* jurisdiction, the courts nurtured such theories as (1) the implied consent theory, in which the corporation impliedly consented to service of process upon a resident agent and (2) the presence test, in which the entity's presence within the state was assumed because of its agents' activities there.<sup>44</sup> The "doing business" factor was present in every test developed and remained the chief guide until the famous *International Shoe* case declared: "the test for *in personam* jurisdiction over a foreign corporation is not merely . . . whether the activity . . . is a little more or a little less. Whether due process is satisfied must 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."<sup>45</sup> Here, the employment of such broad terms as "minimum contacts" — "traditional notions of fair play and substantial justice" — and "reasonableness as affected by the estimate of the inconveniences" overshadowed the Court's finding that the activities of the corporation were sufficient to establish its presence even under the former tests.

In reliance on the "minimum contact" and "inconvenience of parties" criteria, the Supreme Court in *McGee v. International Life Insurance Company*,<sup>46</sup> where *in personam* jurisdiction over a foreign corporation was obtained in an action arising out of a single isolated transaction, held that it was sufficient for purposes of due process that the suit was based on a contract which had substantial connection with the forum. This case has been said to illustrate

<sup>43</sup> 95 U.S. 714 (1877).

<sup>44</sup> 44 Corn. L.Q. 117 (1958); 50 N.W. L. Rev. 599 (1955).

<sup>45</sup> 326 U.S. 310, 319 (1945).

<sup>46</sup> 355 U.S. 220 (1957).

the delineation of the outermost constitutional bounds within which states can acquire *in personam* jurisdiction, greatly extending the doctrine of *International Shoe*.<sup>47</sup> Justice Frankfurter furthered the liberalizing trend in the area of the private individuals by declaring that the circumstances themselves justified *in personam* jurisdiction in nonresident motor vehicle cases because of defendant's presence within the state when the tort was committed, irrespective of any "fictive consent."<sup>48</sup> However, in *Erlanger Mills, Inc. v. Cohoes Fiber Mills, Inc.*,<sup>49</sup> the United States Court of Appeals for the Fourth Circuit questioned the validity of a state statute authorizing jurisdiction over a foreign corporation upon a single sale consummated completely outside the forum, but with reasonable expectation that the goods were to be used in the forum. Judge Sobeloff reasoned that the admitted liberalizing tendencies of *International Shoe* were unable to justify jurisdiction on such minimal contacts.

The significance of the *Erlanger Mills* reasoning, which, in effect, redirected the Court's attention to the original tests for satisfaction of procedural due process as set forth in the *International Shoe* opinion is best exemplified when contrasted with the liberalizing trend in the corporate area previously referred to, which tended to dilute the stringency of these tests. How does the set-back suffered by the liberalizing trend in the corporate field affect the area of the private individual, particularly that of the operator of a motor vehicle? Professor Cardozo, disagreeing with the *Erlanger Mills* case, argues that the inherent danger of the motor vehicle gives a special significance to the "quality" and "nature" of the acts, and he poses the question whether a careless driver from California is more dangerous to North Carolina residents than a defective tire sold by a Californian to be used on North Carolina highways.<sup>50</sup>

A 1937 Maryland statutory enactment authorizes suits brought against a foreign corporation for any contract made "within" the state or for any liability incurred for acts done "within" the state, whether or not such a foreign corporation is doing or has done business in Maryland.<sup>51</sup>

<sup>47</sup> *Supra*, n. 45, 120.

<sup>48</sup> *Olberding v. Illinois Central R.R.*, 346 U.S. 338, 341 (1953) noted 14 M.L.R. 62 (1954); However, note that defendant in the instant case was not present in North Carolina.

<sup>49</sup> 239 F. 2d 502 (4th Cir. 1956), noted 17 Md. L. Rev. 140 (1957).

<sup>50</sup> See Cardozo, *The Reach Of The Legislature And The Grasp Of Jurisdiction*, 43 Corn. L.Q. 210 (1958). In support of the decision see Sobeloff, *Jurisdiction Of State Courts Over Nonresidents In Our Federal System*, 43 Corn. L.Q. 196 (1958).

<sup>51</sup> 2 MD. CODE (1951) Art. 23, § 88(d); 2 MD. CODE (1957) Art. 23, § 92(d).

This statute was upheld in *Compania De Astral v. Boston Metals Company*<sup>52</sup> where a foreign corporation was held subject to suit in Maryland for alleged breach of a single contract made in this state.<sup>53</sup> It has been suggested that if the standard of *International Shoe* has been broadened beyond the automobile area so as to allow jurisdiction over corporations engaging in single or sporadic transactions,<sup>54</sup> the "business activities" rule sufficient for jurisdiction over a corporation, should also support jurisdiction over an individual.<sup>55</sup> However, as evidenced by the Maryland statute, Maryland has not gone this far in the corporate area. Recent Maryland litigation posed the issue of whether suit could be maintained against a foreign corporation supplier of a defective chattel to a resident retailer under the Maryland statute making a foreign corporation subject to suit arising out of a contract made "within" the state. It was held that the foreign corporation was not amenable to suit, although the retailer's order originated in Maryland, because the contract was consummated in New York.<sup>56</sup> A comparison of this decision<sup>57</sup> with those in the motor vehicle area clearly illustrates the significance of the policy reasons of a "higher order" in the latter area dealing with dangerous machines causing serious peril to persons and property.

If jurisdictional concepts expand so as to predicate jurisdiction upon the doing of any act or transaction within the state on account of which it would be reasonable for a state to open its courts, the constitutional extension of *in personam* jurisdiction beyond the holding of the noted case is a foreseeable certainty.

LOUIS B. PRICE

<sup>52</sup> 205 Md. 237, 107 A. 2d 357 (1954), *cert. den.* 348 U.S. 943 (1955); see *Smyth v. Twin State Improvement Corp.*, 116 Vt. 569, 80 A. 2d 664 (1951) for valid jurisdiction in instance of a single tort.

<sup>53</sup> For a noteworthy opinion predicting validity of the Maryland statute as against due process objections, see Reiblich, *Jurisdiction of Maryland Courts Over Foreign Corporations Under The Act of 1937*, 3 Md. L. Rev. 35, 71 (1938) which is an exhaustive treatment of the single isolated transaction problem under the Maryland revision of the corporation laws concerning assertion of jurisdiction over foreign corporations (Laws of 1937, Ch. 504, § 3).

<sup>54</sup> 23 U. of Pitt. L. Rev. 804 (1962).

<sup>55</sup> 43 Corn. L.Q. 196 (1958); 1 BEALE, *CONFLICT OF LAWS*, 363-364 (1935).

<sup>56</sup> *Cegielski v. Leon Levi, Inc. & Hunter Metal Industries, Inc.*, Daily Record, Feb. 8, 1962 (Md. 1962). The Maryland court relied on *Johns v. Bay State Abrasive Products Co.*, 89 F. Supp. 654 (D. Md. 1950) which held that a foreign corporation was not subject to suit because no negligent act was committed within Maryland and the contract to purchase was made outside Maryland.

<sup>57</sup> The decision is certainly reconcilable due to the non-compliance with the Maryland statute.