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the juvenile court has no power at all to transfer the case back. Therefore, as to such persons, the presumption of *doli incapax* is conclusive. This interpretation does no injustice to either the constitution or the statutory provisions. It is consistent with the court's interpretation in *State ex rel. Hinkle v. Skeen,* and more nearly approaches the purpose of the legislature in enacting the statutes relating to child welfare.

Conclusion

Since the proceedings in the juvenile courts are not criminal in nature and no conviction or punishment may result therefrom, it is apparent that no criminal jurisdiction was conferred upon the juvenile courts. The delinquency jurisdiction of the juvenile courts is "exclusive", however, in the sense that acts, which under the statute constitute delinquency, and which formerly were punishable as crimes, are now prima facie noncriminal and no longer within the jurisdiction of the circuit and criminal courts, except where the juvenile court has found that a person above the age of sixteen years possesses that degree of malice which makes up for his lack of age. The opinion of the attorney general that criminal charges against juveniles may be instituted and prosecuted in the criminal courts is contrary to the law of this state, as evidenced by the constitution, the pertinent statutes, the principles of the common law and the expressed intention of the legislature.

L. L. P.

EXTENSION OF LEGISLATIVE IN PERSONAM JURISDICTION OVER FOREIGN CORPORATIONS

In the past twelve years, a number of leading cases have established a substantially new test of legislative jurisdiction over foreign corporations.[1] The liberalization began with *International Shoe v. Washington*[2] which recognized the impracticability of the fictional consent[3] and presence[4] doctrines as valid methods of determining whether or not a state can constitutionally exercise in personam

[1] Shutt v. Commercial Travelers Mutual Accident Ass'n, 229 F.2d 158 (2d Cir. 1956); Perkins v. Benquet Consolidated Mining Co., 342 U.S. 437 (1952); Travelers Health Ass'n v. Virginia, 339 U.S. 643 (1950); International Shoe v. Washington, 326 U.S. 310 (1945).

[2] 326 U.S. 310 (1945).

[3] Mutual Life Ins. Co. v. Spratley, 172 U.S. 602 (1899).

[4] International Harvester Co. v. Kentucky, 234 U.S. 579 (1914).

jurisdiction over a foreign corporation.[5] These doctrines were replaced by a more realistic, though hardly less vague, test of whether or not a foreign corporation's activities and contacts within the state have been such as would make it reasonable and just under "traditional concepts of fair play and substantial justice" to subject it to suit in the state courts.[6] In the absence of these somewhat nebulous minimum contacts, subjection to in personam jurisdiction is a denial to the foreign corporation of the protection of due process of law.[7]

By an amendment to W. VA. CODE c. 31, art. 1, § 71 (Michie 1955), the West Virginia legislature during its last regular session[8] attempted to further extend the in personam jurisdiction of our courts over the activities of foreign corporations in West Virginia.[9] That portion of the amendment under discussion provides that a foreign corporation not authorized to do business in West Virginia will nevertheless be deemed to be doing business here if it "makes a contract to be performed, in whole or in part, by any party thereto, in this state, or if such corporation commits a tort, in whole or in part in this state."[10]

The constitutionality of this section is at best questionable. It would permit, for instance, nonresidents to sue a foreign corporation in West Virginia in an in personam proceeding. Suppose *A*, an Oregon corporation, contracts in Oregon with *B*, a Florida corporation, to deliver goods to Florida; *B* to pay part of the purchase price to *A*'s creditor, *C*, a West Virginia resident. Under the language of the amendment,[11] *A* could acquire personal jurisdiction over *B* by serving the state auditor,[12] and would therefore be entitled to recover an in personam judgment against *B* in West Virginia. There

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[5] See Miller Bros. v. Maryland, 347 U.S. 340 (1954); Partin v. Michaels Art Bronze Co., 202 F.2d 541 (3d Cir. 1953). Note, 16 U. CHI. L. REV. 523 (1949).

[6] 326 U.S. 310 (1945). See also Jenkins v. Dell Publishing Co., 130 F. Supp. 104 (W.D. Pa. 1955).

[7] U.S. CONST. amend. XIV, § 1; Dillon v. Allen-Parker Co., 233 Miss. 388, 78 So. 2d 357 (1955).

[8] 1957.

[9] Senate Bill No. 179, p. 3, as furnished by the Honorable J. Howard Myers, Clerk of the Senate of West Virginia.

[10] *Ibid.*

[11] *Ibid.*

[12] W. VA. CODE c. 31, art. 1, § 71 (Michie 1955).

is little doubt but that such an attempted suit would be held unconstitutional as a violation of jurisdictional due process.[13]

The minimum contact requirement must be applied to each factual situation to determine its applicability.[14] To test the constitutionality of the principal amendment,[15] therefore, it must be applied to specific situations. Suppose *P*, a West Virginia corporation, contracts in New York to buy goods from *D*, a New York corporation, the goods sold f.o.b. New York to be used in West Virginia. *D* has not previously done business in this state. *P* alleges the goods are defective, and sues *D* in West Virginia to recover damages, serving substituted process on the auditor.[16] Our statute is undoubtedly broad enough to encompass this situation, and subject *D* to in personam proceedings in our courts.

In *Erlanger Mills v. Cohoes Fibre Mills*,[17] decided prior to the enactment of the principal amendment, a federal district court held that a less extensive North Carolina statute[18] applied to the above facts was unconstitutional, violating jurisdictional due process because of the state's failure to meet the minimum contact rule for legislative jurisdiction.

It is submitted that the same result would be reached with even less difficulty under the West Virginia statute.[19] There is simply no sufficient contact in West Virginia by *D* in the above facts to meet the requirements as set forth in *International Shoe*.[20]

To further illustrate the extensiveness of the principal amendment,[21] another situation may be examined. Suppose *P*, a resident of West Virginia (or of any other state according to a fair interpretation of the amendment), sues *D*, a Delaware corporation for alleged libel in a magazine which *D* publishes and sells to indepen-

[13] Note 7 *supra*. See Remington Rand v. Knapp-Monarch Co., 139 F. Supp. 613 (E.D. Pa. 1956); Anderson v. British Overseas Airways Corp., 144 F. Supp. (S.D.N.Y. 1956).

[14] Orange-Crush Grapico Bottling Co. v. Seven-Up Co., 128 F. Supp. 174 (N.D. Ala. 1955).

[15] Note 9 *supra*.

[16] W. VA. CODE c. 31, art. 1, § 71 (Michie 1955).

[17] 239 F.2d 502 (N.C. 1956).

[18] 2B N.C. STATS. § 55-38.1 (Michie 1950).

[19] Note 9 *supra*.

[20] 326 U.S. 310 (1945). Although the "doing business" test is not controlling, see C. T. CORP. SYSTEM, WHAT CONSTITUTES DOING BUSINESS (1956); Annot., 38 A.L.R.2d 747 (1954).

[21] Note 9 *supra*.

dent retailers including dealers in West Virginia. *D*'s only contacts in this state are casual, irregular, and unsubstantial visits by three of its promotional employees. *Quaere,* can our courts obtain in personam jurisdiction over *D* on the basis of these facts by the use of substituted service of process? Under the wording of our statute,[22] apparently so since a tort was committed each time the libelous material was read in this state.[23]

The supreme court of North Carolina, in *Putnam v. Triangle Publications,*[24] held, however, that the same North Carolina statute[25] held unconstitutional in *Erlanger Mills v. Cohoes Fibre Mills*[26] was also unconstitutional as applied to the above tort claim. The basis for the decision in *Putnam v. Triangle Publications*[27] was that the minimum contact test had not been met.

It should be noted that the West Virginia court apparently uses a double standard to determine jurisdiction over foreign corporations depending on whether the action is based on a contract or a tort.[28] But again it is submitted that our statute[29] could not be upheld under the facts in the *Putnam v. Triangle Publications* case[30] no matter what view is followed.

Only one case has permitted an extension of in personam jurisdiction over a foreign corporation based on a single tort where there was no other business contact.[31] That case is of some importance because the Vermont statute[32] construed therein is almost identical with the West Virginia amendment under discussion.[33]

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[22] *Ibid.*

[23] See Labonte v. American Mercury Magazine, 98 N.H. 163, 96 A.2d 200 (1953).

[24] 96 S.E.2d 445 (N.C. 1957).

[25] 2B N.C. STATS. § 55-38.1 (Michie 1950).

[26] 239 F.2d 502 (N.C. 1956).

[27] 96 S.E.2d 445 (N.C. 1957).

[28] De Board v. B. Perini & Sons, 87 S.E.2d 462 (1955); Comment, 58 W. VA. L. REV. 199 (1955). The court held that West Virginia (1) has jurisdiction over a foreign corporation which, while doing business in this state, contracts with a resident, withdraws from the state, and subsequently breaches the contract; (2) has no jurisdiction if the withdrawal is subsequent to an act but before a tort occurs as a result thereof.

[29] Note 9 *supra.*

[30] 96 S.E.2d 445 (N.C. 1957).

[31] Smyth v. Twin City Improvement Corp., 116 Vt. 569, 80 A.2d 664 (1951).

[32] VT. STATS. c. 72, § 1562 (1947).

[33] Note 9 *supra.*

The *Smyth v. Twin City Improvement Corp.* case[34] has been criticized as violating the minimum contact test, however, and should not be considered as a controlling decision.[35]

The cases involving single torts must of course be distinguished from decisions construing the constitutionality of nonresident motorists statutes.[36]

In view of the *Erlanger Mills v. Cohoes Fibre Mills,*[37] and *Putnam*[38] cases, it is fairly apparent that the principal amendment is subject to valid criticism in that it ignores the minimum contact test which is now the controlling factor in these cases.[39] In many instances, the principal amendment must undoubtedly be held to be unconstitutional as a violation of jurisdictional due process.

Our legislators either were not aware of the decisions in the two North Carolina cases[40] reported in the advance sheets prior to the enactment of the principal amendment, or else they ignored them. In either event, failure to be familiar with and take into account such recent constructions of statutes similar to those proposed is not conducive to the enactment of valid, workable laws.

C. H. B., Jr.

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[34] Smyth v. Twin City Improvement Corp., 116 Vt. 569, 80 A.2d 664 (1951).

[35] Comment, 100 U. PA. L. REV. 598 (1952); see Annot., 25 A.L.R.2d 1202 (1952).

[36] For example, W. VA. CODE c. 56, art. 3, § 31 (Michie 1955). The distinction is based on holdings that a motor vehicle is a dangerous instrumentality. Brown v. Hughes, 136 F. Supp. 55 (M.D. Pa. 1955); Hess v. Palowski, 274 U.S. 352 (1927); Kane v. New Jersey, 242 U.S. 160 (1916).

[37] 239 F.2d 502 (N.C. 1956).

[38] 96 S.E.2d 445 (N.C. 1957).

[39] 326 U.S. 310 (1945). See also Jeter v. Austin Trailer Equipment Co., 122 Cal. App. 2d 376, 265 P.2d 130 (1953).

[40] Notes 17 and 24 *supra*.