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Civil Procedure—European Airline Found "Doing Business" to Satisfy Jurisdictional Requirements, Although it Maintained no Aircraft Within the United States, and Tort Upon Which Suit Was Based Occurred in France

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in conjunction with CPLR section 308(4). Whether this method of obtaining in personam jurisdiction is in accord with due process has not been decided by the Supreme Court.

BRIAN J. TROY

CIVIL PROCEDURE—EUROPEAN AIRLINE FOUND "DOING BUSINESS" TO SATISFY JURISDICTIONAL REQUIREMENTS, ALTHOUGH IT MAINTAINED NO AIRCRAFT WITHIN THE UNITED STATES, AND TORT UPON WHICH SUIT WAS BASED OCCURRED IN FRANCE

Plaintiff, an airline hostess for Trans-World Airlines, brought suit against defendant, Finnish National Airline, for personal injuries allegedly caused by defendant's negligence. Plaintiff alleged she was struck by a baggage cart, which was forcibly thrown upon her person by an excessive blast of air emanating from one of defendant's airplanes, as it was moving across an airfield ramp. The accident occurred at Orly Airport, Paris, France, and the summons and complaint were properly served upon the Agency and Interline Manager in New York state.[1] Pursuant to New York Civil Practice Laws and Rules (hereinafter CPLR), Rule 3211(a)(8),[2] defendant moved for dismissal, for lack of jurisdictional "basis." The supreme court, at Special Term,[3] denied defendant's motion, and defendant appealed from the order, contending that the airline was a foreign corporation organized under the laws of Finland, where its principal offices were located, and that it was not "qualified" to do business in New York state. The airline, moreover, conducted no flights, either beginning or ending, in New York state, nor did it operate aircraft anywhere within the United States. It maintained a small office in New York City, where reservations were transmitted to the European offices. In addition, some minor publicity and information activities were carried on by it. The office did not, however, sell any tickets, nor did any of the staff members have authority to bind defendant company. Therefore, reasoned defendant, it was not doing sufficient business to meet the requirements of CPLR section 301.[4] The Appellate Division,[5] agreeing with the defendant, reversed the order of the lower court and dismissed the action. The Court of Appeals, in an opinion delivered by Chief Judge Desmond, reversed the order of the Appellate

1. Pursuant to N.Y. CPLR section 311: "Personal service upon a corporation . . . shall be made by delivering the summons as follows: 1. upon any domestic or foreign corporation, to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service. . . ."

2. Providing: "A party may move for judgment dismissing one or more causes of action asserted on the ground that . . . the court has not jurisdiction of the person of the defendant. . . ."

3. Bryant v. Finnish Nat'l Airline, 151 N.Y.L.J., February 18, 1964, p. 15, col. 2 (Sup. Ct. 1964).

4. Providing: "A court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore."

5. 22 A.D.2d 16, 253 N.Y.S.2d 215 (1st Dep't 1964).

Division, one judge dissenting. *Held*, that a foreign airline corporation which maintained a small office in New York state, and which conducted some minor business activities within the state, but which operated no aircraft within the state, *was* "doing business" in sufficient quantity to become subject to the state's jurisdiction in a suit for recovery of damages for personal injuries sustained in a foreign country. *Bryant v. Finnish National Airline*, 15 N.Y.2d 426, 208 N.E.2d 439, 260 N.Y.S.2d 625 (1965).

In order for a forum to exert jurisdiction, in its most generic sense, three requirements[6] must be fulfilled: (a) jurisdiction over the subject matter,[7] (b) proper notice of the proceedings to the defendant,[8] and (c) sufficient basis. The problem herein is the last noted, that of basis. In New York state, the two basic provisions concerning jurisdiction are CPLR sections 301 and 302. Section 302 applies the test of "transacts any business," and is applicable *only* where the "wrong [is] connected with or flow[s] from such business transacted in the state,"[9] whereas section 301, utilizing the "doing business" test, applies *whether or not* the wrong arises from the business carried on within the state. However, "doing business" as a quantitative yardstick requires a greater number of connections between the foreign entity and forum state, than does "transacts any business."[10] The reasons for the distinctions between sections 301 and 302 seem to be both equitable and historical. If the corporation's wrong did not arise from its activities here, it would seem more equitable to require the plaintiff to show a substantially greater amount of connections between the corporation and the state, in order for the forum to require that the foreign corporation travel into the forum to defend a suit against itself. Under the earliest decisions,[11] in order for a judicial forum to wield its power in personam over a "natural" person, actual physical control over the person of the defendant was required; the party necessarily had

6. "Exercise of judicial power by the state through its courts requires the satisfaction of requirements which fall under three heads: subject matter, basis, and service." 1 Weinstein, Korn, Miller, New York Civil Practice § 301.01 (1963).

7. See Elliot v. Piersol, 26 U.S. (1 Pet.) 328 (1828); Benz v. New York State Thruway Authority, 9 N.Y.2d 486, 174 N.E.2d 727, 215 N.Y.S.2d 47 (1961).

8. See Schroeder v. City of New York, 371 U.S. 208 (1962); Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950); Wuchter v. Pizzutti, 276 U.S. 13 (1928); McDonald v. Mabee, 243 U.S. 90 (1917).

9. Bryant v. Finnish Nat'l Airline, 22 A.D.2d 16, 22, 253 N.Y.S.2d 215, 221 (1st Dep't 1964).

10. 1 Weinstein, Korn, Miller, New York Civil Practice, § 302.06 (1963). See Also *e.g.*, Nexsen v. Ira Haupt, 44 Misc. 2d 629, 254 N.Y.S.2d 637 (Sup. Ct. 1964); Ellis v. Newton Paper Co., 44 Misc. 2d 134, 253 N.Y.S.2d 47 (Sup. Ct. 1964); Janklow v. Williams, 43 Misc. 2d 1053, 252 N.Y.S.2d 785 (Sup. Ct. 1964); Lewis v. American Archives Ass'n, 43 Misc. 2d 721, 252 N.Y.S.2d 217 (Sup. Ct. 1964); Greenberg v. R.S.P. Realty Corp., 43 Misc. 2d 182, 250 N.Y.S.2d 460 (Sup. Ct. 1964); Developers Small Business Inv. Corp. v. Puerto Rico Land & Dev. Corp., 42 Misc. 2d 23, 246 N.Y.S.2d 896 (Sup. Ct. 1964); Irgang v. Pelton & Crane Co., 42 Misc. 2d 70, 247 N.Y.S.2d 743 (Sup. Ct. 1964); Jump v. Duplex Vending Corp., 41 Misc. 2d 950, 246 N.Y.S.2d 864 (Sup. Ct. 1964); Steele v. DeLeeuw, 40 Misc. 2d 807, 244 N.Y.S.2d 97 (Sup. Ct. 1963).

11. *E.g.*, Pennoyer v. Neff, 95 U.S. 714 (1877); See also, McDonald v. Mabee, 243 U.S. 90, 91 (1917).

to be served within the forum state. In the case of an "artificial" person,[12] the problem was more complex, because of the innate difficulty of finding the corporation legally present outside its home state.[13] To subject a corporation to jurisdiction a notion of "implied consent" was adopted by some states,[14] wherein a corporate body upon entering a foreign state impliedly consented to submit itself to the state's jurisdiction. Other states utilized a notion of "presence"[15] or of "doing business,"[16] whereby a corporate entity would be adjudged present within a forum merely by its activities there, so long as some reasonable connection with the corporation's presence within the state and its primary functions could be established. The notion of "minimum contacts"[17] was set down in the landmark case of *International Shoe Co. v. Washington*,[18] suggesting that a foreign defendant need only have certain minimal contacts with the forum state so as not to "offend 'traditional notions of fair play and substantial justice.' "[19] Utilizing as its basis the more flexible standard as announced in *International Shoe*, the New York state legislature enacted CPLR section 302. Thus, the notion of "minimum contacts" was embodied in the test of "transacts any business," and thereby a new and less rigid test of jurisdiction emerged in *addition* to the relatively inelastic tests of "residence" and "doing business." Under the "minimum contacts" rationale, the commission of a single tortious act,[20] or the execution of a contract,[21] within the state could be deemed sufficient to subject a corporation to the state's jurisdiction, on causes of action arising therefrom. Thus, the

12. A creature of the state—*i.e.*, a corporate entity is such by virtue of being created by the state, through the issuance of the charter by the sovereign. "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence." Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518, 636 (1819).

13. *E.g.*, Bank of Augusta v. Earle, 38 U.S. (13 Pet.) 517, 588 (1839).

14. *E.g.*, Layfayette Ins. Co. v. French, 59 U.S. (18 How.) 404 (1856); Louisville, C. & C. R.R. Co. v. Letson, 43 U.S. (2 How.) 497 (1844).

15. *E.g.*, Barrow SS. Co. v. Kane, 170 U.S. 100 (1898).

16. *E.g.*, J. R. Watkins Co. v. Hamilton, 32 Ala. App. 361, 26 So. 2d 207 (1946); Sillin v. Hessig-Ellis Drug Co., 181 Ark. 386, 26 S.W.2d 122 (1930); Smith v. Nolting First Mortgage Corp., 45 Ga. App. 253, 164 S.E. 219 (1932); State v. Winstead, 66 Idaho 504, 162 P.2d 894 (1945); Lee v. Memphis Pub. Co., 195 Miss. 264, 14 So. 2d 351, (1943); Brocia v. Franklin Plan Corp., 235 App. Div. 421, 257 N.Y. Supp. 167 (4th Dep't 1932); Harrison v. Corley, 226 N.C. 184, 37 S.E.2d 489 (1946); Kluver v. Middlewest Grain Co., 44 N.D. 210, 173 N.W. 468 (1919); Deaton Truck Lines v. Bahnson Co., 207 S.C. 226, 36 S.E.2d 465 (1945); Wabash R. v. Dist. Ct. of Third Jud. Dist. in and for Salt Lake County, 109 Utah 526, 167 P.2d 973 (1946).

17. See *e.g.*, International Shoe Co. v. Washington, 326 U.S. 310 (1945); Hanson v. Denckla, 357 U.S. 235 (1958).

18. 326 U.S. 310 (1945).

19. *Id.* at 316.

20. *E.g.*, Travelers Health Ass'n v. Virginia, 339 U.S. 643 (1950); Nelson v. Miller, 11 Ill. 2d 378, 143 N.E.2d 673 (1957); See also, Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

21. *E.g.*, McGee v. International Life Ins. Co., 355 U.S. 220 (1957). New York cases have in fact gone even further. See *e.g.*, Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., Feathers v. McLucas, Singer v. Walker, 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8, 15 Buffalo L. Rev. 181 (1965).

state legislatures now have the option to delineate those instances where their judicial forums will have the power to render and enforce judgments over non-resident corporations,[22] within the limits of due process.[23]

The applicable jurisdictional test in the instant case is that of "doing business" as incorporated by CPLR section 301, since the act complained of did not arise from the defendant's activities within the state.[24] In addition to the case law, under CPLR section 301 the legislature delegates to the courts the power to ". . . exercise such jurisdiction over persons, property, or status as might have been exercised heretofore. . . ." The use of the language ". . . as might have been exercised heretofore," taken in conjunction with the intent and objectives of the drafters of the CPLR, "to make it possible, with very limited exceptions, for a litigant in New York courts to take full advantage of the state's constitutional power over persons and things,"[25] reasonably leads to the conclusion that the court is *not* limited to any specific test of "doing business" or of "presence." Under CPLR section 301 therefore, a court may continue to develop such jurisdictional tests as were within their power to adopt before the enactment of the CPLR,[26] as long as they do not offend the "traditional notions of fair play and substantial justice."[27] The original standard used to obtain a quantitative measurement of a corporation's activities under the "doing business" test was whether or not the corporation did a substantial amount of its main business[28] or a "reasonable amount of its business"[29] within the state. Presently, the notion of "systematic, regular and permanent [activities]"[30] is in the foreground. To determine whether a corporation's activities constitute "doing business," the classic "presence"[31] test is used:

> If in fact it [the corporation] is here, if it is here, not occasionally or casually, but with a fair measure of permanence and continuity, then, whether its business is interstate or local, it is within the jurisdiction of our courts. . . .[32]

A major corollary of applying the "presence" test, of course, is the notion that each case must be decided on the basis of its own peculiar facts.[33] In

22. For further discussion of jurisdictional history see: Hoffman, *Plastic Frontiers of State Judicial Power Over Non-Residents*, 24 Brooklyn L. Rev. 291 (1958); Note, 73 Harv. L. Rev. 909 (1960).

23. International Shoe Co. v. Washington, 326 U.S. 310 (1945); Riverside and Dan River Cotton Mills v. Menefee, 237 U.S. 189 (1915); Pennoyer v. Neff, 95 U.S. 714 (1877).

24. Bryant v. Finnish Nat'l Airline, 22 A.D.2d 16, 22, 253 N.Y.S.2d 215, 221 (1st Dep't 1964).

25. New York, Second Preliminary Report of the Advisory Committee on Practice and Procedure [N.Y. Legis. Doc. 1958, No. 13], p. 37.

26. 1 Weinstein, Korn, Miller, New York Civil Practice, § 301.01 (1963).

27. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

28. See Holzer v. Dodge Bros., 233 N.Y. 216, 135 N.E. 268 (1922).

29. Brocia v. Franklin Plan Corp., 235 App. Div. 421, 422, 257 N.Y. Supp. 167, 169 (4th Dep't 1932).

30. Joseph v. Litke, 13 A.D.2d 736, 737, 214 N.Y.S.2d 934, 935 (1st Dep't 1961).

31. As set forth in Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915 (1917).

32. *Id.* at 267, 115 N.E. at 917.

33. *Cf.* Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952); Matter of

Dineen v. United Airlines Transp. Corp.,[34] the court held that a foreign corporation which operated no aircraft within the state, but which maintained an office in New York City, where its employees engaged in the solicitation of business and the sale of tickets, was *not* "doing business" to render it susceptible to jurisdiction. In the companion case of *Jensen v. United Airlines Transp. Corp.*,[35] however, the opposite conclusion was reached on appeal, based on additional facts pleaded by the plaintiff, as follows: an alternate airport within the state was maintained by the defendant, in addition to a passenger station from whence defendant transported its passengers in company limousines to the airport. More recently in *Great Lakes Press Corp. v. Air Malta, Ltd.*,[36] involving an airline organized under the laws of Malta, which conducted its transportation mainly in the Mediterranean and in Bermuda regions, it was found that despite the fact that a domestic corporation was authorized to act as its agent, maintain an office, and use defendant's name in soliciting business and selling tickets, in addition to the authority to enter into related agreements with other aircraft companies for defendant, defendant airlines was held unamenable to jurisdiction. In *Miller v. Surf Properties, Inc.*,[37] a fourth case

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La Belle Creole Int'l, S.A. v. Attorney Gen., 10 N.Y.2d 192, 176 N.E.2d 705, 219 N.Y.S.2d 1 (1961).

34. 166 Misc. 422, 2 N.Y.S.2d 567 (Sup. Ct. 1938). For further discussion of cases concerning airlines and other transportation facilities see: Gelfand v. Tanner Motor Tours, Ltd., 339 F.2d 317 (2d Cir. 1964), wherein foreign bus operators were not "doing business" in New York through a travel agency to which passengers made direct payments for tickets; Taca Int'l Airlines, S.A. v. Rolls-Royce, Ltd., 15 N.Y.2d 97, 204 N.E.2d 329, 256 N.Y.S.2d 129 (1965), wherein the Court decided that a foreign corporation could not avoid jurisdiction through an agent performing business within the state on its behalf, by use of a hollow subsidiary; Elish v. St. Louis S.W. Ry. Co., 305 N.Y. 267, 112 N.E.2d 842 (1953), wherein the Court declared that solicitation of business plus some additional activities related to defendant's operations (board meetings) was sufficient to meet the test; Hastings v. Piper Aircraft Corp., 274 App. Div. 435, 84 N.Y.S.2d 580 (1st Dep't 1948), wherein the corporation engaged a domestic corporation as its distributor, the court found that the fact that the domestic corporation used the name of the foreign corporation in the directories, on its letterhead, and on its office door, was insufficient to show that the corporation was "doing business" within the state.

35. 255 App. Div. 611, 8 N.Y.S.2d 374 (1st Dep't 1938), *aff'd*, 281 N.Y. 598, 22 N.E.2d 167 (1939) (mem.).

36. 202 Misc. 637, 111 N.Y.S.2d 802 (Sup. Ct. 1952). For further cases, of a general nature, construing the "doing business" test see: Railex Corp. v. White Machine Co., 243 F. Supp. 381 (E.D.N.Y. 1965); Ultra Sucro Co. v. Illinois Water Treatment Co., 146 F. Supp. 393 (S.D.N.Y. 1956); Sterling Novelty Corp. v. Frank & Hirsch Distr. Co., 299 N.Y. 208, 86 N.E.2d 564 (1949); Cochran Box & Mfg. Co. v. Monroe Binder Board Co., 232 N.Y. 503, 134 N.E. 547 (1921); IBM Corp. v. Barrett Div. of Allied Chemical & Dye Corp., 16 A.D.2d 487, 229 N.Y.S.2d 547 (3d Dep't 1962); Rochester Happy House, Inc. v. Happy House Shops, Inc., 14 A.D.2d 491, 217 N.Y.S.2d 791 (4th Dep't 1961); Thames v. Lund, 34 N.Y.S.2d 388 (Sup. Ct. 1940), *aff'd*, 263 App. Div. 1041, 34 N.Y.S.2d 416 (3d Dep't 1942); Schumann v. National Pressure Cooker Co., 256 App. Div. 1044, 10 N.Y.S.2d 743 (1st Dep't), *reargument denied*, 257 App. Div. 913, 12 N.Y.S.2d 772 (4th Dep't 1939) (mem.).

37. 4 N.Y.2d 475, 151 N.E.2d 874, 176 N.Y.S.2d 318 (1958). For further cases discussing the test of "doing business" in the same business context see: MacInnes v. Fountainebleau Hotel Corp., 257 F.2d 832 (2d Cir. 1958), wherein a Florida hotel corporation, all of whose activities and attractions offered to guests were located in Miami Beach, was not "doing business" in New York by reason of the fact that it maintained a small office in New York City with three employees whose function it was to receive requests for reservations, which were forwarded to Florida for confirmation, and to answer inquiries and

with facts similar to the instant decision, the fact that the New York office was an independent travel agency was found crucial. Thus, that the peculiar facts in each case are of great significance is apparent. Nevertheless, when such cases as these are compared with cases arising under section 302, it is obvious that the relationship to be proven is more restrictive in the 301 area than in the 302 area.[38]

In examining the facts of the instant case, the Court of Appeals held that the defendant airline was "present" and "doing business" within the state, and it was therefore subject to the jurisdiction of the courts. The relevant statutes noted were section 224 of the General Corporations Law[39] and CPLR section 301, through which the Court established the standing of plaintiff to bring the suit, and the "basis" of the Court to determine the outcome of the suit, respectively. Having affirmatively disposed of the issue of plaintiff's standing to sue, the Court proceeded to the major question: ". . . whether within the statute and cases defendant was 'doing business' in New York State, so as to subject it to personal jurisdiction here."[40] The Appellate Division answered the question in the negative, holding the defendant's contacts too "incidental"[41] in nature to bring it under CPLR section 301, noting that the accident not having arisen from the corporation's activities within the state precluded jurisdiction under CPLR section 302(a)(1),[42] and moreover that "when viewed

distribute brochures; Weiderhorn v. The Sands, Inc., 142 F. Supp. 448 (S.D.N.Y. 1956); Guile v. Sea Island Co., 66 N.Y.S.2d 467 (Sup. Ct. 1946), *aff'd*, 272 App. Div. 881, 71 N.Y.S.2d 911, *leave to appeal denied*, 297 N.Y. 781, 77 N.E.2d 793 (1948); Schwartz v. Breakers Hotel Corp., 13 Misc. 2d 508, 178 N.Y.S.2d 393 (Sup. Ct. 1958).

38. See, *e.g.*, Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., Feathers v. McLucas, Singer v. Walker, 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8 (1965), wherein solicitation, negotiation, and performance of services pursuant to a contract executed without New York, was deemed sufficient to satisfy the "transacts any business" test of CPLR § 302, in Longines-Wittnauer. Further, in Singer v. Walker, the court found that where the corporation had shipped substantial quantities of its product into the state, directly resulting from its solicitation within the state through representatives, advertisements and catalogues, that it was "transacting business" sufficiently to become subject to jurisdiction. Also see *e.g.*, Steele v. DeLeeuw, 40 Misc. 2d 807, 244 N.Y.S.2d 97 (Sup. Ct. 1963), wherein jurisdiction was maintained on the basis of a simple contract signed within the state; Totero v. World Telegram Corp., 41 Misc. 2d 594, 245 N.Y.S.2d 870 (Sup. Ct. 1963), wherein a defamation action was upheld against a syndicated writer whose articles were distributed within the state by the syndicate, arising out of a business transaction within the state.

39. [Now Bus. Corp. Law § 1314(1)] Providing in part: "an action against a foreign corporation may be maintained by a resident of the state . . . for any cause of action."

40. Bryant v. Finnish Nat'l Airline, 15 N.Y.2d 426, 429, 208 N.E.2d 439, 440, 260 N.Y.S.2d 625, 626 (1965).

41. Bryant v. Finnish Nat'l Airline, 22 A.D.2d 16, 22, 253 N.Y.S.2d 215, 221 (1st Dep't 1964).

42. "A court may exercise personal jurisdiction over any nondomiciliary . . . as to a cause of action arising from any of the acts enumerated in this section, in the same manner as if he were a domiciliary of the state, if in person or through an agent he: *transacts any business within the state.* . . ." (Emphasis added.) Under CPLR section 302(a)(1) the test of "transacts any business" is to be distinguished from the test of "doing business" under CPLR section 301, which is the more restrictive of the two. See 1 Weinstein, Korn, Miller, New York Civil Practice, § 302.06 (1963). (See discussion in the text, pp. 432-34, *supra.*) CPLR section 302(a)(1) is precluded from application in the instant case because the "wrong must be connected with or flow from such business transacted in this state," and such is not the case here. Bryant v. Finnish Nat'l Airline, 22 A.D.2d 16, 22, 253 N.Y.S.2d 215, 221 (1st Dep't 1964). For further discussion see: 1 Weinstein, Korn, Miller, *supra*,

in terms of . . . convenience, the equities did not favor plaintiff. . . ."[43] The Court of Appeals disagreed. The applicable test of "doing business," as set down in *Simonson v. International Bank*,[44] declared the highest Court, "should be a simple pragmatic one."[45] The fact that defendant operated no aircraft within the United States was irrelevant under the case of *Berner v. United Airlines*.[46] The majority went on in its summation:

> The New York office is one of many directly maintained by defendant in various parts of the world, it has a lease on a New York office, it employs several people and it has a bank account here, it does public relations and publicity work for defendant here including maintaining contacts with other airlines and travel agencies and, while it does not make reservations or sell tickets, it transmits requests for space to defendant in Europe and helps to generate business. *These things should be enough.*[47] (Emphasis added.)

Under the relevant tests, therefore, defendant airline was subject to the jurisdiction of the courts of the state.

Under the landmark decision of *International Shoe*[48] the United States Supreme Court ". . . defined the constitutional power of the states in asserting jurisdiction over foreign corporations as being limited only by the notions of fair play and substantial justice."[49] Under *McGee v. International Life Insurance Co.*,[50] the Court noted that ". . . a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents."[51] The same notion has been expounded in cases originating in New York state.[52] What is presently apparent is that the Supreme Court has opened a new area, in the realm of jurisdiction, into which the states have the option to tread. They may expand their jurisdictional limits by accepting the option, or they may remain within their present scope. New York has chosen to expand the scope of its "doing business" conceptions with

§§ 301.14, .17, 302.06, .08. See also Homburger, *The Reach of New York's Long-Arm: Today and Tomorrow*, 15 Buffalo L. Rev. 61 (1965); Casenote, 15 Buffalo L. Rev. 181 (1965); Comment, *Transacting Business as Jurisdictional Basis, A Survey of New York Law*, 14 Buffalo L. Rev. 525 (1965).

43. Bryant v. Finnish Nat'l Airline, 22 A.D.2d 16, 22, 253 N.Y.S.2d 215, 221-22 (1st Dep't 1964).

44. Simonson v. International Bank, 16 A.D.2d 55, 225 N.Y.S.2d 392, *aff'd*, 14 N.Y.2d 281, 200 N.E.2d 427, 251 N.Y.S.2d 433 (1964).

45. Bryant v. Finnish Nat'l Airline, 15 N.Y.2d 426, 432, 208 N.E.2d 439, 441, 260 N.Y.S.2d 625, 629 (1965).

46. 3 N.Y.2d 1003, 147 N.E.2d 732, 170 N.Y.S.2d 340 (1957).

47. Bryant v. Finnish Nat'l Airline, 15 N.Y.2d 426, 432, 208 N.E.2d 439, 441-42, 260 N.Y.S.2d 625, 629 (1965).

48. International Shoe Co. v. Washington, 326 U.S. 310 (1945).

49. Amicus Curiae Brief on behalf of plaintiff, by a law firm specializing in aviation negligence (hereafter Amicus Curiae), p. 6; Bryant v. Finnish Nat'l Airline, 15 N.Y.2d 426, 208 N.E.2d 439, 260 N.Y.S.2d 625 (1965).

50. 355 U.S. 220 (1957).

51. *Id.* at 222.

52. *E.g.*, Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8 (1965); Simonson v. International Bank, 14 N.Y.2d 281, 200 N.E.2d 427, 251 N.Y.S.2d 433 (1964); Rondinelli v. Chicago, Rock Is. & Pac. R.R., 5 A.D.2d 842, 170 N.Y.S.2d 947 (2d Dep't 1958).

its decision in *Bryant v. Finnish National Airline.* In an early lower court decision,[53] it was declared that the state courts should follow the federal initiative, although the Court of Appeals in its affirmance offered no opinion.[54] "The test . . . is and should be a simple pragmatic one,"[55] declared the Court in the instant case. Moreover, the equities were with the plaintiff in this situation. It was brought to the attention of the Court,[56] that international airline transportation had greatly increased and that many New York residents fly abroad on foreign carriers, which solicit business here, as is the case with Finnish National Airlines. The only effective and equitable means of redress for New York residents is in the forums of the state, lest they be required to return abroad to a foreign land to try their causes of action.[57] This is consistent with the "notions of fair play and substantial justice."[58]

The decision in the instant case should be lauded as a progressive step in the expansion of jurisdiction over non-resident corporations. Exactly how far this decision takes the New York courts it is too early to determine. It would seem apparent, however, that the instant case would overrule such a decision as in *Dineen v. United Airlines Transp. Corp.*,[59] thereby discarding the distinctions formerly requisite under its companion case of *Jensen v. United Airlines Transp. Corp.*[60] Cases such as *Miller v. Surf Properties, Inc.*,[61] and *Great Lakes Press Corp. v. Air Malta, Ltd.*,[62] are still distinguishable on their facts from the instant case, in that the agency acting within the state was found independent. Although no precise standard or line has been delineated,[63] it would seem that the instant decision incorporates to a greater extent the less restrictive rationale of "transacts any business" utilized under CPLR section 302(a)(1), rather than the traditional "presence" test of *Tauza v. Susquehanna Coal Co.*[64] under section 301; it may in fact even touch those outer limits of permissiveness set down in *International Shoe.*[65]

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53. Lillibridge v. Johnson Bronze Co., 220 App. Div. 573, 222 N.Y. Supp. 130 (1st Dep't 1927).

54. Lillibridge v. Johnson Bronze Co., 247 N.Y. 548 (1928) (mem.).

55. Bryant v. Finnish Nat'l Airline, 15 N.Y.2d 426, 432, 208 N.E.2d 439, 441, 260 N.Y.S.2d 625, 629 (1965).

56. Amicus Curiae, pp. 6-7, Bryant v. Finnish Nat'l Airline, 15 N.Y.2d 426, 208 N.E.2d 439, 260 N.Y.S.2d 625 (1965). Also see the dissenting opinion of Eager, J., in Bryant v. Finnish Nat'l Airline, 22 A.D.2d 16, 253 N.Y.S.2d 215 (1st Dep't 1964).

57. Amicus Curiae, pp. 8-9, Bryant v. Finnish Nat'l Airline, 15 N.Y.2d 426, 208 N.E.2d 439, 260 N.Y.S.2d 625 (1965).

58. As set forth in International Shoe Co. v. Washington, 326 U.S. 310 (1945); Simonson v. International Bank, 14 N.Y.2d 281, 200 N.E.2d 427, 251 N.Y.S.2d 433 (1964).

59. 166 Misc. 422, 2 N.Y.S.2d 467 (Sup. Ct. 1938).

60. 255 App. Div. 611, 8 N.Y.S.2d 374 (1st Dep't 1938), *aff'd*, 281 N.Y. 598, 22 N.E.2d 167 (1939) (mem.).

61. 4 N.Y.2d 475, 151 N.E.2d 874, 176 N.Y.S.2d 318 (1958).

62. 202 Misc. 637, 111 N.Y.S.2d 802 (Sup. Ct. 1952).

63. *Cf.* Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952).

64. Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915 (1917).

65. 326 U.S. 310 (1945).