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THE JUDICIAL POWER of the State of Ohio has long been subject to the constricting influence of *Pennoyer v. Neff,* from which case the territorialist theory of jurisdiction evolved:

> Process from the tribunals of one State cannot run into another State, and summon parties there domiciled to leave its territory and respond to proceedings against them.[1]

The 106th General Assembly of the Ohio Legislature, however, in response to the necessity of keeping abreast with modern society and the vastly increased mobility of its members, enacted into law Sections 2307.381 to 2307.385 inclusive, of the Ohio Revised Code.[2] Collectively these sections are popularly known as the "long-arm" statute.

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1 95 U. S. 714, 727 (1878).

2 Ohio Rev. Code, Secs. 2307.381 to 2307.385, inclusive, effective September 28, 1965. (H. B. 406). It provides:

Section 2307.381. "Person" includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, who is a non-resident of this state.

Section 2307.382. (A) A court *may* exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person's:

(1) Transacting any business in this state;

(2) Contracting to supply services or goods in this state;

(3) Causing tortious *injury* by an act or omission in this state;

(4) Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(5) Causing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state . . . . , provided that he *also* regularly does or solicits business . . . (etc.) . . . in this state;

(6) Having an interest in, using, or possessing real property in this state;

(7) Contracting to insure any person, property, or risk located within this state at the time of contracting. (Emphasis added).

Provision is made for personal service outside the state; and causes of action unrelated to the enumerated acts are prohibited. The pre-existing means of obtaining jurisdiction are continued.

The purpose of this note is to attempt to estimate the extent to which Ohio will utilize the statute, based on the experience of other states having case law on the subject, since there has been no litigation as yet under the statute in Ohio. Discussion is basically limited to the questions of transacting business and of tortious conduct, as these are the most frequently litigated facets of such statutes.

Background

With the enactment of the "long-arm," Ohio has joined the growing number of states which have responded to the "minimum-contracts" doctrine-test set forth in *International Shoe Co. v. Washington;*[3] *i.e.,* has the defendant done something in the forum state or to residents in the forum state in such a manner as to make it fair and reasonable that the defendant be compelled to defend in the forum state?

This represented a discarding of the earlier theories of *Pennoyer v. Neff*[4] which held that a State could only render a judgment binding on a defendant personally if that defendant was physically present and served with process while in the forum state, and *Simon v. Southern Ry.,*[5] which held that, in the case of a defendant non-resident corporation, that entity must have, by implication, consented to the court's jurisdiction. The test of corporate consent was whether or not the company was "doing business" within the forum state.[6]

Ensuing decisions picked away at the foundation of this theory, however,[7] until the Supreme Court announced the "minimum contacts" doctrine in *International Shoe,* thus laying to rest the theories of constructive presence and implied consent, and instead asked merely if a defendant corporation had certain "minimum contacts" within the forum state "such that the

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[3] 326 U. S. 310, 66 S. Ct. 154 (1945).

[4] 95 U. S. 714 (1878).

[5] 236 U. S. 115, 35 S. Ct. 255 (1915).

[6] I. N. Price v. Davis, 22 Ohio App. 388, 153 N. E. 529 (1923); Golden Dawn Foods, Inc. v. Cekuta, 1 Ohio App. 2d 464, 205 N. E. 2d 121 (1964), which held that "each case rests on its own facts."

[7] Henry L. Doherty & Co. v. Goodman, 294 U. S. 623, 55 S. Ct. 553 (1935), which held that service could be made on the agent of a non-resident securities dealer insofar as service concerned obligations arising from transactions in the forum state; Milliken v. Meyer, 311 U. S. 457, 61 S. Ct. 339 (1940), where the court held that an absent defendant could be sued in the courts of the state of his domicile.

maintenance of the suit does not offend traditional nations of fair play and substantial justice." [8]

The principles established by *International Shoe* are not to be construed as *carte blanche* authority, however. Single or isolated activities as a basis for *unrelated* causes of action will not suffice to subject a non-domiciliary foreign corporation to suit.[9] However, as to *related* causes of action, fair play and justice are not compromised if the defendant be forced to appear for suit in the forum state, since that defendant has taken advantage of the opportunity of conducting activities within the forum, thus placing itself within the benefits and under the protection of the forum state's law.[10]

The Supreme Court affirmed *International Shoe*[11] with its opinion in *McGee v. International Life Insurance Co.*,[12] decided twelve years later. There, a cause of action arose from the delivery of an insurance contract directly solicited by a non-resident insurer to its insured within the state of California. In upholding minimum contact jurisdiction resting on a state statute which subjected the company to personal jurisdiction of that state, the Supreme Court conceded that the suit would be inconvenient to the insurer but "was certainly nothing which amounts to a denial of due process." [13] The Court held that "it is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that state." [14] The court went one step further and stated that even a single contract made by the defendant would subject it to jurisdiction if that contract had a substantial connection "with the public policy interests of the forum state." [15]

However, the court felt compelled to further explain its position the following term in *Hanson v. Denckla*,[16] when it

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[8] International Shoe Co. v. Washington, *supra* note 3.

[9] *Id.* at 317 (dicta).

[10] "The exercise of that privilege may give rise to obligations, and so far as those obligations arise out of or are connected with activities within a state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." *Id.* at 319.

[11] International Shoe Co. v. Washington, *supra* note 3.

[12] 355 U. S. 220, 78 S. Ct. 199, 1 L. Ed. 2d 160 (1957).

[13] *Id.* at 224.

[14] *Id.* at 223.

[15] *Id.* at 225.

[16] 357 U. S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958).

rejected the idea that a basis for jurisdiction could be created merely by finding "the center of gravity" of the controversy, or the most convenient location for litigation.[17]

In denying jurisdiction over a non-resident trustee whose sole contact with the forum state was by correspondence with his settlor, who had moved to the forum state after establishing the trust, the court in *Hanson* stated that an essential element to jurisdiction is that the defendant do some act by which he availed himself of the privilege of conducting activities within that state. The non-resident act or contract, however, must be a direct and voluntary one.[18]

The "Long-Arm" of Illinois and New York

Based on the wide latitude afforded by *International Shoe* and subsequent decisions, Illinois enacted the first comprehensive "long-arm" statute.[19] Though not the first state to assert jurisdiction over the subject matter elucidated in the statute,[20] Illinois was the first state to attempt occupation of the entire spectrum of its constitutional power following the Supreme Court's liberalization of the due process clause. Many states followed Illinois' lead and adopted statutes based upon that of Illinois.[21]

The first test of the Illinois statute concerned the section on tortious acts. In *Nelson v. Miller*[22] the Illinois Supreme Court

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[17] *Id.* at 254. "In McGee the court noted the trend of expanding personal jurisdiction over non-residents . . . But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts." *Id.* at 250-51.

[18] *Id.* at 254.

[19] Ill. Laws 1955, pp. 2238, 2245-46, Ill. Rev. Stat. c. 110, Sec. 17 (1963). See, generally, Currie, The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois, 1963 U. Ill. L. F. 533.

[20] In 1937, Maryland provided for suits arising from contracts made or acts done within the state. Md. Acts 1937, c. 504, Sec. 118, at 1057, now Md. Ann. Code art. 23, Sec. 92(d) (1957); see also Vt. Laws 1937, No. 40, now Vt. Stat. Ann. Tit. 12 Sec. 855 (1958), where Vermont provided for suits arising from contracts to be performed or torts committed "in whole or in part" there. Additionally, in 1937, Pennsylvania provided for jurisdiction in suits arising from the ownership or use of real property within the state, Pa. Laws 1937, No. 558, now Pa. Stat. Ann. Tit. 12, Sec. 331 (1953). The Uniform Unauthorized Insurers Act, providing for jurisdiction over those insuring residents of the forum state, had its inception in 1938, and was adopted in several states. 9 C Uniform Laws Ann. 308, Sec. 5 (1938).

[21] Including Idaho, Maine, Montana, New Mexico, New York, and Washington.

[22] 11 Ill. 2d 378, 143 N. E. 2d 673 (1958).

stated that, for purposes of ascertaining jurisdiction, a "tortious act" is an act that would be tortious *if* proved as alleged. To hold otherwise would necessitate hearing the merits prior to a determination of jurisdiction.[23]

Additionally, the court declared in *Nelson* that the Illinois statute intended to assert jurisdiction to the fullest constitutional extent. In answer to due-process objections, the Court upheld the statute by applying the minimum contacts and fairness tests of *International Shoe.*

Following *Nelson v. Miller,* there were other cases which upheld jurisdiction based on the Section 17 tort provision, where either the defendant or his agent physically entered the State of Illinois and therein committed an act alleged to be tortious.[24]

Though most cases adjudicated have involved Illinois residents as plaintiffs, Section 17 is not so limited by express language. A nonresident plaintiff may well fall within the protection of the statute.[25]

Before New York enacted its "long-arm" statute [CLPR 302] [26] a foreign corporation could not be considered "present" for jurisdictional purposes unless it had systematic and regular contacts with New York. It had to be doing business in the state. Justice Cardozo set out the test in *Tauza v. Susquehanna Coal Co.*: [27]

> If it (corporation) is here, not occasionally, or casually, but with a fair measure of permanence and continuity, then it is within the jurisdiction of our Courts.[28]

This "presence" test was the New York guideline until the Supreme Court set out the "minimum contacts" theory in *Inter-*

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[23] "An act or omission within the State, in person or by an agent, is a sufficient basis for the exercise of jurisdiction to determine whether or not the act or omission gives rise to liability in tort." *Id.* at 393-94, 143 N. E. 2d at 681.

[24] Star v. Rogalny, 162 F. Supp. 181 (E. D. Ill. 1957), (non-resident motorist); Rensing v. Turner Aviation Corp., 166 F. Supp. 790 (N. D. Ill. 1958), (airplane crash); Riinc, Inc. v. Peddie, 195 F. Supp. 124 (E. D. Ill. 1961) (ship collision in waters subject to Ill. jurisdiction).

[25] See, generally, Currie, The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois, 1963 U. Ill. L. F. 533.

[26] N. Y. Sess. Law 1962, c. 308, Sec. 302, approved by the Governor April 4, 1962. See, generally, Kellog, Transacting Business as Jurisdictional Basis—A Survey of New York case law, 14 Buffalo L. R. 525 (1964-65).

[27] 220 N. Y. 259, 115 N. E. 915 (1917).

[28] *Id.* at 262.

national Shoe v. Washington.[29] To take advantage of that holding meant passing a statute, which New York did not do until 1962. Thus, until passage of CLPR 302 was enacted, New York's *in personam* jurisdiction was based on a narrower foundation than that permitted by the due process clause of the United States Constitution, as interpreted by the Supreme Court.

However, under *Tauza,* a foreign corporation doing business in New York was amenable to suit for a cause of action, even if that cause did not arise from New York business dealings. In this respect, CLPR 302 is not as liberal, as *in personam* jurisdiction under the statute will lie only for a cause of action *related* to the transaction of business.

In *Brunette Sunapee Corp. v. Zeolux Corp.,*[30] the court dismissed a breach of warranty and negligence action against an Illinois Corporation, since none of the elements of the action arose out of transacting business in New York. Defendant, a washing machine manufacturer, made the machine in Illinois, sold it in Massachusetts, and the machines were thereafter installed in New Hampshire by the Massachusetts purchaser. After installation, the machine failed to operate. The court held that there was no transaction of business in New York, though the defendant was a wholly owned subsidiary of a New York corporation.

In *Patrick Ellam, Inc. v. Nieves,*[31] the court had held that a cause of action arising out of a contract entered into in New York constituted a "transaction" of business. The court went even further in *Iroquois Gas Corp. v. Collins,*[32] where the defendant, a Texas resident, denied entering into an alleged contract to build a pipeline across the Niagara River for the plaintiff. Defendant had sent agents into New York to survey the area and do other preliminary work relating to the *proposed* contract on two separate occasions. The court held that this activity, in furtherance of the contract by non-resident defendant's agents, constituted "a transaction and established the necessary contacts." Even though the contract had not been proved, the court stated that "it was enough that the defendant availed himself of the privilege of conducting business *activity* in New York, thus

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[29] *Supra* note 3.

[30] 228 F. Supp. 805 (S. D. N. Y. 1964).

[31] 41 Misc. 2d 186, 245 N. Y. S. 2d 545 (Sup. Ct. 1963).

[32] 42 Misc. 2d 632, 248 N. Y. S. 2d 494 (Sup. Ct. 1964).

invoking the benefit and protection of the law." [33] (Emphasis added.)

The court concluded *Iroquois* by stating that if there was no contract the defendant could establish this fact at a later hearing, on the merits. But for purposes of *jurisdiction,* activity in furtherance of the contract was enough.

The *Iroquois* decision was influenced by the Illinois case of *Kropp Forge Co. v. Jawitz,*[34] where the facts were similar. The defendant in *Kropp* denied the existence of a contract but visited plaintiff's premises in Illinois, there communicating with plaintiff's employees. The court found that "either the making" of the alleged contract itself, or activity in furtherance of it, while the defendant was physically present with the business shown to have been transacted by the defendant in Illinois.

The *Iroquois* case and the New York case of *Longine-Wittnauer Watch Co. v. Barnes & Reinecke*[35] both placed considerable stress on the physical presence of the defendant or its agent in the forum state, for purposes in furtherance of a contract. In *Longine-Wittnauer,* extensive contract negotiations for the sale of two machines took place in New York. Additionally, the machines were installed and tested within the state, requiring the presence of defendant's officials and employees.

In the alternative, if a contract was negotiated elsewhere but *executed* within the state, would there be sufficient basis for the granting of jurisdiction? New York seemed to think so in *Lewis v. American Archives Assn.,*[36] where the plaintiff, an attorney, was retained by a non-resident defendant in a contract of employment executed in New York. The contract covered activities to be performed for the defendant by the plaintiff in the state. Defendant's employee made one visit to New York for a conference with the plaintiff on matters directly relating to the contract. In upholding jurisdiction, the court said that there had been "sufficient contact." It stated that the intent of the New York legislature was to make nondomiciliaries more accessible to the jurisdiction of the New York courts, "thus affording greater protection to the resident of this state."

The "tortious act" provision of the New York statute was

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[33] *Id.* at 634.

[34] 37 Ill. App. 2d 475, 186 N. E. 2d 76 (1962).

[35] 21 App. Div. 2d 474, 251 N. Y. S. 2d 740 (1964).

[36] 43 Misc. 2d 721, 252 N. Y. S. 2d 217 (1964).

the jurisdictional basis sought by the plaintiff in *Singer v. Walker*.[37] There, a geologist's hammer was manufactured in Illinois by an Illinois Corporation which labeled the hammer "unbreakable" and shipped it to a New York retailer, who sold it to plaintiff's aunt. She, in turn, gave it to plaintiff who used it on a Connecticut field trip, where the hammer fragmented, injuring plaintiff. The Court of Appeals affirmed jurisdiction over the defendant, but not on the "tortious act" provision, holding that "tortious acts of manufacturing and labeling the hammer occurred in Illinois and are insufficient to satisfy the requirements of paragraph 2 [CLPR 302 (a) (2)] that the 'tortious act' be one committed 'within' the state." The court did uphold jurisdiction on the "transacting business" paragraph of the statute, stating that ". . . (it) is not limited to actions in contract and applies to tort actions when supported by a sufficient showing of facts." [38] The court in *Singer* deemed it not controlling that the injury occurred in Connecticut or that the sales contract was consummated in Illinois, since the cause "arose from the purposeful activities engaged in by defendant in this State in connection with the sale of its products in the New York market." [39]

It may be well to note that while both the Illinois and New York statutes speak of the commission of a *tortious act* within the State; the comparable section of the Ohio statute speaks of "causing *tortious injury* by an act or omission in this state." [40] There appears to be a definite distinction in the wording of the statutes. If one may assume that a tort may be found to exist separately from its consequences, the distinction becomes more lucid.

Of course, where the act and its consequences are closely related, it is impractical to separate the two; *e.g.*, negligently shooting another person with a bow and arrow, causing injury to that person.

However, where the alleged tortious act consists of the negligent manufacture or sale of a product, and the consequences arise in a distant location, after a substantial lapse of time, it is

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[37] 21 App. Div. 2d 285, 250 N. Y. S. 2d 216 (1964), affd. 15 N. Y. 2d 443 (1965).

[38] *Id.* at 444.

[39] *Id.* at 445.

[40] Ohio Rev. Code Sec. 2307.382(A) (3).

logical to distinguish between the act and the damage or consequences arising therefrom, particularly if one or more intervening parties have handled the product.

In *Hellriegal v. Sears Roebuck & Co.*[41] a lawn mower was manufactured in Ohio by an Ohio corporation, the mower's power unit being manufactured by a Wisconsin corporation. The unit was shipped to Ohio, placed on the mower, then sold in Ohio to defendant, an Illinois corporation. The mower was eventually sold to plaintiff's father, proved defective, and resulted in injury to plaintiff. The plaintiff alleged that a "tortious act within the state" had occurred, under the theory that the negligent manufacture constituted a tortious act in Illinois, where the injury, or consequence, occurred. The Federal Court refused to grant jurisdiction, stating that the words "commission of a tortious act" mean the same thing as "commission of a tort."[42] The court further reasoned that the term "tortious act" was intended by the legislature to distinguish between a whole tort and the base act apart from its consequences. Implicit in that decision is the conclusion that consequences alone are insufficient to bring a non-resident within the jurisdiction of Illinois law.

The Illinois Supreme Court reached the furthest limits of jurisdictional construction in *Gray v. American Radiator & Standard Sanitary Corp.*[43] In that case, defendant, American Radiator, purchased a safety valve from defendant manufacturer in Ohio. The valve was placed on a hot water tank constructed by defendant in Pennsylvania, which tank was then sold by defendant's dealer to plaintiff in Illinois. The valve proved defective, causing the tank to explode and injure the plaintiff, who attempted to assert jurisdiction over defendant manufacturer on the ground that a tortious act had been committed within the state so as to bring defendant within the scope of the Illinois statute. The court applied the "place of effect" theory of tort law in construing the statute, holding it immaterial that the defendant had not itself introduced the defective valve into Illinois, because the valve had been "presumably sold in contemplation of use here." The court continued:

> As a general proposition, if a corporation elects to sell its products for ultimate use in another State, it is not unjust

[41] 157 F. Supp. 718 (N. D. Ill. 1957).

[42] *Id.* at 720, citing Nelson v. Miller, 11 Ill. 2d 378, 143 N. E. 2d 673 (1957).

[43] 22 Ill. 2d 432, 176 N. E. 2d 761 (1961).

> to hold it answerable here for any damage caused by defects in those products, where the alleged liability arises, as in this case, from the manufacture of products presumably sold in contemplation of use here, it should not matter that the purchase was made from an independent middle-man or that someone other than the defendant shipped the product into this state.[44]

The *Gray* case represented a departure from the theretofore cautious flexing of the Illinois "long-arm." That this case has not been universally followed was demonstrated by the Federal Court for the Northern District of Illinois, in its opinion in *McMahon v. Boeing Airplane Co.*,[45] decided shortly after *Gray*. This court, which had rendered the *Hellriegal v. Sears Roebuck & Co.*[46] opinion four years earlier, stated that the Illinois legislature never intended the Illinois courts to assume jurisdiction over cases "where the complaint does not allege acts or omissions performed within the State of Illinois, rather only the injury is alleged to have occurred in Illinois." [47]

New York case law has indicated a trend towards expansion of jurisdiction over non-resident defendants. Generally, however, the court has been able to find some affirmative act or omission within the state upon which to base jurisdiction.[48]

The New York cases seem to confirm the contention that there remains a necessity of finding some physical presence within the forum state in order to impose jurisdiction under the statute.

The New York case of *Greenberg v. R. S. P. Realty Corp.*[49] perhaps represents the furthest reach thus far in that state.

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[44] *Id.* at 442.

[45] 199 F. Supp. 908 (N. D. Ill. 1961). See also Insull v. New York World Tel. Corp., 273 F. 2d 166 (7th Cir. 1959).

[46] 157 F. Supp. 718 (N. D. Ill. 1957).

[47] McMahon v. Boeing Aircraft Co., *supra* note 45.

[48] In Fornabaio v. Swissair Transport Co. Ltd., 247 N. Y. S. 2d 203 (1964), jurisdiction was based on the defendant's products being used within the state in sufficient numbers, coupled with defendant's knowledge that its products would be sold and used in the state; Lewin v. Boch Laundry Machine Co., 42 Misc. 2d 599, 249 N. Y. S. 2d 49 (1964), jurisdiction granted on defendant's *reasonable expectation* that its products would be sold and used in N. Y., coupled with defendant's past record of substantial sales and distribution in the N. Y. market.

[49] 43 Misc. 2d 182, 250 N. Y. S. 2d 460 (Sup. Ct. 1964); *contra,* Borges v. Pipher, 152 N. Y. L. J., Oct. 28, 1964, p. 22, col. 4 (Sup. Ct.). *Contra,* see also, Gelfand v. Tanner Motor Tours, Ltd., 339 F. 2d 317, 321-22 (2d Cir. 1964).

Defendant hotel corporation solicited business through advertisements in New York newspapers. Plaintiff confirmed her reservations by a direct line telephone placed in New York by defendant New Jersey hotel. The New York court granted jurisdiction on the basis of transacting business, even though the suit sounded on a tort committed in New Jersey.

New York's statute recently came under constitutional attack in *Rosenblatt v. American Cyanamid Co.*[50] Justice Goldberg delivered the opinion and, after finding that the defendant had committed an international tort while physically present in New York, stated that a "single tort is enough to bring one under the statute, which is constitutional." The test set out in that case is that "the defendant must have taken *voluntary action* calculated to have an *effect* in the forum state." [51] (Emphasis added.)

Conclusion

It can be readily seen, from the foregoing discussion, that there is a divergence in opinion among the authorities as to how far the "long-arm" statutes reach.

Ohio, with its newly enacted statute, will shortly be faced, in its courts, with the obligation to interpret the statute. At that point, the courts must determine whether or not they will grant jurisdiction under the statute to the fullest extent of the constitutional power allowed by the United States Supreme Court or, in the alternative, take a conservative approach and progress slowly with this new power, relying on the case law of other jurisdictions for guidelines.

If Ohio courts choose the former path, in an omnibus attempt to "balance the conveniences" between a plaintiff, normally an individual, and a defendant, usually a large enterprise, there may evolve a *caveat* to corporations, insurance companies, and other businesses, with their vast horizontal and vertical structures. Corporations might well avoid marketing their goods or services freely within the state if to do so would avoid the possibility of subjecting themselves to *in personam* jurisdiction for even the

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[50] 22 A. D. 2d 854, 254 N. Y. S. 2d 81 (1964), aff'd. w.o. opinion, 16 N. Y. 2d 621, 261 N. Y. S. 2d 69 (1965), aff'd., 86 S. Ct. 1 (1965).

[51] *Id.* at 4. Facts; an employee of plaintiff stole documents in N. Y., went to Italy, and there conspired with defendant to sell the documents. The defendant came to N. Y., inspected the documents, and there paid part of the purchase price before returning to Italy. The plaintiff was a Maine corp. doing business in N. Y.

remotest transaction. The subsequent impediment of goods and services flowing freely between this state and other jurisdictions could well result in adverse economic conditions.

It is more likely that Ohio will follow the latter choice. The recent case of *Schneider v. Laffoon*[52] lends weight to this position.

> Where the Ohio General Assembly has adopted statutory provisions from another state after those provisions have been construed by the highest court of that state, such construction will be given great weight in this state and will usually be followed.[53]

To ascertain jurisdiction on a case by case approach is to do full justice to the rights of the respective parties in suit. This is in accord with the general philosophy that has historically evolved with construction of any new statute expanding judicial powers.

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[52] 4 Ohio St. 2d 89, 212 N. E. 2d 801 (1965). See, also, McNary v. State, 128 Ohio St. 497, 191 N. E. 733 (1934); Chapel State Theater Co. v. Hooper, 123 Ohio St. 332, 175 N. E. 450, aff'd. 284 U. S. 588, 52 S. Ct. 137, 76 L. Ed. 508 (1931); 50 Ohio Jur. 2d 282, Sec. 299.

[53] *Id.* at 806.