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can effectively control the use of the writ in actions to recover for foreign torts. At the same time, the plaintiff who asserts a good cause of action and seeks recovery by attachment would not be denied all access to the courts of Pennsylvania. It would seem that under the *Alpers* decision, a resident must either seek recovery *in personam*[25] within or without the Commonwealth since there is little chance the plaintiff can obtain personal service[26] upon the foreign defendant. The desirability of reducing burdensome litigation does not appear to warrant the harsh restriction that denies the fundamental *quasi-in-rem* action, especially when the same results may be more equitably achieved by a discretionary use of the doctrine of *forum non conveniens*.

The efficacy and desirability of the writ of foreign attachment as extended to foreign actions *ex delicto* has been well recognized and accepted in other jurisdictions.[27] It is submitted that a decision interpreting Rule 1252 so as to extend to foreign actions *ex delicto* would have been preferable. The application of the rule could then have been made to depend on the discretionary doctrine of *forum non conveniens*.

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CONFLICT OF LAWS AND MINIMUM JURISDICTIONAL CONTACTS

Doing an act within a state or causing consequences therein are at the outer limits of a state's jurisdiction *in personam*[1] over nonresi-

339 Pa. 533, 160 A.2d 549 (1960). For the application of the doctrine in other jurisdictions see Barnett, The Doctrine of Forum Non Conveniens, 35 Calif. L. Rev. 380 (1947); Foster, Place of Trial in Civil Actions, 43 Harv. L. Rev. 1217 (1930); Blair, The Doctrine of Forum Non Conveniens in Anglo American Law, 29 Colum. L. Rev. 1 (1929).

[25]The distinction between an action in rem and an action in personam is that in an action in rem a valid judgment may be obtained so far as it affects the res without personal service of process, while in an action to recover a judgment in personam process must be personally served or there must be a personal or authorized appearance in the action." In re Blue's Estate, 67 Ohio App. 37, 32 N.E.2d 499, 507 (1939).

[26]Jurisdiction over the person of the defendant must be acquired before a valid judgment in personam can be obtained. Such jurisdiction is obtained by personally or constructively serving the defendant with notice of the pending suit. Pennoyer v. Neff, 95 U.S. 714 (1877).

[27]For the general provisions for writs of foreign attachment in several states, see note 17 supra.

[1]An action in personam is one in which "the technical object of the suit is

dents. In section 17 of the Illinois Civil Practice Act[2] the Illinois legislature has undertaken to go to the limits of the due process clause of the Constitution.[3] The constitutionality of the Illinois statute, specifically of section 17(1)(b) relating to the commission of a single tortious act as constituting the basis for *in personam* jurisdiction, was recently questioned in *Gray v. American Radiator & Sanitary Corp.*[4]

The specific problems presented by the *Gray* case were twofold: (1) statutory interpretation, more specifically, the meaning of the words "tortious act," and (2) the power of a state under federal constitutional law to subject to its courts, by process other than personal service within the state,[5] a nonresident[6] for a tortious act committed by the nonresident outside the territorial limits of the state, where the injury occurs within the state.

Titan Valve Manufacturing Company manufactured a safety valve outside Illinois.[7] American Radiator & Sanitary Corporation bought and installed the valve in a water heater which was sold to the plaintiff.[8] When the water heater was used in Illinois it exploded and caused injury to the plaintiff. The plaintiff sued both Titan and American Radiator for damages. The Illinois trial court dismissed the action against Titan, but the Supreme Court of Illinois reversed.

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to establish a claim against some particular person, with a judgment which generally in theory at least, binds his body...." Tyler v. Judges of Court of Registration, 175 Mass. 71, 55 N.E. 812, 814 (1900). See Goodrich, Conflict of Laws § 72 (2d ed. 1949).

[2]Ill. Rev. Stat. c. 110, § 17 (1959). The pertinent parts of paragraph 17 are as follows: "(1) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State to any cause of action arising from the doing of any of said acts: .... (b) The commission of a tortious act within this State."

[3]See Pembleton v. Illinois Commercial Men's Ass'n, 289 Ill. 99, 124 N.E. 355, 359 (1919), dealing with the power of Illinois to give its courts jurisdiction in personam over a foreign corporation, in which the court stated that "the decisions in this State as to due process of law under the Fourteenth federal amendment must be controlled by the decisions of the federal courts rather than by the decisions of our own or other state courts."

[4]22 Ill. 2d 432, 176 N.E.2d 761 (1961).

[5]An action in tort is transitory and, if personal service can be obtained on the nonresident defendant anywhere in the state, the plaintiff can secure a personal judgment against him. See Roper v. Brooks, 201 La. 135, 9 So. 2d 485 (1942).

[6]The term "nonresident" as used in this comment in reference to the defendant, Titan, means that it was, at the time of the commencement of the action, a resident of another state.

[7]The court's syllabus to the case in the unofficial reporter states that the valve was manufactured in Ohio.

[8]The court's syllabus to the case in the unofficial reporter states that the

The defendant, Titan, contended that the words "commission of a tortious act" did not mean the same thing as "commission of a tort," and section 17 would not apply to one who commits a tort by an act done outside the state with consequences in the state.[9] The Supreme Court of Illinois held otherwise. Although a "tortious act" may mean something different from a tort,[10] the court interpreted the language of section 17 to include those cases where the negligent action alleged in the complaint does not occur in Illinois but only the injury occurs in Illinois.

In reaching its decision the Supreme Court of Illinois relied on *Nelson v. Miller*.[11] In the *Nelson* case, the defendant, a resident of Wisconsin, sent an employee into Illinois to deliver a stove. At the employee's request plaintiff assisted in unloading the stove. The employee negligently pushed the stove and injured the plaintiff. It was held that:

> "[T]he jurisdictional requirements... are met when the defendant... is the author of acts or omissions within the State, and when the complaint states a cause of action in tort arising from such conduct."[12]

The *Nelson* case holds that "tortious act" means an act alleged to be tortious. In the *Gray* case the Illinois court is extending this concept to include an injury in Illinois caused by an allegedly tortious act committed outside the jurisdiction.

This Illinois rule, in the light of developing precedents in this area, is believed to be constitutional under the due process clause of the fourteenth amendment.

The *International Shoe Co. v. Washington*[13] case announced a liberal rule that greatly expanded the traditional concepts of state jurisdiction over nonresidents. Justice Stone declared:

> "Historically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a

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valve was installed in the water heater in Pennsylvania and was sold to the consumer in Illinois.

[9]176 N.E.2d at 763.

[10]It can be argued that the words "tortious act" are not synonymous with the word "tort." "The former term, more restrictive than the latter, refers only to the act or conduct and does not include the consequence thereof." McMahon v. Boeing Airplane Co., 199 F. Supp. 908, 909 (N.D. Ill. 1961).

[11]11 Ill. 2d 378, 143 N.E.2d 673 (1957).

[12]Id. at 681.

[13]326 U.S. 310 (1945).

> judgment personally binding him.... But now that the capias ad respondendum has given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' "[14]

Significantly, the only positive limitation placed on the assumption of jurisdiction over a nonresident defendant by the *International Shoe Co.* case is that due process "does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has *no* contacts, ties, or relations."[15]

The defendant, Titan, in the *Gray* case argued that this minimum contact requirement had not been satisfied. The court, in rejecting Titan's contention, relied in part on the United States Supreme Court decision in *McGee v. International Life Ins. Co.*[16] In the *McGee* case the Court for the first time held that a single isolated act was sufficient to comply with the minimum contact test laid down in *International Shoe.* In *McGee* an insurance company, which solicited through the mails the purchase of an insurance policy and thereafter mailed the insured premium notices, was held subject to the jurisdiction of the state over causes of action arising from the policy.

A case which goes even beyond *McGee* is *Zacharakis v. Bunker Hill Mut. Ins. Co.*,[17] in which New York was held to have judicial jurisdiction over a Pennsylvania insurance company which, so far as it appears, had done no more than to mail a resident of New York a policy insuring hotel property in New Hampshire and had received in return a premium mailed from New York. This case was cited, apparently with approval, by the United States Supreme Court in the *McGee* case.[18]

The current attitude of the Supreme Court towards problems of allocating judicial jurisdiction among the states was clearly indicated in *Watson v. Employers Liab. Assurance Corp.*[19] The defendant issued a liability insurance policy to the manufacturer of a hair-waving product, an Illinois subsidiary of a Delaware corporation hav-

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[14]Id. at 316.
[15]Id. at 319. (Emphasis added.)
[16]355 U.S. 220 (1957).
[17]281 App. Div. 487, 120 N.Y.S.2d 418 (1st Dep't 1953).
[18]355 U.S. at 223.
[19]348 U.S. 66 (1954).

ing its headquarters in Massachusetts. The policy issued in Massachusetts or Illinois indemnified the insured against damages that might be suffered by users of the product. The plaintiff, a resident of Louisiana, was injured in using the product and instituted suit against the insurance company under the Louisiana direct action statute.[20] As the defendant insurance company was admitted to do business in Louisiana, it could be served with personal service and there was no issue as to jurisdiction over the person. However, the defendant denied liability because the policy contained a "no action" clause, which was valid under Massachusetts and Illinois law, prohibiting direct actions against the insurer until final determination of the insured's liability. The Supreme Court of the United States declared that Louisiana could apply its own law rather than the law of Massachusetts or Illinois and upheld the constitutionality of the statute.[21] The Court reasoned that the interests of the states where the contract was negotiated and delivered cannot outweigh the contracts and interests of Louisiana in taking care of persons injured in Louisiana. It should be noted that the Court analyzed the contacts for the purpose of solving a conflicts of laws problem (which state law to apply) rather than to determine whether or not the Louisiana court had personal jurisdiction over the defendant. Yet the two problems are similar in that they both concern the scope of the power of a court to render judgment. If the Supreme Court is willing to follow the weight of contacts in the one case it would seem to indicate that it should do so in the other.

It is commonly recognized that the law of the place where the injury occurs governs the right of action for a tort, no matter where the act or omission causing the injury takes place.[22] In the *Gray* case the place of injury was Illinois where the explosion occurred. The fact that Titan's conduct occurred outside of Illinois does not eliminate the law of Illinois as a matter of choice of law. It knew the valve might be sent into Illinois where the harm was done. This case is somewhat similar to that of shooting a firearm across the state line,[23] starting a

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[20]La. Rev. Stat. Ann. § 22:655 (1950), allows a direct action against the liability insurer without regard to a "no direct action" clause and without regard to the fact that the contract of insurance may have been made in another state, where it is binding.

[21]"What has been said is enough to show Louisiana's legitimate interest in safeguarding the rights of persons injured there. In view of that interest, the direct action provisions here challenged do not violate due process." 348 U.S. at 73.

[22]The lex loci deliciti governs in actions of tort. Northern Pac. Ry. v. Babcock, 154 U.S. 190, 197 (1894); Jarrett v. Wabash Ry., 57 F.2d 669, 671 (2d Cir. 1932); Restatement, Conflict of Laws § 412 (1934).

[23]Dallas v. Whitney, 118 W. Va. 106, 188 S.E. 766 (1936).