Hastings Law Journal

Volume 16 | Issue 1 Article 7

1-1964

Satisfying Minimum Contracts by Physical Repossession of Chattels

Albert F. Pagni

NOTES

SATISFYING "MINIMUM CONTRACTS" BY PHYSICAL REPOSSESSION OF CHATTELS

In *Pope v. National Aero Fin. Co.*,[1] the California court undertook to determine whether a corporation was "doing business" within the State so as to subject it to local process and jurisdiction. The case involved service of process on a Kansas corporation, a wholly owned subsidiary of a Kansas airplane manufacturer, engaged in financing and selling the manufacturer's airplanes both to dealers and retail purchasers. Plaintiffs, as creditors, claimed that the financing arrangements between their debtor, a California corporation, and the Kansas financing corporation were in fraud of creditors. The debtor was presently insolvent and, as a result of the finance corporation's repossession and sale of nine aircraft had no property from which plaintiffs could satisfy their claim.

The plaintiffs, seeking to set aside the alleged fraudulent conveyances to the Kansas finance corporation, served a summons and complaint pursuant to section 411 of the Code of Civil Procedure and section 6501 of the Corporations Code on the theory that the foreign financing corporation was "doing business" within the State of California.[2] The court held that the Kansas financing corporation, by *physically repossessing* and selling within this State airplanes upon which the purchasers had defaulted, was "doing business" in the State so as to be subject to local process and jurisdiction.

The question of immediate concern is whether or not a foreign corporation becomes amenable to local process and jurisdiction where upon several occasions it has entered a jurisdiction to physically repossess its secured chattels upon the default of the debtor.

It is difficult and perhaps impossible to lay down any rule of universal application to determine when a foreign corporation is amenable to local service of process and jurisdiction. Traditionally, in order to justify jurisdictional requirements, it has been necessary to determine whether a foreign corporation was doing business within a particular state.[3]

---

[1] 220 Cal. App. 2d 709, 33 Cal. Rptr. 889 (1963).

[2] CAL. CODE CIV. PROC. § 411(2), provides that in a suit against a foreign corporation, doing business within the State, summons must be served by delivering of a copy of the summons in the manner provided for by CAL. CORP. CODE §§ 6500-04. These sections of the CAL. CORP. CODE provide for the method of effecting service of process on foreign corporations. In the instant case service was made upon the Secretary of State.

[3] See, *e.g.*, CAL. CORP. CODE §§ 6200-6804 for the general provisions governing foreign corporations. See also, *e.g.*, CAL. CORP. CODE §§ 6203, 6450-52 for the provisions on intrastate business. *Cf.* Jeter v. Austin Trailer Equip. Co., 122 Cal. App. 2d 376, 265 P.2d 130 (1953). In McGee v. International Life Ins. Co., 355 U.S. 220, 222 (1957), Justice Black stated that "in a continuing process of evolution this Court accepted and then abandoned 'consent,' 'doing business,' and 'presence' as the standard for measuring the extent of state judicial power" over foreign corporations. Due process is satisfied where the forum has certain minimum contacts with the foreign corporation such that "the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Ibid.* Notwithstanding this statement, the utility of the phrase "doing

The difficulty of this determination has been due to the recognition that the phrase "doing business" has three significant legal aspects:[4] (1) to determine whether the corporate activities subject it to tax liability; (2) to determine whether a corporation is required to qualify to do business under the local statute; and (3) to determine whether the state has jurisdiction for service of process. "The degree of activity or contact which is required varies according to the purpose for which the foreign corporation is sought to be subjected to local laws."[5] The distinction between the classes of cases is aptly summed up as follows:

> The business which must be transacted by a foreign corporation to permit service of process must be such as to warrant the inference that the corporation is *present.* To subject such a corporation to taxation for doing business, the transactions must not only show that the corporation is present, but also that it is *active.* In order that qualification be rendered necessary, the corporation must not only be present and active, but its activity must be *continuous.*[6]

Thus it follows that a state may have jurisdiction over a foreign corporation by virtue of its local activities for purposes of service of process but may still lack the power to tax or regulate the same corporation.[7]

The general principle was established in *Pennoyer v. Neff*[8] that a court does not have jurisdiction to render an in personam judgment against a nonresident if he was not personally served within the territory of the forum or did not actually consent to the forum's jurisdiction. Within a relatively short time the Supreme Court held that the *Pennoyer v. Neff* doctrine applied "in all its force, to personal judgments of State courts against foreign corporations."[9]

With the passage of time and the accompanying great increase of business activity carried on across state lines, the strict territorial requirements of jurisdiction over foreign corporations became impracticable as a means of protecting the interests of local citizens.[10] The development of corporate enterprise on a national scale prompted state legislatures and courts to enlarge the situations in which foreign corporations would be subject to local process.[11] Thus by considering that

---

business" has not been completely abrogated, and its inclusion in CAL. CODE CIV. PROC. § 411(2) which provides that process must be served upon "a foreign corporation . . . doing business in this state," necessitates a determination of its legal significance. In making this consideration, it will nevertheless be advisable to remember the transition in this field of law and that the question of jurisdiction actually depends upon the existence of minimum contacts between the corporation and the state, and the compliance with the traditional standard of fair play, rather than on any particular definition of "doing business."

[4] 18 FLETCHER, CYCLOPEDIA CORPORATIONS § 8712 (rev. vol. 1955); *cf.* Comment, 11 U.C.L.A.L. REV. 259 (1964).

[5] Jeter v. Austin Trailer Equip. Co., 122 Cal. App. 2d 376, 381, 265 P.2d 130, 133 (1953); Thew Shovel Co. v. Superior Court, 35 Cal. App. 2d 183, 95 P.2d 149 (1939).

[6] Isaacs, *An Analysis of Doing Business,* 25 COLUM. L. REV. 1018, 1045 (1925) quoted with approval in Hartstein v. Seidenbach's Inc., 129 Misc. 687, 222 N.Y. Supp. 404 (Sup. Ct. 1927). See generally RESTATEMENT, CONFLICT OF LAWS § 167 (1934).

[7] Fielding v. Superior Court, 111 Cal. App. 2d 490, 244 P.2d 968 (1952).

[8] 95 U.S. 714 (1877).

[9] St. Clair v. Cox, 106 U.S. 350, 353 (1882).

[10] See Daum, *The Transaction of Business within a State by a Non-Resident as a Foundation for Jurisdiction,* 19 IOWA L. REV. 421 (1934).

[11] See Note, 60 YALE L.J. 908 (1951).

the foreign corporation had "impliedly consented" to the power of a state to render a personal judgment,[12] that the corporation was "present" within the forum,[13] or that the corporation was "doing business" within the state,[14] the courts were able to enlarge their power so that foreign corporations became amenable to service of process in an in personam proceeding.

The power of state courts to assert jurisdiction over foreign corporations was expanded in *International Shoe Co. v. Washington*,[15] where the Supreme Court discarded the theories of "consent" and "presence" as the only basis for jurisdiction, substituting the requirement that foreign corporations have "certain minimum contacts" with the forum. Whether the activities of a foreign corporation are sufficient to subject it to local process is to be determined by the "traditional notions of fair play and substantial justice" as to a general balancing of conflicting interests.[16]

In California in order to obtain personal jurisdiction over a foreign corporation, two basic requirements must be fulfilled: "(1) the corporation must be 'doing business' in this state . . . and (2) service must be made within this state on a person legally competent for that purpose."[17] "Doing business" at one time required such contact with the forum as to amount to "presence" of the foreign corporation within the jurisdiction,[18] but the modern rule construes the term "doing business" to encompass "any act or acts creating such contact with the state as to make it reasonable to require the foreign corporation to defend the particular suit which is brought, providing the maintenance of the suit does not offend traditional notions of fair play and substantial justice."[19] The modern rule has been aptly stated as follows:

> The statute [§ 411] authorizes service of process on foreign corporations that are "doing business in this State." That term is a descriptive one that the courts have equated with such minimum contacts with the state "that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" . . . Whatever limitation it imposes is equivalent to that of the due process clause. "'[D]oing business' within the meaning of section 411 of the Code of Civil Procedure is synonymous with the power of the state to subject foreign corporations to local process."[20]

The rationale of the rule in *International Shoe* has been adopted by California and a review of the decisions will indicate that the courts have applied and

---

[12] Connecticut Mut. Life Ins. Co. v. Sprately, 172 U.S. 602 (1899). See generally BEALE, CONFLICT OF LAWS § 89.7 (1935).

[13] Old Wayne Mut. Life Ass'n v. McDonough, 204 U.S. 8 (1907). See generally BEALE, CONFLICT OF LAWS § 89.6 (1935).

[14] Bendix Home Appliances, Inc. v. Radio Accessories Co., 129 F.2d 177 (8th Cir. 1942).

[15] 326 U.S. 310 (1945).

[16] *Id.* at 316.

[17] Sims v. National Eng'ring Co., 21 A.C.A. 625, 627, 34 Cal. Rptr. 537, 538-39 (1963).

[18] See James R. Twiss, Ltd. v. Superior Court, 215 Cal. App. 2d 247, 30 Cal. Rptr. 98 (1963).

[19] *Id.* at 254, 30 Cal. Rptr. at 102.

[20] Henry R. Jahn & Son, Inc. v. Superior Court, 49 Cal. 2d 855, 858, 323 P.2d 437, 439 (1958).

followed the doctrine.[21] Furthermore, the courts have gone far to replace the old traditional tests of "presence," "implied consent" and "continuous activity." In one case a foreign corporation which had no place of business, no agents, employees or representatives, and no records of its business within the State was held to be "doing business" where its activities were confined to the solicitation of business by advertising in magazines. The court said that there is no essential difference between solicitation by agents within California and solicitation by advertising in magazines. The systematic and continuous solicitation produced a flow of business in California which was sufficient to create an obligation therein, thus constituting "doing business" for purposes of local service of process and jurisdiction.[22]

In *Empire Steel Corp. v. Superior Court*,[23] the court held that a parent foreign corporation was doing business in this State through the ownership of a wholly owned and controlled subsidiary corporation which was doing business in California, where the corporate entities were not sufficiently preserved and the subsidiary was the *alter ego* of the foreign parent corporation. The *Empire Steel* case did not consider continuous activity as the necessary criteria to determine minimum contact, but held that the court should analyze the activities of the foreign corporation not "merely quantitatively, but in terms of their 'quality and nature,' and their connection with the obligations sued upon."[24]

Recently it was held that where a foreign corporation purchased goods by purchase orders issued in and mailed from a foreign country on a systematic and substantial basis, that it was amenable to local process on the theory of doing business in California where the corporation sent one of its representatives to California on several occasions to expedite compliance by the vendor.[25]

Thus the departure from the "presence" test emanates from the fact that jurisdiction arises out of defendant's contact with the forum state. Furthermore, to the extent that a corporation exercises the privilege of conducting activities within a state, enjoying the benefits and protection of the laws of that state, the exercise of that privilege may give rise to obligations. If the obligations arise out of or are connected with the activities within the state, then the subjection of the foreign corporation to local process can hardly be violative of fair play and substantial justice.[26]

Viewed in this light the *Pope* case appears to be consistent with the rationale of the foregoing cases. For in that case the foreign corporation had made its financing programs known through the mails, and on several occasions, by per-

[21] See, *e.g.*, Empire Steel Corp. v. Superior Court, 56 Cal. 2d 823, 366 P.2d 502, 17 Cal. Rptr. 150 (1961); American Continental Import Agency v. Superior Court, 216 Cal. App. 2d 317, 30 Cal. Rptr. 654 (1963); Florence Nightingale School of Nursing v. Superior Court, 168 Cal. App. 2d 74, 335 P.2d 240 (1959).

[22] Florence Nightingale School of Nursing v. Superior Court, *supra* note 21.

[23] 56 Cal. 2d 823, 366 P.2d 502, 17 Cal. Rptr. 150 (1961).

[24] *Id.* at 832, 366 P.2d at 507, 17 Cal. Rptr. at 155.

[25] American Continental Import Agency v. Superior Court, 216 Cal. App. 2d 317, 30 Cal. Rptr. 654 (1963).

[26] International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); Pope v. National Aero Fin. Co., 220 Cal. App. 2d 709, 719, 33 Cal. Rptr. 889, 896 (1963); American Continental Import Agency v. Superior Court, 216 Cal. App. 2d 317, 322, 30 Cal. Rptr. 654, 657 (1963).

sonal appearances of personnel at dealer meetings. Furthermore, representatives made several visits yearly to California in connection with the financing program. The applications for financing were initiated in California and then transmitted to Kansas for approval and acceptance. Therefore, consistent with the foregoing principles of the California cases, there was enough substantial contact within the State by this systematic course of commercial transaction to make the defendant corporation amenable to local process and jurisdiction.[27]

The court placed heavy emphasis on the fact that the foreign corporation had come within the State to repossess its chattel security.[28] It declared that it was "impressed" with the policy of the foreign corporation "physically" repossessing and "actively" engaging "in the sale of the repossessed airplanes in this state." In view of the fact that this policy had been carried out on numerous occasions and that the foreign corporation had "resorted to the aid of the California courts in order to effect and facilitate such repossession," the court found that the foreign corporation was amenable to local process and jurisdiction.

Would the court have reached the same conclusion if the repossessing and selling of security interests had been the only contacts with California? Could this mean that where a foreign corporation has on several occasions come within the jurisdiction to physically repossess its security interests upon default of the mortgagor, that it would by those very acts become amenable to local process and jurisdiction? If the chattel mortgages are executed in the State of California or if the cause of action arises in California, the forum having not only a substantial interest in the controversy but also a sufficient minimal contact with the corporation, then clearly the corporation should be amenable to local process and jurisdiction.[29] But when the mortgage agreements are executed in a foreign jurisdiction and when the only contact with the forum is physical repossession of secured chattels, it becomes difficult to justify local service of process and jurisdiction. Would it be unreasonable to believe that the court was suggesting that such a minimal contact as physical repossession of secured chattels by a foreign corporation may adequately satisfy due process for purposes of jurisdiction?

There is no doubt that if the litigation arose out of the very transaction the foreign corporation should, for the protection of interests of local citizens, be considered to have made sufficient minimum contact according to the "traditional notion of fair play and substantial justice" to require that it defend that particular suit.[30] But if the claim was by a third party, not a party to the original transaction, and the corporation's only contact with the State had been the repossession or the repossession and sale of its security interests, the court's suggestion becomes more difficult to justify.[31] A decision that the foreign corporation would be amenable to local process and jurisdiction would appear "especially unfortunate, and undesirable, particularly" for local citizens, for it would "inevitably tend to

[27] Pope v. National Aero Finance Co., *supra* note 26, at 713-14, 33 Cal. Rptr. at 892-93.

[28] *Id.* at 715, 33 Cal. Rptr. at 894.

[29] *Cf.* McGee v. International Life Ins. Co., 355 U.S. 220 (1957); Jeter v. Austin Trailer Equip. Co., 122 Cal. App. 2d 376, 265 P.2d 130 (1953).

[30] See McGee v. International Life Ins. Co., 355 U.S. 220 (1957), where the contract upon which the suit was based was sufficient contact with California.

[31] See Simon v. Southern Ry., 236 U.S. 115 (1914); Stavang v. American Potash and Chemical Corp., 227 F. Supp. 786 (1964).

deter those who are in the market" for local trade from entering into any transaction which would have any contact with this State.[32]

In *Pope*, service of process was made upon the Secretary of State.[33] A further query is whether the cause of action must accrue within the jurisdiction when substitutional service is utilized. Upon a determination by the court that the forum has sufficient contacts with the foreign corporation is there a further requirement that the action must not only be related to those activities, but also that the action must accrue within the court's jurisdiction?

In *Pope* the court did concede that "it is not enough that the foreign corporation engage in activities creating substantial contacts in California, but these must be in relation to the claim asserted."[34] To support its conclusion that the alleged cause of action was related to the defendant's activities within the state the court found: (1) that the financing arrangements between the debtor and the defendant corporation were in fraud of creditors; (2) that the debtor was guilty of fraud in executing the subject chattel mortgages; (3) that the defendant corporation was aware of the debtor's fraudulent intent; and (4) that the corporation had repossessed and sold the aircrafts in question. As a result of the debtor's dealings with the defendant corporation, the court found that the plaintiff's cause of action was related to the corporation's doing business within the State. Further emphasis was placed on the fact that the debtor was not only a resident of California, but also a dealer for a Kansas corporation, which was wholly owned by the defendant corporation.

The principle was once well established that a foreign corporation was liable to suit only upon causes of action arising out of activities done within the state.[35] But since *International Shoe*, and subsequent decisions[36] the Supreme Court has expanded the power of the state courts to assert jurisdiction over foreign corporations by holding that the due process clause does not prohibit state power even though the cause of action is unconnected with the corporate activities within the state. Accordingly, it follows that every state has the undoubted right to provide for service of process upon any foreign corporation doing business within its borders, and it may also provide that in the case of the corporation's failure to appoint an agent upon whom service may be made, service may be made upon an officer designated by law.[37]

---

[32] Henry R. Jahn & Son, Inc. v. Superior Court, 49 Cal. 2d 855, 863, 323 P.2d 437, 442 (1958) where Justice Schauer's dissenting opinion criticizes the majority opinion which indicates a trend toward holding that all persons residing and doing business outside of this State may become amenable to local process merely by placing orders by phone or correspondence, a holding which would be detrimental to the interests of California producers and sellers who wish to sell to out of state firms.

[33] Pope v. National Aero Fin. Co., 220 Cal. App. 2d 709, 712, 33 Cal. Rptr. 889, 891 (1963).

[34] *Id.* at 719, 33 Cal. Rptr. at 896.

[35] Simon v. Southern Ry., 236 U.S. 115 (1915); Old Wayne Mut. Life Ass'n v. McDonough, 204 U.S. 8 (1907).

[36] See, *e.g.*, Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952), which indicates that the trend of the law is away from a consideration of physical power over a foreign corporation to a more flexible standard of balancing of conveniences and interests.

[37] See CAL. CORP. CODE § 6501.

When the court has determined that process was validly served upon a foreign corporation doing business within the state, it need not concern itself with the "niceties" of the law of the place where a contract is entered into or where it is to be performed, nor need it concern itself with the place of the wrong or where the cause of action accrued. Though the court conceded that its only concern was whether the nature and extent of the commercial dealings had a reasonable relation to the claim asserted,[38] it is apparent that such was unnecessary for "the law of this state is to the effect that 'a foreign corporation may have sufficient contacts with a state to justify an assumption of jurisdiction over it to enforce causes of action having no relation to activities in that state.' "[39]

Therefore it is clear that if the court determines that physical repossession of secured chattels by a foreign corporation is an activity which satisfies minimal contacts, it follows that it is immaterial whether or not the cause of action has any relation to such activities. A third person thus could acquire jurisdiction over a foreign corporation in a completely unrelated cause of action merely because that corporation had occasionally entered the jurisdiction to repossess chattels upon defaulted obligations.

Suppose a situation where the chattel mortgage had been executed while both parties were domiciled in Kansas. Thereafter the debtor moves to California and becomes domiciled there, having taken the chattel security with him to California with neither the consent nor the knowledge of the creditor. Further suppose that the debtor thereafter defaults upon his obligation. What are the alternatives available to the foreign corporation?

Assume that the Kansas corporation does not want to institute action outside of its own State. Can it seek judicial relief in the courts of Kansas? Since neither the chattels nor the debtor are within its boundaries, it can not by the traditional view seek satisfaction in Kansas, as neither in rem nor in personam jurisdiction is available.[40] But even if Kansas could obtain in personam jurisdiction over the debtor, the corporation's position would not be enhanced. For if the Kansas court does enter a default judgment against the non-appearing debtor, the corporation is in no position to levy execution upon the judgment, because irrespective of any argument about valid judicial power, a judgment may not be satisfied without a person or a res within the territorial boundaries of the adjudicating state. This does not mean that the adjudication was futile, for it is well recognized that the corporation may take the judgment to California and there bring an action on the Kansas judgment which will be entitled to full faith and credit in the California courts.[41]

---

[38] Pope v. National Aero Fin. Co., 220 Cal. App. 2d 709, 719, 33 Cal. Rptr. 889, 896 (1963).

[39] Brunzell Constr. Co. v. Harrah's Club, 225 A.C.A. 883, 893, 37 Cal. Rptr. 659, 665 (1964); see also Koninklijke Luchtvaart Maatschappij v. Superior Court, 107 Cal. App. 2d 495, 237 P.2d 297 (1951).

[40] Pennoyer v. Neff, 95 U.S. 714 (1877).

[41] It is for the state itself to determine whether it shall open or close its courts to foreign corporations, and it may impose such terms and conditions upon the right to sue as it may elect. American De Forest Wireless Tel. Co. v. Superior Court, 153 Cal. 533, 96 Pac. 15 (1908). Except that it may not deny a right to sue in one state upon a judgment obtained in a sister state, that being controlled by the full faith and credit clause of the federal constitution. Kenney v. Supreme Lodge, 252 U.S. 411 (1920).

However, upon seeking to enforce the sister state's judgment, the corporation will run the risk of being subjected to local service of process and jurisdiction without regard to the basis of the cause of action.[42] By its voluntary act in demanding justice from the debtor the corporation has submitted itself to the jurisdiction of the court, and there is nothing arbitrary or unreasonable in treating the corporation as being there for all purposes. This is the price which the State may exact as a condition of opening its courts to the foreign corporation.[43] Furthermore, there is nothing in the fourteenth amendment to prevent a state from adopting a procedure by which a judgment in personam may be rendered against the foreign corporation where it has sought the benefits and protection of the local courts and laws.[44]

What other alternatives are available to the foreign corporation? Since the situs of the chattels, as well as the debtor, is in California, it may attempt to seek satisfaction of the debtor's obligation in California. In fact this may be the only practical alternative available. In California the foreign corporation will have several practical means of redress to protect its interest in the chattel security.[45] It may seek redress in the local courts by foreclosure of the mortgagor's equity of redemption.[46] Further consideration must then be given to the local procedure that will be applicable in such a foreclosure and whether such procedure would create an unwanted burden to the corporation.[47] In view of the local procedure the corporation may have no other alternative but to seek to repossess and sell the securities; for section 726 of the Code of Civil Procedure provides that a chattel mortgagee can not ignore his security and sue on the debt, but must first exhaust the security.[48] Thus once the foreign corporation has submitted itself to the judicial machinery of the local jurisdiction, it will immediately run the risk of being sub-

[42] Adam v. Saenger, 303 U.S. 59, 67 (1938).

[43] *Id.* at 68.

[44] International Shoe Co. v. Washington, 326 U.S. 310 (1945); Adam v. Saenger, 303 U.S. 59 (1938); Henry R. Jahn & Son, Inc. v. Superior Court, 49 Cal. 2d 855, 323 P.2d 437 (1958).

[45] A foreign corporation, not authorized to do business within a state, may nevertheless bring a suit therein, irrespective of local limitations, to recover its property which would otherwise be lost. To deny such a right would be in effect a denial of due process and equal protection of the law as guaranteed by the fourteenth amendment. Kentucky Fin. Corp. v. Paramount Auto Exch. Corp., 262 U.S. 544 (1923).

[46] CAL. CIV. CODE § 2967 provides that chattel mortgagee, upon default of the mortgagor, may foreclose the mortgagor's right of redemption by either of two statutory methods: (1) sale of property as a pledge, CAL. CIV. CODE §§ 3001-02; or (2) foreclosure proceeding under CAL. CODE CIV. PROC. § 726.

[47] See RESTATEMENT, CONFLICT OF LAWS §§ 281, 585 (1934); BEALE, CONFLICT OF LAWS § 281.1 (1935). *Cf.* Russell v. Pacific Ry., 113 Cal. 258, 45 Pac. 323 (1896).

[48] CAL. CODE CIV. PROC. § 726 provides that there can be but one form of action for the enforcement of any right secured by a mortgage upon personal property. The courts have interpreted this section as a legislative intent that the mortgaged property, being the primary fund, must be exhausted before any other remedy may be had against the mortgagor. See, *e.g.*, Winklemen v. Sides, 31 Cal. App. 2d 387, 88 P.2d 147 (1939). See generally Sher, *The Unruh Act and Chattel Mortgages-A Case of Legislative Oversight*, 13 STAN. L. REV. 282, 295 (1961) that the Unruh Act does not change the application of section 726 of the Code of Civil Procedure.

jected to local service of process and jurisdiction, since it can not accept the benefits of the local laws and courts without assuming the burdens.[49]

Suppose that the foreign corporation is faced with the last ditch relief of physical repossession. First, assume that physical repossession alone does not satisfy minimum contact requirements, but that physical repossession and sale will satisfy the requirement of fair play, as was intimated in *Pope*. Considering the physical characteristics of airplanes, their bulk and quasi-immovable nature, is not the foreign corporation as a practical matter almost compelled to sell the chattels at the situs of their physical repossession? But if it does, this will constitute doing business within that jurisdiction and it will become amenable to local process, even on extraneous causes of actions. Further assume only repossession, without a sale being consummated within the state. Is the foreign corporation's position improved? Apparently not, for there is a strong indication that such activities may be of such a quality and nature to make it reasonable and just, according to the traditional notions of fair play and substantial justice, to require that the foreign corporation defend a particular suit brought within the forum,[50] irrespective of whether the cause of action has any relation to the corporation's physical activities of repossessing its chattel security within this State.[51]

Is this violative of our traditional concept of fair play? Perhaps not. Perhaps it is only just that the acts of a foreign corporation, regardless of their remoteness, should be considered sufficient to satisfy minimum contacts, and perhaps this should be true without regard to whether such a corporation can be considered to be "doing business" voluntarily within the jurisdiction.[52]

The primary reason that corporations ever came to be amenable to foreign jurisdiction was that it appeared to be reasonable and just that they should be subjected to suits in places where they had voluntarily engaged in business.[53] The exercise by a foreign corporation of the privilege of conducting activities within a jurisdiction should definitely give rise to certain obligations. If these obligations arise out of or are connected with the activities within the state, it is not violative of due process to subject that corporation to local jurisdiction.[54] On the other hand, it is not contemplated "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."[55] Jurisdiction, it would then seem, ought to be entertained only in such cases where it is reasonable and just that the corporate defendant should be amenable to local service of process. Defining reasonable and

---

[49] Adam v. Saenger, 303 U.S. 59 (1938); Pope v. National Aero Fin. Co., 220 Cal. App. 2d 709, 33 Cal. Rptr. 889 (1963).

[50] See note 33 *supra*.

[51] See note 39 *supra*. It is true that California could not prevent a foreign corporation from entering the State to repossess its chattel security, for such a deprivation would be taking of property without due process of law and violative of the federal constitution, Kentucky Fin. Corp. v. Paramount Auto Exch. Corp., 262 U.S. 544 (1923), but there is no constitutional infringement of due process where the state makes one amenable to local process even though the corporation is exercising a guaranteed constitutional right, Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952).

[52] See note 20 *supra*.

[53] 18 FLETCHER, CYCLOPEDIA CORPORATIONS § 8640 (rev. vol. 1955).

[54] International Shoe Co. v. Washington, 326 U.S. 310 (1945).

[55] *Id.* at 319.