Civil Procedure - Long-Arm Statute - Broad Interpretation

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CIVIL PROCEDURE—LONG-ARM STATUTE—BROAD INTERPRETATION—
The Pennsylvania Supreme Court interpreted the scope of Section 331, which provides for service against non-resident owners of real estate, and concluded the word "involved" as used in the statute does not require a causal connection between the accident or injury and the real estate, but only the occurrence of the accident or injury on the real estate.


Appellant's preliminary objections to jurisdiction over him as a non-resident defendant were overruled in the Court of Common Pleas of Allegheny County. Appeal was made directly to the Supreme Court of Pennsylvania.

The appellee allegedly sustained personal injuries as a result of an accident which occurred on May 18, 1966, at the residence of the appellants who occupied a house in Mt. Lebanon, Allegheny County, Pennsylvania. On that date appellee, while baby-sitting for appellant's children, was allegedly injured when a chair upon which she was sitting collapsed.

On June 25, 1966, appellants moved from Allegheny County and

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2. The objections were based upon Pennsylvania's long-arm statute; _PA. STAT. ANN._ tit. 12, § 672 (1953).

Wherever in any proceeding at law or in equity the question of jurisdiction over the defendant or of the cause of action for which suit is brought is raised in the court of first instance, it shall be preliminarily determined by the court upon the pleadings or with the depositions, as the case may require; and the decision may be appealed to the Supreme Court, or the Superior Court, as in the cases of final judgments.

See, _PA. STAT. ANN._ tit. 12 Rule 1017(b)(1) (1967), which suspends operation of this act except insofar as it confers the right to appeal from a decision on a jurisdictional question.
became residents of Hawaii. Appellee instituted suit in the Court of Common Pleas, Allegheny County, and pursuant to the Pennsylvania long-arm statute the complaint was served on the Secretary of the Commonwealth and upon the appellants by registered mail.

Appellant's objection was that substituted service was improper under these facts since Section 331 provides for this type service when there is an "accident or injury occurring within the Commonwealth in which such real estate, footways, and curbs are involved." Appellant contended that real estate was in no way involved since the chair which allegedly collapsed was personally. The Supreme Court of Pennsylvania, however, agreed with the lower court that "the situation presented was one which fell within the scope of the Act of July 2, 1937, and that substituted service of process had been properly accomplished." In so doing the court reversed interpretations of lower courts which had concerned themselves with finding a causal connection between the real estate and the injury. The Supreme Court of Pennsylvania stated that, "[w]e cannot agree with these courts that 'involvement' under the Statute requires more than the occurrence of the accident or injury on the real estate."

Appellant's argument of causal connection between real estate and injury rested solely on lower court opinions due to the lack of appellate court decisions on Section 331. Reference is first made to the case of Andrews v. Joffa, in which a minor defendant inflicted a gun wound on another minor while on a farm owned by the defendant's father, who was made a party defendant in the case. The defendants, however, were residents of Ohio which brought Section 331 into issue. The Andrews' court was of the opinion that the occurrence of the injury on the farm did not mean the farm was "involved in the injury." The Andrews' opinion pointed out that it had no appellate court cases to give it guidance in defining the scope of "involved" as used in Section 331. Thus the court in Andrews relied on other lower court decisions, one of which was Shouse v. Wagner. That court in its attempt to define

5. Id.
8. 429 Pa. at 375, 240 A.2d at 503.
10. Id. at 197.
“involved” stated that “[b]eing ‘involved’, is not the same as being the site or location of an accident or injury.” 12

Moreover, the problem of statutory interpretation in regard to Section 331 is sharpened in focus when that section is compared with Section 106. 13 The latter section is a venue statute used to determine the county in which a cause of action will be brought, while Section 331 is a jurisdictional statute dealing with those not residing in the state. Section 106 which contains broader language than Section 331 was formerly construed in a very restrictive manner by the Supreme Court of Pennsylvania in the case of Olson v. Kucencic. 14 In order that Section 106 be operative it was deemed necessary that a cause of action arise from a condition inherent in, or incident to the realty before the statutory language of “occurring upon real estate” could be satisfied. 15 This contention of causal connection between the cause of action and realty is made by appellant in regard to Section 331.

In support of this restrictive interpretation of Section 106, Olson quoted the common law rule in regard to service of process. The rule is that: “In an action in personam the process must be served personally within the jurisdiction of the court in which the action was commenced, upon the person to be affected thereby.” 16 The Olson court noted that since Section 106 has no language which inherently limits its scope, to interpret “occurring upon real estate” as all that is necessary for application of the act would “so broaden the intent of the Act as to authorize extra-territorial service of process in almost any conceivable action regardless of its nature.” 17 The problem of unlimited scope of application does not exist with Section 331. Where Section 106 simply names the “defendant” as the proper person upon whom to serve process, 18

12. Id. at 84.
In cases where claims are made for damages arising from any accident or injury occurring upon real estate, the footways, sidewalks, and curbs adjacent thereto, it shall be lawful to commence an action for the recovery of damages in any court of record in the county wherein the real estate, footways, sidewalks, and curbs, are located, and service of process may be made by the sheriff of the county in which the action is brought, by deputizing the sheriff of the county wherein the defendant resides or where service may be had upon such defendant under the existing laws of this Commonwealth, in like manner as process may be now served in the proper county. (Emphasis added).
15. Id. at 508, 133 A.2d at 598.
16. Id. at 509, 133 A.2d at 597.
17. Id.
18. See, Rich v. Meadville Park Theatre Corp., 360 Pa. 388, 62 A.2d 1 (1948), which stated that defendant is not limited to owner, lessee, or user of real estate.
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Section 331 enumerates "owner, tenant and user" as the only ones upon whom service can be made. Thus where the Supreme Court of Pennsylvania felt compelled to limit Section 106, it saw no reason to do so with Section 331 since it has an inherent limitation within its wording. The type of imitation placed on Section 106 is understandable within the context of that statute. That is, Section 106 is a venue statute determining which county court will hear the cause of action, but not whether the state court has jurisdiction. It is meant to deal only with residing parties, while Section 331 deals with non-residing parties in which the question of entertaining the cause of action in the state is the primary concern. With this in mind the court may have felt the best forum for presenting the evidence would be attained under Section 106 by limiting the statute. Whether it was legitimate for the court to broaden Section 331 will be discussed below.

The implementation of the two statutes may be compared thusly: if one is attempting to utilize the machinery of Section 106 in order to get extra county service of process on the resident "defendant" one must first establish a causal connection between the real estate and the cause of action in order to satisfy the statutory language of "occurring upon real estate"; if one is attempting to utilize the machinery of Section 331 in order to get service of process on a non-resident "owner, tenant, or user of real estate" there need only be the occurrence of the injury on the real estate in order to satisfy the statutory language of "involved" real estate.

Thus what Betcher stands for is a broadening in the scope of applicability of Section 331 which had seemed, by its own language and previous lower court decisions, to have only a limited application.

It would be difficult to accurately analyze and evaluate Betcher without going into the history of personal long-arm jurisdiction, and the place that Section 331 holds in that history. For this survey the landmark decision of International Shoe v. State of Washington will be used as a pivotal point around which the discussion can move in an attempt to put Section 331 in proper perspective.

International Shoe laid down the broad standards of due process under which courts and legislatures presently operate.

[D]ue 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 substantive justice." 20

Prior to International Shoe, the scope of due process was rather restricted. There were, of course, the traditional bases for jurisdiction; if a person was physically present, or consented to jurisdiction, or domiciled in the forum state he could be subject to its jurisdiction. At one time these were satisfactory methods of process. The lack of geographic mobility increased the causes of action arising in the forum state within which the parties resided, while the reduction in the significance of state borders necessitated an increase in the bases of state jurisdiction. States began to recognize the need to increase their jurisdiction, but prior to International Shoe lacked broad operative guidelines. This lack of leeway in the due process area brought on such fictional doctrines as "implied consent," 21 and "doing business" as a basis for "physical presence." 22 In 1937 Pennsylvania became the first state to make real estate a basis for attaining jurisdiction over a non-resident defendant. Section 331 came in a period when legislatures were looking for ways to extend non-resident jurisdiction, but were not certain just how broad an extension would be justified. The restrictive nature of the statute can be explained by the fact that until International Shoe there was no substantial authority for enacting such a real property statute. 23 What the statute amounted to was a limited provision which could only be invoked upon commission of certain torts within the state. This re-emphasized the pivotal nature of International Shoe, since after that decision there was no longer any need for fictions or limited legislative enactments which feared they would outdistance the bounds of due process.

Subsequent to International Shoe, the facts indicate that many states did not take advantage of the full potentialities of that decision. 24 This

20. Id. at 316.
21. In Mutual Life Ins. Co. v. Spratley, 172 U.S. 602 (1899), the Court reasoned that a consent to be sued in the state might be presumed by the state as a condition to permitting the non-resident corporation to do business within the state.
22. In Philadelphia & Reading R.R. v. McKibbin, 243 U.S. 264 (1917), jurisdiction was granted on the theory that non-resident corporation by "doing business" within the state became "present" there.
23. In Dubin v. City of Philadelphia, 34 Pa. D. & C. 61 (1938), it was held that the statute was constitutional, but without any authority to support that position.
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seems to be in large part the problem the Supreme Court of Pennsylvania faced in the Betcher case. The fact that the statute is limited as regards causes of action has already been noted, but beyond the limited number of actions which can be brought based on the statute is the problem of limited language.

From our present perspective there seems little reason for the limited statute. The Supreme Court of Pennsylvania interpreted the statute in a much broader fashion than it was written, and it seems clear that the broad interpretation does not violate due process. Betcher pointed out that simply reviewing the facts shows that there is no violation of due process. The court in Betcher made reference to the case of Gearhart v. Pulakos to support this rationale. Although the fact situations in the two cases are distinguishable, in that Gearhart does involve a causal connection between real estate and injury, the discussion of the scope of due process in Gearhart is still valuable. The court in Gearhart drew an analogy between the use of highways and the use of real property. It was pointed out that it is the use of highways that authorizes service on non-resident defendants, and this leads to the conclusion in regard to real property that "the ownership of property in Pennsylvania at the time an accident occurs upon it, which is the basis of a cause of action, permits service of process in the Federal Courts by the United States Marshal . . . ."26

In line with the above reasoning one can examine further what could be called the "due process gap." In determining whether or not such a gap exists one must first find a fact situation which would not violate due process when analyzed on its own merits, and devoid of any relevant state statute. If one can at this point conclude there is no violation of due process, then the second element of the examination, the relevant state statute, must be made applicable to the fact situation. If such application is impossible, or at best can only be accomplished by a type of statutory expansion, then to some degree a gap exists between present due process standards and the relevant state statute. The examination of the facts in Betcher by the Supreme Court of Pennsylvania showed no violation of due process. However, the application of Section 331 to the facts was a difficult task because of the statute's limitations. Moreover, suppose the facts had been somewhat different in that the chair was not on appellant's property at the time of the injury, but instead

had been taken to a nearby playground at which place it collapsed causing the injury. No one under those circumstances would attempt to apply Section 331, yet the same justifiable facts would exist which make Pennsylvania the only logical and just forum in which to bring the suit. The hypothetical facts are meant only to reemphasize the limitations of Section 331 as a statute by which personal long-arm jurisdiction can be attained. A court is unlikely to have any success in attempting to cure what is evidently an outmoded statute.

Although Betcher broadens Section 331, and makes it more in accord with present due process standards it also presents a substantial question: Should the legislature move to void the gap between a limited long-arm provision and the present broadened range of due process?

John Tumolo

CRIMINAL LAW—SEARCHES AND SEIZURES—The Supreme Court of the United States held that a policeman is justified in making a search for weapons in the outer clothing of one who he reasonably suspects is armed and dangerous, even though the policeman has no probable cause to arrest the man he is detaining.

*Terry v. State of Ohio, 88 S. Ct. 1868 (1968).*

Petitioner and two other men were observed by a policeman who suspected them of “casing a job, a stick-up” because of their activity in front of a store window. The men had been walking up and down the street in front of the store, looking in the window and conferring. Fearing that the men were armed, the police officer confronted petitioner, asked his name and, having received a mumbled answer, patted down the outside of his clothing. The officer felt a pistol in the pocket of petitioner’s overcoat, moved him inside the store and removed his overcoat taking the pistol out. The trial court held¹ and the Supreme Court affirmed² that the gun was admissible as evidence against petitioner, and, thus, that the search was not unreasonable on the basis that the police officer had the right to search those whom he