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Constitutional Law - Procedural Due Process - Quasi in Rem Jurisdiction - Foreign Attachment

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CONSTITUTIONAL LAW—PROCEDURAL DUE PROCESS—QUASI IN REM JURISDICTION—FOREIGN ATTACHMENT—The Third Circuit Court of Appeals has held the Pennsylvania foreign attachment statute violative of fourteenth amendment procedural due process and has established minimum standards for a constitutional statute.

Jonnet v. Dollar Savings Bank, 530 F.2d 1123 (3d Cir. 1976).

In 1973, Pennsylvania resident Elmer J. Jonnet commenced an assumpsit action in the District Court for the Western District of Pennsylvania against Dollar Savings Bank of the City of New York, a New York corporation having its principal place of business in that state.[1] Plaintiffs alleged the defendant had refused to honor a $1,100,000 mortgage commitment.[2] Because jurisdiction could not be obtained under the Pennsylvania "long-arm" statute,[3] Jonnet utilized the state's foreign attachment procedure and attached debts owed the defendant by two local corporations.[4] The statute permitted attachment without prior notice or hearing, did not mandate the filing of an affidavit or bond by the plaintiff, and did not require judicial supervision of the proceeding.[5]

Dollar Savings Bank challenged the foreign attachment procedure on due process grounds. Granting defendant's motion to dismiss the action, the district court held the Pennsylvania statute violated the fourteenth amendment by allowing the deprivation of property without due process of law.[6] Plaintiffs appealed the dis-

1. The action was brought by Jonnet and two Pennsylvania corporations. Jonnet v. Dollar Sav. Bank, 530 F.2d 1123, 1125 (3d Cir. 1976). Federal jurisdiction was based on diversity of citizenship. 28 U.S.C. § 1332 (1970).

2. 530 F.2d at 1125.

3. Section 8309(c) of the Pennsylvania "long-arm" statute, PA. CONSOL. STAT. ANN. tit. 42, §§ 8301-10 (Supp. 1976), excludes mortgages from those transactions which constitute "doing business" in Pennsylvania.

4. Foreign attachment constituted the only basis for jurisdiction. 530 F.2d at 1125 n.4. FED. R. CIV. P. 64 authorizes the use of the state procedure by the federal district court.

5. The Pennsylvania foreign attachment procedure allowed the prothonotary (clerk of court) to issue the writ of attachment without the participation of a judge. The plaintiff was not required to state the basis of his claim or to post a bond; a complaint could be filed after the attachment was effected. While the defendant could reduce the amount attached, the attachment could be dissolved only by posting a bond; the entrance of a general appearance did not dissolve the attachment. PA. R. CIV. P. 1251-79. These provisions were declared unconstitutional by the Third Circuit. 530 F.2d at 1129-30.

6. Jonnet v. Dollar Sav. Bank, 392 F. Supp. 1385 (W.D. Pa. 1975). The district court based its decision on the tripartite test established by the Supreme Court in Fuentes v. Shevin, 407 U.S. 67 (1972). For a discussion of the district court's analysis see note 33 *infra*.

missal of the suit to the Third Circuit Court of Appeals which unanimously affirmed the lower court's ruling.[7]

Only four years earlier the Third Circuit had upheld the same Pennsylvania foreign attachment statute in *Lebowitz v. Forbes Leasing and Finance Corp.*[8] After *Lebowitz,* however, the United States Supreme Court handed down three decisions expanding defendants' rights in attachment cases: *Fuentes v. Shevin,*[9] *Mitchell v. W.T. Grant Co.*[10] and *North Georgia Finishing, Inc. v. Di-Chem, Inc.*[11] Although none of these cases dealt specifically with a factual situation similar to that presented in *Jonnet,* in the Third Circuit's view, "their implications for foreign attachment cannot be ignored";[12] the court stressed the refined notions of procedural due process found in these cases and concluded that the Pennsylvania foreign attachment procedure offered insufficient protection of the defendant's property interest.[13]

Moreover, in light of the dynamic concept of due process, the court questioned the continuing viability of the 1921 Supreme Court decision of *Ownbey v. Morgan*[14] as precedent mandating the validity of the Pennsylvania procedure.[15] *Ownbey* involved a foreign attach-

7. One concurring opinion was filed by Judge Gibbons. 530 F.2d at 1130. *See* notes 28-31 and accompanying text *infra.*

8. 456 F.2d 979 (3d Cir.), *cert. denied,* 409 U.S. 843 (1972). In *Lebowitz* the Third Circuit found no precedent which required the invalidation of the Pennsylvania statute. While recognizing the hardships worked on the defendant, the court evaluated the procedure in terms of whether it "critically impaired the efficiency of the adversary system," and determined that it did not. *Id.* at 981. *Lebowitz* was decided approximately four months before the Supreme Court's decision in Fuentes v. Shevin, 407 U.S. 67 (1972).

9. 407 U.S. 67 (1972) (striking down Pennsylvania and Florida replevin statutes which failed to provide pre-seizure notice and hearing for debtor). *See* notes 32 & 33 and accompanying text *infra.*

10. 416 U.S. 600 (1974) (upholding Louisiana attachment statute which provided for judicial participation in issuance of writ, an immediate post-seizure hearing, and award of damages to defendant in event of wrongful attachment). *See* notes 34-36 and accompanying text *infra.*

11. 419 U.S. 601 (1975) (invalidating Georgia garnishment statute which failed to provide either prior or subsequent hearing, judicial supervision of the process or means of indemnifying defendant). *See* notes 37-41 and accompanying text *infra.*

12. 530 F.2d at 1127.

13. *Id.* at 1129-30.

14. 256 U.S. 94 (1921).

15. 530 F.2d at 1128. Aside from *Ownbey* there is little precedent regarding procedural safeguards in the context of foreign attachment. No circuit court of appeals has addressed the issue since the line of procedural due process cases beginning with Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969) (requiring prior notice and hearing for pre-judgment garnishment of wages). District courts which have considered the question have reached conflicting

ment statute similar to Pennsylvania's in its lack of procedural safeguards.[16] Although the *Ownbey* defendant had challenged only one provision of the statute, the Supreme Court in dictum[17] had sanctioned the entire procedure, and recently cited *Ownbey* in *Fuentes* and *Mitchell.*[18] After considering these citations, the Third Circuit determined that the Supreme Court would not require prior notice and hearing for a valid foreign attachment;[19] the court reasoned, however, that the citations of *Ownbey* in *Fuentes* and *Mitchell* did not constitute Supreme Court approval of the lack of other procedural safeguards in the *Ownbey* statute.[20] The court of appeals, therefore, outlined five essential safeguards drawn from its interpretation of *Mitchell* and *Di-Chem.*[21] A valid foreign attachment statute would require: the filing of an affidavit specifically

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results. *See, e.g., In re* Law Research Servs., Inc., 386 F. Supp. 749 (S.D.N.Y. 1974) (Connecticut foreign attachment statute unconstitutional because of state's failure to exercise strict control over attachment); Long v. Levinson, 374 F. Supp. 615 (S.D. Iowa 1974) (Iowa statute upheld on basis of strict control exercised by state over proceeding); U.S. Indus. Inc. v. Gregg, 348 F. Supp. 1004 (D. Del. 1972) (upholding Delaware statute). These cases were decided on the basis of the three-part test established in *Fuentes. See* note 33 *infra.*

16. The Delaware foreign attachment statute provided for the issuance of a writ by the prothonotary upon the plaintiff's filing of an affidavit stipulating that the defendant resided out of state and was justly indebted to plaintiff in a sum exceeding fifty dollars. *See* 256 U.S. at 101-03 n.1. The plaintiff could actually gain control over the defendant's property prior to any hearing by posting a bond which would compensate defendant if he appeared in court within one year from the date of distribution and disproved the claim. *Id.* The Delaware foreign attachment provisions may now be found at DEL. CODE ANN. tit. 10, §§ 3506-08 (1975).

17. The defendant in *Ownbey* only challenged the provision which prevented a nonresident defendant from entering an appearance and defending the suit without posting a special bond. 256 U.S. at 102-03. Because of this limited challenge, the Court was not required to consider the statute as a whole. The Court emphasized, however, that such statutes trace their history from English law. It concluded that such a longstanding custom could not be considered violative of due process. *Id.* at 104-11. Delaware's statutory provision challenged in *Ownbey* has been "long-since abandoned." 530 F.2d at 1136 (Gibbons, J., concurring).

18. *See* notes 42 & 43 and accompanying text *infra.*

19. 530 F.2d at 1128. *See* notes 45-49 and accompanying text *infra.*

20. *Id.* at 1129. For support of the Third Circuit's position that *Ownbey* should be read narrowly see *In re* Law Research Servs., Inc., 386 F. Supp. 749, 753 (S.D.N.Y. 1974) (precedential value of *Ownbey* limited by fact that constitutionality of jurisdiction obtained by attachment was not challenged). *See also* Hansford, *Procedural Due Process in the Debtor-Creditor Relationship: The Impact of Di-Chem,* 9 GA. L. REV. 589, 595 n.26 (1975) [hereinafter cited as Hansford]; Note, *Quasi in Rem Jurisdiction and Due Process Requirements,* 82 YALE L.J. 1023, 1029-32 (1973) [hereinafter cited as *Due Process Requirements*].

21. 530 F.2d at 1129-30. Although neither *Mitchell* nor *Di-Chem* set forth mandatory procedural standards, the Supreme Court did consider the effect of the safeguards which were present or lacking in the statutes involved. *See* notes 35 & 38 and accompanying text *infra.*

setting forth the basis of the claim;[22] the presentment of the affidavit to an official with "legal competence";[23] a means of indemnifying the defendant;[24] an immediate post-seizure hearing;[25] and a method of dissolving the attachment.[26] Due process did not require that notice and hearing precede foreign attachment, provided these "other safeguards" are present; because the Pennsylvania statute lacked such protections the court held it unconstitutional.[27]

Although he concurred in this analysis, Judge Gibbons based his separate opinion on the view that any foreign attachment procedure would be unconstitutional under the facts presented in *Jonnet*.[28] The concurring judge thought the "minimum contacts" required for in personam jurisdiction by *International Shoe Co. v. Washington*[29] should also be required for quasi in rem jurisdiction obtained by foreign attachment.[30] Since the defendant in *Jonnet* did not have the requisite minimum contacts with Pennsylvania, Judge Gibbons felt that foreign attachment could not be constitutionally utilized.[31]

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22. According to the Third Circuit, the affidavit must set forth the amount and the basis of the claim, establish the non-residency of the defendant, and specify the property located within the forum. 530 F.2d at 1129. In contrast, the Pennsylvania statute required only a praecipe stating the property to be seized. PA. R. CIV. P. 1255.

23. 530 F.2d at 1130. While the court admitted that participation by the judiciary in the issuance of the writ would afford greater protection to a defendant, it felt the states should be permitted to implement an alternative procedure. *Id.* at 1129-30 & n.15. *See* notes 50-55 and accompanying text *infra*.

24. The court suggested that the plaintiff might be required to post a bond to indemnify the defendant. 530 F.2d at 1130.

25. The court interpreted *Mitchell* and *Di-Chem* to require an early hearing on the validity of the attachment, but not necessarily an early trial on the merits of the suit. At the hearing the plaintiff would have to show the probable validity of his claim and the defendant's non-residency if that were in issue. *Id.*

26. The court did not mandate a specific procedure for dissolution but indicated that possible alternatives might include the posting of a bond or dissolution by entrance of a general appearance. 530 F.2d at 1130.

27. *Id.* at 1129-30.

28. *Id.* at 1142. (Gibbons, J., concurring).

29. 326 U.S. 310 (1945). In *International Shoe* the Supreme Court upheld Washington state's right to exercise in personam jurisdiction over a foreign corporation in an action concerning the collection of the state's unemployment tax. The Court indicated due process requires that the defendant have sufficient contacts with the forum state so that maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *Id.* at 316.

30. Judge Gibbons examined the evolving standards of due process exemplified by *International Shoe, Sniadach, Fuentes, Mitchell* and *Di-Chem*. He determined that early cases such as *Ownbey*, which approved quasi in rem jurisdiction solely on the basis of judicial power over property located within the forum, were inconsistent with those standards. 530 F.2d at 1134-35. *See* note 17 *supra*.

31. 530 F.2d at 1131. The loan agreement between the parties was consummated in New

The Third Circuit's recognition that procedural safeguards are essential to a valid attachment is consistent with *Mitchell* and *Di-Chem;* yet under *Jonnet*'s factual circumstances, the court's failure to require a hearing prior to the attachment, or judicial participation in the issuance of the writ is significant. The importance of pre-seizure notice and hearing to fourteenth amendment due process was emphasized by the Supreme Court in *Fuentes,* a decision which struck down statutes permitting replevin of consumer goods without notice or hearing for the installment buyer.[32] Although title remained in the seller, giving him a secured interest, the Court in *Fuentes* concluded that pre-seizure notice and hearing would be required for a valid replevin except in extraordinary situations.[33] The Court's broad ruling in *Fuentes* was subsequently narrowed in *Mitchell,*[34] another installment purchase case where the creditor retained a secured interest. There the Court upheld a statute which

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York and there was no evidence the defendant had conducted any business in Pennsylvania. Judge Gibbons found that it would violate the notions of fundamental fairness articulated in *International Shoe* to require the defendant to either defend in a state with which it had no contacts or lose its property by default. Furthermore, even if the defendant's contacts with the state were substantial, the attachment procedure would violate equal protection, since Pennsylvania does not permit prejudgment attachment of a resident defendant's assets. *Id.* at 1141-43. *See* note 56 *infra.*

32. *Fuentes* stressed that all kinds of property interests should be protected by prior notice and hearing. 407 U.S. at 89-90. In contrast, in its earlier decision in *Lebowitz,* the Third Circuit had emphasized the difference between the attachment of wages, protected under *Sniadach,* and the attachment of a corporate bank account, which did not require such protection. 456 F.2d at 981. *But see* text accompanying notes 37-41 *infra.*

33. 407 U.S. at 90-91. The Court established a tripartite test for determining when such an "extraordinary situation" existed. First, the seizure must be necessary to secure an important governmental or general public interest. Second, there must be a special need for prompt action. Third, the state must exercise strict control over the procedure. *Id.* at 91.

The district court in *Jonnet* applied the *Fuentes* test and found the Pennsylvania statute lacking in each category. Although it recognized the state's legitimate interest in obtaining jurisdiction, the court ruled that the statute was overbroad because it did not distinguish between defendants over whom jurisdiction could be obtained solely by attachment, and those susceptible to the Pennsylvania "long-arm" statute. The court found no need for prompt action since the disposal of long term mortgages would not be simple. Finally, the requisite strict state control over the procedure was determined to be totally absent. 392 F. Supp. at 1392. Although the Third Circuit utilized *Mitchell*'s balancing approach rather than the *Fuentes* test, it indicated the result would be the same under the facts in *Jonnet.* 530 F.2d at 1129 n.13. *Compare* Mitchell v. W.T. Grant Co., 416 U.S. 600, 607-10 (1974), *with* Fuentes v. Shevin, 407 U.S. 67, 90-91 (1972).

34. The effect of *Mitchell* on the notice and hearing requirement established by *Fuentes* was not certain. 530 F.2d at 1126-27. *See* Mitchell v. W.T. Grant Co., 416 U.S. 600, 629 (1974) (Stewart, J., dissenting) (suggesting that *Mitchell* overruled *Fuentes*); Turner v. Impala Motors, 503 F.2d 607, 610 (6th Cir. 1974) (assuming *Fuentes* had been overruled by *Mitchell*). *See generally* 14 DUQ. L. REV. 494, 503 & n.62 (1976).

provided for an immediate *post*-seizure hearing and other safeguards, including judicial participation in the issuance of the writ, posting of a bond by the plaintiff, and the awarding of damages to the defendant if the plaintiff did not prove probable cause for his claim at the hearing.[35] In *Mitchell* the Court emphasized the seller's interest in preventing the removal, transfer or destruction of his goods; when this interest was weighed against the buyer's interest in receiving a prior hearing, the Court concluded that a hearing immediately following the seizure, combined with the other safeguards built into the statute, adequately protected both parties' interests and complied with fourteenth amendment due process requirements.[36]

The Supreme Court's approval of post-seizure hearings in *Mitchell* was extended by its decision in *Di-Chem*. The corporate plaintiff, alleging the defendant was indebted to it, had been permitted to effect a pre-judgment garnishment of the defendant's corporate bank account in which the plaintiff had no property interest.[37] Because the Georgia statute utilized by the plaintiff failed to provide the safeguards found in the *Mitchell* statute, the Court ruled it was inadequate.[38] Yet even after citing *Fuentes* as precedent, the Court did not require a prior hearing in *Di-Chem*; it intimated only that an early one was necessary.[39] More importantly, in *Di-Chem* the Court did not discuss the plaintiff's lack of a property interest in the assets attached. In *Mitchell* the Court had emphasized that in the case of a secured transaction, the issues can be easily established by documentary proof such as a lien agreement, reducing the need for an adversary hearing prior to the attach-

35. 416 U.S. at 605-07. The Louisiana statute also required an affidavit specifically setting forth the claim, and provided that even if the plaintiff proved probable cause at the post-seizure hearing, the defendant could secure possession of the goods by posting a bond. *Id.*

36. *Id.* at 607-10.

37. 419 U.S. at 604. Although *Di-Chem* also involved a sale of goods to the defendant, the seller apparently did not retain title to the goods and was interested in payment rather than repossession.

38. The Georgia attachment statute required only the filing of a conclusory affidavit and did not provide for judicial supervision in the issuing of the writ. There was no provision for an early post-seizure hearing; the garnishment could be dissolved only by posting a bond. *Id.* at 608.

39. 419 U.S. at 607. Although the Court cited both *Fuentes* and *Mitchell* in support of its decision, the opinion failed to set forth the actual basis for the holding. In his dissenting opinion, Justice Blackmun stated: "One gains the impression, particularly from the final paragraph of its opinion, that the Court is endeavoring to say as little as possible in explaining just why the Supreme Court of Georgia is being reversed." *Id.* at 614.

ment.[40] Its failure to make any factual distinction between the seizure of secured property in *Mitchell,* and the attachment of a bank account for an unrelated debt in *Di-Chem,* suggests that a pre-hearing attachment in the context of unsecured transactions would be acceptable to the Supreme Court.[41]

The Third Circuit's refusal to require prior notice and hearing for a foreign attachment may therefore be consistent with *Di-Chem*'s apparent extension of *Mitchell* to situations where no lien exists. Rather than directly acknowledge the issues raised by the existence or lack of a property interest in the plaintiff, however, the court of appeals alluded to the Supreme Court's recent references to *Ownbey.*[42] In *Fuentes, Ownbey* was cited as an extraordinary situation justifying pre-hearing seizure because of the state's interest in obtaining jurisdiction.[43] A requirement of notice and hearing prior to a foreign attachment could arguably subvert the state's legitimate interest since the defendant might remove his assets from the forum, thus destroying the basis for jurisdiction.[44]

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40. 416 U.S. at 617-18.

41. It has been suggested that this aspect of *Di-Chem* represents a more substantial departure from *Fuentes* than *Mitchell* represented. *See* Hansford, *supra* note 20, at 605-09. For the view that the due process requirements established in *Sniadach* and *Fuentes* should continue to apply to unsecured transactions despite *Di-Chem* see Catz & Robinson, *Due Process and Creditor's Remedies: From Sniadach and Fuentes to Mitchell, North Georgia and Beyond,* 28 RUT. L. REV. 541, 566 (1975).

42. The Supreme Court first cited *Ownbey* in the *Sniadach* decision as illustrative of a situation in which pre-hearing seizure may be permissible. 395 U.S. at 339. In *Fuentes, Ownbey* was used as an example of an extraordinary situation justifying pre-hearing seizure. 407 U.S. at 91 n.23. *Ownbey* was cited in *Mitchell* in support of the proposition that due process is satisfied if the defendant is afforded a hearing at some point, whether prior or subsequent to the attachment. 416 U.S. at 613.

The extent of the Supreme Court's approval of *Ownbey* is unclear. Supreme Court citations to *Ownbey* may indicate only that foreign attachment was necessary to secure jurisdiction in 1915, when that action arose, rather than constituting recognition that attachment is still necessary today in view of "long-arm" jurisdiction. *See Due Process Requirements, supra* note 20, at 1029-32. Two alternative explanations are also possible: either the Court is unwilling to overrule a long-standing precedent, or the citations are indicative of a different approach to various pre-hearing seizure procedures. *See* Hansford, *supra* note 20, at 595 n.23.

43. *See* note 33 *supra.*

44. In *Lebowitz* the Third Circuit acknowledged that prior notice to a non-resident defendant would afford him the opportunity to remove his assets and avoid the jurisdiction of the court. 456 F.2d at 981. *See also* Merrill Lynch Gov't Sec., Inc. v. Fidelity Mut. Sav. Bank, 396 F. Supp. 318, 320-21 (S.D.N.Y. 1975) (upholding the New York foreign attachment statute based on this aspect of *Lebowitz*). However, in his concurring opinion in *Jonnet,* Judge Gibbons argued that this assumption does not justify different treatment for resident and non-resident defendants. 530 F.2d at 1142-43.

Although the Third Circuit's rationale in *Jonnet* is supported by Supreme Court precedent, the court could have applied other reasoning consistent with that precedent to reach a different result. In *Guzman v. Western State Bank,*[45] the Eighth Circuit required a hearing prior to any taking of property absent an assertion by the creditor that the defendant is likely to conceal, dispose of, or destroy the particular property.[46] The plaintiff in *Guzman* had a property interest in the goods attached; such a hearing requirement seems even more appropriate in the case of foreign attachment where the attachment is effected not to safeguard a creditor's property, but only to obtain jurisdiction.[47] Since *Mitchell* and *Di-Chem* set forth minimum rather than maximum due process standards,[48] the Third Circuit might have included a requirement similar to that pronounced in *Guzman*. In the absence of evidence that the nonresident defendant is likely to remove his assets from the forum, a provision for pre-seizure notice and hearing would better accomodate the competing interests at stake—the state's interest in obtaining jurisdiction would not be jeopardized and a hearing prior to the attachment of the defendant's property would ensure the fundamental fairness contemplated by procedural due process.[49]

The Third Circuit also failed to require the participation of a judge in the issuance of the writ of attachment. While it conceded that *Mitchell* and *Di-Chem* "might be read to require that a judge approve the seizure,"[50] the court required only the participation of

45. 516 F.2d 125 (8th Cir. 1975) (mobile home and automobile attached under writ issued by clerk of court without prior notice or hearing).

46. The court described attachment as a "drastic remedy" and observed that the creditor's interest normally will not be jeopardized by the delay involved in granting a prior hearing. *Id.* at 130.

47. If an installment purchaser destroys or transfers the goods, they are lost to the creditor; if a non-resident removes his assets in order to avoid jurisdiction, an action may still be brought in the jurisdiction where he is found. *Cf.* Zammit, *Quasi-In-Rem Jurisdiction: Outmoded and Unconstitutional?*, 49 ST. JOHN L. REV. 668, 681-82 (1975) [hereinafter cited as Zammit].

48. Both *Mitchell* and *Di-Chem* dealt only with the particular statutory provisions presented. In *Mitchell* the Court noted recent reports and proposals on the subject of creditor remedies, but commented:

> We indicate no view whatsoever on the desirability of one or more of the proposed reforms. The uncertainty evident in the current debate suggests caution in the adoption of an inflexible constitutional rule.

416 U.S. at 618-19 n.13.

49. The *Guzman* court found that such a requirement most effectively balanced the competing interests involved. 516 F.2d at 129-30.

50. 530 F.2d at 1130 n.15.

a "competent" official.[51] Since neither *Mitchell* nor *Di-Chem* specified whether judicial participation in the issuance of the writ is constitutionally required or merely a desirable safeguard,[52] the court's reading of those decisions may be defensible. The vague standard set forth in *Jonnet* may, however, require a case by case determination of whether the issuing official has the requisite professional competence to issue the writ, and more importantly, it offers little assurance against a wrongful taking.[53] In the area of secured transactions, probable cause for an attachment may be demonstrated by the production of the installment agreement and evidence of default.[54] Outside this area, however, the existence of probable cause for the issuance of a writ is a more complex question. Documentary evidence may not suffice to show the existence and breach of a contract or the commission of a tort; if the designated official has insufficient knowledge of the law, the possibility is greater that a defendant may be deprived of his property on the basis of an invalid or insubstantial claim. Under this analysis, judicial participation in the issuance of the writ should be required in order to safeguard the interests of the defendant.[55]

Regardless of its shortcomings,[56] the *Jonnet* decision represents a

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51. *Id.* at 1130. *See* note 23 *supra.*

52. *But see* North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601, 611 n.3 (1975) (Powell, J., concurring). Justice Powell voiced his disagreement with the majority's "*suggestion* that the Due Process Clause *might* require" judicial participation in the issuance of the garnishment writ. *Id.* (emphasis added).

53. Upholding the statute in *Mitchell,* the Court emphasized that it protected the defendant against wrongful seizure of his property. 416 U.S. at 605.

54. *See* text accompanying note 40 *supra.*

55. The Eighth Circuit in *Guzman* required judicial participation in the issuance of the writ not only to insure against a wrongful taking, but also to determine "whether the impact on the debtor of even a temporary deprivation of the property outweighs the interest of the creditor or the state in affording the creditor *ex parte* attachment." 516 F.2d at 131.

56. A troublesome question left unanswered by *Jonnet* is whether evolving notions of due process require a defendant in a foreign attachment action to have "minimum contacts" with the forum state. Although the question was not raised by the parties, the concurring opinion's emphasis on this point suggests that a future defendant will pursue the issue.

Commentators have supported the position taken by Judge Gibbons that minimum contacts should be required for a valid foreign attachment. *See, e.g.,* Carrington, *The Modern Utility of Quasi in Rem Jurisdiction,* 76 HARV. L. REV. 303, 306-09 (1962); Hazard, *A General Theory of State-Court Jurisdiction,* 1965 SUP. CT. REV. 241, 281-88; Zammit, *supra* note 47, at 674-77. *See also* Atkinson v. Superior Court, 49 Cal. 2d 338, 316 P.2d 960 (1957), *cert. denied,* 357 U.S. 569 (1958) (state court applying minimum contacts doctrine to quasi in rem jurisdiction). In Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 312-13 (1950), the Supreme Court indicated that the applicability of due process standards should not depend on the classification of an action as in personam or quasi in rem.

significant step in the area of procedural due process. Defendants subject to foreign attachment in Pennsylvania are now assured of greater protection against the fundamental unfairness which may result from a state's desire to provide its citizens with a convenient judicial forum. The guidelines set forth by the Third Circuit for a future statute will guard the rights of both plaintiffs and defendants and may provide an impetus for legislatures in other states to reconsider existing foreign attachment procedures and to enact statutes more consistent with the concept of due process.

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When the issue is raised, the court will be required to consider not only the limitations imposed by *International Shoe,* but also the impact of state "long-arm" statutes on both the necessity and utility of foreign attachment. Additionally, it may have to determine if attachment may be justified on public policy grounds in certain situations where minimum contacts with the forum state do not exist. The resolution of these questions will require a more thorough evaluation of the legal and policy bases underlying foreign attachment.