433 U.S. 186, 53 L.Ed.2d 683

**R. F. SHAFFER et al., Appellants,**

**v.**

**Arnold HEITNER, as Custodian for Mark Andrew Heitner.**

**No. 75-1812.**

Argued Feb. 22, 1977.

Decided June 24, 1977.

A nonresident shareholder of a Delaware corporation brought a shareholder's derivative suit against present and former officers and directors of the corporation and a subsidiary, alleging that defendants had violated their duties to the corporation by causing it and its subsidiary to engage in actions that resulted in the corporations' being held liable for substantial damages in a private antitrust suit and a large fine in a criminal contempt action. Simultaneously, plaintiff filed a motion for sequestration of the Delaware property of the individual defendants, all nonresidents of Delaware, accompanied by an affidavit identifying the property to be sequestered as stock, options, warrants, and various corporate rights of the defendants. After the sequestration order was issued, defendants entered a special appearance to quash service of process and vacate the sequestration order, contending that the ex parte sequestration procedures did not accord them due process. The Court of Chancery, New Castle County, rejected such arguments, and the Supreme Court of Delaware, 361 A.2d 225, affirmed that judgment. On appeal, the Supreme Court, Mr. Justice Marshall, held that Delaware's assertion of jurisdiction over defendants, based solely on the statutory presence of their property in Delaware, violated the due process clause of the United States Constitution.

Reversed.

Mr. Justice Powell, concurred and filed opinion.

Mr. Justice Stevens, concurred in the judgment and filed opinion.

Mr. Justice Brennan, concurred in part and dissented in part and filed opinion.

**1. Federal Courts ⇐503**

Where, under Delaware law, defendants whose property had been sequestered were required to enter general appearance, thus subjecting themselves to in personam liability, before they could defend on the merits, Delaware Supreme Court's judgment upholding jurisdiction over nonresident defendants on basis of sequestration of their property in Delaware was final for purposes of appeal to United States Supreme Court. 28 U.S.C.A. §§ 1257, 1257(2).

**2. Constitutional Law ⇐305(5)**
**Courts ⇐17**

In order to justify exercise of jurisdiction in rem, basis for jurisdiction must be sufficient to justify exercising jurisdiction over interests of persons in a thing; standard for determining whether exercise of jurisdiction over interests of persons is consistent with due process clause is minimum contacts standard elucidated in United States Supreme Court's *International Shoe* decision. U.S.C.A.Const. Amend. 14.

**3. Constitutional Law ⇐305(5)**

Present and former officers and directors of Delaware corporation and its subsidiary were denied due process when, in shareholder's derivative action brought by nonresident who alleged that defendants violated their duties to corporation by causing it and its subsidiary to engage in actions that resulted in corporations' being held liable for substantial damages in a private antitrust suit and large fine in criminal contempt action, Delaware court's assertion of jurisdiction over defendants, invoked via order sequestering their stock and other corporate rights, was based solely on statutory presence of such property of defendants within the state, and where such property was not subject matter of litigation or in any way related to underlying cause of action, sequestered property failed to provide contact with Delaware sufficient to support jurisdiction of that state's courts over defendant. 8 Del.C. §§ 141(b), 143, 145, 169; 10 Del.C. § 366; 28 U.S.C.A. §§ 1257, 1257(2), 1404(a); U.S.C.A. Const. art. 4, § 1; Amend. 14; West's Ann. Cal.Corp.Code, § 2115.

*Syllabus* *

Appellee, a nonresident of Delaware, filed a shareholder's derivative suit in a Delaware Chancery Court, naming as defendants a corporation and its subsidiary, as well as 28 present or former corporate officers or directors, alleging that the individual defendants had violated their duties to the corporation by causing it and its subsidiary to engage in actions (which occurred in Oregon) that resulted in corporate liability for substantial damages in a private antitrust suit and a large fine in a criminal contempt action. Simultaneously, appellee, pursuant to Del.Code Ann., Tit. 10, § 366 (1975), filed a motion for sequestration of the Delaware property of the individual defendants, all nonresidents of Delaware, accompanied by an affidavit identifying the property to be sequestered as stock, options, warrants, and various corporate rights of the defendants. A sequestration order was issued pursuant to which shares and options belonging to 21 defendants (appellants) were "seized" and "stop transfer" orders were placed on the corporate books. Appellants entered a special appearance to quash service of process and to vacate the sequestration order, contending that the *ex parte* sequestration procedure did not accord them due process; that the property seized was not capable of attachment in Delaware; and that they did not have sufficient contacts with Delaware to sustain jurisdiction of that State's courts under the rule of *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95. In that case the Court (after noting that the historical basis of *in personam* jurisdiction was a court's power over the defendant's person, making his presence within the court's territorial jurisdiction a prerequisite to its rendition of a personally binding judgment against him, *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed. 565) held that that power was no longer the central concern and that "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' " (and thus the focus shifted to the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of *Pennoyer* had rested). The Court of Chancery, rejecting appellants' arguments, upheld the § 366 procedure of compelling the personal appearance of a 187
nonresident defendant to answer and defend a suit brought against him in a court of equity, which is accomplished by the appointment of a sequestrator to seize and hold the property of the nonresident located in Delaware subject to court order, with release of the property being made upon the defendant's entry of a general appearance. The court held that the limitation on the purpose and length of time for which sequestered property is held comported with due process and that the statutory situs of the stock (under a provision making Delaware the situs of ownership of the capital stock of all corporations existing under the laws of that State) provided a sufficient basis for the exercise of *quasi in rem* jurisdiction by a Delaware court. The Delaware Supreme Court affirmed, concluding that *International Shoe* raised no constitutional barrier to the sequestration procedure because "jurisdiction under § 366 remains . . . *quasi in rem* founded on the presence of capital stock [in Delaware], not on prior contact by defendants with this forum." *Held:*

1. Whether or not a State can assert jurisdiction over a nonresident must be evaluated according to the minimum-contacts standard of *International Shoe Co. v. Washington, supra.* Pp. 2581–2585.

(a) In order to justify an exercise of jurisdiction *in rem*, the basis for jurisdiction

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

*Central R. Co.*, 346 U.S. 338, 340–341, 74 S.Ct. 83, 85–86, 98 L.Ed. 39 (1953). The fiction used was that the out-of-state motorist, who it was assumed could be excluded altogether from the State's highways, had by using those highways appointed a designated state official as his agent to accept process. See *Hess v. Pawloski*, 274 U.S. 352, 47 S.Ct. 632, 71 L.Ed. 1091 (1927). Since the motorist's "agent" could be personally served within the State, the state courts could obtain *in personam* jurisdiction over the nonresident driver.

The motorists' consent theory was easy to administer since it required only a finding that the out-of-state driver had used the State's roads. By contrast, both the fictions of implied consent to service on the part of a foreign corporation and of corporate presence required a finding that the corporation was "doing business" in the forum State. Defining the criteria for making that finding and deciding whether they were met absorbed much judicial energy. [203] See, e. g., *International Shoe Co. v. Washington*,, 326 U.S., at 317–319, 66 S.Ct., at 158–160. While the essentially quantitative tests which emerged from these cases purported simply to identify circumstances under which presence or consent could be attributed to the corporation, it became clear that they were in fact attempting to ascertain "what dealings make it just to subject a foreign corporation to local suit". *Hutchinson v. Chase & Gilbert*, 45 F.2d 139, 141 (CA2 1930) (L. Hand, J.). In *International Shoe*, we acknowledged that fact.

The question in *International Shoe* was whether the corporation was subject to the judicial and taxing jurisdiction of Washington. Mr. Chief Justice Stone's opinion for the Court began its analysis of that question by noting that the historical basis of *in personam* jurisdiction was a court's power over the defendant's person. That power, however, was no longer the central concern:

> "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.' *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 343, 85 L.Ed. 278." 326 U.S., at 316, 66 S.Ct., at 158.

Thus, the inquiry into the State's jurisdiction over a foreign corporation appropriately focused not on whether the corporation was "present" but on whether there have been

> "such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there." *Id.*, at 317, 66 S.Ct., at 158.

[204] Mechanical or quantitative evaluations of the defendant's activities in the forum could not resolve the question of reasonableness:

> "Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause 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." *Id.*, at 319, 66 S.Ct., at 160.[19]

19. As the language quoted indicates, the *International Shoe* Court believed that the standard it was setting forth governed actions against natural persons as well as corporations, and we see no reason to disagree. See also *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222, 78 S.Ct. 199, 200, 2 L.Ed.2d 223 (1957) (*International Shoe* culmination of trend toward expanding state jurisdiction over "foreign corporations and other nonresidents"). The differences between individuals and corporations may, of course, lead to the conclusion that a given set of circumstances establishes state jurisdiction over one type of defendant but not over the other.

Thus, the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of *Pennoyer* rest, became the central concern of the inquiry into personal jurisdiction.[20] The immediate effect of this departure from *Pennoyer's* conceptual apparatus was to increase the ability of the state courts to obtain personal jurisdiction over nonresident defendants. See, e. g., Green, Jurisdic-
|205 tional Reform in California, |21 Hastings L.J. 1219, 1231–1233 (1970); Currie, The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois, 1963 U.Ill. L.F. 533; Developments 1000–1008.

No equally dramatic change has occurred in the law governing jurisdiction *in rem*. There have, however, been intimations that the collapse of the *in personam* wing of *Pennoyer* has not left that decision unweakened as a foundation for *in rem* jurisdiction. Well-reasoned lower court opinions have questioned the proposition that the presence of property in a State gives that State jurisdiction to adjudicate rights to the property regardless of the relationship of the underlying dispute and the property owner to the forum. See, e. g., *U. S. Industries, Inc. v. Gregg*, 540 F.2d 142 (CA3 1976), cert. pending, No. 76–359; *Jonnet v. Dollar Savings Bank*, 530 F.2d 1123, 1130–1143 (CA3 1976) (Gibbons, J., concurring); *Camire v. Scieszka*, 116 N.H. 281, 358 A.2d 397 (1976); *Bekins v. Huish*, 1 Ariz.App. 258, 401 P.2d 743 (1965); *Atkinson v. Superior Court*, 49 Cal.2d 338, 316 P.2d 960 (1957), appeal dismissed and cert. denied *sub nom. Columbia Broadcasting System v. Atkinson*, 357 U.S. 569, 78 S.Ct. 1381, 2 L.Ed.2d 1546 (1958). The overwhelming majority of commentators have also rejected *Pennoyer's* premise that a proceeding "against" property is not a proceeding against the owners of that property. Accordingly, they urge that the "traditional notions of fair play and substantial justice" that govern a State's power to adjudicate *in personam* should also govern its power to adjudicate personal rights to property located in the State. See, e. g., Von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv.L.Rev. 1121 (1966) (hereafter Von Mehren & Trautman); Traynor, Is This Conflict Really Necessary?, 37 Texas L.Rev. 657 (1959) (hereafter Traynor); Ehrenzweig, The Transient Rule of Personal Jurisdiction: The "Power" Myth and Forum Conveniens, 65 Yale L.J. 289 (1956); Developments; Hazard.

|Although this Court has not addressed |206 this argument directly, we have held that property cannot be subjected to a court's judgment unless reasonable and appropriate efforts have been made to give the property owners actual notice of the action. *Schroeder v. City of New York*, 371 U.S. 208, 83 S.Ct. 279, 9 L.Ed.2d 255 (1962); *Walker v. City of Hutchinson*, 352 U.S. 112, 77 S.Ct. 200, 1 L.Ed.2d 178 (1956); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). This conclusion recognizes, contrary to *Pennoyer*, that an adverse judgment *in rem* directly affects the property owner by divesting him of his rights in the property before the court. *Schroeder v. City of New York, supra*, 371 U.S., at 213, 83 S.Ct., at 282; cf. *Continental Grain Co. v. Barge FBL–585*, 364 U.S. 19, 80 S.Ct. 1470, 4 L.Ed.2d 1540 (1960) (separate actions against barge and barge owner are one "civil action" for purpose of transfer under 28 U.S.C. § 1404(a)). Moreover, in *Mullane* we hold that Fourteenth Amendment rights cannot depend on the classification of an action as *in rem* or *in personam*, since that is

**20.** Nothing in *Hanson v. Denckla*, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958), is to the contrary. The *Hanson* Court's statement that restrictions on state jurisdiction "are a consequence of territorial limitations on the power of the respective States", *id.*, 357 U.S., at 251, 78 S.Ct., at 1238, simply makes the point that the States are defined by their geographical territory. After making this point, the Court in *Hanson* determined that the defendant over which personal jurisdiction was claimed had not committed any acts sufficiently connected to the State to justify jurisdiction under the *International Shoe* standard.