By enacting the Nebraska Long-Arm Statute, the legislature has extended the jurisdictional reach of Nebraska courts significantly beyond traditional notions of territorial presence to allow them broad power to adjudicate disputes between nonresidents and


2. The foundation case with regard to in personam jurisdiction based on territorial presence is, of course, Pennoyer v. Neff, 95 U.S. 714 (1877). In personam jurisdiction based upon service of process upon the defendant while he is physically present within the jurisdictional boundaries of the court theoretically presupposes the "power" of the court to restrict the defendant's movement, although this concept has been persuasively labeled a "myth." Ehrenzweig, The Transient Rule of Personal Jurisdiction: The "Power" Myth and Forum Conveniens, 65 YALE L. REV. 289 (1956). While this "power" may be largely fictitious and historical, service of process founded upon territorial presence is still the basic means of exercising jurisdiction over defendants. Developments in the Law—State-Court Jurisdiction, 73 HARV. L. REV. 909, 937-38 (1960).

3. The Long-Arm Statute covers situations in which nonresidents are likely to be involved. The provisions of NEB. REV. STAT. § 25-536 (Cum. Supp. 1972) read as follows:
   (1) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's:
      (a) Transacting any business in this state;
      (b) Contracting to supply services or things in this state;
      (c) Causing tortious injury by an act or omission in this state;
      (d) Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state;
      (e) Having an interest in, using, or possessing real property in this state; or
      (f) Contracting to insure any person, property, or risk located within this state at the time of contracting.
   (2) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him.
Nebraska citizens. Like most long-arm statutes, the Nebraska statute allows the exercise of in personam jurisdiction based upon certain minimum contacts with the state, thus assuring a convenient forum for resident plaintiffs in litigation against nonresident defendants. Obviously, this extension of jurisdiction seems to be designed to protect Nebraska citizens. In an extremely mobile age, this expansive authority to assume in personam jurisdiction clearly is appropriate. To insure that this purpose is achieved, the breadth of the Long-Arm Statute in allowing the exercise of jurisdiction over nonresident defendants and foreign corporations should not unduly be restricted by narrow venue choices. In other words, the venue opportunities available to plaintiffs should be flexible enough to assure that the venue statutes do not take back what the Long-Arm Statute provides; namely, the opportunity for resident plaintiffs to bring their disputes against nonresident defendants in Nebraska courts. Thus, the basic question becomes: Do the existing venue statutes provide the resident plaintiff sufficient latitude for full utilization of the Long-Arm Statute?

4. See, e.g., R.I. Gen. Laws Ann. § 9-5-33 (1969) which takes in personam jurisdiction to the constitutional limits, allowing the exercise of jurisdiction over nonresidents who have "the necessary minimum contacts." The Nebraska statute, an adoption of § 1.03 Uniform Interstate and International Procedure Act, § 1.03, 9B U.L.A. (1966), is not as all encompassing, typifying a more usual Long-Arm Statute.


7. Id.

8. Often the question is the converse: Does the existing long-arm statute in a given state (in connection with broad venue provisions) allow adjudication in situations where the burden upon the defendant of litigating in a foreign state far outweighs countervailing considerations such as protection of the resident plaintiff and the privileges and benefits afforded the nonresident defendant by the forum state. This problem can be determined as a matter of jurisdiction by considering the quality and quantity of the "contacts" with the forum state. Thompson v. Ecological Science Corp., 421 F.2d 467, 469 (8th Cir. 1970); Electro-Craft Corp. v. Maxwell Electronics Corp., 417 F.2d 365, 367 (8th Cir. 1969). Or, as a matter of venue, the burden of defense can be balanced against the desirability of the forum under the doctrine of forum non conveniens or by standards for statutory transfer. See J.F. Pritchard & Co. v. Dow Chemical of Canada, Ltd., 331 F. Supp. 1215, 1220-1221 (W.D. Mo. 1971), aff'd 462 F.2d 998 (8th Cir. 1972); Neb. Rev. Stat. § 25-410 (Cum. Supp. 1972) which provides for a transfer of civil actions "for the convenience of the parties and witnesses or in the interest of justice," paralleling 28 U.S.C. § 1404(a) (1970) in the federal system. See also A. Ehrenzweig, Conflict of Laws 122 (1962), arguing that the criteria for personal jurisdiction and for forum non conveniens are about to coalesce; F. James, Civil Procedure 662 (1965), indicating that the doctrine of forum non conveniens is available to the states.
and the paucity of case law interpreting those statutes in relationship to the Long-Arm Statute, that question becomes a difficult one to answer.

**ACTIONS AGAINST NONRESIDENTS**

Although the Nebraska venue provisions were revised in 1971, the general venue provisions which potentially concern actions against nonresidents remain substantially the same as those codified in 1913. Two general venue statutes are involved. Section 25-408, which expressly concerns action against nonresidents and foreign corporations reads, in part, as follows:

> An action . . . against a nonresident of this state or a foreign corporation may be brought in any county in which there may be property of, or debts owing to said defendant, or where said defendant may be found; but if such defendant be a foreign insurance company, the action may be brought in any county where the cause, or some part thereof, arose . . . . (emphasis added)

Thus, for most resident plaintiffs attempting to locate proper venue in an action against a nonresident defendant, the most pertinent language of Section 25-408 obviously becomes “where said defendant may be found.” Because, unless the nonresident defendant fortuitously happens to own property within the state or is a foreign insurance company, this language is the primary provision in the Nebraska scheme of venue which expressly locates venue against

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10. *Id.* §§ 25-408, 25-409 (Cum. Supp. 1972). These are the two general venue statutes which deal expressly with venue over nonresidents and foreign corporations. As will be discussed later in this article, *Neb. Rev. Stat.* 25-521 (Reissue 1964), which has been primarily treated as a jurisdictional statute, may come into play in determining venue with regard to nonresidents for foreign corporations. Several other venue provisions cover special situations which may involve various types of nonresidents. See, e.g., *Neb. Rev. Stat.* § 25-401 (Reissue 1964) which establishes venue for actions involving real estate in the county where such land is located regardless of whether that property is owned by residents or nonresidents; *Neb. Rev. Stat.* § 25-406 (Cum. Supp. 1972) which deals with actions against common carriers either domestic or foreign.
11. This provision apparently is designed to assure a venue location where quasi-in rem jurisdiction is asserted against a nonresident defendant either by garnishment or attachment. See *Neb. Rev. Stat.* § 25-1001 (Reissue 1964) providing for attachment when the defendant is a foreign corporation or a nonresident individual.
nonresident defendants. However, the circumstances under which a nonresident defendant or foreign corporation may be "found" within a particular county for the purposes of Section 25-408 are not entirely clear, although a full utilization of the Long-Arm Statute may depend upon this narrow question of statutory interpretation.

With regard to venue, the interpretation of the word "found" when used in a statute depends upon the nature of the defendant. Generally, in determining whether a foreign corporation is "found" within a particular locality for venue purposes, the courts have looked to a "doing business" standard. Under that approach a foreign corporation is "found" within the jurisdiction when it is engaged in systematic and continuous business within the forum. Because the corporation is an artificial entity lacking a physical being, the approach with regard to foreign corporations differs somewhat from that determining whether a nonresident individual "may be found" within the forum for the satisfaction of pertinent venue requirements. Both with regard to jurisdictional notions and venue concepts, the corporation manifests its presence within the forum by its business done there. On the other hand, the nonresident individual traditionally is "found" when he, or his agent, is physically present within the forum and is summoned while there. Of course, in any

12. Language similar to Neb. Rev. Stat. § 25-408 (Cum. Supp. 1972) appears in several of the special federal venue statutes. For example, the venue section of the Clayton Act, 15 U.S.C. § 15 (1970) allows suit, among other places, "in the district in which the defendant . . . is found." Similarly, one location of proper venue in copyright cases is "in the district in which the defendant . . . may be found." 28 U.S.C. § 1409(a) (1970).


15. See generally, Kurland, The Supreme Court, The Due Process Clause and the In Personam Jurisdiction of State Courts — From Pennoyer To Denckla: A Review, 25 U. Chi. L. Rev. 569, 582-86 (1958), discussing the deficiencies of the "presence" theory as it relates to in personam jurisdiction. Many of the same criticisms may be made concerning the "presence" theory and venue.

event the defendant may waive his objections as to venue."

Restricting the place of trial to these traditional narrowly defined standards* unfortunately precludes resident plaintiffs from bringing suit in the most appropriate county in situations for which the Long-Arm Statute seems especially designed.* For example, with regard to foreign corporations doing business generally within the state, but


18. The potential narrowness of the Nebraska venue provisions has caused difficulty in the past for persons seeking to acquire jurisdiction under other constructive service of process statutes. For instance, considerable doubt occurred as to appropriate venue under the Nonresident Motorist Statute, Neb. Rev. Stat. § 25-530 (Cum. Supp. 1972). See Beatty, Section 25-530 — Venue or Jurisdiction?, 37 Neb. L. Rev. 587 (1958). Similar venue problems have occurred in other states involving nonresident motorist statutes, creating conflicting approaches. For example, where the constructive service statute did not specify the proper place of venue, some courts have allowed suit in any county of the state, holding that the general venue provisions did not restrict venue in those kinds of transitory cases. Dunn v. Superior Ct., 102 Ariz. 198, 427 P.2d 516, 518 (1967); Alcarese v. Stinger, 197 Md. 236, 81 A.2d 651, 655 (1951); Courtney v. Meyer, 202 S.C. 437, 25 S.E.2d 481, 482-83 (1943). Conversely, some courts have held venue to be proper in the nonresident motorist cases in the county in which the statutory designated agent had his official residence. Bouchillon v. Jordan, 40 F. Supp. 354, 355 (E.D. Miss. 1941); Bergstedt v. Neff, 17 F. Supp. 753, 754 (W.D. La. 1936).

19. In most instances in which a "presence" requirement can be satisfied for the purposes of a rigid "may be found" standard, in personam jurisdiction could be obtained under other jurisdictional statutes, making the Long-Arm Statute largely irrelevant. For example, as a prerequisite to transacting business within this state on the part of a foreign corporation, a registered agent must be appointed and a registered office maintained. Neb. Rev. Stat. § 21-20,112 (Reissue 1970). Service of process may be made upon the registered agent of the foreign corporation. Neb. Rev. Stat. § 21-20,114 (Reissue 1970). And, where the foreign corporation is "doing business" within the state and has failed to maintain a registered agent in Nebraska, in personam jurisdiction can be obtained by service of process upon the Secretary of State. Id. Conversely, where the foreign corporation is not "doing business" within the state on a continuous and systematic basis, it cannot be served under section 21-20,114. Peterson v. U-Haul Co., 409 F.2d 1174, 1182 (8th Cir. 1969). Likewise, when a nonresident individual is physically "found" within a particular county, he may be served there. Neb. Rev. Stat. § 25-508 (Reissue 1964). Thus, in virtually any situation in which a nonresident individual or foreign corporation "may be found" within the state in the traditional sense, utilization of the Long-Arm Statute is unnecessary. This may indicate a need to broaden some provisions of the present Long-Arm Statute beyond a "doing business" standard, particularly with regard to some tort actions. See Neb. Rev. Stat. § 25-536(1) (d) (Cum. Supp. 1972). An Illinois products liability case serves as a good illustration of the short comings of the Nebraska statute. In Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961), a component manufacturer of an allegedly defective safety valve, Titan Valve Manufacturing Co., was served under the Illinois Long-Arm Statute, Ill. Rev. Stat. Ch. 10, § 16 (1959). The valve had been manufactured and incorporated into the final product, a water heater, outside the state. Titan, a nonresident, was not "doing business" within Illinois. However, drawing upon choice of laws rules, the Supreme Court of Illinois found that a "tortious act" had occurred within the state since the final event, the plaintiff's injury took place there. Thus, valid service of process was achieved under that provision of the Illinois statute which read "a non-resident who . . . commits a tortious act within this state submits to jurisdiction."
not within the county in which plaintiff's injury occurred or where the cause of action arose, the generally accepted interpretation of the phrase "may be found" forecloses proper venue in the most likely forum — the county in which relevant evidence and pertinent witnesses are located. In that situation, the plaintiff may obtain valid in personam jurisdiction, but not good venue under Section 25-408. Likewise, where a nonresident individual commits a tortious act within the state and leaves before service of process is accomplished, a strict interpretation of Section 25-408 prevents the acquisition of proper venue since the defendant cannot be "found" within any county of the state. And, as long as he remains outside the state, appropriate venue cannot be perfected, even though in personam jurisdiction can. Furthermore, assuming the intention of the legislature is to afford broad protection to Nebraskans, a narrow interpretation of Section 25-408 may also foreclose suit in another county convenient to resident plaintiffs — the county in which the plaintiff resides. Similarly, where the nonresident contracts to provide services or things within the state, the Long-Arm Statute expressly provides for the assumption of in personam jurisdiction by the Nebraska courts even though the defendant is not necessarily "doing business" on a systematic or continuous basis. In that situation also, the resident plaintiff can obtain valid personal jurisdiction, but may not be able to satisfy the requirements of Section 25-408 if the non-

Had that accident occurred in Nebraska, an injured Nebraskan could not have achieved valid service of process under the Nebraska Long-Arm Statute as it presently exists. In addition to the requisite injury within the state, Section 25-536(d) adds the requirement that the nonresident "regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in [Nebraska]." In other words, to be subject to valid service of process, the nonresident must be "doing business" within the state even though his activities resulted in injury to a Nebraskan within the state.

It is possible, however, that in other situations the Long-Arm Statute relaxes the strict "doing business" requirement for personal jurisdiction. Neb. Rev. Stat. § 25-536(1)(a) (Cum. Supp. 1972) speaks in terms of "transacting any business." (emphasis added) This can be interpreted so as to avoid a requirement of systematic and continuous business, thus extending jurisdiction in situations where there has been periodic or interrupted business. The "transacting any business" approach therefore moves away from the more traditional "presence" requirements. As indicated by the language of Neb. Rev. Stat. § 25-536(1)(d) (Cum. Supp. 1972), however, this does not change the result in the Gray-type situations as mentioned above.

22. Id. § 25-536(1)(b). See American Hoechst Corp. v. Bandy Laboratories, Inc., 332 F. Supp. 241 (W.D. Mo. 1971) in which a Missouri long-arm provision similar to that of Nebraska was used to invoke a personam jurisdiction in an action involving a single contract where the defendant foreign corporation was not "doing business" within the state in the usually accepted sense.
resi7dent is "found" only when the defendant is "doing business" within the county. For, if the "doing business" test is implied, it is entirely possible that the nonresident has entered into a single transaction which does not constitute the continuous activity required.

As indicated by these potential situations, the traditional notions of "presence" are not satisfactory in many instances in which the resident plaintiff desires to use the Long-Arm Statute. A solution might be to reject the "doing business" standard used in connection with the "may be found" language of venue provisions and to apply a liberalized interpretation with regard to Section 25-408. In that connection, by way of a broader interpretation, it is possible to "find" a nonresident individual or foreign corporation where he or it may be summoned. That interpretation appears possible in light of existing Nebraska precedent.23 Using this approach, Nebraska plaintiffs could locate venue in any county within the state since service of process upon the nonresident individual or foreign corporation could be obtained in any county under the provisions of the Long-Arm Statute. By tying venue to the jurisdictional provisions of the Long-Arm Statute in this manner, maximum use of the Long-Arm Statute is achieved for the protection of resident plaintiffs.

VENUE IN TORT ACTIONS

While Section 25-408 specifically refers to venue in connection with nonresidents and foreign corporations, two other statutory provisions, Sections 25-40924 and 25-521,25 arguably may be available to resident plaintiffs seeking to acquire proper venue over the nonresident defendant where service of process can be obtained by means of the Long-Arm Statute. One of those provisions, Section 25-409, was primarily intended to establish venue for actions involving resident defendants. That statutory provision reads in relevant part as follows:

23. See Lamb v. Finch, 87 Neb. 565, 566, 127 N.W. 903, 904 (1910) in which the Nebraska supreme court stated:
   The difference [between the forerunners to sections 25-408 and 25-409] is in phraseology merely, and not in substance. The meaning in each is that an action may be brought in any county where the defendant ... may be found and summoned.
   See also Juckett v. Brenneman, supra note 16. Admittedly, these decisions when read literally do not stand for the proposition that a defendant is found where summoned. However, the language of these cases might be read very broadly to reach this result.
very action for tort brought against a resident or residents of this state must be brought in the county where the cause of action arose, or in the county where the defendant, or some one of the defendants, resides, or in the county where the plaintiff resides and the defendant, or some one of the defendants, may be summoned. Every other action must be brought in the county in which the defendant, or some one of the defendants, resides or may be summoned. (emphasis added)

Whether or not this statutory provision can be utilized in establishing a broad base of venue in actions against nonresident defendants depends upon the judicial construction of the language "every other action must be brought in the county in which the defendant . . . may be summoned." For, if read literally, this sentence of Section 25-409 would permit proper venue in any county in which the defendant, resident or nonresident, could be served with process. In other words, in actions in which service of process could be achieved under the Long-Arm Statute and its corresponding service provision, venue would be appropriate in any county in the state in which the plaintiff desired to initiate suit. This construction would have the desirable effect of creating venue which would allow total utilization of the Long-Arm Statute.28

A broad construction of Section 25-409 which would extend its provisions to nonresidents and foreign corporations, however desirable, runs contrary to accepted rules of statutory construction. It is a truism that statutory language must be read in the context of the entire statute and that the intention of the legislature must be determined from the statute taken as a whole and not from an isolated portion.29 And, when Section 25-409 is viewed in its entirety, it seems to

26. Although section 25-409 is entitled "Actions in tort against residents; residuary venue provision; transfer of actions," the caption of the statute does not constitute any part of the statute itself and cannot be used as an aid in statutory construction. Neb. Rev. Stat. § 49-802(8) (Reissue 1968) specifically provides that "title heads . . . in the statutes of Nebraska, supplied in compilation, do not constitute any part of the law." This comports with the general rule applied by the courts. 2A J. Sutherland, Statutes & Statutory Construction § 47.14 (1973).


28. This statutory construction would, of course, achieve exactly the same result as a broad construction of the "may be found" language of section 25-408, as previously discussed. See text at note 23 supra.

relate entirely to the problem of venue in actions against resident defendants or in litigation involving joinder of both resident and non-resident defendants. Because the first sentence of Section 25-409 refers to tort actions involving resident defendants, arguably the language of the second sentence encompassing "every other action" might be interpreted to locate venue in all other types of actions; for example, those involving nonresidents. However, a cursory reading of the complete sentence, particularly in light of the preceding sentence of Section 25-409, must reasonably lead to a rejection of that approach. First, both sentences of the statute specifically refer to venue with regard to residents. Second, since the opening sentence of Section 25-409 expressly refers to tort actions, the phrase "every other action," when read in context, reasonably can be read to relate to non-tort actions, rather than to those involving only nonresidents. Furthermore, in view of the fact that the initial sentence of Section 25-409 establishes venue in tort actions solely as to resident defendants, it is also reasonable to conclude that the second sentence of the statute concerns resident defendants in actions other than tort, or in the language of the statute itself, "every other action". Thus, an expansive judicial reading of Section 25-409 while remotely possible is unlikely.30

A SERVICE AND VENUE PROVISION IN RELATION TO NONRESIDENTS

Perhaps the most likely statutory provision available to the resident plaintiff for locating his long-arm-based action in an appropriate county within the state is Section 25-521, a combination venue and jurisdictional statute.31 The express language of Section

30. There is, however, some indication that the Nebraska supreme court may treat sections 25-408 and 25-409 alike in construing the language of both statutes. See Lamb v. Finch, 87 Neb. 565, 566, 127 N.W. 903, 904 (1910).
31. Neb. Rev. Stat. § 25-521 (Reissue 1964) reads as follows:
   In all cases where service may be made by publication, and in all other cases where the defendants are nonresidents, and the cause of action arose in the state, suit may be brought in the county where the cause of action arose, and personal service of the summons may be made out of the state by the sheriff or some person appointed by him for that purpose. In all cases where service of a summons is made on a person without the state, proof of such service must be made by affidavit, stating the time and manner of service. Such service shall be made in the same manner as summonses are served on parties residing within this state.
25-521 appears to allow the sheriff or his appointee to serve process outside the state in two situations: (1) all cases where service may be made by publication, and (2) all other actions where the defendants are nonresidents and the cause of action arose in Nebraska. However, early Nebraska decisions indicate that Section 25-521 is no more than an alternative for service by publication even though the language of the statute is much broader. These cases led one commentator to state:

This section can not and does not, mean what it says. In all cases where the cause of action arose in the state, and the defendant is a nonresident, the Nebraska court can not acquire jurisdiction over the person of the nonresident by the simple expedient of serving him wherever he may be found outside the state.

The judicial narrowing of Section 25-521 clearly was a reaction to prevailing notions of constitutional limitations upon personal jurisdiction. At that time, personal jurisdiction was closely confined to traditional concepts of territorial presence as defined in Pennoyer v. Neff. Thus, the early restrictive reading of Section 25-521 was a necessary prerequisite to constitutional validity. Deference to existing constitutional requirements is clearly evident in Anheuser-Bush Brewing Association v. Peterson:

It is sufficient for our present purpose that [Section 25-521] has uniformly been held to be a mere substitute for constructive service of process . . . . Where, however, the purpose of an action is to determine the personal right of the parties, and to enforce against the defendant a personal liability merely, according to a fundamental principle of our jurisprudence, personal service within the state where the action is pending is essential to confer jurisdiction upon the court.

32. Boden v. Mier, 71 Neb. 191, 98 N.W. 701 (1904); Rowe v. Griffiths, 57 Neb. 488, 78 N.W. 20 (1899); Anheuser-Bush Brewing Ass'n v. Peterson, 41 Neb. 897, 60 N.W. 373 (1894).
34. 95 U.S. 714 (1877). "Every state possesses exclusive jurisdiction and sovereignty over persons and property within its territory . . . [and] no state can exercise direct jurisdiction and authority over persons or property without its territory." Id. at 722.
35. 41 Neb. 897, 60 N.W. 373 (1894).
36. Id. at 902, 60 N.W. at 375.
While a restrictive reading of Section 25-521 was necessary when territorial presence was required, a narrow construction of its provisions is no longer compelled today. With the advent of the "minimum contacts" theory of personal jurisdiction, Section 25-521 now may be given its fullest scope. For, in most instances, the in-state activities which give rise to the cause of action will be sufficient to satisfy due process requirements for the exercise of personal jurisdiction. Thus, Section 25-521 should be extended to both classes of cases described by the literal provisions of the statute. With that broadened interpretation, the plaintiff may achieve personal jurisdiction against a nonresident by obtaining an appointment of a sheriff or his deputy in the foreign state to serve process, forwarding process to the appointee, and effecting service of process extra-territorially through the designated appointee in the foreign state.

When utilized in connection with the Long-Arm Statute, Section 25-521 provides the plaintiff with an extra venue dimension. For, although Section 25-521 was enacted well before the Long-Arm Statute, many cases arising under the Long-Arm Statute could qualify for the special venue provision of Section 25-521. In many cases Section 25-521 enables the resident plaintiff to bring suit in an appropriate and convenient location (the county where the cause of action arose). Without such a provision the plaintiff might be limited to somewhat restrictive locations for proper venue under Sections 25-408 and 25-409. However, Section 25-521 is not a panacea for all venue problems involved in cases arising under the Long-Arm Statute. Some difficulties arise with its use in that respect. First,
Section 25-521 prescribes a single method by which service of process may be effected by the appropriate sheriff. On the other hand, Section 25-540, the service of process provision for the Long-Arm scheme, flexibly sets out several ways in which service of process can be achieved, including for example, personal delivery by means prescribed for in-state service, service by any means prescribed by the state in which service is to be effected and service by registered mail. Thus, use of Section 25-521 to gain a desirable geographic location for litigation limits the plaintiff with regard to the manner in which he may obtain service of process. Furthermore, many of the cases arising under the Long-Arm Statute may involve causes of action which do not technically arise within the state. In those cases, Section 25-521 would not be available. Therefore, assuming a narrow judicial construction of Sections 25-408 and 25-409, the resident plaintiff might be required to go outside Nebraska to obtain an adjudication of his case.

RIGHTLY BROUGHT AND CHOICE OF FORUM

While difficulties still exist as to the scope of the venue statutes in relationship to the Long-Arm Statute, a collateral problem potentially involving resident litigants apparently has been resolved. As originally enacted, Section 25-504 allowed plaintiff to obtain personal service on an out-of-county resident only if the action was “rightly brought.” On its face the statute spoke in terms of personal service, but the effect of the “rightly brought” provision, as will be seen later, was to impose restrictions on plaintiff’s choice of forum provided un-
der the venue statutes. Whether the legislature has eliminated the restrictions and ambiguities can only be answered by an examination of the statute prior to its amendment.

In an action against several defendants residing in different counties in the state, the plaintiff could bring a suit against one of the defendants in the county where the defendant resided; but plaintiff could get service of process under Section 25-504 upon the defendants who did not reside in that county only if the action against the resident defendant was "rightly brought." Although jurisdiction over the non-county defendants depended upon Section 25-504, exactly what a plaintiff had to do to satisfy the "rightly brought" requirement was not clear.

Joinder of the proper parties was essential in satisfying the "rightly brought" language. If a non-county defendant were found not liable, the action was not "rightly brought" against him and service was invalid. Misjoinder of causes of action could prevent the case from being "rightly brought" and thus the service upon all of the out-of-county residents would be lost. In an attempt to prevent the abuse of Section 25-504, the Nebraska supreme court carefully examined the facts for a sign that the resident county defendant had been joined merely as a conduit to obtain service on the out-of-county defendants. In other words, the court refused to allow a "sham" defendant. One commentator suggested that to fully comply with the court definition of "rightly brought" and to retain jurisdiction over out-of-county defendants, the plaintiff should state a cause

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45. Neb. Rev. Stat. §§ 25-408, 25-409 (1943). Unless the action was one of tort allowing venue in actions against state residents to be in a county where the cause of action arose, the forum required by the venue provisions had to be in the county where the defendant or some one of the defendants resided or where the plaintiff resided. Actions against nonresident defendants required venue in the county where property of, or debts of such defendant may be found or where said defendant could be found.

46. If an out-of-county defendant did not object to the service of process, it was held that he waived his objection and submitted to the jurisdiction of the court even though the action was not "rightly brought." Morearty v. Strunk, 118 Neb. 718, 721-22, 226 N.W. 329, 330 (1929).


48. Stewart v. Rosengren, 66 Neb. 445, 448, 92 N.W. 586, 587 (1902): "But it is obvious that misjoinder of causes of action in order to get jurisdiction in a different county is fully as obnoxious to the policy of that section as joining nominal defendants."

of action against the defendant residing in the county and also introduce evidence to demonstrate a bona fide reason for joining him.\(^\text{50}\)

In interpreting Section 25-504, the Nebraska court began to tie the "rightly brought" status with the final outcome of the litigation:

\[\text{[T]he plaintiff's right under Section 25-504 to have service upon defendant in a foreign county, is entirely dependent upon his alleging and finally proving a cause of action against the defendant served in the county of the forum. (emphasis added)}\]

The equation of "rightly brought" with "alleging and proving a cause of action" was the central core from which problems emerged. If the resident defendant received a successful judgment\(^\text{62}\) or if he settled out of court,\(^\text{3}\) the court lost jurisdiction over the out-of-county defendants. The plaintiff, therefore, had to start another action in a county where the remaining defendants were subject to service of process. Conceivably, the statute of limitations could expire and prohibit the second action.\(^\text{54}\)

\(^{50}\). Coffman, \textit{Counties to Which Summons May Issue in Nebraska}, 12 \textit{Neb. L. Bull.} 341, 345-46 (1934). This approach is similar to that enunciated by the court in Brownell \textit{v.} Adams, 121 Neb. 304, 236 N.W. 750 (1931). A receiver sued defendant shareholders in Douglas County where they resided as well as where the cause of action arose and then sought jurisdiction over the out-of-county defendants. The court found that:

\[\text{Where an action is rightly brought in one county against a number of defendants properly joined, and a \textit{bona fide} defendant served in that county, a summons may be issued to other counties for service upon proper defendants.}\]

\textit{Id.} at 309, 236 N.W. at 752 (italics in original)

\(^{51}\). Lippincott \textit{v.} Wolski, 147 Neb. 930, 940, 25 N.W.2d 747, 752 (1947).

\(^{52}\). McNeny \textit{v.} Campbell, 81 Neb. 754, 760, 116 N.W. 671 (1908).


\(^{54}\). This situation could develop when plaintiff tolled the statute of limitations by obtaining jurisdiction over an out-of-county defendant (through use of section 25-504) and then lost jurisdiction when the case failed to satisfy "rightly brought" conditions. Service of process arrests the statute of limitations. Butler \textit{v.} Smith, 84 Neb. 78, 120 N.W. 1106, 1108 (1909). Hence with a loss of process, the statute of limitations would be reactivated and continue from the time it was tolled. If the plaintiff were unable to file suit in a county where defendant was amenable to process (or again try section 25-504) before the statute expended, plaintiff would be prevented from suing defendant it seems. Because a statute of limitations begins to run when the aggrieved party has the right to institute and maintain suit, Weiss \textit{v.} Weiss, 179 Neb. 714, 716, 140 N.W.2d 15, 17 (1966), without effective process to toll the statute, the plaintiff might be put in a precarious position as a result of losing his "rightly brought" status.
In *Plantz v. Armbrust* plaintiff alleged she had been injured in an apartment in Dodge County, Nebraska, when a defective wall heater ignited her clothing. The owner of the apartment resided in Douglas County and the two men who had repaired the defective heater resided in Dodge County. The plaintiff had two alternatives for her forum: Dodge County, where the cause of action arose and two defendants resided, or Douglas County where the defendant-owner resided. Whichever forum she chose, plaintiff would have to rely on Section 25-504 to get personal service upon the out-of-county defendant(s). Since the "rightly brought" status, upon which the validity of out-of-county service depended, was tied to the end result of the litigation, plaintiff was on the horns of a dilemma. If she sued in Dodge County and lost against the two repairmen, personal jurisdiction over the owner would be lost. If she sued in Douglas County she had to win against the owner otherwise service on the repairmen would become invalid. Plaintiff decided to sue in Douglas County, settled with the owner, and as a result the repairmen's motion to dismiss was granted.

On appeal the trial court's dismissal of the two repairmen was affirmed. The Nebraska supreme court equated "rightly brought" with "proving a cause of action." It rejected plaintiff's argument that settlement indicated that plaintiff had a bona fide claim (or else the defendant would not have agreed to settle) and had a right to recover damages. Since the claim against the resident owner had been settled instead of "successfully prosecuted," the case lost its "rightly brought" status and the court no longer had jurisdiction over the out-of-county defendants.

The *Plantz* case illustrates the problems with equating "rightly brought" (and the validity of service of process) with the final outcome of the case. Plaintiff could never be sure whether the court's jurisdiction over the out-of-county residents would be valid from day to day. A strong objection to the "successfully prosecuted" method of

56. Id. at 38, 173 N.W.2d at 377.
57. Neb. Rev. Stat. § 25-409 (Cum. Supp. 1972) provides for venue in tort actions against Nebraska residents where the cause of action arose (Dodge County) as well as in the county where the defendants resided (Dodge and Douglas Counties) or in the county where the plaintiff resided (Dodge County).
58. 185 Neb. at 39, 173 N.W.2d at 378.
59. Id.
60. Id. at 38-39, 173 N.W.2d at 378.
61. Id.
analysis applied by the Nebraska court was the fact that it introduced an important restriction into plaintiff's choice of forum. If the suit involved defendants from different counties, plaintiff had to decide against which defendant he had the best chance of winning. Rather than choosing a county (within the relevant venue statute) which was convenient to the parties or the site of the injury, plaintiff had to consider the residence of a defendant where plaintiff was most likely to prevail.

The court's decision to equate "rightly brought" with successfully prosecuted was certainly not compelled by the language of the statute. Several other cases intimated that other alternative interpretations were available. in Barry v. Wachosky the court said:

    The test for determining whether an action be rightly brought in one county against the defendant found, and served therein, so that the other defendants may be served in a foreign county is whether the defendant served in the county in which the action is brought is a bona fide defendant to that action — whether his interest in the action and in the result thereof is adverse to that of the plaintiff.

Later, in Stull Brothers v. Powell the court stated that an action was "rightly brought" if the resident defendants were jointly liable with the other defendants and the plaintiff had demonstrated a "right to recover" from the resident defendant.

"Reasonable grounds" for a cause of action were also thought to be sufficient to comply with the statute:

    Had the plaintiff shown any reasonable ground . . . had he introduced sufficient evidence to show that his action against [the defendant] was based upon probable cause, the case would have been different, for his action might have been rightfully brought and the court have acquired jurisdiction for the trial of the issuable controversy as against [defendant] though it should prove upon trial, that the plaintiff's evidence was insufficient to allow him to prevail. (emphasis added)

62. 57 Neb. 534, 77 N.W. 1080 (1899).
63. Id. at 536-37, 77 N.W. at 1081.
64. 10 Neb. 152, 97 N.W. 249 (1903).
65. Id. at 155, 97 N.W. at 250.
Thus language in prior decisions offered three alternatives (bona fide defendant, right to recover and reasonable grounds) to the proving a cause of action interpretation used in *Plantz*.

Shortly after the *Plantz* decision, the legislature revised Section 25-504. The new statute eliminated the term “rightly brought.” The committee records concerning the revision indicate that the legislature was aware of the inequity involved in *Plantz* through loss of jurisdiction over the out-of-county residents, and sought to cure the defects of the old Section 25-504. No longer does a plaintiff have to attempt to satisfy the requirement of “rightly brought,” whatever that might have been. Instead, to obtain service on a defendant in another county the only requisite is that the forum court have “jurisdiction.” The word “jurisdiction” thus becomes pivotal for the courts under the new Section 25-504. How broadly the term will be interpreted judicially will determine how effectively the new statute can eliminate the old “rightly brought” difficulties.

There is some ambiguity in the requirement that the forum court have “jurisdiction.” The word “jurisdiction” could conceivably cover both personal jurisdiction over the parties and subject matter jurisdiction. Or, the wording may refer only to general subject matter jurisdiction. If the word “jurisdiction” is interpreted to cover both in personam jurisdiction and subject matter jurisdiction, then that determination should be made at the outset of the case. Thus, where the forum court initially has good in personam jurisdiction over the resident-county defendant and jurisdiction over the subject matter, those jurisdictional prerequisites should be sufficient to allow summons to issue to the counties of the non-forum residents. And jurisdiction over the non-forum defendants should continue throughout the case, regardless of whether the suit ultimately proves

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> When the action is brought in any court having jurisdiction, according to the provisions of this code, a summons shall be issued to any other county, against any one or more of the defendants at the plaintiff’s request.


successful against the resident county defendant. Any approach which goes beyond the requirement of valid jurisdiction at the outset of the case resurrects those problems which the legislature sought to abrogate by the 1971 amendment to Section 25-504. A resurrection of the “rightly brought” requirement is neither desirable nor necessary, especially since there is no wording in the statute which would remotely compel that approach.

To date there is no case construing the new Section 25-504, but as the statute is written, the requisite criteria for issuing summons to any other county should be met as long as the forum court has jurisdiction over the subject matter, in personam jurisdiction over the resident county parties, and proper venue at the outset of the action. Should venue be brought in the wrong court, the district court, rather than lacking any jurisdictional power, may apply Section 25-4101 to transfer the action for “convenience of the parties” and in “the interest of justice.”

The power to issue summons to other counties seems justified as long as the court has “jurisdiction,” for it represents a policy that convenience of the parties should predominate. The new statute recognizes a proposition that county lines within the state should be no more than convenient political lines for diversification of government functions rather than possible barriers to court action.13

CONCLUSION

As shown by the foregoing, the 1971 amendments to the venue statutes of Nebraska apparently have done what they were principally intended to do — resolve the “rightly brought” problem created under the old version of the statutes. However, depending upon the judicial interpretation given the existing venue statutes, difficulties may remain in terms of the relationship between existing venue locations and the nonresident defendant, particularly in regard to the Nebraska Long-Arm Statute. The restrictive approach compelled by the existing venue statutes under anything but a strained construc-

72. As long as “jurisdiction” is interpreted as subject matter jurisdiction the legislative intent to overcome the “rightly brought” problems will be successful. However, should a court decide to equate jurisdiction with in personam jurisdiction only, the courts will be narrowly restrictive and will defeat the legislative purpose in light of the Plants decision and legislative revisions following.
73. See Coffman, Jurisdiction or Venue?, 20 MINN. L. REV. 617, 647 (1936).
tion serves to constrict the expansive reach of the Long-Arm Statute to the detriment of residents of Nebraska. Thus, there should be serious legislative consideration of a further revision of the venue provisions, a change which would burden venue to meet the scope of the Long-Arm Statute.

The broadest possible venue provisions in suits against non-resident defendants and foreign corporations would be, of course, to allow suit in any county within the state. Under that approach, questions of hardship or undue inconvenience to the parties, witnesses, or court could be handled by means of the broad transfer provisions of the existing statute, Section 25-410, or by means of a forum non-conveniens dismissal where any litigation within the state would be unduly burdensome. On the other hand, a more moderate approach might be adopted which would still allow the Nebraska plaintiff to fully utilize the extra-territorial reach of the Long-Arm Statute. For example, the legislature might consider adoption of the concise and cogent statutory scheme of venue embraced by the State of Alaska:

(a) All actions in ejectment or for the recovery of the possession of, quieting title to, for the partition of, or the enforcement of liens upon, real property shall be commenced in the superior court in the judicial district in which the real property, or any part of it affected by the action is situated.

(b) If, in a civil action other than one specified in (a) of this section, a defendant can be personally served within a judicial district of the state, the action against that defendant shall be commenced in that judicial district or in the judicial district in which the claim arose.

(d) Subject to [another section] a trial and any precedent or antecedent hearings in an action shall be conducted . . . within the judicial district at a location which would best serve the convenience of the parties and witnesses.

74. The application of the doctrine of forum non conveniens by a state is not unconstitutional. Missouri ex rel. Southern Ry. v. Mayfield, 340 U.S. 1 (1950).
(e) Actions in cases not covered by this section may be commenced in any judicial district of the state.

(f) Failure to make timely objection to improper venue waives the requirement of this section.76

In any event, further consideration should be given to the prevailing venue statutes by the legislature to provide the necessary fluidity and workable relationship between jurisdiction and venue in Nebraska. Until such legislative consideration is given and acted upon, Nebraska citizens may be without a convenient local forum for the resolution of certain grievances against nonresident individuals and foreign corporations, a situation apparently adverse to the Long-Arm Statute.