NEW LIMITATIONS ON CHOICE OF FEDERAL FORUM

The doctrine of *forum non conveniens*¹ is peculiar in modern law to common law countries. Civil law systems have no need for such a regulatory device, since venue of suits in personam is generally restricted in civil law jurisdictions to the defendant’s residence, or principal seat of business, or to the place where the

¹ On this topic see, generally, Blair, The Doctrine of Forum Non Conveniens in Anglo-American Law, 29 Col. L. Rev. 1 (1929); Braucher, The Inconvenient Federal Forum, 60 Harv. L. Rev. 908 (1947); Dainow, The Inappropriate Forum, 29 Ill. L. Rev. 867 (1935); Foster, Place of Trial—Interstate Application of Interstate Methods of Adjustment, 44 Harv. L. Rev. 41 (1930); Foster, Place of Trial in Civil Actions, 43 Harv. L. Rev. 1217 (1930); Dodd, Jurisdiction in Personal Actions, 23 Ill. L. Rev. 427 (1929); see also Forum Non Conveniens, A New Federal Doctrine, 56 Yale L.J. 1234 (1947); 32 A.L.R. 6 (1924) (non-statutory tort cases); 87 A.L.R. 1425 (1933) (contract cases).
cause of action arose. On the other hand, the common law permits trial of actions other than the small minority of local actions "wherever the defendant can be found," regardless of the residence of the parties or of where the cause of action arose.

It was early recognized that under the common law "the open door may admit those who seek not simply justice, but perhaps justice blended with some harassment." Lawsuits between foreigners are frequently attended by elements such as absence of witnesses and records from the forum and the necessity of applying the law of another nation which render exercise of jurisdiction inexpedient and unjust. Admiralty courts, therefore, have long been held to have the power to decline jurisdiction in controversies between aliens. The general practice is to dismiss such suits, particularly controversies involving the internal affairs of a ship, and to relegate the parties to their home forum, unless an emergency makes assumption of jurisdiction necessary to prevent a failure of justice; but jurisdiction will not be declined as readily if the aliens are of different nationality and consequently have no common forum.

Internal abuses may also result from liberal venue practice. In the United States, the large size of the country and the existence of diverse federal and state jurisdictions subject a "roaming" defendant (such as a multi-state corporation) to the possibility of suit in every jurisdiction in which the defendant can be "found." Plaintiffs derive from this extensive choice of forum a tactical

See, for example, Codex Juris Canonici (1917) canons 1560-68; French Code of Civil Procedure arts. 2 and 3; German Code of Civil Procedure §§ 12-37; Italian Code of Civil Procedure (1940) arts. 18-30.


See Charter Shipping Co. v. Bowring, Jones & Tidy, 281 U.S. 515, 518 (1930); The Belgium, 114 U.S. 355 (1885); The Maggie Hammond, 9 Wall. (U.S.) 435 (1869); Mason v. Ship Blaireau, 2 Cr. (U.S.) 240, 264 (1804) (dictum by Justice Marshall that an admiralty court might decline to exercise its jurisdiction over a salvage dispute between aliens).

See Canadian Malting Co. v. Paterson Steamship Ltd., 285 U.S. 413 (1932) and authorities cited note 4 supra; Robinson, Admiralty § 3 (1930); Coffey, Jurisdiction over Foreigners in Admiralty Courts, 13 Calif. L. Rev. (1925). For the rules in personal tort cases between master and seaman and in controversies over wages of seamen on foreign vessels, see 32 A.L.R. 56 (1924) and 87 A.L.R. 435 (1969), respectively.

Under the general venue statute, Judicial Code § 51, 18 Stat. 470 (1875) as amended, 28 U.S.C.A. § 112 (Supp., 1946), suit in federal diversity cases may be brought in the district of
advantage which may be reflected in a judgment or in an unwarranted settlement. At least three types of abuse have arisen from this advantage: the "strike" suit, interstate ambulance chasing, and the practice of "shopping" for the most sympathetic jury and the most lenient rules of procedure and evidence. As a corrective for these evils the common law has evolved the doctrine of forum non conveniens to prevent the maintenance of a suit in one court "when in fairness it should be tried in another." The doctrine thus applies only if the parties can be relegated to another more convenient forum which can deal with their controversy more expeditiously.

Two recent decisions of the United States Supreme Court have, for the first time, endorsed general application by federal courts of the doctrine of forum non conveniens. In Koster v. Lumbermens Mut. Casualty Co., a New York policyholder brought a derivative suit in a New York federal court to compel an accounting by the director-president of Lumbermens, who was an Illinois resident, and by an Illinois corporation controlled by him. The district court's dismissal of the suit upon the basis of the doctrine of forum non conveniens was affirmed by a five to four majority of the Supreme Court. The Court held that even when the forum is the plaintiff's residence, a federal court, upon showing by a defendant that substantial inconvenience will result to him from defending either the plaintiff's or defendant's residence. A corporation is amenable to suit and subject to the diversity jurisdiction of federal district courts under this provision wherever it has complied with a state statute requiring designation of an agent for service of process. Nierbo v. Bethlehem Shipbuilding Corp., 308 U.S. 105 (1939).


Dicta in earlier Supreme Court decisions indicated that federal courts were bound to proceed to judgement in every case to which their jurisdiction extended. See Chicot County v. Sherwood, 148 U.S. 529, 533 (1893); Hyde v. Stone, 20 How. (U.S.) 170, 175 (1857); Cohens v. Virginia, 6 Wheat. (U.S.) 264, 404 (1821) (no more right to decline jurisdiction than to usurp it—either would be treason). The dissent of Justices Black and Rutledge in Gulf Oil Corp. v. Gilbert, 67 S.Ct. 839 (1947) is based on this position, although it excludes federal equity jurisdiction from the purview of the dogma because of the traditional discretionary character of equity courts.


in the forum, may decline to exercise its jurisdiction, if the plaintiff has advanced no reason why the forum is convenient to him.

In *Gulf Oil Corporation v. Gilbert* the plaintiff, a Virginia resident, brought an action, also in a New York federal court, against a Pennsylvania corporation doing business in New York and Virginia for damages arising from an alleged tort committed in Virginia. The district court's dismissal of the action, grounded upon application of the New York state rule of *forum non conveniens*, was reversed by the same circuit court of appeals (one judge dissenting) which had affirmed dismissal of the suit in the *Koster* case. The majority of the circuit court of appeals was of opinion that the doctrine of *forum non conveniens* was not applicable in the federal courts to ordinary actions at law for damages. But the same five to four majority of the Supreme Court in turn reversed this decision, holding that a federal court has "inherent" discretionary power to dismiss an action at law, as well as in equity, pursuant to the doctrine.

Although in 1941 Justice Frankfurter referred to the doctrine of *forum non conveniens* as a "manifestation of a civilized judicial system . . . firmly imbedded in our law," the three dissents in these cases are evidence that outright recognition of a comprehensive *forum non conveniens* doctrine by the United States Supreme Court resulted only after a real struggle. Such disagreement, resulting as it does from divergent notions of policy, suggests that analysis of the workings of the doctrine may be appropriate.

"Danger of injustice" may be occasioned by two inconveniences to the court which must decide whether to entertain a foreign case: difficulty in obtaining all the necessary facts concerning the controversy, and lack of knowledge of the laws under which the case is to be decided. The obstacles faced by a court in

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17 In both the Koster and Gilbert opinions, the Supreme Court expressly declined to decide the question whether Erie R. Co. v. Tompkins, 304 U.S. 64 (1938), requires federal courts to follow the forum non conveniens doctrine of the state courts. On this question see Weiss v. Routh, 140 F. 2d 193 (C.C.A. 2d, 1945); *Braucher, The Inconvenient Federal Forum, 60 Harv. L. Rev. 908, 927 (1947); 14 Univ. Chi. L. Rev. 97 (1946), noting *Gilbert v. Gulf Oil Corp.*, 153 F. 2d 883 (C.C.A. 2d, 1946).
21 Justice Jackson delivered the opinion of the Court in both cases. Separate dissenting opinions were written in the Koster case by Justices Black and Reed, joined, respectively, by Justices Rutledge and Burton. In the Gilbert case, Justice Black delivered a dissenting opinion joined by Justice Rutledge; Justices Reed and Burton also dissented, but did not set out the factual reasons for their dissent, on the ground that the Court's affirmance of the Koster case would control.
22 At least one writer has made a plea that we abandon our physical power theory of jurisdiction and adopt a more elastic theory whereby jurisdiction would vest in the forum where the cause of action arose, on the ground that such a court would be in the best position
trying the facts of a foreign cause include inability to compel attendance of material witnesses and impossibility of view by the jury. Consequently jurisdiction is most frequently refused over actions concerning personal torts, where attendance of witnesses and viewing of premises by the jury are relatively more important than in any other type of litigation. In contract cases these factors are generally less important than in tort cases; accordingly, courts have refused to entertain foreign contract litigation less frequently than foreign tort litigation.

The difficulty which a court faces in ascertaining and applying the law of a foreign controversy would seem to constitute a strong argument in favor of a rule permitting discretionary refusal of jurisdiction over foreign actions. But, although academic authorities agree with Justice Jackson that "there is an appropriateness . . . in having the trial of a diversity case in a forum that is at home with state law that must govern the case, rather than having a court of some other forum untangle problems in conflict of laws, and in law foreign to itself," the courts themselves seem reluctant to regard this consideration as valid. The current trend in the federal courts, illustrated by cases involving to make an intelligent decision as to the law and facts, since it is its law which is to be applied and since the facts in dispute occurred in that state and eye-witnesses probably resided there. "Viewing the question of jurisdiction from the standpoint of policy alone, power of enforcement may well be regarded as of less importance than ability to reach a correct conclusion as to the law and the facts. Once we admit that a court has jurisdiction, its judgment becomes res judicata for all purposes, provided only that our theories of jurisdiction are sufficiently elastic to treat the original judgment as valid." Dodd, Jurisdiction in Personal Actions, 23 Ill. L. Rev. 427, 441 (1929).


25 See Dodd, Jurisdiction in Personal Actions, 23 Ill. L. Rev. 427 (1929); Braucher, The Inconvenient Federal Forum, 60 Harv. L. Rev. 908, 937 (1947).


27 See Mexican C.R. Co. v. Mitten, 73 Tex. Civ. App. 653, 36 S.W. 282 (1896), in which an intermediate Texas court, in holding that the laws of Mexico, not being proved, must be presumed to be the same as those of Texas, declined to follow the supreme court of the state. The Supreme Court of Texas had earlier in the same year laid down the general rule that jurisdiction should ordinarily be declined in cases involving torts committed in Mexico, even though brought by a Texas resident, for the reason, inter alia, that Mexican law was "so materially different" from Texas common law. Mexican Nat. R. Co. v. Jackson, 89 Tex. 107, 33 S.W. 857 (1896). Compare the opinions in Arizona Commercial Mining Co. v. Iron Cap Copper Co., 236 Mass. 522, 124 N.E. 281 (1920); 119 Me. 213, 110 Atl. 429 (1920); 236 Mass. 185, 128 N.E. 4 (1920).
the internal affairs of foreign corporations\(^\text{28}\) has been against discretionary dismissal to serve the convenience of a court which must ascertain foreign state law.\(^\text{29}\) On the other hand, the majority opinions in the two cases here noted indicated that a federal court may consider relative administrative difficulties as one factor in determining upon dismissal or retention.\(^\text{30}\) In general, when difficulty of applying foreign law has been given as a reason for declining jurisdiction, other circumstances have been present which would justify dismissal.\(^\text{31}\)

The convenience of a forum to a defendant depends upon practical elements which determine whether trial of a case will be expeditious and inexpensive. These may include "the relative case of access to sources of proof; availability of compulsory process for attendance of unwilling, and cost of obtaining attendance of willing witnesses; possibility of view of premises, if view would be appropriate to the action...."\(^\text{32}\) In "internal affairs" cases\(^\text{33}\) these factors are relevant in considering the extent of the interference with the current operations of a business that may be incurred by removal of records and witnesses to the forum. Under the federal rule, as laid down in the Gilbert and Koster cases, the plaintiff's choice of forum should not be disturbed unless there is a preponderance of considerations in favor of dismissal.\(^\text{34}\)

Opponents of the doctrine of forum non conveniens argue that application of

\(^{28}\) The foreign law aspect in such cases was a factor in state development of the rule of non-interference with internal affairs of a foreign corporation. See Kimball v. St. Louis & S.F. Ry. Co., 157 Mass. 7, 31 N.E. 697 (1892); Langfelder v. Universal Laboratories, 293 N.Y. 200, 56 N.E. 2d 550 (1944); Simms v. Garrett, 114 W.Va. 19, 170 S.E. 423 (1933).

\(^{29}\) "The fact that the corporation law of another state is involved does not set the case apart for special treatment. The problem of ascertaining the corporation law may often be difficult. But this is not ground for a federal court to decline to exercise its jurisdiction to decide a case properly before it." Williams v. Green Bay & W. R. Co., 326 U.S. 549, 553 (1946). Compare Rogers v. Guaranty Trust Co. of New York, 288 U.S. 123 (1933).


\(^{33}\) For general discussion of the doctrine of non-interference with internal affairs of a foreign corporation, see Ballantine, Private Corporations §§ 293, 294 (1927); The Development of the "Internal Affairs" Rule in the Federal Courts and Its Application under Erie v. Tompkins, 46 Col. L. Rev. 413 (1946); Forum Non Conveniens and the "Internal Affairs" of a Foreign Corporation, 33 Col. L. Rev. 492 (1933); 18 A.L.R. 736 (1922), 89 A.L.R. 736 (1934), 155 A.L.R. 1231 (1946).

the doctrine creates "uncertainty, confusion, and hardship," since the only way to ascertain the appropriateness of a particular forum is to institute in it the suit in question. A plaintiff may thereby incur loss of time and money and run the risk that his claim will be barred by a statute of limitations. In answer it has been properly pointed out that "a plaintiff seeking speedy justice need only select a forum against which no reasonable objection could be raised." Furthermore, the rule governing discretionary dismissal laid down in the Koster and Gilbert cases, requiring a preponderance of considerations in favor of dismissal, would seem to be a sufficient safeguard against arbitrary rejection of a bona fide choice of forum.

Nevertheless, an outcome like that in the Gilbert case, in which the plaintiff waited almost two years to learn that the trial court's dismissal of his action was a proper exercise of discretion, is scarcely desirable. A proposed revision of the Judicial Code, now pending in Congress, furnishes a more efficient solution of the problem with respect to federal diversity jurisdiction. The proposed legislation would grant United States district courts a discretionary power to transfer any civil action, "for the convenience of parties and witnesses, in the interest of justice," to any other district or division in which it might have been brought. The committee report on this section states that it "was drafted in accordance with the doctrine of forum non conveniens." Although similar transfer of actions among courts of different states according to the requirements of trial convenience is presently impossible, a safeguard against delay and loss of remedy by operation of a statute of limitations is there also available through use of dismissals conditioned upon waiver of the statute of limitations or upon such other terms as seem equitable.

Another strong argument against use of the doctrine of forum non conveniens applies only to stockholders' derivative suits. Mr. Justice Black has pointed out that the possibility of having to travel across the country to the "convenient" forum might deter many stockholders from bringing such suits, with resulting encouragement of fraudulent or irresponsible corporate management.

41 See Braucher, The Inconvenient Federal Forum, 60 Harv. L. Rev. 908, 931-32 (1947); Foster, Place of Trial—Interstate Application of Intrastate Methods of Adjustment, 44 Harv. L. Rev. 41, 49 (1931).
Though venue practice should be flexible enough so that the beneficial minatory effect of such suits will not be sacrificed, choice of inconvenient forums should not be permitted to the extent of facilitating "strike" suits. Courts must also be vigilant to prevent institution in remote jurisdictions of collusive suits which might foreclose legitimate stockholder grievances. The paramount consideration, therefore, in determining the place of trial in derivative suits is not convenience to the individual stockholder bringing the suit, but convenience to the court in the performance of administrative duties involved in safeguarding the interests of the entire class whom the plaintiff assumes to represent.

Courts have also considered the interests of the citizens of the forum itself in deciding whether or not to entertain foreign cases. The New York courts, for example, were early flooded with foreign litigation, with the result that their present policy of declining foreign tort cases was evolved in order to protect the access of the state's citizens to their own courts. Related to recognition of the interest of residents of a forum that the dockets of their own courts not be crowded with foreign litigation is the view that local taxpayers should not bear the expense of entertaining foreign litigation or the additional burden of jury service.

Cutting across these elements of inconvenience to courts, individual defendants, and the public which may accompany unrestricted exercise of jurisdiction in imported actions are broader considerations which only rarely appear in an opinion. The basic question is whether an "open-door" policy provides a satisfactory adjustment of the economic and social conflicts which cause such actions to be brought. There is apparent in some of the decisions a "philosophy which assimilates a would-be litigant to a laborer or business-man entitled to

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44 Abuse of the stockholder derivative suit, in the form of piratical suits for the personal enrichment of professional litigants, have been frequent, and no adequate remedy has yet been devised against them. Ballantine, Corporations § 149 (rev. ed., 1946); see Extortionate Corporate Litigation: The Strike Suit, 34 Col. L. Rev. 1308, n. 1 (1934).


a free opportunity to try his luck in whatever state he chooses." This may be due to solicitude of courts for a workman or other layman thought to be at a disadvantage compared with a large and legally informed corporation.

However, distribution of any money award is at least a three-way affair: from the defendant to the plaintiff and his attorney. The notorious Minnesota situation strikingly demonstrated that too liberal venue practice can stimulate highly profitable personal injury rackets, with interstate ambulance chasing and high contingent fees. The difference, therefore, between what the defendant pays out and what the plaintiff finally pockets may represent an excessive

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50 Foster, Place of Trial—Interstate Application of Intrastate Methods of Adjustment, 44 Harv. L. Rev. 41, 60 (1930), commenting on Boright v. Chicago, R.I., & P.R. Co., 180 Minn. 52, 230 N.W. 457 (1930).


Language similar to that of § 6 of the FELA is used in the Taft-Hartley Act § 301, H.R. 3020, 80th Cong., 1st Sess. (Pub. L. No. 10, 1947) with respect to venue of action by employers against unions. Query: Will the courts be as ready to make an interpretation of the special venue language of the Taft-Hartley Act equally as liberal to plaintiff corporations as that accorded plaintiff workers under the FELA?

Statistics on extra-state causes of action against railroad companies during the heyday of the Minnesota personal injury racket are shocking. In the appended note to Davis v. Farmers Co-operative Co., 262 U.S. 312 (1923), the United States Supreme Court took judicial notice of the Minnesota situation by citing a message of the governor to the state legislature in 1923 to the effect that there were pending in 67 of the 87 counties of the state 1,028 personal injury suits, in which non-resident plaintiffs claimed damages aggregating nearly $26,000,000 against foreign railroads operating no line in Minnesota. See also 15 Minn. L. Rev. 83, 94 n. 44 (1930), where it is said: "The record in the district court of Winona county in the case of Carnes v. Chicago G.W. R.R., Sup. Ct. Docket No. 27743, contains a list of 133 cases brought during 1927 and 1928 against one railroad company on causes of action arising outside of the State, claiming a total sum of $4,106,154. The record in the Boright case [180 Minn. 52, 230 N.W. 457 (1930)] contained an affidavit by the attorney for the defendant railway in which he stated that during the past 2 years, more than seven-eighths of the personal injury cases brought (against railway companies?) within the state of Minnesota were based on causes of action arising outside of the state."

Currently, Chicago appears to be a favored forum for trial of migratory suits. Cf. Atchison, T., & S.F. R. Co. v. Andrews, note 53 infra; Baltimore & Ohio R. Co. v. Halchak, 71 F. Supp. 224 (Pa., 1947) (refusal to enjoin exportation of a suit to Chicago despite plaintiff's admission that his sole purpose for such exportation was the possibility of obtaining higher damages). For indications of the popularity of Los Angeles County, California, see allegations of plaintiff in Union Pac. R. Co. v. Utterback, 173 Ore. 572, 146 P. 2d 76, 79 (1944) (injunction against transportation of cases to California denied).

53 For a description of the high-pressure methods and high-powered organizations maintained by a legal firm in Minnesota specializing in piratical litigation, including advances to plaintiffs pending determination of their suits, slush funds, entertainment funds, and the maintenance of a corps of expert witnesses, see Chicago, M., St.P. & P.R. Co. v. Wolf, 199 Wis. 278, 282, 226 N.W. 297, 298 (1929) (injunction against exportation by plaintiff of his personal injury action to Minnesota refused, since plaintiff had not participated in the tactics of his Minnesota attorney). For an account of similar methods followed by a Chicago firm, including, in addition, the paid cooperation of railroad employees, see Atchison, T., & S.F. R. Co. v. Andrews, Gen. No. 46S-4586, Superior Ct. of Cook County, Illinois (1947) (Chicago attorney restrained from prosecuting 92 pending imported personal injury suits against the Santa Fe Railroad).
cost for the “privilege” or “right” extended theoretically for the plaintiff’s benefit. Plaintiffs who are at a disadvantage compared with corporate defendants will likely be at a disadvantage as well in dealing with crafty lawyers. Society confers no advantage upon such plaintiffs if it puts them at the mercy of racketeers who may fleece them and perhaps even expose them to liability as co-conspirators.

The question of who ultimately must pay the cost of the supposed “benefit” conferred upon a “perambulating” plaintiff must also be considered. The notion that a widow can harass a railroad company may seem absurd; but the cost of bringing testimony, especially that of employees needed elsewhere, and other evidence to a remote forum may be heavy. Since “shopping” actions do generally involve business organizations, the cost of defending or of settling them, with all other costs of doing business, will likely be passed on to the consumer in higher prices or by marketing of inferior goods and services. The prejudice to the public interest occasioned by such suits is more apparent, and has received wider judicial recognition, in actions against common carriers than against units of other industries, perhaps because of the quasi-public nature of the railroad industry.

The question of a “right to shop” has presented both constitutional and statutory issues. Prior to the decision in Douglas v. New York, N.H., & H.R.R. Co., 279 U.S. 377 (1929), it had been held in a number of cases that the constitutional guaranty of equal privileges and immunities for citizens in the several states operated as a limitation upon the discretionary power of a court to refuse to entertain foreign causes of action involving citizens and residents of other states. Davis v. Minneapolis, St.P. & S. Ste. M.R. Co., 134 Minn. 455, 159 N.W. 1084 (1916); Eingartner v. Ill. Steel Co., 94 Wis. 70, 68 N.W. 664 (1896); Corfrode v. Gartner, 79 Mich. 332, 44 N.W. 623 (1890); Barrell v. Benjamin, 15 Mass. 354 (1819); 32 A.L.R. 6, 12 (1924).

While provisions of the federal general venue statute have been regarded as matters of privilege subject to waiver, Nierbo v. Bethlehem Shipbuilding Corp., 308 U.S. 165 (1939), and to discretionary denial, Gulf Oil Corp. v. Gilbert, 67 S.Ct. 839, 842 (1947), the special venue provision of the Federal Employers Liability Act, which provides that actions may be brought, inter alia, wherever the defendant is doing business, have been regarded as matters of right, which “cannot be frustrated for reasons of convenience or expense.” Baltimore & Ohio R. Co. v. Kepner, 314 U.S. 44, 54; cf. Gulf Oil Corp. v. Gilbert, 67 S.Ct. 839, 841 (1947). A court having jurisdiction of a FELA suit cannot decline to exercise it on the ground that another forum would be more convenient. Lect v. Union P.R. Co., 25 Cal. 2d 605, 155 P. 2d 42 (1944), cert. den. 325 U.S. 866 (1945). But cf. Douglas v. New York, N.H. & H.R. Co., 279 U.S. 377 (1929). Two items of pending legislation suggest possible Congressional disapproval of this judicial construction of the FELA venue provision. H.R. 1639, 80th Cong., 2d Sess. (1947), would restrict choice of forum under the FELA to the forum where an accident occurred or where the injured employee resided at the time of the injury, unless the defendant could not be served in either of these localities. In addition, the committee report on Section 1404A of the proposed revision of the Judicial Code, supra notes 38-40, providing for discretionary transfer of diversity cases on the basis of trial convenience, cites the Kepner case as an example of the need for such a procedural reform.


See cases developing a principle related to forum non conveniens by the application of the commerce clause of the federal constitution to vexatious suits against carriers. “The
able interstate or international business are subject to similar risks. The public, which is interested in the avoidance of unnecessary industrial costs, will be benefited if plaintiffs injured by corporations seek their compensation without resorting to legal harassment.

It appears, therefore, that our law has developed a practice weighted in favor of parties who have claims against business organizations. This practice, which developed before many of the needs it is now called upon to satisfy arose, is today justified as a necessary balance to the economic and legal inferiority of those with such claims. But economic loss often ensues, while full benefit is not guaranteed to those supposedly favored. Forum non conveniens is a device used to stem the economic loss and to satisfy notions of fair play. Perhaps the underlying social conflicts which induce the bringing of much harassing litigation could in some cases be more justly resolved by legislation concerning industrial accidents, possibly in the form of wider workmen's compensation coverage, and by legislation regulating prosecution of derivative suits. Whether or not such laws are enacted, the legal system surely is not required to do more than afford an injured plaintiff a convenient, effective remedy, which would not include the right to exploit his cause of action by an arbitrary choice of forum, to the detriment of the defendant and the public interest.

orderly, effective administration of justice does not require that a foreign carrier should submit to a suit in a state in which the cause of action did not arise, in which the transaction giving rise to it was not entered upon, in which the carrier neither owns nor operates a railroad, and in which the plaintiff does not reside." Justice Brandeis in Davis v. Farmers Co-operative Co., 262 U.S. 312, 317 (1923); Atchison T. & S.F.R. Co. v. Wells, 265 U.S. 101 (1924); Michigan Central R. Co. v. Mix, 278 U.S. 492 (1929); Denver & Rio Grande W. R. Co. and Atchison T. & S.F. R. Co. v. Terte, 284 U.S. 284 (1932). The rule that such suits would not be permitted, as placing an unreasonable burden on interstate commerce, has been limited by Hoffman v. Foraker, 274 U.S. 21 (1927) and International Milling Co. v. Columbia Transportation Co., 292 U.S. 511 (1934), to cases in which imported suits are brought in states where the defendant railroads' operations are inconsequential, i.e., where they run no lines and do no more than maintain facilities for the solicitation of business. Possible adverse effect on foreign commerce with Mexico, which might result from an unrestricted assumption of jurisdiction of Mexican railroad accident cases, was emphasized in Mexican Nat. R. Co. v. Jackson, 89 Tex. 107, 33 S.W. 857 (1896).

During the first World War the Director General of Railroads issued General Orders 18 and 18a restricting venue of actions against carriers to the county or district where the cause of action arose or where the plaintiff resided at the time the injury occurred. In Davis v. Farmers Co-operative Co., 262 U.S. 312, 316 (1923), Justice Brandeis pointed out that the facts justifying these war-time orders were applicable in peacetime as well as during the war. But cf. Sacco v. B. & O.R. Co., 56 F. Supp. 959 (N.Y., 1944); Leet v. Union Pac. R. Co., 25 Cal. 2d 515 P. 2d 42 (1944), cert. den. 325 U.S. 866 (1945) (in the absence of an executive order by the president or of congressional action, prejudice to the war effort from prosecution of migratory actions did not authorize a court to refuse jurisdiction of suits arising under the FELA).
