

PLACE OF TRIAL — INTERSTATE APPLICATION
OF INTRASTATE METHODS OF ADJUSTMENT

AN earlier article¹ describes the mischievous consequences of determining the state of trial according to the nature of actions and of permitting suits on transitory actions wherever the defendant may be “found,” and traces various attempts to escape these consequences by statutory and constitutional limitations on jurisdiction, by rules of construction, and by statutes and injunctions against exporting suits. There is a certain fascination in following a number of channels of legal development each with its separate history but with a common direction given to all of them by pressure to meet some practical end. In this instance investigation revealed no satisfactory way out. Attempts to meet trial convenience by warping the concept of “finding” the defendant have resulted in much subtlety of reasoning, but this process is too cumbersome to correct any but the most extreme abuses. Attempts to restrain the exportation of suits have proved, if anything, less successful.

So much painful struggle and so little accomplishment suggests the need of a bolder approach which would completely discard the doctrine of permitting suit wherever the defendant may be found. The question of the proper place of trial is essentially administrative in character, like the question of time which arises upon a motion for continuance. It should be dealt with in the same way. The court should be free to decide according to the circumstances of the case with a view to giving each party a reasonably fair opportunity to present his proof. Intricate metaphysical reasoning as to the nature of actions and dogma as to jurisdiction should not be allowed to obscure this simple practical issue. The natural place to raise this issue is in the court where the plaintiff has begun his action. This article is concerned with the question as it arises in this way.

I

The purely administrative aspects of the problem will emerge more clearly if we turn from the interstate to the intrastate field.

¹ Foster, *Place of Trial in Civil Actions* (1930) 43 HARV. L. REV. 1217.

Considerations affecting the choice of state may be classified with reference to (1) ease of access by the parties with their proof; (2) differences in the probable reaction of the alternative forums to the same proofs; (3) enforceability of a judgment if obtained. The first two have close analogies in the problem of choosing the county. It is true that here the smaller scale of distances involved — hundreds rather than thousands of miles — may seem to make mere geographical location relatively unimportant. But the most relevant comparison is to the situation at the period when the intrastate rules were in their formative stage, a time when difficulties of transportation were such as to make the burden of a one hundred mile journey comparable to that of a thousand mile journey today. Hence there is really a close analogy to the practical problems involved in current determination of the proper state.

Again, while there are no differences in the substantive or procedural rules to be applied in different counties, there are usually differences in trial terms and calendar conditions which will make trial more prompt in one than in another. Subtle intuitions as to the turn of mind of Judge *X* who will hear in the case in county *A* as contrasted with that of Judge *Y* in county *B*, as to differing attitudes of urban and rural jurors, and as to currents of popular feeling, may combine to make the choice of county a vital point in trial strategy.

The third phase of the interstate problem — enforceability of the ensuing judgment — has no counterpart within the state. This makes it possible to select the county solely with a view to its propriety as a place for trial, without any complications comparable to the questions of jurisdiction which cumber the choice of states. The result is to make the intrastate law a possible concrete example of the end toward which private international law should strive — the same degree of interstate coöperation in the administration of justice as would be practiced between different departments of a single judicial system.

There is nothing new about applying on a wider scale the rules worked out for determining the county. It is thence that comes our dogma about local and transitory actions and most of the worst mischief in the law as to the state of trial. The difficulty is that the borrowing was uncritical, superficial, and conceptual. A system of procedure is like a machine. An understanding of its broader

functions and the relations of the parts to each other is a prerequisite to successful adaptation to a different field. Slavish imitation of a part of the model without its counterbalances is bound to prove unsuccessful. The obvious failings of the doctrine of local and transitory action in the interstate field invite a re-examination of the original to see whether some essential check has been overlooked.

Numerous standard works² trace the relation between the rules of venue and the development of jury trial, and show how the fact-reporting function of the jury originally made it inevitable that the jurors come from the place where the facts at issue arose, thus making all actions local; how this fitted in with and compelled a system of pleading designed to bring the parties to a single and narrow issue; how the requirement of a local venue gradually relaxed with the change of the jury to a fact-trying body; how the changes took place with the minimum modification in forms, as certain allegations, which once had to be true, became fictitious; how the distinction between local and transitory actions came to turn on whether the court would permit the allegation that a particular event happened in one place, to wit in a totally different place,³ and how this left the plaintiff with the *prima facie* power of designating any county in England as the place for trial of a transitory action.

The plaintiff's power of determining the venue was abused.⁴ The successive attempts to restrict its exercise indicate that then as now there was temptation to choose the most inconvenient place for the defendant whether or not it was convenient for the plaintiff. A statute of Richard II⁵ attempted unsuccessfully to curb

² See STEPHEN, PLEADING (1895) * 315-28; THAYER, PRELIMINARY TREATISE ON EVIDENCE AT THE COMMON LAW (1898) c. II; 3 HOLDSWORTH, HISTORY OF ENGLISH LAW (1923) 654; 5 *id.* 117-19, 140-42; TIDD, PRACTICE (1st ed. 1796) 10-13; SCOTT, FUNDAMENTALS OF PROCEDURE (1922) 18-23.

³ Sir Frederick Pollock has parodied the well known case of *Mostyn v. Fabrigas*, 1 Cowp. 161 (1774), in his LEADING CASES DONE INTO ENGLISH (1892) 22:

"Minorca lies in the Middle Sea,
Within the ward of Cheap to wit."

⁴ See 5 HOLDSWORTH, HISTORY OF ENGLISH LAW 117.

⁵ "To the intent that writs of debt and accompt, and all other such actions, be from henceforth taken in their counties, and directed to the sheriffs of the counties where the contracts of the same actions did rise; (2) it is ordained and accorded, That if from henceforth in pleas upon the same writs it shall be declared,

the growth of fictions and keep the venue local. A statute of Henry IV⁶ directed that attorneys be sworn that "they make no suit in a foreign county." Various rules of court called for punishment of attorneys for doing so.⁷ There was a brief period in which the defendant was permitted to take issue on allegations of venue. This made for delay.⁸ Finally, the practice developed of allowing motions to change the venue originally selected by the plaintiff. A stereotyped motion calculated to take care of the clearly vexatious cases dates from early in the seventeenth century.⁹ It was available where the cause arose exclusively in one county and the plaintiff had designated another. The plaintiff could prevent the change or change the venue back¹⁰ by undertaking to give material evidence arising in the county where he had laid it. If he failed to make good his undertaking he would be nonsuited.

Later we find the common law courts exercising a discretionary power to change the venue for the convenience of witnesses, in situations where the usual stereotyped motion would not apply. A good illustration of the practice is *Holmes v. Wainwright*.¹¹ The defendant obtained a rule *nisi* to change the venue from London to Yorkshire upon affidavit that all the witnesses lived in Yorkshire. The plaintiff showed that a particular fact arose in London. On the defendant's agreeing to admit this fact the rule was made

That the contract thereof was made in another county than is contained in the original writ, that then incontinently the same writ shall be utterly abated." 6 RICH. II, c. 2 (1382).

⁶ 4 HEN. IV, c. 18 (1402).

⁷ Tidd cites Michaelmas Rules 1654 § 5, K. B.; *id.* 1654 § 8, C. P.; *id.* 15 Eliz. § 15, C. P. Statements made in the balance of this paragraph are based on the chapter in TIDD, PRACTICE entitled *Change of Venue*. Since both chapter and page numbers vary in every edition consulted, no attempt will be made at more precise reference.

⁸ For a while the practice was to examine plaintiff on oath, later to try the issue to the country.

⁹ Tidd says that Lord Holt dated the origin from the time of James I. He cites TRYE, *JUS FILIZARII* 231 (1630), as giving the fee imposed for it. The form of affidavit as it became settled in the time of Charles I is: "the plaintiff's cause of action (if any) arose in the county of A, and not in the county of B, or elsewhere out of the county of A."

¹⁰ In the King's Bench the practice was to grant a rule absolute in the first instance upon the defendant's making the motion in due form. In the Common Pleas the result was only a rule *nisi*.

¹¹ 3 East 328 (1803).

absolute. Other cases emphasize the large discretion in the court to condition the granting of the motion on the defendant's abandonment of some of his technical legal rights; to require an undertaking to give judgment as of a particular term;¹² to require a precise showing of the number of witnesses and the nature of the defense;¹³ to require the defendant in an action on a bond to withdraw his plea of the general issue and go to trial on another plea characterized as on the merits.¹⁴ The defendant had the burden of overcoming the inertia of the court, and where his witnesses lived in one county and plaintiff's in another, so that convenience was equally balanced, the plaintiff's convenience would prevail.¹⁵

The modern English practice provides for fixing the place of trial in every action by the court or judge with "regard to the convenience of the parties and their witnesses and the date at which the trial can take place, and when a view may be desirable the locality of the object to be viewed; and to the other circumstances of the case, including (*inter alia*) the wishes of and expense to the parties, the relative facilities for trial in Middlesex or at the assizes and the burden imposed on jurors."¹⁶ The initial determination may subsequently be altered for "sufficient cause . . . without appeal from the former direction."¹⁷ There are no prescribed rules even as to what is *prima facie* desirable.¹⁸ The court is free to exercise an untrammelled discretion subject to a reversal only where it has been clearly abused. The 1930 *Annual Practice* lists only four cases in which an appeal was

¹² *Foster v. Taylor*, 1 T. R. 781 (1787).

¹³ *Evans v. Weaver*, 1 Bos. & P. 20 (1797).

¹⁴ *Fenwick v. Farrow*, 1 Chit. 334 (1819).

¹⁵ *Flecke v. Godfrey*, a decision of Lord Mansfield, cited in *Foster v. Taylor*, 1 T. R. 781, 782n.(a) (1787).

¹⁶ Order 36, rule 10, in ANNUAL PRACTICE (1930) 608. Until 1902 plaintiff could choose the county subject to change by the court. Order 36, rule 1, in STATUTORY RULES AND ORDERS (1890) 75.

¹⁷ Order 36, rule 1, in ANNUAL PRACTICE (1930) 597.

¹⁸ Possibly the line of least resistance in a close case would be to follow the common law rules of venue. In *Foxwell v. Van Grutten*, 14 T. L. R. 145 (1897), which affirms the order of the Judge in Chambers, Lord Justice Smith said that "*prima facie* the plaintiff was entitled to put the venue where he liked, and in an action of ejectment with regard to land at Cornwall *prima facie* Cornwall was the right place in which to try it." The initial weighting in favor of the plaintiff's choice may have disappeared with the revision in 1902. See note 16, *supra*.

taken, the latest of which was decided in 1906. In no case was the appeal successful.¹⁹

The order directing the place of trial is made on the "summons for directions," at which time it is also decided whether trial is to be with a special jury, with a common jury, or without a jury. Since the task of deciding these other questions involves inquiry as to the precise matters in dispute and the general character of the testimony, there is comparatively little burden on court or parties to extend the inquiry to include the residence of witnesses and any other factors relevant to selecting the most convenient place for trial. The high ability of English trial judges and masters and the confidence which they inspire make it possible to settle the question satisfactorily, and with practical finality, in this simple, untechnical way.

In the United States, the county of trial is largely regulated by statutes which are declaratory of the common law as to local actions, but more restrictive as to the plaintiff's choice when he is suing on a transitory action. A few generalizations are possible concerning these diverse restrictions. In almost every state there is some check which would prevent the plaintiff from selecting a remote county merely to embarrass the defendant. Attempt is made to approximate an appropriate initial designation by means of rules of thumb turning on the place where the cause arose, or on the residence of the defendant or of either party. In some states the plaintiff has an alternative choice of suing in the county where the defendant is served.²⁰ There are special rules to take

¹⁹ The cases are *The Assyrian*, 4 T. L. R. 694 (1888); *Soley v. Lage*, 12 T. L. R. 191 (1896); *Foxwell v. Van Grutten*, 14 T. L. R. 145 (1897); *Thorogood v. Newman*, 23 T. L. R. 97 (1906). Perhaps *Powell v. Cobb*, 29 Ch. D. 486 (1885), should be added. Objection to change of venue was included with other unsuccessful grounds of appeal. Only *Thorogood v. Newman* is subsequent to the 1902 revision. In addition there is one reported case in which the trial judge expressed disapproval of the Master's order which had been objected to by one of the parties but was not appealed from. See *Jones v. Consolidated Anthracite, Ltd.*, [1916] 1 K. B. 123, 131.

²⁰ At common law defendant could be served anywhere in England regardless of the venue. Some American states have restrictions requiring service to be in the county where the action is pending. Where this is true it is, of course, necessary to provide for trial where defendant is found. See MD. ANN. CODE (Bagby, 1924) art. 75, §§ 157, 158, providing for service wherever defendant is found after a return *non est* in the county prescribed as normally appropriate for trial. In other states there is less clue to the motive for permitting suit where

care of particular types of litigation, such as actions on insurance contracts, or for personal injuries, and sometimes there are provisions that a suit on a contract may be brought in the county where it is to be performed. In addition, many states preserve the common law device of changing the venue for grounds including convenience of witnesses. The result is that the rules of thumb have only *prima facie* effect and are subject to discretionary modification wherever there is a balance of convenience in favor of some other county.²¹

Such discretionary powers as are vested in the trial courts seem to be exercised satisfactorily. Seldom does an appellate court hold that there has been an abuse of discretion in granting or denying a change of venue. The rules of thumb may give rise to questions of construction and to a resultant burden on appellate courts, and may in some instances protract litigation. On the other hand they avoid the existence of an issue as to the proper place of trial in every case. It is doubtful whether we would be better off without any rules at all — unless we could transplant the entire English judicial system, including better paid, more independent, and more trusted trial judges, charged with ample discretionary powers as to all the details of practice.

The danger that a plaintiff who mistakes his county may fall afoul of the Statute of Limitations or lose the advantage of attachments or garnishments can be obviated by providing that the

defendant is found in view of modern provisions for leaving process at his residence and in view of the general rule that process will run throughout the state as at common law. In some instances it may have been intended to protect the plaintiff from mistaking for defendant's home the place where defendant is. This of course is unnecessary where defendant may only move to change from a wrong to a proper county, and not to dismiss. See note 22, *infra*.

²¹ See Appendix for summary of various statutes. Seventeen states have express provisions for changing venue for convenience of witnesses, seven more for "cause," which, in view of the common law practice, probably includes convenience of witnesses. Eighteen states have provisions which by implication exclude change on account of convenience of witnesses. In the other six states no provision was found. This may mean that the common law rules prevail. Or it may be the result of a necessarily hasty search in so many statute books with varying practices as to indexing. In thirty-two states there is a tendency to give defendant rather than plaintiff the advantage of trial at his home — except for special provisions permitting trial of certain actions where they arise. In only eleven is there clear evidence of preference for the plaintiff's convenience. In the other five states no clear statutory indication was found.

plaintiff's suing in the wrong county shall only give the defendant the right to change the venue by timely motion and will not result in a dismissal. Such legislation is in force in some fourteen states and has been recommended by Dean Pound and others for general adoption.²²

Whether we look to the common law, the modern English rules, or the American statutes governing the county of trial, we find nothing so irrational as the doctrine of local and transitory actions conventionally applied in the interstate field. There was no harm, for example, in the common law requirement that the venue of actions for trespass to land should be laid in the county where the land was, since this was usually the most convenient place for trial and it involved no risk of leaving the plaintiff without remedy anywhere.²³ Whatever the venue requirement, process might be served anywhere in England. Moreover, the requirement could be waived. Even in local actions the venue could be changed where necessary to secure an impartial trial.²⁴ In the case of transitory actions we have seen that none of the systems gives the plaintiff an unrestricted choice which he may exercise with a view to vexing the defendant or getting before whatever judge or type of jury is most likely to look favorably on his claim. Each system bears witness that in spite of the smaller geographic scale involved, the county of trial is important enough to warrant determination according to notions of con-

²² The states are: California, Idaho, Iowa, Montana, Nevada, Minnesota, New York, North Dakota, Oregon, South Carolina, South Dakota, Utah, Washington, and Wisconsin. See Pound, *Some Principles of Procedural Reform* (1910) 4 ILL. L. REV. 491, 497. A similar advantage was urged as one of the reasons for a state's adoption of a unified system of courts. See a committee report signed by Everett P. Wheeler, chairman, Roscoe Pound, Charles F. Amidon, Joseph Henry Beale, Frank Irvine, Samuel C. Eastman, William E. Mikell, Henry D. Estabrook, Edward T. Sanford, Charles E. Littlefield, Charles S. Hamlin, Charles B. Elliott, George Turner, John D. Lawson, William L. January. (1917) 1 J. AM. JUD. SOC. 101, 104.

²³ Cf. *Livingston v. Jefferson*, Fed. Cas. No. 8,411 (D. Va. 1811), discussed in the writer's previous article, *Place of Trial in Civil Actions* (1930) 43 HARV. L. REV. 1217, 1219.

²⁴ Compare *Ellenwood v. Marietta Chair Co.*, 158 U. S. 105 (1895), where the point that an action for trespass to land was tried in the wrong state was first raised by the Supreme Court of the United States, and the action dismissed on this ground. The record indicates the point was not taken below. Nor was it mentioned in the briefs. See criticism of this case in SCOTT, FUNDAMENTALS OF PROCEDURE 24-30.

venience. The variations are only as to the extent of the discretion left to the trial judge, and as to whether plaintiff's or defendant's convenience is to be preferred where a choice must be made. Except in the American states which do not recognize convenience of witnesses as a ground for change of venue, it is possible to settle the question after the parties are at issue and after a preliminary inquiry as to the testimony which they will need.

II

Are there any insuperable obstacles to a comparable handling of the interstate problem? One is provincialism. There is always a danger that courts will be less concerned with doing justice between the parties before them than in vindicating local interests at the expense of foreigners.²⁵ We may have advanced beyond some of the cruder manifestations of this spirit, but it exerts a subtle influence on close cases, making courts reluctant to reëxamine traditional premises where there is resulting hardship only to non-residents or foreign corporations, making them strike somewhat different balances between competing interests of plaintiff and defendant according to which one happens to be a resident. A similar psychological factor is the tendency to over-emphasize symmetrical development of principles when they are applied to situations not likely to recur with frequency. These factors are largely subconscious. As modern conditions increasingly force courts to consider the effect of their rulings as to the state of trial, they are less likely than heretofore to be ruled by artificial dogma and chauvinistic complexes.

A more practical obstacle to applying the intrastate analogy is that the issue as to the state of trial must be presented to individual states which can speak only for themselves and can not be certain that another state will follow what they believe to be the proper doctrine of international law. If a court in state *A* dismisses the action on the ground that state *B* is the proper state for trial, can it be sure that courts in state *B* will not also refuse

²⁵ See *Hatch v. Spofford*, 22 Conn. 485, 499 (1853), quoted in Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law* (1929) 29 COL. L. REV. 1, 7, n. 35: "That country is undutiful and unfaithful to its citizens, which sends them out of its jurisdiction to seek justice elsewhere."

to entertain it? Will the plaintiff lose the advantage of attachment liens or of his having "found" an elusive defendant, or will the Statute of Limitations be set up, in case he is forced to begin over again in another state? The court in state *A* can not, as in the intrastate situation, simply order a transfer of the action to state *B* so that there will be a continuation of the same action. There is no procedure for attaching property or debts on mesne process in aid of an action in another state. It is submitted that these obstacles are only superficial and can easily be avoided with a little ingenuity in adapting to this situation machinery with which our courts are familiar in other connections — the conditional decree in equity and the granting of a discretionary common law motion on such terms as seem equitable.

Assuming that the plaintiff has begun an action in a place which on the whole does not seem convenient, the question should be not whether he is to be penalized by a dismissal, but whether the ends of justice might better be served by trial elsewhere, and on what terms. This will make it possible, as in the case of motions for change of venue, to ascertain just what is the issue and what testimony will be needed, before deciding whether or not the court should entertain the action. The dismissal may then be conditional on the defendant's stipulating to admit service and waive all objections to proceeding in the state he contends is more appropriate, agreeing if necessary to waive the Statute of Limitations, and making such other stipulations as may be essential in order that the dismissal may operate for all practical purposes as a change of venue to the other state. If property or debts have been attached and the court believes that the plaintiff ought not to lose his lien, the defendant may be required to give bond to satisfy any judgment obtained in the other state. Delay incident to compelling the plaintiff to start again may be compensated for by requiring the defendant to cooperate in expediting trial in the other state. He may be required to serve his answer in less than the time allowed. It might even be insisted that he waive a requirement of the foreign state as to the county for trial, and permit trial in an adjoining county which is about equally convenient but in which the case would be reached more promptly. It is not intended to urge that all or any of these conditions would be appropriate in every case. The amount of con-

cessions required of the defendant should depend upon how reasonable the plaintiff was in beginning his action where he did. The exact form of the order should be left to the sound discretion of the trial judge in meeting the infinitely varying situations which will come before him.

Wherever there is the slightest danger of the defendant's successfully repudiating his stipulations in the foreign court, the initial court may, in lieu of dismissing the action, stay it subject to appropriate conditions, including a stipulation permitting the summary entry of judgment in case the defendant resorts to obstructive tactics abroad. Or the stay may be used where there is any uncertainty as to what may be accomplished in the foreign court even with the full coöperation of the defendant.²⁶

A Pennsylvania statute²⁷ in force since 1869 permits a somewhat similar procedure when a non-resident plaintiff sues a resident defendant and the defendant submits an affidavit that he has a just defense and that the witnesses live in the plaintiff's state. It calls for discontinuing the action upon delivery by the defendant of a power of attorney both to enter his appearance in the plaintiff's state and to confess judgment in any court in the United States for the amount recovered in the action in plaintiff's state, subject to the proviso that the action is not barred in that state at the time of the application to discontinue. While this statute is helpful so far as it goes, it illustrates vividly the futility of relying on specific legislation to regulate procedural problems of this sort. The legislation has all the earmarks of having been passed either to help a lawyer with influence in a specific case, or

²⁶ See Note (1930) 39 *YALE L. J.* 1196, advocating an analogous use of a conditional stay in certain situations involving concurrent litigation in two states, and citing some authority for granting a stay under circumstances in which a dismissal might be refused.

As a matter of form counsel would doubtless feel safer in submitting their motion to dismiss or stay before the time for answering expires and before filing a formal answer, but including in their motion a specification of what will be their grounds of defense when required to answer in the court ultimately held to be appropriate. It is very doubtful, however, whether a court would be justified in insisting upon nice distinctions as to whether the motion precedes, accompanies, or follows a formal answer, provided that it is otherwise timely.

²⁷ PA. STAT. (West, 1920) § 17064.

to prevent a recurrence of what seemed an unreasonable handling of a single controversy. It suggests no broad consideration of related problems. There is no provision for the situation where plaintiff and defendant are both non-residents,²⁸ or for waiver of the Statute of Limitations if necessary, or for preserving equivalent advantages to a plaintiff who has attached property. If legislation is to be passed to deal with such cases it should be as general as possible and leave to the courts broad discretionary powers to do whatever may seem reasonable under the circumstances. No matter how little dispute there is as to the desirability of such legislation, there is comparatively little chance of overcoming legislative inertia and securing its passage unless some accident happens to focus attention upon it.

The best hope is that the courts will feel free to take appropriate action without specific legislation authorizing them to do so. It is submitted that authority for such action is implicit in well-established common law principles. The closest analogy is to change of venue on terms for the convenience of witnesses.²⁹ Many other instances suggest themselves, in which courts of law have felt free to attach conditions to discretionary orders — as in granting leave to amend,³⁰ allowing the filing of a plea after de-

²⁸ Perhaps the statute implies that an unconditional dismissal would be appropriate where plaintiff and defendant both reside in the same state. What effect it would have where both are non-residents but of different states would depend on how far the courts will push the doctrine of *expressio unius exclusio alterius*. See Radin, *Statutory Interpretation* (1930) 43 HARV. L. REV. 863, 873, and Landis, *A Note on "Statutory Interpretation,"* *ibid.* 886, 892. There may well be a difference between the attitude toward social legislation involving burning issues and that toward isolated tinkering with procedure. In the latter instance the most realistic assumption is that the legislature was dealing only with a specific case without thought of any wider application of the possible logical implications of the words used. The court should be free to use its own judgment as to the desirable rule in cases which fall just outside the language used. The danger that courts will not take this attitude is what makes the drafting of such legislation so perilous.

²⁹ See pp. 44-45, *supra*, for English cases. See also *Carpenter v. Watrous*, 5 Wend. 102 (N. Y. 1830); *cf.* *Ellis v. Fitzpatrick*, 3 Ind. T. 656, 64 S. W. 567 (1901).

³⁰ *Knauth v. Heller*, 68 Hun 570, 23 N. Y. Supp. 106 (1893) (permitting amendment denying agent's authority, conditioned on defendant's producing him for preliminary examination); *Farmers Handy Wagon Co. v. Casualty Co. of America*, 184 Iowa 773, 167 N. W. 204, 169 N. W. 178 (1918) (requiring consent to withdrawal of stipulation waiving jury). See also (1930) 49 C. J. 544.

murrer overruled,³¹ allowing continuances,³² permitting the taking³³ or setting aside of a nonsuit,³⁴ granting or denying a new trial,³⁵ and so forth. The only controversy is as to what orders are discretionary and what terms are appropriate under particular circumstances. These numerous analogies suggest that if there is a discretionary authority to dismiss actions brought in an inconvenient state, this discretion may be exercised subject to flexible conditions which will mitigate possible hardship on plaintiffs and make the relief more generally available to defendants.

III

It seems generally recognized that there is a discretionary power to dismiss where the parties are aliens or foreign corporations.³⁶ Is this, like the common law correctives against an inappropriate county, merely illustrative of a broad power of common law courts to adapt their procedure to varying facts — or is it a survival of historic inhospitality to foreigners? The latter hypothesis seems scarcely tenable when we look to the exercise of

³¹ *Tefft v. McNoah*, 9 Mich. 201 (1861) (condition that defendant go to trial at the then term).

³² *Ames v. Webbers*, 10 Wend. 575 (N. Y. 1833) (condition that death shall not abate action). See also (1917) 13 C. J. 192.

³³ *Matter of Waverly Waterworks Co.*, 85 N. Y. 479 (1881) (condition that plaintiff pay defendant's expenses). See also (1919) 18 C. J. 1168.

³⁴ See (1919) 18 C. J. 1213.

³⁵ See (1928) 46 C. J. 418; SCOTT, FUNDAMENTALS OF PROCEDURE c. IV. In *Mulhorn v. Public Serv. Trans. Co.*, 130 Atl. 516 (N. J. 1925), it appeared that in a suit by a wife for her injuries and by her husband for consequent loss of services, the jury had allowed the husband damages for his own personal injuries. A new trial was ordered unless the plaintiff would amend so as to set up a claim for his own injuries, and thus bar himself from bringing another action.

³⁶ See *The Belgenland*, 114 U. S. 355 (1885), an admiralty suit growing out of a collision between a Norwegian and a Belgian ship. No American citizen was interested. The Court held it for the discretion of the trial court to entertain jurisdiction or not, referring to a similar common law rule. 114 U. S. at 361. *Matthali v. Galitzin*, L. R. 18 Eq. 340 (1874); *Robinson v. Kerr* (1793), reported in note to *Rea v. Hayden*, 3 Mass. 25 (1807) (action on a contract made where the alien parties resided, not allowed); *Nashua River Paper Co. v. Hammerhill Paper Co.*, 223 Mass. 8, 111 N. E. 678 (1916); *Disconto Gesellschaft v. Umbreit*, 127 Wis. 651, 106 N. W. 821 (1906), *aff'd*, 208 U. S. 570 (1908) (German corporation *versus* German individual, as principal defendant, and Wisconsin garnishee); *Great Western Ry. v. Miller*, 19 Mich. 305 (1869). For other cases in which the principal was recognized, see Note (1924) 32 A. L. R. 6, 8.

the discretionary power. It does not result in unfair discrimination against foreign plaintiffs; rather does it protect foreign defendants from unnecessary hardship. It is much more easily explained on procedural grounds alone. Where both the parties are foreigners there is a high probability that the local forum is inappropriate, and this warrants dismissal unless there are some special facts which make it reasonable to entertain the action.

The same procedural considerations require the exercise of a like discretion where the plaintiff is a citizen of a sister state. Otherwise a visitor from a sister state may actually be subject to a risk from which the visiting alien is protected — the risk of a vexatious suit brought by a plaintiff who could easily have sued at their common domicil but who hopes to force a settlement by reaching him at a place where it would be highly inconvenient to defend. There is authority for this interpretation in the English and Scotch cases, which freely entertain the plea of *forum non conveniens*. Under this practice a Scotchman has been denied the right to sue a Scotch bank in England.³⁷ The explanation for the doctrine given by the House of Lords is merely that it serves the ends of justice, not that a foreigner, much less a resident of the other kingdom, has an inferior standing in a court of Great Britain.³⁸

Unfortunately the close analogy between dismissing inconvenient actions by aliens or foreign corporations and actions by residents of other states, and the relation of both problems to the intrastate law of venue, have been obscured by loose talk as to the inferior status of non-citizens.³⁹ This and Supreme Court dicta listing access to the courts in the several states as one of the privileges and immunities guaranteed to citizens of each state by Article IV, Section 2 of the Constitution, led many courts to decide that they had no power to dismiss an action by a resident of a sister state if they would entertain a similar action by a resident of their own state. It was assumed that a discrimination against

³⁷ Logan v. Bank of Scotland, [1906] 1 K. B. 141.

³⁸ Société du Gaz de Paris v. Armateurs français, [1926] Sess. Cas. (H. L.) 13.

³⁹ See HENDERSON, POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW (1918) c. VI. See also Kentucky Finance Corp. v. Paramount Auto Exchange Corp., 262 U. S. 544 (1923).

non-residents was equivalent to a discrimination against citizens of other states.⁴⁰

The few cases upholding the power to dismiss were not carried beyond the state courts, and not until the recent case of *Douglas v. New York, N. H. & H. R. R.*⁴¹ was the question settled. This case upheld the New York practice making it discretionary whether to entertain an action by a non-resident against a foreign corporation.⁴² A brief examination of the antecedents of the case is necessary to understand both its constitutional implications and its significance in the private law of the states which had previously deemed themselves hemmed in by a constitutional limitation.

In reconciling the broad language of the privileges and immunities clause with that measure of autonomy to which the several states were deemed entitled, at least three restrictive doctrines have been evolved. First, that only certain privileges are protected — not including that of dredging for oysters,⁴³ but, according to frequent reiteration, including the privilege of suing.⁴⁴ The second is that discriminations are permissible which are not hostile in character but are reasonably adapted to differences in situation between residents and non-residents.⁴⁵ And finally it has been suggested that there is a distinction between residence and citizenship, and that a discrimination based on residence alone is not prohibited.⁴⁶ A bald statement of the last makes it sound like an evasive quibble. It has been criticized as inconsistent with the provision of the Fourteenth Amendment which makes citizens of the United States citizens of the state wherein

⁴⁰ See Blair, *supra* note 25; Notes (1928) 41 HARV. L. REV. 387; (1928) 37 YALE L. J. 983.

⁴¹ 279 U. S. 377 (1929).

⁴² See *Murnan v. Wabash Ry.*, 246 N. Y. 244, 158 N. E. 508 (1927), for an exposition of the New York practice. In the *Douglas* case it is referred to as statutory, but without specifying whether the statutes create or limit an otherwise broader power of dismissal. Which is the proper view was one of the points on which the Minnesota court divided in the *Boright* case, *infra* note 62.

⁴³ *Corfield v. Coryell*, Fed. Cas. No. 3,230 (E. D. Pa. 1823); *McCready v. Virginia*, 94 U. S. 391 (1876).

⁴⁴ *Corfield v. Coryell*, *supra* note 43; *Ward v. Maryland*, 12 Wall. 418, 430 (U. S. 1870); *Chambers v. Baltimore & Ohio R. R.*, 207 U. S. 142 (1907); *Canadian No. Ry. v. Eggen*, 252 U. S. 553 (1920).

⁴⁵ *Chemung Canal Bank v. Lowery*, 93 U. S. 72 (1876).

⁴⁶ See *Loftus v. Pennsylvania R. R.*, 16 Ohio App. 371, 140 N. E. 94 (1923). See also cases cited in note 48, *infra*.

they reside.⁴⁷ It has been rejected in at least two cases, each holding a particular discrimination against non-residents an unconstitutional discrimination in fact against citizens of other states.⁴⁸ So far as the Supreme Court is concerned, it has been used only where the discrimination was deemed reasonable.⁴⁹ Possibly oysters can justly be reserved for citizens, including those who live abroad, and denied to persons who continue citizens of other states although in some sense local residents. But in the case of procedural regulations it would be difficult to find a reasonable basis for discrimination based on a citizenship not coinciding with residence. This suggests that the third formula may be only a somewhat more legalistic phrasing of the second.⁵⁰

Following one or the other of the formulæ it had long been settled that there may be imposed on non-residents bringing or defending actions conditions which are not applied to residents — such as different periods of limitation,⁵¹ the filing of costs bonds,⁵² and more summary liability to attachment.⁵³ Doubtless there would have been no challenge to a requirement of venue compelling trial in the county nearest to the common domicil of non-resident litigants. But somehow a rule of jurisdiction confining them to the available domiciliary courts was not looked upon in the same light. Literal adherence to language of the Supreme

⁴⁷ See Meyers, *The Privileges and Immunities of Citizens in the Several States* (1903) 1 MICH. L. REV. 286, 383, cited with approval by Blair, *supra* note 25, at 14, n. 70.

⁴⁸ *Blake v. McClung*, 172 U. S. 239, 247 (1898); *Travis v. Yale & Towne Mfg. Co.*, 252 U. S. 60, 79 (1920) (holding that a taxing scheme "if it discriminates against all non-residents, has the necessary effect of including in the discrimination those who are citizens of other States; and, *if there be no reasonable ground for the diversity of treatment*, it abridges the privileges and immunities to which such citizens are entitled"). (Italics ours.)

⁴⁹ See the dissenting opinion of Mr. Justice Brewer in *Blake v. McClung*, 172 U. S. 239, 262 (1898); *La Tourette v. McMaster*, 248 U. S. 465 (1919). In *Maxwell v. Bugbee*, 250 U. S. 525, 539 (1919), the Court, having found no protected privilege involved, held it unnecessary to decide whether the act in question could be sustained on the narrow ground that the discrimination was based on residence and not on citizenship.

⁵⁰ See (1930) 28 CALIF. L. REV. 159.

⁵¹ *Chemung Canal Bank v. Lowery*, 93 U. S. 72 (1876); *Canadian No. Ry. v. Eggen*, 252 U. S. 553 (1920).

⁵² See *Blake v. McClung*, 172 U. S. 239, 256 (1898). See also *Ownbey v. Morgan*, 256 U. S. 94 (1921).

⁵³ *Central Loan & Trust Co. v. Campbell*, 173 U. S. 84 (1899).

Court, although uttered when neither the facts nor the general line of reasoning had anything to do with problems of venue, gave rise to the belief that whatever disparate conditions are imposed on the non-resident plaintiff, he must be left a substantially adequate remedy in the forum he has selected, regardless of the availability of the courts at his domicile. Emphasis is on the privilege of the plaintiff, not on the doing of justice between the parties.⁵⁴

This argument was advanced in the *Douglas* case,⁵⁵ but is scarcely noticed in the opinion of Mr. Justice Holmes.⁵⁶ He confines himself to the somewhat nicer argument of the petitioner, which was, as he restates it, that "a citizen of New York is a resident of New York wherever he may be living in fact, and thus all citizens of New York can bring these actions, whereas citizens of other States can not unless they are actually living in the State."⁵⁷ The Court answers this by assuming that the New York courts would apply their doctrine to residents in "the primary sense of one actually living in New York," and then continues:

"A distinction of privileges according to residence may be based upon rational considerations and has been upheld by this Court, emphasizing the difference between citizenship and residence, in *La Tourette v. McMaster*, 248 U. S. 465. Followed in *Maxwell v. Bugbee*, 250 U. S. 525, 539. . . . There are manifest reasons for preferring residents in access to often overcrowded Courts, both in convenience and in the fact that broadly speaking it is they who pay for maintaining the Courts concerned."⁵⁸

⁵⁴ See *State ex rel. Prall v. District Court of Waseca County*, 126 Minn. 501, 148 N. W. 463 (1914). Apart from the mechanical building upon dicta of the Supreme Court, there would seem to be as little foundation for this argument as for a contention that the common statutes requiring trial in the county where one of the parties lives deny the equal protection of the laws. Under them the courts in a particular county may be open to residents of that county and yet under identical circumstances closed to residents of other counties.

⁵⁵ BRIEF FOR PETITIONER 19.

⁵⁶ The Chief Justice, Mr. Justice Van Devanter, and Mr. Justice Butler dissented without opinion. 279 U. S. 377, 388 (1929). We are left in the dark whether they believed the New York practice unconstitutional or merely accepted the other point of the petitioner, that it could not be applied in cases arising under the Federal Employers' Liability Act.

⁵⁷ 279 U. S. 377, 386.

⁵⁸ *Id.* at 387.

In establishing the competency of state courts to dismiss actions by non-residents when another forum is deemed more appropriate, the *Douglas* case furnishes no very clear criterion as to the limits, if any, on the exercise of discretion, nor even of the standards which should govern. In view of the availability of the home forum there was no question that the New York courts had reached a fair result as between the parties. This is evidently recognized by the Supreme Court's reference to the "convenience" of the distinction drawn. But what is meant by the emphasis on crowded courts and the burdens on local taxpayers?⁵⁹ Are these factors considered relevant in themselves or only additional reasons for not doing an injustice to the foreign corporate defendant? It is submitted that once the plaintiff establishes the appropriateness of a particular forum as between himself and defendant, he should not be handicapped because he is not a local taxpayer, and that if his choice of forum is vexatious no amount of local tax-paying should purchase for him an undue advantage over the defendant. Under this view the non-resident plaintiff might claim a constitutional right to sue in a sister state which is substantially nearer his home than the defendant's, or at least that the court exercise jurisdiction unless the defendant submit to suit at the plaintiff's home. Perhaps a court free to exercise discretion would allow the same remedies to a close neighbor as to one of its own citizens where the alternative was a remote forum,⁶⁰ and of course there is a certain margin of judgment which must be left to the state courts. The constitutional problem is most likely to arise in the event that the *Douglas* case should prove a stimulus for legislation dealing with non-resident litigants. A statute flatly excluding actions between non-residents would not

⁵⁹ The argument is taken from some of the state cases which had anticipated the constitutional holding of the *Douglas* case. They are cited with approval by Blair, *supra* note 25, at 25. In the state courts the argument may have been thrown out as a sop to local patriots who might otherwise be distressed by the failure to harass a foreign corporation. There is perhaps one situation where the effect on trial calendars might properly influence the court's discretion. It would refute an attempt by the plaintiff to justify his choice of an otherwise inappropriate forum because he could get to trial there more quickly than at home. A state's efforts to expedite local justice should not be thwarted by compelling it to carry the burdens of more backward neighbors.

⁶⁰ See *Murnan v. Wabash Ry.*, *supra* note 42, and subsequent disposal of the case in 222 App. Div. 833, 226 N. Y. Supp. 393 (1928).

only operate unfairly in certain instances, but might also be held unconstitutional.⁶¹

The most interesting question suggested by the *Douglas* case is what will happen in the states which have thus far felt a constitutional compulsion to entertain vexatious suits by plaintiffs who are citizens of other states. Will they now feel free to treat questions as to the state of trial as sensibly as they do questions as to the county of trial, and will they regard citizens of sister states as no more entitled to abuse their processes than aliens and foreign corporations? This question was raised recently in Minnesota in the case of *Boright v. Chicago, R. I. & Pac. R. R.*⁶² The case was recognized as of great importance. Numerous counsel filed briefs as *amici curiae* — representatives of railroads and, on the plaintiff's side, counsel for labor unions and counsel whose interest is not stated of record. These last, one may infer, were interested as frequently appearing for non-resident plaintiffs in personal injury cases. The victory was for the personal injury racket — not, however, without a vigorous dissent. Thriving under a highly organized and thus far judicially tolerated system of ambulance chasing, and the old beliefs as to the effect of the privileges and immunities clause, the spectacle of vexatiously imported litigation has long been familiar in Minnesota. The majority opinion in the *Boright* case suggests that judges are perhaps becoming callous to it.⁶³ It seemed that the common law power

⁶¹ Cf. S. C. CODE CIV. PROC. (1922) § 744; construction given similar provision of North Carolina Code in *Ledford v. Western Union Tel. Co.*, 179 N. C. 63, 101 S. E. 533 (1919); and former provision of New York Code involved in *Robinson v. Oceanic Steam Nav. Co.*, 112 N. Y. 315, 19 N. E. 625 (1889). See also *Loftus v. Pennsylvania Ry.*, *supra* note 46.

⁶² 230 N. W. 457 (Minn. 1930); see similar view advanced as alternate ground in *Herrmann v. Franklin Ice Cream Co.*, 114 Neb. 468, 208 N. W. 141 (1926). *Boright* was an employee of defendant living in Kansas and injured there. Defendant was an Illinois corporation having a substantial part of its railroad system in Minnesota and there engaged in intrastate as well as interstate commerce. Defendants also asked for dismissal to avoid a burden on interstate commerce. This plea was denied, following earlier Minnesota cases, on the ground that the objection under the commerce clause does not apply to a railroad operating part of its system within the state. This is a point still open under the decisions of the United States Supreme Court. See Foster, *Place of Trial in Civil Actions* (1930) 43 HARV. L. REV. 1217, 1232.

⁶³ See authorities referred to by Stone, J., in his dissenting opinion, 230 N. W. 457, 464.

to adapt procedure to prevent its abuse had atrophied from disuse, and the court found on non-constitutional grounds that it was powerless to dismiss such suits.⁶⁴ Instead of regretting this situation, it glorified the Minnesota law for its hospitality to strangers, thus indicating that it was still thinking in terms of a philosophy which assimilates a would-be litigant to a laborer or business man entitled to a free opportunity to try his luck in whatever state he chooses. Compelled by the United States Supreme Court to abandon any constitutional sanction for this theory, the majority of the Court still stubbornly adheres to it as determining at least the domestic policy of the state. The decision is hardly one to commend itself for general acceptance.

IV

This is a theoretical, academic treatment. Its purpose ends with pointing out indisputable abuses, analyzing the various lines of legal development which have resulted from efforts to cope with them, and recommending the exercise of a discretionary power of dismissal, subject to conditions safeguarding the interests of plaintiffs, both as the only adequate solution and as in accord with the most vital traditions of common law development. Theoretical analysis can show how closely related this is to practice that has worked successfully in choosing the place of trial both on the smaller intrastate scale and on the larger international scale, and which is generally conceded to be appropriate for deciding in what state a corporation may sue. The academic writer can not hope to furnish assistance in the practical problems which will rise in the exercise of discretion.⁶⁵ These must

⁶⁴ The dicta cited for this position do not seem very compelling. As a matter of purely formal logic the dissenting opinion seems more convincing. One wonders whether the majority of the court would have found the earlier dicta so persuasive in case the issue had been whether to open rather than to keep open the door to vexatious litigation.

⁶⁵ Blair, *supra* note 25, at 20, analyzes the cases to show the practical functioning of the doctrine of *forum non conveniens*. In addition, some help may be derived from cases passing on the exercise of discretion by trial courts to change the venue for convenience of witnesses. See, e.g., *State v. Superior Court*, 147 Wash. 690, 267 Pac. 503 (1928) (change prevented by admissions); *Wakpala State Bank v. Tackett*, 50 S. D. 385, 210 N. W. 199 (1926) (refusal of change where purpose was to re-litigate point already settled); *Bell v. Morris Canal & Banking Co.*, 3

be left to the experience and sound judgment of the courts, particularly of trial courts. There need be little fear that they will abuse a discretion frankly recognized as such. The danger is always lest an illusory quest for certainty lead them to predicate mechanical rules on the solutions deemed advisable in a few of the more common cases, thus turning a simple practical problem into a complicated mystery.⁶⁶

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Green 63 (N. J. 1835) (venue changed to be near bank's books, removal of which would have interrupted public business of the bank); *Belding v. Archer*, 131 N. C. 287, 42 S. E. 800 (1902) (court influenced by relative promptness of trial in two possible counties). See also pp. 44-45, *supra*. The case of *American Historical Soc. v. Glenn*, 248 N. Y. 445, 453, 162 N. E. 481, 483-84 (1928), suggests the desirability of caution against hasty generalizations based on the interests of either plaintiffs or defendants alone. The court said "It is a great and fundamental privilege of defendants to have small causes brought in local courts heard in their own territory." *Cf.* N. Y. C. P. A. (1920) § 182, giving plaintiff a *prima facie* right to sue in his own county if he chooses; and see note 21, *supra*, for differences in statutes determining the county according to whether plaintiff's or defendant's convenience should prevail.

⁶⁶ Contract actions are less likely than tort to require transportation of numerous witnesses, and perhaps more likely to involve pursuing an evasive debtor. Hence there is less occasion for the exercise of discretion to dismiss. It is obvious, however, that this generalization is subject to exception. Compare dicta in New York that the discretionary power exists only in tort cases. These dicta were accepted as settling the state law by Thatcher, J., in *Pantswowe Zaklady Graviozne v. Automobile Ins. Co.*, 36 F.(2d) 504, 506 (S. D. N. Y. 1928), (1930) 43 HARV. L. REV. 1157. See Blair, *supra* note 25, at 30.

APPENDIX

For each state the first citation is to the provision for venue; the second to the provision for change of venue. The phrase "for prejudice" is used to cover objections to both court and jury; reference to this ground is made only where there is no legislative provision which in terms includes change for convenience of witnesses.

Alabama. CODE (Michie, 1928) § 10467 (defendant's county; in non-contract actions, alternative where action or omission occurred). *Ibid.* § 10476 (for prejudice).

Arizona. CODE (Struckmeyer, 1928) § 3715 (defendant's county; exceptions include alternative where contract was to be performed). *Ibid.* § 3718 (convenience of witnesses).

Arkansas. DIG. STAT. (Crawford & Moses, 1921) § 1176 (defendant's county). *Ibid.* §§ 10339, 10341 (for prejudice; other grounds expressly excluded).

California. CODE CIV. PROC. (Deering, 1923) §§ 392, 395 (defendant's county or where personal injury occurred). *Ibid.* §§ 396, 397 (to correct wrong designation and for convenience of witnesses).

Colorado. See Maxwell Chamberlain Co. v. Piatt, 65 Colo. 140, 173 Pac. 867 (1918) (defendant's county or where contract was to be performed). COMP. LAWS (1921) § 6616 (for prejudice).

Connecticut. GEN. STAT. (1918) § 5563 (plaintiff's or defendant's county). No general provision found for change of venue. *Cf. ibid.* §§ 5571, 5581.

Delaware. No statutes regulating venue or change. See REV. CODE (1915) §§ 4178, 4179 (regulations of pleading which imply common law rules of venue prevail).

Florida. COMP. LAWS (1927) § 4219 (defendant's county or where cause accrued or property in question is located). *Ibid.* § 4335 *et seq.* (for prejudice; no change to a county where either party resides, except by consent).

Georgia. POL. CODE ANN. (1926) § 5526 *et seq.* (defendant's county). *Ibid.* § 5532 *et seq.* (for prejudice).

Idaho. COMP. STAT. (1919) §§ 6661, 6664 (defendant's county or, in insurance cases, place of death or loss). *Ibid.* §§ 6665-66 (for convenience of witnesses or to correct wrong designation).

Illinois. REV. STAT. (Cahill, 1929) c. 146, § 1 (defendant's county or where found, or, in insurance cases, plaintiff's county). *Ibid.* §§ 6, 7 (for prejudice).

Indiana. ANN. STAT. (Burns, 1926) § 329 (defendant's county). *Ibid.* § 442 (convenience of witnesses).

Iowa. CODE (1927) §§ 11038, 11043, 11049 (defendant's county or where contract was to be performed or where insured loss occurred). *Ibid.* §§ 11039, 11053, 11408 (for prejudice or to correct wrong designation).

Kansas. REV. STAT. ANN. (1923) c. 60, § 509 (defendant's county). *Ibid.* § 511 (for prejudice).

Kentucky. CIV. CODE (Carroll, 1927) § 78 (defendant's county or where served). STAT. (Carroll, 1930) § 1094 *et seq.* (for prejudice).

Louisiana. No provision for venue found. REV. CODE OF PRAC. (Marr, 1927) p. 318 (change of venue for cause).

Maine. REV. STAT. (1916) c. 86, § 9 (county where either party lives). *Ibid.* c. 87, § 25 (for cause).

Maryland. ANN. CODE (Bagby, 1924) art. 75, § 157 (defendant's county unless return *non est*). *Ibid.* § 109 (for prejudice).

Massachusetts. GEN. LAWS (1921) c. 223, §§ 1, 7 (where any party lives or does business, except that personal injury actions must be brought where plaintiff lives or injury was received). No provision for change of venue found.

Michigan. COMP. LAWS (1915) §§ 12340, 12341 (where either party lives). *Ibid.* § 12341 (for cause).

Minnesota. STAT. (Mason, 1927) § 9214 (defendant's county). *Ibid.* §§ 9215, 9216 (convenience of witnesses and to correct wrong designation).

Mississippi. ANN. CODE (Hemingway, 1927) § 500 (defendant's county or where found; if defendant is a corporation, also where cause occurred). *Ibid.* § 505 (resident individual may change to county where he lives; otherwise, for prejudice).

Missouri. REV. STAT. ANN. (1919) § 1177 (defendant's county, or plaintiff's county if defendant is found there). *Ibid.* § 1357 (for prejudice).

Montana. REV. CODE (Choate, 1921) § 9096 (defendant's county, or plaintiff's county if defendant is found there). *Ibid.* §§ 9097, 9098 (to correct wrong designation or for convenience of witnesses).

Nebraska. COMP. STAT. (1922) § 8563 (where defendant lives or is found). *Ibid.* § 8564 (for prejudice).

Nevada. REV. LAWS (1912) §§ 5012-14 (where defendant lives). *Ibid.* § 5015 (for convenience of witnesses or to correct wrong designation).

New Hampshire. PUB. LAWS (1926) c. 328, § 1 (where party resides). *Ibid.* § 3 ("when justice or convenience requires it").

New Jersey. COMP. STAT. (1910) p. 4113, § 202 (where cause arose or where plaintiff or defendant lives, subject to court's discretion). *Ibid.* § 203 (for cause).

New Mexico. STAT. ANN. (Courtright, 1929) c. 147, § 101 (where any party lives or cause originated, or county where defendant is found if in judicial district of his residence). *Ibid.* § 105 (for prejudice).

New York. C. P. A. (1920) § 182 (where a party lives). *Ibid.* §§ 186, 187 (to correct a wrong designation or for convenience of witnesses).

North Carolina. CODE ANN. (Michie, 1927) § 469 (where a party lives). *Ibid.* § 470 (for convenience of witnesses).

North Dakota. COMP. LAWS ANN. (1913) § 7417 (defendant's county). *Ibid.* § 7418 (for convenience of witnesses or to correct wrong designation).

Ohio. CODE ANN. (Throckmorton, 1930) § 11277 (where defendant lives or is served). *Ibid.* § 11415 (for prejudice).

Oklahoma. COMP. STAT. ANN. (Bunn, 1921) § 207 (where defendant lives or is served). *Ibid.* § 208 (for prejudice).

Oregon. LAWS ANN. (Olson, 1920) § 44 (where defendant lives or is served). *Ibid.* § 45 (for convenience of witnesses or to correct wrong designation).

Pennsylvania. STAT. (1920) § 17069 *et seq.* (except in actions for trespass to land, regulation of process rather than venue limits suit to county where service can be had). *Ibid.* §§ 17268, 17274 (for prejudice and where there would otherwise be more than six months' delay in getting to trial).

Rhode Island. GEN. LAWS (1923) § 4850 (where either party lives or defendant is served). No provision for change of venue.

South Carolina. CIV. CODE (1922) § 378 (defendant's county). *Ibid.* § 382 (for convenience of witnesses or to correct wrong designation).

South Dakota. COMP. LAWS (1929) § 2327 (defendant's county; in certain tort cases, where cause arose). *Ibid.* § 2328 (for convenience of witnesses or to correct wrong designation).

Tennessee. See *Haynes v. Woods*, 151 Tenn. 163, 268 S. W. 632 (1925) (where either party lives). ANN. CODE (Shannon, 1918) § 5720 (for prejudice).

Texas. See *City of Tahoka v. Jackson*, 115 Tex. 89, 276 S. W. 662 (1925) (where defendant lives or contract was to be performed). COMP. STAT. (1928) p. 284, art. 2170 (for cause).

Utah. COMP. LAWS (1917) §§ 6528-31 (where a party lives or cause arose). *Ibid.* §§ 6532-33 (for convenience of witnesses or to correct wrong designation).

Vermont. GEN. LAWS (1917) § 1782 (where a party lives). *Ibid.* § 1784 (for prejudice).

Virginia. GEN. LAWS (1923) §§ 6049-50 (where defendant lives or cause arose). *Ibid.* § 6175 (for cause).

Washington. COMP. STAT. (Remington, 1922) § 207 (where defendant lives or is served). *Ibid.* §§ 208, 209 (for convenience of witnesses or to correct wrong designation).

West Virginia. CODE ANN. (Barnes, 1923) p. 2138, c. 123, §§ 1, 2 (where defendant lives or cause arose). No provision found for change of venue.

Wisconsin. STAT. (1927) § 261.01 (where defendant lives). *Ibid.* §§ 261.03, 261.04 (for convenience of witnesses or to correct wrong designation).

Wyoming. COMP. STAT. ANN. (1920) c. 358, § 5618 (where defendant lives or is served). *Ibid.* p. 1144, c. 394, § 6419 (for convenience of witnesses).