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Jurisdiction over Non-resident Motorists for Suits Arising from Local Accidents

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JURISDICTION OVER NON-RESIDENT MOTORISTS FOR SUITS ARISING FROM LOCAL ACCIDENTS.

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The automobile presents one of the major problems of today. It has been said that there are now on the streets of Baltimore City ten thousand more automobiles than there were a year ago. Any one familiar with the work of the courts in Baltimore City knows that the law courts are largely kept busy by litigation growing out of automobile accidents. The criminal courts get a substantial amount of work from appeals from the Traffic Court. On the other hand, the equity courts have a minimum of litigation resulting from automobiles.

Any one with an impersonal interest in the work of the courts would probably deprecate legislation which tends to increase the work of the law courts in connection with automobiles. But whatever may be the merits of this abstract proposition, it would seem very unfair for a non-resident owner of an automobile to come into this State, cause an accident herein, and still not be liable to suit in the courts of the locality where the accident occurred. Legislation was necessary to supply this lack in the law of this State, because the Maryland Court of Appeals had decided[1] that when a non-resident came to Maryland for the purpose of answering criminal proceedings growing out of the operation of an automobile within the State, he was immune from civil process.

Maryland, like many other States, has enacted legislation to provide for local suits against non-resident owners of automobiles for accidents occurring within this State. There have been three such statutes passed.

The first statute[2] was abortive because, though it was modeled upon a valid statute of another State, it sought to make an improvement therein which succeeded only in invalidating the statute. The vitiating provision was that

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[1] Feuster v. Redshaw, 157 Md. 302, 145 Atl. 560, 65 A. L. R. 1370 (1929).

[2] Acts, 1929, Ch. 254.

notice of any suit filed in this State was required to be given by registered mail to the defendant, and that the address to which such notice was sent was conclusively presumed to be correct, if it were an address given by such defendant in any proceeding at or subsequent to the accident involved, or if the defendant's last address appeared upon the records of the officials enforcing the Maryland Motor Vehicle Law.

The present statute was enacted in 1931[3] and was amended in 1933[4] to permit its provisions to apply to suits brought before Justices of the Peace.

While the validity of the present legislation has never been specifically sustained either by the Maryland Court of Appeals or by the Supreme Court of the United States, yet in view of the general characteristics necessary to the constitutionality of such acts as determined by those Courts there can be no question about the validity of the present Maryland law. The present law has, however, been indirectly approved by the Maryland Court of Appeals in two cases concerning its effect, which are referred to below.

The gist of the present statute is that when the accident occurs in this State for which it is claimed that a non-resident owner (unavailable to process in this State) is responsible, suit may be instituted in the local courts of this State by the person affected. Service of process may be had upon the Secretary of State, who is, by reason of the use of the Maryland roads by the non-resident owner, deemed to be the agent of such non-resident owner for service of process. In addition, notice of the suit must be sent by registered mail to the non-resident owner, and an affidavit must be filed in the case showing that this requirement has been complied with. The statute provides the form of notice to be sent to the non-resident owner.

The necessary requirements for the constitutionality of such legislation have been clearly outlined by the Supreme Court of the United States in two cases,[5] and by the Mary-

[3] Acts, 1931, Ch. 70.
[4] Acts, 1933, Ch. 288, Md. Code Supp., Art. 56, Secs. 190-A, B.
[5] Hess v. Pawlowski, 274 U. S. 352, 71 L. Ed. 1091, 47 S. Ct. 632 (1926); Wuchter v. Pizzutti, 276 U. S. 13, 72 L. Ed. 447, 48 S. Ct. 259 (1928).

land Court of Appeals in holding the Act of 1929 invalid.[6] From these three cases, two essentials to the validity of such legislation are clearly set out. One is that no personal judgment can be entered in any court within a State except where it is based upon the personal service of process within the State either upon the defendant sought to be sued, or upon his authorized representative. In Maryland, as well as in other States, the legislation complies with this requirement by specifying that the use of Maryland roads is an inferential appointment of the Secretary of State as the authorized representative within Maryland to accept service of process for the non-resident automobile owner.

The second requirement is that in addition to the service as above, sufficient notice must be given the defendant. In *Grote v. Rogers,*[7] this was described as follows:

> "In determining the question as to the constitutionality of the act, we must consider what may be done, and not merely what has occurred, under its provisions. . . . The test of its validity, as against the objections urged in this case, is the inquiry whether it contains such requirements, with respect to the transmission of the notice, as to make it reasonably probable that the non-resident defendant will be informed of the suit by which he is sought to be personally affected. The concern and object of such a provision should be actual notice to the defendant, and its prescribed course of procedure should tend to insure that result. In our opinion, the statute under discussion does not afford such an assurance. It fails to meet the test of reasonable probability that a compliance with its terms would give the defendant actual knowledge of the suit, and it is, therefore, invalid under the constitutional limitation which has been invoked."

The 1929 Act was held invalid, because in an excess of zeal the Maryland Legislature provided that the addresses given by the defendant as above referred to should be conclusively presumed to be correct, and, as the Court pointed out in *Grote v. Rogers,* it could very well be that the address given by the defendant at the time of the accident

[6] Grote v. Rogers, 158 Md. 685, 149 Atl. 547 (1930).
[7] Ibid, 158 Md. 694, 695.

might be correct, but he might have changed it before suit is filed and it was not, therefore, reasonably probable that he would receive actual notice of the suit.

The present statute, however, provides machinery whereby it is reasonably probable that a non-resident defendant will be informed of the suit, which is technically sustained by personal service upon the Secretary of State.

In dealing with this type of legislation Mr. Justice Butler, in *Hess v. Pawlowski,* says the following in connection with the Massachusetts statute there involved:

> "Motor vehicles are dangerous machines, and even when skillfully and carefully operated, their use is attended by serious dangers to persons and property. In the public interest the state may make and enforce regulations reasonably calculated to promote care on the part of all, residents and non-residents alike, who use its highways. The measure in question operates to require a non-resident to answer for his conduct in the state where arise causes of action alleged against him, as well as to provide for a claimant a convenient method by which he may sue to enforce his rights. Under the statute the implied consent is limited to proceedings growing out of accidents or collisions on a highway in which the non-resident may be involved. It is required that he shall actually receive and receipt for notice of the service and a copy of the process."[8]

It is interesting to note that while the Maryland statute requires the plaintiff (or his attorney) to give notice by registered mail to the non-resident defendant, and to file in the case an affidavit showing compliance with this requirement, in other States, the reasonable probability of actual notice to the defendant is provided in other ways.

In Pennsylvania, the statute[9] requires that the process be served upon the Secretary of Revenue, and the requirement of notice is merely that the Sheriff shall mail it to the last known address of the defendant. He is not required to send it even by registered mail, and under the test referred to above, this requirement affords a reasonable probability that the defendant will in this manner be ap-

[8] 274 U. S. 352, 356, 71 L. Ed. 1091, 1094, 47 S. Ct. 632, 633 (1926).
[9] Purdon's Penna. Stat., Title 75, Secs. 1201-1206.

prised of the suit. The Pennsylvania statute has been held sufficient in a decision handed down in 1933 by a United States District Court.[10]

Similarly, the Minnesota[11] and Wisconsin[12] statutes require the service of process to be served upon a State official and the plaintiff is required to mail notice to the defendant at his last known address. It is not necessary to send by registered mail, or to show by the registry return receipt, that the notice has actually been delivered. Both of these statutes, together with a similar Connecticut statute, have been held valid.[13]

While there has been no specific decision either by the Maryland Court of Appeals or by the Supreme Court of the United States on the validity of the present Maryland law, it has been twice before the Maryland Court of Appeals.

In the case of *Wagner v. Scurlock,*[14] it was held that the notice was properly given, but that in any event, the personal appearance of the defendant in the case waived any possible insufficiency of the notice.

In the case of *Employers' Liability Assurance Corporation v. Perkins,*[15] there was a fuller discussion of the Act. There was some discussion by Judge Parke of the requirements of the statute, and the specific decision was, that where a notice is sent a non-resident defendant by registered mail, and it appears from the registry return receipt that the notice was actually receipted for by the wife of the non-resident defendant, this is a sufficient compliance with the requirement of reasonable probability that the defendant be notified, because the wife, by virtue of her marital relation, has authority, where not disaffirmed, to sign the registry return receipt.

In neither of the two cases was there any question raised as to the validity of the present Maryland law, and

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[10] Carr v. Tennis, 4 Fed. Supp. 142 (D. Pa. 1933).
[11] Mason's Minn. Stat., Secs. 2684-2688.
[12] Wisconsin Stat., Sec. 85.05 (3).
[13] Jones v. Paxton, 27 Fed. (2d) 364 (D. Minn. 1928); State v. Belden, 211 N. W. 916 (Wisc. 1927); Hartley v. Vitiello, 113 Conn. 74, 154 Atl. 255 (1931). See also Vols. 15-16, Huddy, Ency. of Automobile Law, Sec. 82, where the matter is discussed and all of the late authorities cited.
[14] 166 Md. 284, 170 Atl. 539 (1933).
[15] 169 Md. 269, 181 Atl. 436 (1935).

any discussion of the statute now in force in this State would seem only to revolve around how far it is applicable.

One of the first questions is, who is liable to suit? The Maryland statute is broad in that it provides for suit against non-residents "while operating, or causing to be operated automobiles within this State." This would, therefore, provide for suit against the owner of the car, when it was being operated by a chauffeur under authority from the owner. In some States, however, the non-resident statutes have a more limited application. In New York, for instance, it has been decided[16] that where a car is being operated by the defendant's chauffeur, there can be no suit against the owner, as the New York statute is restricted to actual operation by the owner.

The Maryland statute might, however, raise another question. As it applies in its terms to "operating, or causing to be operated", a query is, therefore, suggested whether under the Maryland statutes, where a non-resident owner lends his car to another person, and the latter is on his own business operating the car within the State of Maryland, the non-resident owner can be sued in Maryland under the present law. In other words, is the case of mere permissive operation covered by the Maryland statutes? The author ventures the suggestion that the answer to this query is "No".[17]

The answer suggested by the author to the inquiry just propounded pertains only to the procedural question of whether under this law such a suit could be instituted in Maryland; and it may be that this question is only academic in view of the settled decisions by the Maryland Court of Appeals holding for non-liability for mere permissive operation of a car, and rejecting what is generally known as the "Family Car Doctrine".

So far, no question has arisen in this state as to the effect of the Maryland statute when a non-resident owner is charged with being responsible for an accident in the operation of his automobile on Maryland roads and dies before

[16] O'Tier v. Sell, 252 N. Y. 400, 169 N. E. 624 (1930).

[17] Authorities for this point of jurisdiction are cited in current annotations to Huddy, Ency. of Automobile Law, Vols. 15-16, Sec. 85.

suit can be filed. It has been held, however, by the courts of other states that, in such event, the personal representative of the non-resident owner cannot be sued under the statutes there in question.[18]

A recent decision by the United States District Court of Maryland[19] involves an interesting point. One defendant was the wife of a naval officer who, with her husband, resided in Annapolis at the time of the alleged accident, which occurred in Maryland, and for a year thereafter. After this defendant removed her residence from Maryland, she was sued under the Maryland non-resident owner's law in the Anne Arundel County Circuit Court. This suit was removed to the Federal Court. A motion to quash had been filed in the State court on the ground that the service attempted to be had in Maryland could not lie in this case where the person sued was a resident at the time of the accident. Judge Chesnut held that it was not the intention of the statute to cover the case of a Maryland resident who subsequently became a non-resident.

This decision is certainly in entire consonance with the purposes of the act as hereinabove set out, to the effect that a non-resident of Maryland, using the public highways of Maryland, impliedly consents to the appointment of the Secretary of State as an agent to accept service of process. There is no such implied appointment in the case of a Maryland resident using Maryland roads.

This case also invites an interesting query to which we believe there has been no answer in the Federal courts. Can an original suit, when diversity of citizenship exists, be brought in the Federal courts against a non-resident under the provisions of this statute? A suggestion that occurs is whether if a non-resident insurance company or other corporation can be sued in the Maryland Federal Court by service upon an agent resident in Maryland, and appointed to accept service of process, is there an analogy between this case and the implied appointment of the Secretary of State of Maryland by the non-resident automobile

[18] Huddy, Ency. of Automobile Law, Vols. 15-16, p. 152, current annotations.

[19] Suit v. Shaller and Pickton, Daily Record, March 18, 1937.

owner from the mere fact of the use of the Maryland public roads? The author of this article does not venture to answer this inquiry.

In discussing the extent of the operation of the Maryland statute, for purposes of convenience the phrase "Non-resident Owner" is used. The Maryland statute, however, does not in terms apply simply to an owner operating his own car, or causing it to be operated within the State of Maryland. It broadly provides that the use of the roads and highways of Maryland shall be deemed to be an acceptance of the provision of the Maryland law as to the appointment of the Secretary of State as agent to accept service of process in any suit growing out of an accident in which such non-resident may be involved "while operating, or causing to be operated a motor vehicle" on the Maryland highways.

The Maryland law makes no provision as to the venue of suits filed under its provisions, and in the absence of such a provision, it is submitted that a person suing in Maryland for an accident in this State, involving a non-resident motor vehicle owner, may proceed in any court in the State which he may see fit to select. Certainly, this has been the practice in proceeding under the Maryland statute.

The Maryland law applies in its terms only to accidents on the "public highways within the limits of this State". So it would seem to follow that the act affords no redress for accidents occurring on private roads, or elsewhere than on public highways. Some interesting questions might arise under this feature of the law.

The Act, of course, does not restrict its application to resident plaintiffs, and accordingly its benefits are accorded not only to residents of Maryland, who may be injured in the operation of an automobile by a non-resident, but also to residents of States other than Maryland who are similarly damaged. There are authorities in other States to the effect that non-residents have the same right to sue under such statutes as is thereby given to residents.[20]

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[20] Huddy, loc. cit, supra note 18.

Perhaps the length of time the Maryland statute has been in force reduces to a moot question a discussion as to whether or not the statute has any retroactive effect. There have been conflicting decisions on this subject in the courts of other States.[21]

On the whole, in view of the extreme mobility of automobiles, in spite of the fact that automobile litigation is increased by this legislation, no one could question the wisdom or justice of giving to Maryland residents the right to bring suit in the courts of Maryland against non-residents claimed to be responsible for automobile accidents occurring upon the public highways of Maryland.

While the author does not intend to be facetious in this discussion, yet in view of the recent large growth in the use of "trailers", and the custom of persons of moderate means having their actual residence in "trailers", there might be some practical difficulty in complying with the requirement of the Maryland statute that notice be given to the non-resident automobile owner by registered mail.

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[21] A discussion will be found in Huddy, Encyc. of Automobile Law, Vols. 15-16, pp. 153-155.