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Proper Venue of Actions Under Non-resident Motor Vehicle Statute - and Similar Provisions of Aviation Act - Alcarese v. Stinger

PROPER VENUE OF ACTIONS UNDER NON-RESIDENT MOTOR VEHICLE STATUTE — AND SIMILAR PROVISIONS OF AVIATION ACT

Alcarese v. Stinger[1]

The appellee defendant, a non-resident motorist, had an automobile accident in Cecil County. Appellant plaintiff thereafter instituted a negligence action in the Circuit court for Harford County. Service on the non-resident defendant was secured pursuant to the provisions of the Maryland statute which provides for local suits against non-resident motorists for accidents occurring within this state.[2] The lower court, dismissing the action on the ground that it lacked geographical jurisdiction (venue), held that the suit should have been filed in the court in Cecil County where the accident occurred,[3] or in Anne Arundel County, the locale of the Secretary of State (through whom service of process was effected under the provisions of the non-resident motorist statute.)

On appeal the lower court was reversed, the Court of Appeals holding that since the non-resident motorist statute makes no provisions as to venue of suits filed under its provisions and further since the general venue statute of the state was not applicable,[4] a plaintiff 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.

Although the constitutionality of the non-resident motorists statute is now well settled,[5] this is the first time the question of venue as such has arisen. However, a writer of a leading article in the Maryland Law Review in commenting on this problem stated:[6]

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[1] 78 A. 2d 651 (1951).

[2] Md. Code (1951), Art. 66½, Sec. 113.

[3] In this particular case it is of interest to the reader to learn that the Harford County attorney who filed the case for the plaintiff had been retained by the plaintiff's Mississippi counsel a very short time before the 3 year limitation period had expired. Accordingly, the Harford attorney brought the action in Bel Air, county seat of Harford County, rather than waste any more time by going to Elkton, the county seat of Cecil County, where the cause of action actually accrued.

[4] Md. Code (1951), Art. 75, Sec. 158.

[5] Assurance Corp. v. Perkins, 169 Md. 269, 181 A. 436 (1935); Hess v. Pawloski, 274 U. S. 352 (1927).

[6] Mullen, *Jurisdiction Over Non-Resident Motorists for Suits Arising from Local Accidents*, 1 Md. L. Rev. 222, 229 (1937).

> "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."

In each of three cases which have reached the Court of Appeals, the accident occurred in one county, while suit was brought in another county. However, in no case was the question of venue raised.[7]

At common law all causes were originally termed local because they had to be tried by a jury acquainted with the facts of the dispute. In those days a jury was a witness to facts as well as a judge of them. Too many defendants, however, took advantage of this situation by fleeing the neighborhood and venue of the locale, thereby effectually terminating the case against them.[8] The converse of making all actions transitory was found to be an ineffectual solution, however, for in cases involving the title of land or questions of waste or damage to a free-hold, an equitable decision could not be made except at the locale of the land itself. Accordingly, the common law developed the two separate types of action — local and transitory — with their respective venue qualifications. They are still applicable today in Maryland, except where modified by statute.[9] In all actions involving title of land, the venue is said to be local and the case must be tried in the jurisdiction where the land lies.[10]

It is with transitory actions, however, that we are mainly interested in this case. In *Alexander's British Statutes,* we find some interesting as well as pertinent

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[7] In the case of Assurance Corp. v. Perkins, *supra,* n. 5, the accident occurred in Anne Arundel County while suit was filed in Baltimore City. In the case of Wagner v. Scurlock, 166 Md. 284, 170 A. 539 (1934), the accident occurred in Anne Arundel County while suit again was filed in Baltimore City. In the case of Associated Transport, Inc. v. Bonoumo, 191 Md. 442, 62 A. 2d 281 (1948), the accident occurred in Howard County while suit was brought in Baltimore City. Any objections to venue, not having been appropriately raised, were waived. Howell v. Bethlehem-Sparrows Point Shipyard, 190 Md. 704, 711, 59 A. 2d 680 (1947), and cases cited.

[8] Loftus v. Penn. R.R., 107 Oh. St. 352, 140 N. E. 94, 96 (1923).

[9] Philips v. City of Baltimore, 110 Md. 431, 433-4, 72 A. 902 (1909).

[10] *Supra,* n. 9; See also Hesselbrock v. Burlington County, 111 N. J. L. 177, 168 A. 45 (1933).

points on venue.[11] "Where the action might have arisen in any county it is transitory and generally the plaintiff may in England lay the venue wherever he pleases, though the court possesses the power of changing it if not laid where cause of action arose."[12] Under the common law, a transitory action such as a negligence suit can be instituted in any county in which defendant can be served with process and defendant has no right to insist that it shall be tried in the county in which it arose.[13]

If there were no general venue statute in Maryland today the court would have found no trouble in deciding the case and could have fallen back on the old common law rule, that if a cause of action is not local (i.e., if it could have arisen in any place or county) it is termed transitory and suit may be brought in any county or jurisdiction where defendant may be found.[14] However, Maryland does have a general venue statute[15] which governs venue in our state wherever applicable. It provides in substance that in all transitory actions a defendant who is a resident of Maryland shall be sued either in the county where he does business or in the county in which he resides. It further provides that in an ex-delicto action where all the defendants are not residents of or engaged in business in the same county they may be sued where the cause of action arose.

Although recent decisions interpreting provisions of this statute have been liberal to the extent that they have refused to disallow service because of narrow interpretations of its various provisions, it seems impossible to construe it in such a way as to encompass the non-resident parties in the instant case.[16] Obviously, under the present circumstances, since all parties are non-residents of the State as well as county, and none do business or are employed in the State, it is not possible to apply the general venue statute. Judge Collins, speaking of the general venue statute for the Court of Appeals, said:[17]

> "It was merely an arbitrary designation by the legislature of the county in which the suit might be brought at the plaintiff's election under such applicable situations."

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[11] Alexander's British Statutes (Coe's Ed.), Vol. II, p. 659.
[12] CHITTY'S ED. OF BLACKSTONE'S COMMENTARIES, Vol. II, p. 228.
[13] State, Use of Allen v. Pittsburg & Conellsville R.R. Co., 45 Md. 41 (1876).
[14] 56 Am. Jur.; Venue, Secs. 3, 8.
[15] Md. Code (1951), Art. 75, Sec. 158.
[16] See Suit v. Shailer, 18 F. Supp. 568 (D. C. Md., 1937).
[17] *Supra*, n. 1, 653. For the general venue statute, see ns. 4, 15, *supra*.

The case law in other states, regarding the venue provisions of non-resident motor vehicle statutes, is as different and varied as their statutes are many.[18] The multitude of differences in the individual enactments naturally give rise to many conflicting and distinguishable decisions on the exact point governing the venue of actions in cases involving non-resident motorists.[19] In states whose statutes are similar to Maryland to the extent that they contain no specific venue provisions, the courts have varied in their approach to the problem. In the case of *Bergstedt v. Neff*,[20] we find the Court designating venue at the county where the Secretary of State is domiciled or in the county where the injury occurred, while in *Carter v. Schackne*,[21] the Court held the statute intended to fix venue at plaintiff's residence. In the case of *Lloyd Adams, Inc. v. Liberty Mutual Ins. Co.*, [22] the Georgia court permitted the action to be brought in any county in the state.

In summary, the decision in the instant case seems to follow the line of rather liberal decisions which the Court of Appeals has handed down while construing the non-resident motor vehicle statute. The Court is inclined not to permit narrow technicalities to interfere with administration of the law regarding the liability and responsibility of non-resident motorists. This is unquestionably in the best interest of the citizens of the state and is a model which other jurisdictions might well follow.

In the light of the instant case, the act of our legislature allowing for service on non-resident owners or fliers of aircraft presents an interesting point. This Statute,[23] incorporates the provisions of Article 66½, sec. 113, providing for service on non-resident motorists, merely making the changes in wording necessary to relate itself to airways and air service, and specifically states, "Service shall be made in the same manner and with the same consequences provided for service of non-resident motor vehicle owners

[18] See an extensive and particularized annotation in 115 A. L. R. 893.

[19] BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW & PRACTICE, Vol. IX, Part I, Sec. 5817, pp. 49-50.

[20] 17 F. Supp. 753 (D. C., W. D. La., 1936). See also Bouchillon v. Jordan, 40 F. Supp. 354 (D. C., E. D. Miss., 1941), which limits venue to the county where the Secretary resides.

[21] 173 Tenn. 44, 114 S. W. 2d 787 (1938).

[22] 190 Ga. 633, 10 S. E. 2d 46 (1940). See also Highway Steel and Mfg. Co. v. Kincannon, 198 Ark. 134, 127 S. W. 2d 816 (1939). In 1947 the Georgia statute was amended so as to require a non-resident plaintiff to bring suit in the county in which the cause of action arose, while a resident plaintiff was given an election between the county where the cause of action arose and the county of his resident. Ga. Ann. Code, Sec. 68-803.

[23] Md. Code (1951), Art. 75, Sec. 159.

or operators in Article 66½, Sec. 113 (a-f) inclusive." There is, however, an additional paragraph found in this Statute which does not appear in the non-resident motorists law. It reads — "Notwithstanding the provisions of Sec. 158,[24] in any action against the owner or operators of aircraft growing out of any injury to the person or property of a Maryland resident occurring in Maryland, which results from operation of said aircraft, *suit may be brought in the county in which such injury occurred.*"[25]

Although this paragraph would seem to provide for an additional venue in which to bring an action in relation to the terms of Maryland's general venue statute, it seems possibly to have a limiting effect when viewed in relation to the decision of the instant case. Under the general venue statute a transitory action against a Maryland resident may only be brought at the defendant's residence or place of business; under the airplane venue statute there is added the place where the injury occurred, but under the instant case an action in the non-resident motorists case can be brought anywhere in the state.

In view of the instant decision, if the legislature wishes to continue the theme of consistency with the non-resident motorists law in the airplane venue statute it might be desirable to modify the latter either by striking out the words — "Suit may be brought in the county in which such injury occurred" and inserting "Suit may be brought in any county of the state" or else merely by striking out the language altogether, leaving it for the Court of Appeals to follow the opinion handed down in the instant case.

With the constant increase of air travel it would seem to be a rather logical conclusion that the air accident rate will rise proportionately and the same social compulsions arising from the modern highway destruction rate will to a lesser degree be present to impel this State to allow those injured by air accidents the maximum amount of protection for their suffering and loss.

There is only one possible reason in policy in restricting venue for suits against non-resident airplane owners to the county where the cause of action arose and that might be the temptation of an unscrupulous plaintiff to bring suit in whichever county a jury would be most likely to return the highest verdict. However, this practice would be much more likely to spring up if at all in the case of negligence

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[24] *Supra*, ns. 4, 15.
[25] Italics added.

actions involving automobile owners. Inasmuch as the Court of Appeals has just extended the venue of the non-resident motorist suits to allow plaintiffs to bring action in any county, they apparently felt that the public interest was best served by allowing the injured plaintiff every help and convenience in bringing his suit. It follows therefore that since the only sound obstacle to allowing suit to be brought in any county was overridden in the case of motor vehicle accidents, where it was a very considerable barrier, it should not be allowed to obstruct a defendant in an airplane accident case, where the likelihood of such misuse is infinitely less, if and when such case arises for decision.

However, in the interest of certainty as to legislative intent, it would seem desirable to amend both statutes, so that they clearly express on their face the venue for such suits as the legislature desires it to be, in the light of the instant case and considerations which it may suggest.[26]

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[26] If permitting venue in any county as was done by the Court of Appeals is considered to be too broad, a venue provision clearly permitting suit either where the cause of action arose or where plaintiff is a resident or has a usual place of business would seem to give the plaintiff a fair choice and to cause no substantial hardship for the defendant. See the Georgia amendment, *supra*, n. 22.