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John R. Barsanti Jr.
Washington University School of Law

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NOTES

VALIDITY OF STATUTES AUTHORIZING SUIT AGAINST THE ADMINISTRATOR OF A NON-RESIDENT MOTORIST

A non-resident was riding as a passenger in his own car, which was being driven with his consent on a Michigan highway, when an accident occurred. Shortly thereafter, the non-resident owner died, and defendant was subsequently appointed administratrix of his estate by an Ohio probate court. Then plaintiff, who had been a passenger in the other automobile involved in the collision, instituted an action to recover damages for his injuries. The action was prosecuted pursuant to a recent amendment to the Michigan Non-Resident Motorist Statute,¹ which provides that in the event of the death of a non-resident owner of an automobile involved in an accident, the suit may be commenced or continued against his administrator or executor. Defendant was served constructively in accordance with the provisions of the statute. She appeared specially and moved to quash the service of summons on the ground that a statute providing for substituted service on a foreign administrator is unconstitutional, and hence no jurisdiction was acquired over her. (There were no assets of the estate in Michigan.) The court dismissed the motion, stating that the statute was valid as a reasonable exercise of the state's police power, but refused to comment upon what consideration Ohio courts would be bound to accord any judgment rendered.²

Accidents such as this, in which a non-resident motorist is killed are not unique. Identical situations have occurred many times in the past, and will occur even more frequently in the future as the volume of automobile traffic continues to increase. Michigan has attempted to aid the prosecution of damage suits arising from these situations. In so doing, the state has employed a method which raises an issue under the due process clause of the Fourteenth Amendment with reference to the ability of a state to acquire jurisdiction over a foreign administrator by

1. MICH. COMP. LAWS § 256.521 (1948): for reenactment see Mich. Acts 1949 No. 300, § 403.

2. *Plopa v. DuPre*, 327 Mich. 660, 42 N.W.2d 777 (1950).

means of constructive service in an action based upon a claim against the estate.³ Before consideration of this issue is begun, it will be helpful to briefly review the developments of the non-resident motorist statutes leading up to the principal case.

DEVELOPMENT OF NON-RESIDENT MOTORIST STATUTES

At the present time, every state has what is commonly known as a non-resident motorist statute.⁴ A typical example is one which provides that the operation of a motor vehicle by a non-resident (or a motor vehicle owned by a non-resident and operated with his consent by his agent) on the highways of the state is deemed equivalent to an appointment by the non-resident of some official of the state upon whom service of process may be served. This can be done in any action against the owner growing out of the operation of the motor vehicle on the highways of the state. Furthermore, the statute provides that such operation shall be deemed a signification of the owner's agreement that any such summons which is so served upon him shall be of the same legal force and validity as if served upon him personally within the state.⁵ The statute also contains a provision for giving actual notice of the suit to the non-resident, such as, for example, by registered mail.⁶

No sooner had the ordinary non-resident motorist statute been finally accepted, than it became evident that the situation

3. For the purpose of this discussion, there is no need to differentiate between an administrator and an executor; henceforth the term administrator will be used to denote both administrator and executor.

4. For a complete list see the opinion in *Knoop v. Anderson*, 71 F. Supp. 832, 836, 837 (N.D. Iowa 1947).

5. The earlier non-resident motorist statutes provided that the non-resident must himself appoint an official of the state as his agent upon whom process could be served in any action arising from the operation of the vehicle in the state. That type statute was held constitutional in *Kane v. New Jersey*, 242 U.S. 160 (1916). The jurisdictional base for any action prosecuted under that statute would be consent by the non-resident to be sued in that manner. The modern statute (as cited in the text) goes beyond the earlier statute in that the appointment of the agent to receive service of process is automatically performed without affirmative action on the part of the non-resident. The validity of this implied appointment was upheld in *Hess v. Pawloski*, 274 U. S. 352 (1927). It is to be noted, though, that the jurisdictional base under this modern statute is not consent by the non-resident, but rather that when one commits certain acts in a state, the state, by virtue of its police power, has jurisdiction over him personally in litigation growing out of these acts.

6. *Wuchter v. Pizutti*, 276 U.S. 13 (1928) held that without the provision for giving actual notice to the non-resident the statute is unconstitutional for the reason that it violates procedural due process requirements.

arising when the non-resident dies was not provided for in the statute. Yet the more serious the accident from which an action might arise, the more likely that the non-resident might die. In fact, this very situation did arise a number of times. In many instances an attempt was made to sue (or to continue the suit against) the foreign administrator of the deceased as defendant in the action, but these attempts consistently failed.⁷ However, dicta in two of the cases indicated that such an action would be valid if the statute were extended to include it.⁸ Prompted by the comments of those two cases, as well as the pressing need to make the non-resident motorist statutes more effective, nine states amended their statutes so as to provide for suing the foreign administrator in the place of his decedent, the non-resident.⁹

Including the principal case, there have been four decisions involving the new amendments. Three of the decisions¹⁰ have held that the service upon the foreign administrator was valid, whereas the fourth¹¹ did not. The cases upholding the service have been decided primarily on the ground that an irrevocable agency between the non-resident and a state official was created

7. The courts relied chiefly on three different reasons:

(a) The agency created by the statute was terminated upon the death of the non-resident. *Dowling v. Winters*, 208 N.C. 521, 181 S.E. 751 (1935); *Lepse v. Real Estate-Land Trust Co.*, 11 N.J. Misc. 887, 168 Atl. 858 (C.P. 1933).

(b) The statute must be strictly construed, and since the administrator is not included, it cannot be extended to him. *Downing v. Schwenk*, 138 Neb. 395, 293 N.W. 278 (1940); *Young v. Potter Title & Trust Co.*, 114 N.J.L. 561, 178 Atl. 177 (Sup. Ct. 1935); *Vecchione v. Palmer*, 249 App. Div. 661, 291 N.Y. Supp. 537 (2d Dep't 1936); *State ex rel. Ledin v. Davison*, 216 Wis. 216, 256 N.W. 718 (1934).

(c) The action could not be brought or revived against a foreign administrator. *Riggs v. Schneider's Ex'r.*, 279 Ky. 361, 130 S.W.2d 816 (1939).

8. *Young v. Potter Title & Trust Co.*, 114 N.J.L. 561, 566, 178 Atl. 177, 180 (Sup. Ct. 1935); *State ex rel. Ledin v. Davison*, 216 Wis. 216, 222, 256 N.W. 718, 720 (1934). *But see Vecchione v. Palmer*, 249 App. Div. 661, 291 N.Y. Supp. 537, 539 (2d Dep't 1936). (Dicta there said that inclusion of the foreign administrator in the statute would be to no avail.)

9. ARK. DIG. STAT. § 1375 (Cum. Supp. 1944); IOWA CODE §§ 321.498-321.499 (1946); MD. ANN. CODE art. 661/2, § 106 (Cum. Supp. 1943); MICH. COMP. LAWS § 256.521 (1948); NEB. REV. STAT. c. 54, § 1 (Cum. Supp. 1949); N.Y. VEHICLE AND TRAFFIC LAW § 52 and as amended by c. 719 of the laws of 1945; S.C. ACTS No. 223, § 22 (1949); TENN. CODE ANN. § 8671 (Williams Supp. 1949); WIS. STAT. § 85.05 (3) (1945).

10. Besides the principal case, the other two were: *Oviatt v. Garrison*, 205 Ark. 792, 171 S.W.2d 287 (1943); *Leighton v. Roper*, 300 N.Y. 434, 91 N.E.2d 876 (1950).

11. *Knoop v. Anderson*, 71 F. Supp. 832 (N.D. Iowa 1947).

under the authority of the police powers of the state, and such agency remained binding upon the non-resident's administrator, instead of terminating upon the death of the non-resident, as it would have had ordinary principles of the law of agency governed. Each of the three courts involved refused to comment upon what effect the foreign administrator's domiciliary state would be bound to give any judgment rendered.

The fourth case, *Knoop v. Anderson*,¹² which held the service invalid, did so by invoking the rule which states that a foreign administrator is immune to suit upon a claim against the estate. The court said that because of this immunity no jurisdiction could be acquired over the foreign administrator, and any attempt to do so would be an unreasonable exercise of the police power. Much weight was given by this court to the fact that the foreign administrator's domiciliary state would not recognize a judgment rendered against one of its administrators in a foreign forum.

The issue raised by the new amendments to the non-resident motorist statutes is one of due process of law under the Fourteenth Amendment to the Federal Constitution. The question that must be answered is whether the state acquired jurisdiction over the parties and the cause so that a valid judgment can be rendered. The answer to the question is at this time one of conjecture, since there is no pertinent decision by the United States Supreme Court. But even though the question admits of no certain answer, the factors and considerations which the Supreme Court will likely take into account when the question reaches it are topics ripe for discussion. The Court in deciding the case will be confronted with what appears to be an attempt by a state to send its process outside of the state in order to reach a foreign administrator who hitherto has been considered immune to suits which are based upon claims against the estate. Therefore it is imperative to consider in this note the following: (1) What is jurisdiction and how can a state acquire it so as to render a valid judgment; (2) What effect must other states give to such a valid judgment; (3) What is the foundation and scope of the immunity rule with respect to foreign administrators; (4) What policy matters are involved which will influence the Court in its decision?

12. *Ibid.*

JURISDICTION AND FULL FAITH AND CREDIT

The concept of jurisdiction is a branch of the law that is wrought with innumerable ramifications. However, the scope of the term "jurisdiction" as used herein will be the definition adopted by the *Restatement of the Conflict of Laws*. That authority defines "jurisdiction as the power of a state to create interests which, under the principles of the common law, will be recognized as valid in other states."¹³ However, that definition alone is insufficient, for it only states what jurisdiction is. Equally important is how, when, and in what manner the power can be invoked by a state. At present there are five bases on which a state can rest an exercise of jurisdiction over an individual, and in the absence of all of these, a state lacks the power to create interests which are binding and conclusive.¹⁴ It is to be noted, however, that the five bases are not necessarily all inclusive, and that others can be added by a finding by the United States Supreme Court that a new base used by a state is not inconsistent with due process requirements. The result of a state's acquiring proper jurisdiction, or in other words invoking the power to create interests properly, is that any judgment duly rendered pursuant thereto is valid.¹⁵ The effect of such valid judgment is that it will be conclusive evi-

13. RESTATEMENT, CONFLICT OF LAWS § 42 (1934).

14. RESTATEMENT, CONFLICT OF LAWS § 77 (1934).

(1) The exercise of jurisdiction by a state through its courts over an individual may be based upon any of the following circumstances:

- (a) the individual is personally present within the state
- (b) he has his domicile within the state
- (c) he is a citizen or subject owing allegiance to the nation
- (d) he has consented to the exercise of jurisdiction
- (e) he has by acts done by him within the state subjected himself to its jurisdiction.

(2) In the absence of all of these bases of jurisdiction, a state through its courts cannot exercise jurisdiction over individuals.

15. RESTATEMENT, CONFLICT OF LAWS § 74, comment c (1934). The converse is also true. Any judgment rendered wherein the court did not have jurisdiction is void even where rendered because it is violative of due process requirements as laid down by the Fourteenth Amendment. *Baker v. Baker, Eccles & Co.*, 242 U.S. 394 (1917); *McDonald v. Mabee*, 243 U.S. 90 (1917); *Riverside & Dan River Cotton Mills v. Menefee*, 237 U.S. 189 (1915). There were early cases indicating that such a judgment was valid where rendered, but that view can no longer exist in the light of these later cases.

Compliance with all aspects of procedural due process, such as notice and opportunity to have a day in court, will in no way cure a lack of jurisdiction. *Baker v. Baker, Eccles & Co.*, 242 U.S. 394 (1917); *Wilson v. Seligman*, 144 U.S. 41 (1892); *Harkness v. Hyde*, 98 U.S. 467 (1878).

dence everywhere of the rights existing between the parties to the action, for under the full faith and credit clause of the Constitution (with some possible exceptions not here pertinent), the rule is that every state must give the same force and effect to the judgment of a court of another state as that judgment enjoyed in the state wherein it was rendered.¹⁶

Referring back to the principal case and applying the above enunciated principles, the situation is as follows. The case does not appear to fit within any of the recognized bases for jurisdiction, yet the Michigan court held that jurisdiction had been acquired.¹⁷ If defendant should appeal, the issue that will have to be decided will be whether the amendment to the Michigan Non-Resident Motorist Statute violates the due process clause of the Constitution. A decision by the Court upholding the amendment may open the way for a new base upon which to rest jurisdiction, or it may only be a step further along the road begun by *Hess v. Pawloski*¹⁸ away from the strict territorial doctrine of jurisdiction as announced in *Pennoyer v. Neff*.¹⁹ In any event, the Court will be confronted on one side by the rule that a foreign administrator is immune from suit upon claims against the estate, and by the fact that the service made is upon a non-resident who has never been within the state and whose only connection with the proceedings is through his administration of the deceased motorist's estate. On the other side will be the liberality of the Court with respect to due process requirements in non-resident motorist cases, and various social and policy factors which are closely related to the increase in automotive

16. *E.g.*, *Morris v. Jones*, 329 U.S. 545 (1947); *Millikin v. Meyer*, 311 U.S. 457 (1940); *Adam v. Saenger*, 303 U.S. 59 (1938); *Fauntleroy v. Lum*, 210 U.S. 230 (1908); 1 BEALE, *CONFLICT OF LAWS* § 43.3 (1st ed. 1935).

17. According to the decision in *Baldwin v. Iowa State Traveling Men's Ass'n*, 283 U.S. 522 (1931), the Michigan judgment is *res judicata* upon the question of jurisdiction in the cause even though defendant only put in a special appearance to contest the court's jurisdiction, and defendant's sole relief is by appeal to the United States Supreme Court. If defendant fails to appeal and thereby allows the judgment of the Michigan court to stand, and a trial is had on the merits of the case wherein a judgment is duly rendered against defendant, that judgment should be valid and thus entitled to full faith and credit in every state.

18. 274 U.S. 352 (1927).

19. 95 U.S. 714 (1877). The case is recognized as an authority for the general proposition that a state can not send its process beyond its territorial limits in acquiring jurisdiction over an individual, but this has been qualified by later decisions.

traffic and the resulting danger to the public. The remainder of this note will be devoted to spelling out more fully those considerations with which the Court will have to contend.

FOREIGN ADMINISTRATOR'S IMMUNITY RULE

In the interest of clearly setting forth the status of a foreign administrator in the eyes of the law today, the discussion will proceed by answering the following question: Under the now existing state of the law, can a state having personal service of process within the state upon a foreign administrator acquire jurisdiction in an action upon a claim against the estate when there are no assets of the estate present?²⁰ The most common method of acquiring jurisdiction is by personal service of process upon the party within the territorial limits of the forum.²¹ Logically, the same method would appear to be competent when the party served is a foreign administrator, yet such a result is not the case. The reason for this is that the person who is an administrator stands in a peculiar light. He has a dual personality, being a real life "Dr. Jekyll and Mr. Hyde." He is at the same time an individual interested in his own personal affairs, and an administrator interested only in the affairs of his decedent's estate, these two phases of his personality being completely separate and distinct. When he is acting as an individual, geographic location has no effect upon him, but when he is acting as administrator, geographic location has a great deal to do with him. The reason for this distinction is that an administrator derives all of his power and authority under the law of the state, acting through the probate court which directs the distribution of the estate.²² That court by itself cannot empower him to act outside of its territorial limits (which would be the state lines), but it can restrict him so that he cannot act outside the state. Therefore, in order for the administrator to act as such outside the state, two essential elements are needed; (1) the law of the state of his appointment must not have restricted his activity solely within his domiciliary state; and (2) the foreign state, in

20. The jurisdictional base of personal service is merely used as a convenient example. Any of the present known bases (see note 13 *supra*) could have been used.

21. RESTATEMENT, CONFLICT OF LAWS § 77 (1a) (1934).

22. *In re Cowhan's Estate*, 220 Mich. 560, 190 N.W. 680 (1922); 3 BEALE, CONFLICT OF LAWS § 465.2 (1935).

which he is attempting to act, must be willing to accept him as an administrator; he must be accepted as an officer of the court of his appointment even though he is now in a foreign forum. If either of these two elements is lacking, an administrator abruptly ceases to be an administrator upon leaving his domiciliary state. He will be a mere individual having no connection with an estate. The conclusion is therefore obvious that personal service of process upon him would not be an acquisition of jurisdiction over him as an administrator and would be completely ineffective for prosecution of a claim against the estate.

One of the two elements needed to empower an administrator to act as such outside his domiciliary state has consistently been absent throughout the judicial history of the United States. This has resulted in an established rule of law which is presently applied as a matter of routine in our courts, with little, if any, consideration of the reasons for it. The rule dictates that as administrator he is immune to any action, based upon a claim against the decedent's estate, attempted outside of the domiciliary state in the absence of assets at the situs of the suit.²³ An example of application of this doctrine is the case of *Helme v. Buckelew*,²⁴ which involved an action arising under §1836a of the New York Code of Civil Procedure, which provided that an executor or administrator, duly appointed in another state, could sue or be sued in New York in his representative capacity just as any non-resident may sue or be sued. In that case, a foreign administratrix was personally served while in New York in an action upon a claim against the estate with no assets

23. *Wyman v. Halstead*, 109 U.S. 654 (1883); *Vaughan v. Northrup*, 15 Pet. 1 (U.S. 1841); *Jefferson v. Beall*, 117 Ala. 436, 23 So. 44 (1898); *Monfils v. Haylewood*, 218 N.C. 215, 10 S.E.2d 673 (1940), *cert. denied*, 312 U. S. 684 (1941); RESTATEMENT, CONFLICT OF LAWS § 512 (1934). There have been instances where the foreign administrator has attempted to submit himself to the jurisdiction of a court, but the decisive weight of authority holds that it cannot be done. *Burrows v. Goodman*, 50 F.2d 92 (2d Cir. 1931); *cert. denied*, 284 U.S. 650 (1931); *Judy v. Kelly*, 11 Ill. 211 (1849); *Hargrave v. Turner Lumber Co.*, 194 La. 285, 193 So. 648 (1940); RESTATEMENT, CONFLICT OF LAWS § 513 (1934). *Contra*: *Babbitt v. Fidelity Trust Co.*, 70 N.J. Eq. 651, 63 Atl. 18 (Ch. 1906); *Newark Saving Inst. v. Jones*, 35 N.J. Eq. 406 (Ch. 1882). However, where the foreign administrator brings the suit under a statute permitting him to so act, and a judgment is rendered against him on a counterclaim, that judgment is conclusive, and it would be provable as a claim against the estate in the domiciliary state. *Lackner v. McKechney*, 252 Fed. 403 (7th Cir. 1918); *Palm's Adm'r. v. Howard*, 31 Ky. Law 316, 102 S.W. 267 (1907).

24. 229 N.Y. 363, 128 N.E. 216 (1920).

in the state. The court held that the summons should be vacated, because the statute failed to terminate her immunity to suit even though it did remove her disability to sue. In the course of the opinion, Judge Cardozo stated:

Foreign administrators and executors may be sued in the same manner as non-residents, but only when the subject matter subjects them to the jurisdiction; for comity, though it may enlarge their rights, cannot, unless it is also comity of the domicile, enlarge their liability.²⁵

The element that was missing in the *Helme* case and which was essential to the successful prosecution of the suit to a valid judgment was approval by the administratrix's domiciliary state of her acting in her official capacity in New York, a foreign state. The other element, that of recognition as an administratrix in a foreign state, was supplied by the New York Code of Civil Procedure.

Since the reasons for this rule lie wholly in the absence of either of the two aforementioned elements, the rule holding a foreign administrator to be immune to suit is thus seen to rest upon principles of the common law of Conflict of Laws which are formulated by the courts themselves, and it has not been thought to be based upon any constitutional prohibition against entertaining such a suit. Therefore, in order to acquire jurisdiction over a foreign administrator by personal service of process, there would have to be a reversal of the present common law rule by the courts. The domiciliary state must consent to his acting outside of its territorial boundaries, and the foreign state must recognize him as an official of his domiciliary state. The general trend today is toward recognition in the foreign states, as evidenced by many statutes permitting foreign administrators to

25. *Id.* at 373, 128 N.E. at 219. Similarly, in *McMaster v. Gould*, 240 N.Y. 379, 148 N.E. 556 (1925), a statute providing for the continuance of an in personam action against a party's administrator in case of death during the suit was held to violate the due process clause of the Constitution which precludes the legislature from providing generally for judgments in personam against the foreign administrator of the decedent. *Contra*: *Dewey v. Barnhouse*, 75 Kan. 214, 88 P. 877 (1907); *Craig v. Toledo, A.A. & N.M.R. Co.*, 3 Ohio S. & C. P. Dec. 146 (1895). On exact facts and a similar statute as in *Helme v. Buckelew*, the courts in these two cases held that personal service upon a foreign administrator within the territorial boundaries of the state gave jurisdiction to render a valid judgment, even in the absence of any res within the state, but both courts refused to comment upon what effect the domiciliary state would have to give the judgment.

sue and as further evidenced by a number of attempts made to sue them. Yet this trend by itself is having little, if any, effect upon the immunity rule, because the domiciliary state is normally quite adamant in its stand of refusing to allow its administrator to bind the estate by acts outside of the domiciliary state. The stand is based upon a desire to keep the administration of the estate free from interference by foreign courts. But there is no real need for the domiciliary state to take such a position, for a judgment against a foreign administrator would not constitute any such interference. Such judgment would only be conclusive evidence of a claim existing against the estate, which the domiciliary state would consider along with other valid claims in accordance with its laws. The judgment would not in itself deprive the estate of any assets. All administration of the estate would still be under the exclusive control of the domiciliary state.²⁶

It is thus seen that under the present state of the law a foreign administrator enjoys a great immunity from suit, and the question asked at the beginning of this section must be answered in the negative, even though the states could easily remove the immunity.²⁷ However, for the purpose of this note the law must be taken as it now stands, which means that if the United States Supreme Court affirms the Michigan decision the foreign administrator immunity rule will still stand, but will have had an exception engrafted. This exception will be that in the situation provided for in the amendment to the non-resident motorist statutes, the foreign administrator will no longer enjoy an immunity from suits based upon claims against the estate with no assets present. The fact that this exception would only be carving a small niche in the wall of immunity around a foreign administrator should, to a large extent, lighten the weight that the immunity rule places on the side of finding the amendment to be

26. *Yonley v. Lavender*, 21 Wall. 276 (U.S. 1875).

27. In *Evans v. Tatem*, 9 S. & R. 252 (Pa. 1823) a Pennsylvania executrix had been sued in Tennessee upon a claim against her decedent's estate. She had voluntarily appeared, and a judgment had been rendered against her. This judgment was then presented as evidence of a valid claim against the estate in Pennsylvania, and was upheld and given effect by the court which stated that it could see no reason for any other result. The Evans case was the only one found giving such a result, but it is enough to serve as an example of what the situation would be should the states reverse this present position with regard to foreign administrators as indicated in the text.

in violation of the Constitution. Yet even when of a lightened weight, it is an important consideration which the Supreme Court will not be able to treat lightly.

LIBERALITY OF THE SUPREME COURT IN THE NON-RESIDENT MOTORIST CASES

On the other side of the fence, tending to lend weight to the possibility of the amendment to the non-resident motorist statute being held consistent with due process requirements, is the fact that the Supreme Court has taken a liberal view with respect to non-resident motorist legislation in the past. It was early decided that a state's power to make regulations regarding its highways extended to their use by non-residents just as to residents.²⁸ As was pointed out in the beginning of this note, the Court had no trouble upholding the early non-resident motorist statutes in *Kane v. New Jersey* and *Hess v. Pawloski*.²⁹ A strong inducement behind the Supreme Court's decisions in these cases was the finding of a danger to the public. The opinion in the *Hess* case said:

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.³⁰

With today's increased automobile traffic and the attendant increase in danger to the public, a logical conclusion is that the Supreme Court will not now retreat from the position of liberality taken in the earlier case. In fact, because of the increased danger now, as compared with the situation at the time of the *Hess* case (*i.e.*, 1927), it is not at all unreasonable to assume that the Court, in measuring the amendment against due process requirements, might advance beyond its previous position.

In conjunction with this point of liberality, it is well to observe that many of the standard non-resident motorist statutes provide for suit against the non-resident when his agent drives in the state. The statutes usually provide that service upon the appointed official of the state with proper notice of the suit to

28. *Hendrick v. Maryland*, 235 U.S. 610 (1915).

29. See note 5 *supra*.

30. 274 U.S. 352, 356 (1927).

the non-resident owner will give valid in personam jurisdiction in an action arising out of the agent's operation of the automobile. This is done with no violation of the due process requirements.³¹ The Supreme Court could very well hold that suit against the non-resident's administrator does not place any greater strain on the due process requirement than in the agency situation even though the two are far from being analogous.

SOCIAL AND POLICY FACTORS

Whether the Supreme Court will uphold the amendment to the non-resident motorist statute and thereby place a new milestone along the road begun by the *Hess* case leading away from the doctrine of *Pennoyer v. Neff* will also depend on various social and policy factors. One such factor which has already been introduced is the increased volume of automobile traffic. This has created a definite danger to the public safety with which a state, through its police power, should be allowed to cope. For a state to provide a procedure whereby an injured and innocent plaintiff can prosecute his lawsuit at the situs of the accident where his witnesses will be more readily available does not appear to be unreasonable. Undoubtedly it is true that a consideration of convenience alone should never decide grave constitutional issues, but it is equally true that there is no reason why the matter of convenience can not be considered in arriving at a decision. As pointed out earlier, allowing the suit to be brought at the situs of the accident instead of in the domiciliary state would not interfere with the administration of the estate; since wherever the plaintiff should sue, any judgment he received would merely be conclusive evidence of a claim against the estate which the domiciliary state would administer along with other valid claims.

Also to be taken into account is that the more serious the accident, the stronger is the probability that plaintiff will be seriously injured physically and have his property heavily damaged, and the stronger is the probability of the non-resident motorist dying.

31. *Jones v. Pebler*, 371 Ill. 309, 20 N.E.2d 592 (1939); *Schutt v. Dillavou* 234 Iowa 610, 13 N.W.2d 322 (1944); *Rose v. Gisi*, 139 Neb. 593, 298 N.W. 333 (1940); *Queen City Coach Co. v. Chattanooga Medicine Co.*, 220 N.C. 442, 17 S.E.2d 478 (1941); *Wynn v. Robinson*, 216 N.C. 347, 4 S.E.2d 884 (1939). The wording of the statute is very important in this situation, for the courts in strictly construing it will not extend it to an agent of the non-resident unless express provision is made for such a result.

The Supreme Court may very well consider the paradoxical situation that would result should the amendment be found unconstitutional. That situation would be that those plaintiffs who were fortunate enough to be in an accident in which the non-resident survived could sue where the accident occurred. Those plaintiffs who were unfortunate enough to be in an accident wherein the non-resident was killed or soon died would be forced to sue in the non-resident's domiciliary state. Yet this latter situation is the one which involves the most serious accidents and the greatest danger to the public safety. Such a factor could well have an effect on the Court's deliberations.

CONCLUSION

The United States Supreme Court, in deciding the fate of the extension of the non-resident motorist statutes to the administrator of the non-resident, will be forced to resolve various conflicting doctrines of law and various social policies. However, it is the opinion of this author that the inconsistent factors can be resolved so as to find that the extension does not violate the requirements of due process as prescribed by the Fourteenth Amendment. Such a result could be reached primarily by modifying the present effect of some of the factors and would not require a complete elimination of them. Further, it is felt that the amendment to the non-resident motorist statutes fills an undesirable hole in the non-resident motorist legislation and that it gives a result which in most cases is more consistent with justice and fairness than is the situation without such an amendment.

JOHN R. BARSANTI, JR.