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Constitutional Law - Process or Notice - In Personam Judgment on Personal Service or Summons Outside State Not Denial of Due Process

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instant case, decided that the defendant acted as an attorney and not as a scrivener,[11] the case, as decided, appears to admit to little controversy. A civil action for damages by an injured third party is thus added to the list of liabilities to which a layman practicing law subjects himself.[12]

The requirement of privity of contract and the classification of a legatee under a will as an incidental beneficiary, present vast bulwarks to an intended beneficiary seeking recovery from a negligent draftsman. As the court points out in the instant case, "to say that only the testator has been wronged is contrary to fact and legal fiction."[13] It is submitted that the injured legatee should be protected by holding the negligent draftsman, whether layman or attorney, liable in an action based on contract or tort.

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CONSTITUTIONAL LAW — PROCESS OR NOTICE — IN PERSONAM JUDGMENT ON PERSONAL SERVICE OF SUMMONS OUTSIDE STATE NOT DENIAL OF DUE PROCESS. — Defendant, a resident of Wisconsin, was engaged in the business of selling appliances. He was personally served with a summons in that state by plaintiff, a resident of Illinois, who alleged injuries caused by defendant's agent in delivering a stove to plaintiff in Illinois. The Illinois Supreme Court *held* that the 1955 amendments to Section 17 of the Illinois Civil Practice Act,[1] which authorize the entry of a judgment in personam on personal service of summons on a nonresident outside the state, does not violate the 14th

11. *Compare* the instant case *with* Mickel v. Murphy, 305 P.2d 993 (Cal. 1957) in which the court *held* that the defendant acted as a scrivener and not as an attorney, and was therefore not liable in a tort action, for negligent preparation of a will.

12. It is an interesting contrast to note that there is no such liability in the case of a negligent attorney, no matter how great his negligence. See Bank v. Ward, 100 U.S. 195 (1879) (Defendant was employed by X to examine and report on X's title to certain property. He certified the title to be good and the property unencumbered, while actually X had previously conveyed away the property by duly recorded conveyance which defendant, with a reasonable degree of care, could have ascertained. Plaintiff, in reliance upon this certification, loaned money to X, who became insolvent, and sought recovery from defendant. The court *held* that, there being neither fraud, collusion nor falsehood by the defendant, nor privity of contract between plaintiff and defendant, he was not liable to plaintiff for any loss sustained by reason of the defective certificate.) In Buckley v. Gray, 110 Cal. 339, 42 Pac. 900 (1895), defendant was employed by plaintiff's mother to draw a will, by the terms of which the plaintiff and a brother were to share equally in her estate, to the exclusion of the children of a deceased brother. Defendant had plaintiff sign as a subscribing witness, thus rendering the provisions of the will void as to the plaintiff, and permitting the deceased brother's children to take one-half of the estate. Plaintiff brought action to recover for the attorney's negligence, but the court *held*, that an attorney is liable for negligence in the conduct of his professional duties, arising only from ignorance or want of care, to his client alone, that is, to the one between whom and the attorney the contract of employment and service existed, and not the third parties. The only exceptions arise where the attorney has been guilty of fraud, collusion, or a malicious or tortious act.

13. 310 P.2d 63, 68 (Cal. 1957).

1. Ill. Ann. Stat. § 17 (1955) "Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits his person, . . . to the jurisdiction of the courts of this State as to any cause of action arising from . . . the transaction of any business within this State; the commission of a tortious act within this State; the ownership, use, or possession of any real estate situated in this State; or contracting to insure any person, property or risk located within this State at the time of contracting. Service of process . . . may be made by personally serving the summons upon the defendant outside this State, with the same force and effect as though . . . served personally within this State."

amendment to the Constitution of the United States. *Nelson v. Miller,* 143 N.E.2d 673 (Ill. 1957).

A legislature's direct attempt to determine the situs of suit, by edict provisions facilitatng court jurisdiction of fleeing nonresident defendants, is designed mainly to prevent hardship to resident plaintiffs in transporting witnesses and to hasten the enforcement of remedies.

The precedent for this unique statute, which is reminiscent though an extended version of the Maryland[2] and Vermont[3] statutes subjecting foreign corporations to suit within those states on the occasion of a tort being committed there, is founded on the "minimum contact" doctrine.[4] This doctrine was set forth in the *International Shoe Case,*[5] which strictly involved a corporation, but whose "tenor and philosophy of opinion leaves no doubt of intent that its principles apply equally to nonresident individuals."[6] The *International Shoe* decision discarded the historical "presence"[7] theory and substituted a test of fairness which questioned whether or not the corporation might reasonably be required to defend where sued without offending substantial justice.[8] It has been asserted that with the advent of this standard the question of forum non conveniens becomes the essential element of consideration by the courts.[9] A current trend in state control over foreign corporations is exemplified by statutes requiring the nonresident corporation to designate an agent on whom process may be had.[10] The reasoning behind those cases holding foreign corporations

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2. Md. Ann. Code art. 23, § 88(d) (1951).

3. Vt. Rev. Stat. § 1562 (1947).

4. See International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) "Due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." Scholnik v. National Airlines, 219 F.2d 115 (6th Cir. 1955).

5. International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945) "To the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and so far as those obligations arise out of, or are connected with, the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." See International Harvester Co. v. Kentucky, 234 U.S. 579, 587 (1914).

6. See Cleary and Sider, Jr., *Extended Jurisdictional Bases for Illinois Courts,* 50 Nw. U. L. Rev. 599, 603 (1955).

7. For an example of the application of this theory, See Pennoyer v. Neff, 95 U.S. 714, 733 (1877) (The Oregon Supreme Court held valid a personal judgment obtained in an Oregon court by serving a non-resident defendant by publication of summons. The state through its tribunals, could subject property situated within its confines and owned by nonresidents to the payment of the demands of its own citizens.) "The exercise of that jurisdiction would not infringe on the sovereignty of the state where the nonresidents were domiciled, . . . and that every state owed protection to its own citizens." However, "where the subject-matter of the suit involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance." But see Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516, 518 (1923).

8. Stretching the International Shoe, 50 Nw. U. L. Rev. 425 (1955).

9. See Compania de Astrol v. Boston Metals Co., 107 A.2d 357 (Md. 1954) A Panamanian Corporation with no office in the United States and not "doing business" in Maryland was held amenable to suit in Maryland on the basis of a single contract entered into in Maryland.; Smyth v. Twin State Improvement Corp., 116 Vt. 569, 80 A.2d 664 (1951) A foreign corporation subjects itself to the jurisdiction of the Vermont Courts by the commission of a single tort within the territorial limits of the state. See also, Ruppert v. Morrison, 117 Vt. 83, 85 A.2d 584 (1952).

10. See, *e.g.,* N.D. Sess. Laws 1957, c.102, §§ 110, 112.

amenable to process served on their agents is in part applicable to personal defendants.[11]

It should be noted that bold legislation took place long before 1945[12] and that the pragmatic legislative trend illustrated by the principal case is but a slight extension of former practice. Continued recognition of the nonresident motorist statutes is persuasive authority in support of the proposition that the commission of a single tort within the state is sufficient to satisfy the "minimum contact" requirement.[13] In the public interest the State may "make and enforce regulations reasonably calculated to promote care on the part of both residents and nonresidents and makes no hostile discrimination against nonresidents . . . but tends to put them on the same footing as residents."[14] The courts determine due process mainly by looking to the statutory provisions for satisfactory notice to the defendant; if the manner of service is found applicable equally to the resident and nonresident and there is every "reasonable probability" the defendant will receive actual notice, the constitutionality of the statute will be upheld.[15]

Increased mobility of the population must inevitably give rise to more numerous encounters between parties of diverse citizenship, and the accompanying legal claims which follow may be handled more expediently by the type of statute which the far-sighted Illinois legislature has enacted.

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11. See Davidson v. Doherty, 214 Iowa 739, 241 N.W. 700 (1932) § 11079 of the 1927 Iowa Code, which authorized service on an agent employed in an agency through which business involved was transacted, when applied to nonresident defendants, was held as not contravening the due process clause; Wein v. Crockett, 113 Utah 301, 195 P.2d 222 (1948) Where plaintiff served a non-designated agent of a nonresident, doing business within the state, who had failed to comply with c.10, §§2,3 of the 1947 Laws of Utah (now Rule 4 (e) (10) and Rule 17 (e) of the Utah Rules of Civil Procedure, 1953) requiring designation of a person within the state as an agent for service of process, the constitutionality of such act was upheld as being nondiscriminatory against nonresidents and the failure of the nonresident to comply with the law cannot be used to defeat the resident's right to claim benefit of the statute. "Where a cause of action arises in the state against a personal defendant, it is not a taking of his propery without due process to require the defendant carrier to here contest the action." See Restatement, Conflict of Laws § 84 (1934, Supp. 1954). But see, Flexner v. Farson, 248 U.S. 289 (1918).

12. See *e.g.*, Sauders v. Londan Assur. Corp., 76 F.2d 926 (8th Cir. 1935); Rubine v. Golberg, 9 N.J. Misc. 460, 154 Atl. 535 (1931) Where a New Jersey statute authorizing service of process on the Secretary of State in damage suits against nonresident motorists was held constitutional. The court relied upon the 1927 Hess v. Pawloski decision, (274 U.S. 352). For a complete resumé as to prior legislation, see 19 Iowa L. Rev. 421 (1934).

13. See Hess v. Pawloski, 274 U.S. 352 (1927); For example, of a nonresident motorist statute, see N.D. Rev. Code § 28-0611 (1953 Supp.) "The use and operation . . . by a nonresident or his agent, of a motor vehicle upon or over the highways of this state shall be deemed an appointment . . . by such nonresident at any time, of the highway commissioner of this state to be his true and lawful attorney upon whom may be served all legal process in any action or proceeding against him growing out of the use or operation of the motor vehicle resulting in damages or loss to person or property, whether the damage or loss occurs upon a public highway or upon public or private property, and such use or operation shall constitute an agreement that any such process in any action against him which is so served shall have the same legal force and effect as if served upon him personally . . . ."

14. See Hess v. Pawloski, *supra* note 13 at 356; See also Hendrick v. Maryland, 235 U.S. 610, 622 (1915).

15. Wuchter v. Pizzuti, 276 U.S. 13 (1928) (By implication).