

Conflict of Laws - Substituted Service Under Nonresident Motorist Statute - Workmen's Compensation Suit

A. B.

Repository Citation

A. B., *Conflict of Laws - Substituted Service Under Nonresident Motorist Statute - Workmen's Compensation Suit*, 3 La. L. Rev. (1940)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol3/iss1/21>

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Notes

CONFLICT OF LAWS—SUBSTITUTED SERVICE UNDER NONRESIDENT MOTORIST STATUTE—WORKMEN'S COMPENSATION SUIT—Plaintiff, an employee of defendant foreign partnership, suffered physical injuries in Louisiana while acting within the scope of his employment. The injury was occasioned when defendant's motor vehicle, in which plaintiff was riding, was driven off the highway by an authorized agent of defendant. Plaintiff sued in this state to recover workmen's compensation and the defendant was cited by service on the Secretary of State in compliance with Louisiana's "non-resident motorist act."¹ Defendant excepted to the jurisdiction of the court *ratione personae*. *Held*, exception overruled. The statute does not restrict jurisdiction over nonresidents by substituted service to actions *ex delicto* and its provisions are applicable to a suit for workmen's compensation. *Maddry v. Moore Bros. Lumber Co.*, 197 So. 651 (La. 1940).

A well recognized exception to the rule of *Pennoyer v. Neff*² is that a state may, in the exercise of its police power, obtain jurisdiction over the person of a nonresident by substituted service whenever the cause of action arises out of such nonresident's use of the highways.³ The Louisiana act⁴ is therefore valid to the extent that this is done.

The statute was held to apply to the instant case on the theory that the cause of action arose out of defendant's use of the highways in that "the cause of action under the Act [workmen's

1. La. Act 86 of 1928, § 1, as amended by La. Act 184 of 1932. The pertinent part of the act, contained in Section 1, reads as follows: ". . . the acceptance by non-residents of the rights and privileges conferred by existing laws to operate motor vehicles on the public highways of the State of Louisiana, or the operation by a non-resident or his authorized employee of a motor vehicle on the said highways other than under said laws, shall be deemed equivalent to an appointment by such non-resident of the Secretary of the State of Louisiana. . . to be his true and lawful attorney for service of process . . . in any action or proceeding against said non-resident growing out of any accident or collision in which said non-resident may be involved while operating a motor vehicle on such highways. . . ."

2. 95 U.S. 714, 24 L.Ed. 565 (1877), holding that constructive service on a nonresident does not give the court jurisdiction over the defendant in an action in personam.

3. *Hendrick v. Maryland*, 235 U.S. 610, 35 S.Ct. 140, 59 L.Ed. 385 (1915); *Kane v. New Jersey*, 242 U.S. 160, 37 S.Ct. 30, 61 L.Ed. 222 (1916); *Hess v. Pawloski*, 274 U.S. 352, 47 S.Ct. 632, 71 L.Ed. 1091 (1927); *Pizzutti v. Wuchter*, 103 N.J. Law 130, 134 Atl. 727 (1926).

4. La. Act 86 of 1928, § 1, as amended by La. Act 184 of 1932.

compensation act] grows out of an accident"⁵ which brings into effect an implied contract without which recovery could not be had. Strictly speaking, it is more accurate to say that the cause of action, based on contract,⁶ grew out of and was incorporated in the employment agreement; the accident was but an event which completed the employer's liability. Therefore, the case under discussion should not properly be termed an "action or proceeding . . . growing out of any accident or collision"⁷ so as to fall within the purview of the Louisiana nonresident motorist statute.

Moreover, the state's power to obtain jurisdiction *ratione personae* over a nonresident defendant by substituted service should be limited to cases wherein the cause does in fact arise out of the defendant's conduct on the state highways.⁸ It would seem, then, that any statute which purports to extend this rule to cases not arising out of conduct on the highways would be unconstitutional as a violation of the due process clause of the federal Constitution.

A. B.

CONSTITUTIONAL LAW—EQUAL PROTECTION—DUE PROCESS OF LAW—SALARY DISCRIMINATION AGAINST NEGRO SCHOOL TEACHER—Action by a negro school teacher and negro teachers' association to obtain a declaratory judgment that the fixing by the school board of salaries of negro teachers at a lower rate than that of white teachers of equal qualifications and experience, performing the same duties, was violative of the due process and equal protection clauses of the Fourteenth Amendment. Plaintiffs also prayed an injunction against such discrimination. The action was dismissed on motion without going to trial. *Held*, the facts ad-

5. *Maddry v. Moore Bros. Lumber Co.*, 197 So. 651, 653 (La. 1940).

6. The Louisiana rule is that action for compensation under a workmen's compensation act is based on contract and not tort. *Legendre v. Barker*, 5 La. App. 618 (1927); *Hargis v. McWilliams Co.*, 119 So. 88 (La. App. 1928).

7. La. Act 86 of 1928, § 1, as amended by La. Act 184 of 1932.

8. *Hess v. Pawloski*, 274 U.S. 352, 47 S.Ct. 632, 71 L.Ed. 1091 (1927), and cases following the principle postulated therein. *Moore v. Payne*, 35 F. (2d) 232 (W.D. La. 1929); *Schilling v. Odlebak*, 177 Minn. 90, 93, 224 N.W. 694, 696 (1929): "Laws like our statute cannot be construed as a hostile discrimination against nonresidents. *The implied or constructive appointment is consistent with the necessities involved. The nonresident is subject to it only by his own conduct.* The individual, in using the modern highway, must recognize the police power which is the basis of all highway regulation measures." (Italics supplied.) See also *Culp, Process in Actions Against Non-Resident Motorists* (1934) 32 Mich. L. Rev. 325; *Dodd, Jurisdiction in Personal Actions* (1929) 23 Ill. L. Rev. 427; *Scott, Jurisdiction over Nonresident Motorists* (1926) 39 Harv. L. Rev. 563.