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Federal Practice - Jurisdiction - Louisiana Watercraft Statute, La. R.S. 13:3479 (1950)

John S. White Jr.

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be informed of the nature of the charges against him should be satisfied by such subtle implications in an indictment. Little more justification for the state's refusal to grant defendant a bill of particulars as to the intended forcible felony can be found in the court's suggestion that this portion of the information could be disregarded as surplusage, since the charge that he intended to commit theft was sufficient. The accused was charged and tried under an information charging dual intents and was refused particulars as to one of them. If the fact that an information is valid means that the defendant's right to a bill of particulars has been satisfied, then the bill of particulars serves no useful purpose in Louisiana criminal procedure.

Maynard E. Cush

FEDERAL PRACTICE—JURISDICTION—LOUISIANA WATERCRAFT
STATUTE, LA. R.S. 13:3479 (1950)

Plaintiff, widow of a Louisiana resident killed while working as a ship repairman on a British steamer docked in New Orleans, brought suit in federal district court¹ under article 2315 of the Louisiana Civil Code² to recover damages for his alleged wrongful death. Service of process was made pursuant to the Louisiana Watercraft Statute, La. R.S. 13:3479, providing, in substance, for service of process on the Secretary of State in actions against nonresidents growing out of any accident arising from the non-resident's operation, navigation, or maintenance of watercraft in

1. The modes of service of process in federal courts are provided in the Federal Rules of Civil Procedure. Following is the pertinent provision of Rule 4:

"(d) Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making the service with such copies as are necessary. Service shall be made as follows:

"
"(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by any statute of the United States or in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that State." (Emphasis added.) FED. R. CIV. P. 4(d)(7).

2. It is not within the limited scope of this note to consider the constitutionality of LA. R.S. 13:3479 (1950) as applied to a case arising under the Jones Act, 38 STAT. 1185 (1915), as amended, 46 U.S.C. § 688 (1952), instead of Art. 2315, LA. CIVIL CODE of 1870.

the state.³ Defendant moved to dismiss the complaint and, in the alternative, to quash the summons, on the grounds that the statute was unconstitutional under the due process clause of the fourteenth amendment, the interstate and foreign commerce clause, and the admiralty clause of the United States Constitution. The court denied the motions and *held* the state's right and duty to provide protection for persons and property on its navigable waters are no less important than its right and duty to provide like protection for persons on its highways. *Tardiff v. Bank Line, Ltd.*, 127 F. Supp. 945 (E.D. La. 1954).

State statutes providing for the exercise of jurisdiction in actions for personal judgments against nonresident defendants must meet the requirements of the due process clause of the fourteenth amendment. In *Pennoyer v. Neff*, the Supreme Court said that one of these requirements is service of process on the defendant within the state.⁴ In subsequent cases, exceptions to this requirement have been made in special situations.⁵ For

3. The text of the statute is as follows: "The operation, navigation or maintenance by a non-resident or non-residents of a boat, ship, barge or other water craft in the state, either in person or through others, and the acceptance thereby by such non-resident or non-residents of the protection of the laws of the state for such water craft, or the operation, navigation or maintenance by a non-resident or non-residents of a boat, ship, barge or other water craft in the state, either in person or through others, other than under the laws of the state, shall be deemed equivalent to an appointment by each such non-resident of the Secretary of State or his successor in office, to be the true and lawful attorney of each such non-resident for service of process, upon whom may be served all lawful process in any suit, action or proceeding against such non-resident or non-residents growing out of any accident or collision in which such non-resident or non-residents may be involved while, either in person or through others, operating, navigating or maintaining a boat, ship, barge or other water craft in the state; and such acceptance or such operating, navigating or maintaining in the state of such water craft shall be a signification of each such non-resident's agreement that any such process against him which is so served shall be of the same legal force and effect as if served on him personally."

LA. R.S. 13:3480 (1950) provides: "Service of citation in any case provided in R.S. 13:3479 shall be made by serving a copy of the petition and citation on the Secretary of State, or his successor in office, and such service shall be sufficient service upon any such non-resident: provided that notice of such service, together with a copy of the petition and citation are forthwith sent by registered mail by the plaintiff to the defendant, or actually delivered to the defendant, and the defendant's return receipt, in case notice is sent by registered mail, or affidavit of the party delivering the petition and citation in case notice is made by actual delivery, is filed in the proceedings before judgment can be rendered against any such non-resident. The court in which the action is pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action."

4. 95 U.S. 714 (1877); see also, e.g., Millar, *Jurisdiction Over Absent Defendants: Two Chapters in American Civil Procedure*, 14 LOUISIANA LAW REVIEW 321, 325 (1954).

5. See GOODRICH, CONFLICT OF LAWS 188, § 73 ("Jurisdiction in Personam—Persons Subject To") (1949).

example, in *Hess v. Pawloski*, the Supreme Court held constitutional a Massachusetts statute providing that the operation of a motor vehicle in that state by a nonresident motorist was equivalent to the appointment of the state registrar as the nonresident's agent for the service of process in cases growing out of accidents or collisions resulting from such operation.⁶ The statute also provided for giving notice of service and sending a copy of the process to the defendant by registered mail. The Court based the nonresident's amenability to suit in the state forum upon the state's power to promote the health and safety of its citizens, and held that the type of implied appointment with notice involved in that case did not offend due process of law.⁷ In actions against foreign corporations, jurisdiction *in personam* was at first restricted to the state which had chartered the corporation.⁸ It has now become well settled, however, that the corporation may consent to the jurisdiction of another state's courts by appointing an agent there for the service of process. Even in the absence of consent, statutes providing for service of process within a state in actions arising out of the foreign corporation's "doing business" within the state have been upheld on a theory of implied consent.⁹ The term "doing business" has been the subject of extensive judicial interpretation,¹⁰ resulting in an enlargement of state jurisdiction with an accompanying "erosion" of the requirement of service of process on the corporate defendant "doing business" within the state.¹¹ In 1945, Chief Justice Stone,

6. 274 U.S. 352 (1927).

7. The Supreme Court has since repudiated the idea that the jurisdiction conferred by nonresident motorist statutes rests on the idea of consent. *Olberding v. Illinois Central R.R.*, 346 U.S. 338 (1953). The instant case specifically recognizes this. "Even the assumption on which the consent is predicated is fictitious. The right of the state to exclude nonresidents, as such, from the highways is a myth, unsupported in our constitutional jurisprudence [citing cases]. No longer ago than last decision day, the Supreme Court held [*Castle v. Harper Freight Lines, Inc.*, 75 Sup. Ct. 191 (1954)] that a motor line, guilty of repeated violations of state laws regulating vehicular traffic, could not be excluded from the highways of the state whose laws it insisted on offending." *Tardiff v. Bank Line, Ltd.*, 127 F. Supp. 945, 948 (E.D. La. 1954).

8. *Bank of Augusta v. Earle*, 38 U.S. (13 Pet.) 519, 588 (1839); HENDERSON, *THE POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW* c. 5 (1928).

9. See, generally, *International Harvester Co. v. Kentucky*, 234 U.S. 579 (1914); GOODRICH, *CONFLICT OF LAWS* 209, § 76 ("Jurisdiction Over Foreign Corporations") (1949).

10. See the Court's summary of what "doing business" included in *International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945).

11. *St. Clair v. Cox*, 106 U.S. 350 (1882) (personal service of a copy of the writ of attachment and of the inventory of the property on the agent of the defendant corporation within the state); *Connecticut Mutual Life Ins. Co. v. Spratley*, 172 U.S. 602 (1899) (personal service on duly appointed agent

in *International Shoe Co. v. Washington*,¹² announced the Supreme Court's view that "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'."¹³ The test formulated by the Court, however, as to the jurisdictional requirements of due process is not expressed in terms of "doing business" but looks instead to the "quality and the nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure."¹⁴

The Court in the instant case drew an analogy between the Louisiana Watercraft Statute and the nonresident motorist statute involved in *Hess v. Pawloski*. The nonresident motorist statute involved in *Hess v. Pawloski* applied to cases "growing out of any accident or collision in which said non-resident may be involved while operating a motor vehicle" on the highways of the state.¹⁵ The Louisiana Watercraft Statute applies to cases "growing out of any accident or collision in which [the] non-resident or non-residents may be involved while, either in person or through others, operating, navigating or maintaining a . . . watercraft in the state."¹⁶ While the two statutes are based upon the same idea,¹⁷ they are different in two significant respects.

of foreign insurance company in a suit on policies, where the company had ceased to do business in the state prior to suit); *Pennsylvania Lumbermen's Mutual Fire Ins. Co. v. Meyer*, 197 U.S. 407 (1904) (personal service on director, a New York resident, of defendant Pennsylvania corporation, no agents or officers being within the state); *Commercial Mutual Accident Co. v. Davis*, 213 U.S. 245 (1909) (service on doctor sent to investigate settlement of plaintiff's claim); *St. Louis Southwestern Ry. of Texas v. Alexander*, 227 U.S. 218 (1913) (joint freight agent in New York for Cotton Belt Route and defendant connecting carrier, a Texas corporation; held defendant "doing business" in New York; service on director of defendant, resident of New York).

12. 326 U.S. 310 (1945).

13. *Id.* at 316. "Those demands [of due process] may be met by such contacts of the corporation with the State of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there. An 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection." *Id.* at 317.

14. *International Shoe Co. v. State of Washington*, 326 U.S. 310, 319 (1945). See, generally, GOODRICH, *HANDBOOK OF THE CONFLICT OF LAWS* § 76 (1949).

15. *Hess v. Pawloski*, 274 U.S. 352, 354 (1927). The Louisiana nonresident motorist statute is LA. R.S. 13:3474-3475 (1950).

16. The statute is set forth in note 3 *supra*.

17. See, *contra*, Sarpy, *Louisiana's Watercraft Statute and Federal Maritime Jurisdiction*, 29 TUL. L. REV. 111, 119 (1954).

First, the nonresident motorist statute applies only to cases arising out of the operation of a motor vehicle, while the watercraft statute applies to cases arising out of the operation, navigation, or *maintenance* of a watercraft within the state. Thus an automobile repairman's widow could not avail herself of the former statute to prosecute an action for the wrongful death of her husband arising out of the *maintenance* of a nonresident's motor vehicle within the state; but a ship repairman's widow, as in the instant case, can avail herself of the watercraft statute. Second, the nonresident motorist statute was confined to activities more clearly dangerous than those, including maintenance, covered by the watercraft statute. Thus the analogy drawn by the Court between *Hess v. Pawloski* and the instant case is not perfect. In drawing additional support for its decision from *International Shoe Co. v. Washington*, the court did not emphasize the language in that case concerning "the quality and nature of activity" which justifies the exercise of personal jurisdiction over a corporate nonresident through the service of process on an officer of the state. But it might have done so, for defendant's steamer was in port, and the maintenance it was undergoing was presumably essential or, at least, highly advantageous to its continued operation. The death resulted directly from that maintenance. In the course of its opinion the court pointed out the inconvenience plaintiff would experience in having to seek out defendant in Great Britain or having to wait, perhaps in vain,¹⁸ for the return of defendant's steamer in order to utilize admiralty process.¹⁹ From the viewpoint of the convenience to either plaintiff or defendant resulting from the Louisiana Watercraft Statute, consideration should also be given to the availability of witnesses in Louisiana and the difficulty of proving

18. The court referred to the "peremptive period of one year" under Art. 2315, LA. CIVIL CODE of 1870, citing *Mejia v. United States*, 152 F.2d 686 (5th Cir. 1945). This language is a reference to the opinions of certain Louisiana cases which hold that unless an action for wrongful death is instituted within a year of the death of the deceased as required by article 2315 of the Civil Code, the action is "perempted." Under this view, article 2315 extends the remedy only on condition that it be exercised within the year; and if this condition is not complied with, plaintiff has no right of action. *Matthews v. Kansas City Southern Ry.*, 10 La. App. 382, 120 So. 907 (1929); *Mitchell v. Sklar*, 196 So. 392 (La. App. 1940). *But see Thompson v. Gallien*, 127 F.2d 664 (5th Cir. 1942) and cases therein cited; Note, 9 TUL. L. REV. 285 (1935).

19. As indicated in the statute cited in note 3 *supra*, Admiralty Rule 2 would preclude application of the subject statute in a suit before a federal district court sitting in admiralty.

Louisiana law to an English court.²⁰ Thus, on the basis of *Hess v. Pawloski* and the more general considerations involved in *International Shoe Co. v. Washington*, the court's conclusion that service of process on the Secretary of State in cases like this one does not offend due process of law seems reasonable.²¹

While there may be some disagreement as to whether or not *Pennoyer v. Neff* has been abandoned,²² it is certain that service of process on the defendant within the state as a requirement of due process no longer carries the same meaning that it did when first announced. An expansion of state jurisdiction has been recognized in the decisions, especially where the defendant has been a foreign corporation. The *International Shoe* case increased this tendency.²³ The instant case sanctions the statutory agent device of the *Hess* decision in an application of the *International Shoe* doctrine.

John S. White, Jr.

FRENCH CIVIL LAW—SALES—EARNEST MONEY

Plaintiff deposited 200,000 francs with defendant during the course of their negotiations for the sale of defendant's immovable property. Upon failure to agree on the terms of the contract, although a price of 1,000,000 francs had been agreed upon, defendant retained the deposit on the grounds that it constituted earnest money within the meaning of *Code Civil* article 1590.¹ Plaintiff instituted suit to recover the deposit. He contended that article 1590 was inapplicable, because the payment had been made to secure preference over another prospective buyer and

20. The burden of proving a difference between the law of England and any foreign law is upon the party who asserts its existence. 13 HALSBURY, LAWS OF ENGLAND 614, § 685 (2d ed. 1934); see, e.g., *Smith v. Gould*, *The Prince George*, [1842] 4 Moo. P.C.C. 21.

21. The defenses based on the interstate and foreign commerce clause, and the admiralty clause of the Federal Constitution were rejected summarily on authority of *Western Fuel Co. v. Garcia*, 257 U.S. 233 (1921); *Sherlock v. Alling*, 93 U.S. 99 (1876); *Pueblo v. H. E. Moss & Co.*, 159 F.2d 842 (2d Cir. 1947).

22. 23 U.S.L. WEEK 1101 (Jan. 11, 1955), announced the case with the following headline, "Pennoyer v. Neff Overruled, Federal District Court Holds."

23. See Note, *The Growth of the International Shoe Doctrine*, 16 U. OF CHI. L. REV. 523 (1949).

1. Art. 2463, LA. CIVIL CODE of 1870 is identical. It states: "But if the promise to sell has been made with the giving of earnest, each of the contracting parties is at liberty to recede from the promise; to wit: he who has given the earnest, by forfeiting it; and he who has received it, by returning the double."