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## Constitutional Law: Due Process

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### Constitutional Law: Due Process\*

Despite the appearance of the more recent mechanical devices, the radio and the airplane, upon the horizon of science, the motor car has not yet been replaced as a fruitful source of litigation. High pressure advertising of the several "playgrounds" of the nation, coupled with the manufacture of a large variety of motor cars whose serial numbers bear seven digits, has served to deluge both the highways and the courts with much dispute. In view of the speed of the automobile, and the habits of men, it is a natural consequence that the legislatures of the several states are attempting to control the flood of nonresident motorists within their borders, at least to the extent of providing to their citizens a convenient and just method of reaching the purse strings of offending visitors.

The present case arose thus: The state of Massachusetts enacted a statute which in substance provided that the mere use of a public highway of that state by a nonresident motorist *implies, ipso facto*, the appointment of the state registrar as his true and lawful attorney for the purpose of receiving process in any action arising out of any accident or collision in which the nonresident motorist may be involved while operating a motor vehicle on any highway of the said state. It further provides that a copy of the process served must be sent to the defendant by registered mail. The defendant in this action, (appellant here) a resident of Pennsylvania, was alleged to have negligently and wantonly driven his automobile on a public highway of Massachusetts, and by reason thereof, struck and injured the plaintiff (defendant in error). Jurisdiction was obtained under the above statute, that is, by serving upon the registrar the process, and mailing a copy thereof to the appellant. The appellant contested the jurisdiction, contending that the statute was in violation of the due process clause of the Fourteenth Amendment. The court reached its conclusion by consideration of the following cases:

*Penmoyer v. Neff*<sup>1</sup> promulgates the proposition that the process of one state cannot run into another and summon a party there domiciled to respond to proceedings against him; that notice sent outside the state to a nonresident is unavailing to give jurisdiction in an action against him personally for the recovery of money. The case in question reconciles itself with the above propounded rule by the fact that the use of the highway by a nonresident motorist is a positive act of appointing an attorney for receiving process, and thus valid jurisdiction is acquired.

*Hendrick v. Maryland*<sup>2</sup> is cited as authority for the proposition that the state's power to regulate the use of its highways extends to their use by nonresidents as well as by residents. The court says, "In the absence of national legislation covering the subject, a state may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles. This is but an exercise of the police power uniformly recognized as belonging to the states and essential to the preservation of the health, safety, and comfort of their citizens."

\* *Hess v. Pawloski*, 47 Sup. Ct. Rep. 632.

<sup>1</sup> 95 U.S. 714.

<sup>2</sup> 235 U.S. 610.

In *Kane v. New Jersey*,<sup>3</sup> a situation similar to the case under discussion, the appellant contended that a statute requiring the registration of nonresident motorists and the appointment of the secretary of state as attorney for receiving process was in violation of the due process clause. In that case the court recognized the power of the state to actually exclude such persons as would refuse to comply with the statute, from entering the state. In answer to the contention that such a statute is discriminatory, the Supreme Court held that the basic principles of the law were to render equal protection of the law to residents as well as to nonresidents. It is clear that before the passage of such statute, residents were at a disadvantage in attempting to get jurisdiction of a nonresident offender. By comparing the action of the New Jersey Legislature to an analagous crime situation, the court reasoned that the ability to enforce criminal penalties for transgression as an aid toward securing observance of laws would likewise apply to the enforcement of the observance of the civil law. There is no discrimination against nonresidents, denying them the equal protection of the law, but on the contrary, it puts nonresidents upon an equal basis with residents.

It follows, therefore, in logical sequence, that if a state has the power to *exclude* motorists from entering its borders upon the refusal of such motorists to comply with its statutes, the state may declare the use of its highways by nonresident motorists the equivalent of appointment of an attorney upon whom process may be served, and so the court held in the instant case. It is a progressive and material step toward the protection of citizens of a state possessing such a law from any disadvantage they may have suffered by reason of not being able to obtain jurisdiction of an offending nonresident motorist.

STEWART G. HONECK

### Navigable Waters.

State Railroad Commission must determine compensation to be paid state as a prerequisite of contract for removing material from bed of navigable lake, and the requirement of "compensation to be paid" to state for taking material connotes idea of use of money. Rights of riparian owners to center of beds of navigable streams and rivers and constitutional rights of such owners. Power of the state to dispose of materials in and under navigable waters.

The importance of Section 31.02 (5) of the Wisconsin Statutes is fully determined in a recent decision handed down by the Wisconsin Supreme Court in the case of *Angelo et al. v. Railroad Commission*.<sup>1</sup>

W. B. Angelo and other riparian owners on Lime Lake, Portage County, sought to enjoin the defendant Railroad Commission from action under Section 31.02 (5) Stats. in conferring authority upon certain persons to take marl from the bed.

This lake covers fifty-nine acres and has been used for boating, hunting and fishing. It was not meandered in the U. S. Government survey. The patents from the United States conveyed as land the entire area. There is no showing whether it is connected with waters flowing into Lake Michigan or the Mississippi and the county map indicates that it has no apparent outlet.

<sup>3</sup> 242 U.S. 160.

<sup>1</sup> 217 N.W. 570. (Wis.) Decided Jan. 10, 1928.