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Article 37

Section 52-a Vehicle and Traffic Laws

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The New York courts are looked to as affording an avenue for upholding the proposed statute. There are decisions in New York to the effect that the "yellow dog" contract is only a condition of employment—a mere understanding as distinguished from an enforceable contract.[15]

However, in these cases the court found that the contract was one at will, or that it was so full of loopholes in the Interborough cases, that the I. R. T. could terminate the employment almost at will, thus leaving the contract wholly without mutuality. The New York decisions still leave open the possibility that contracts may be drawn which will meet the requirements of mutuality and consideration. Where there was a *bona fide* agreement for a definite term, no New York case went so far as to refuse an injunction.[16]

Hence, the legislation will have to hurdle formidable barriers.

Professor Walsh is of the opinion that the true solution of the whole vexing question would be a holding by the courts that inducing a breach of such contracts to extend the organization of labor in an industry is privileged as fair competition.[17]

It is pointed out that nowhere in the *Hitchman*[18] case were the social implications and consequences of the enforcement of "yellow dog" contracts through injunctions so much as mentioned. Even so, three judges dissented, and perhaps in the next case, with the purposes and results appearing so clearly, the Supreme Court might depart from its prior decisions.[19]

JULIUS NOVEMBER.

SECTION 52-A. VEHICLE AND TRAFFIC LAWS.—The Legislature of the State of New York during the 1931 session extended the right to obtain personal service on defendants in motor vehicle

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[15] Exchange Bakery and Restaurant, Inc. v. Rifkin, 245 N. Y. 260, 157 N. E. 130 (1927); Interborough Rapid Transit Co. v. Lavin, 247 N. Y. 65, 159 N. E. 863 (1928); *cf.* Interborough Rapid Transit v. Greene, 131 Misc. 682, 227 N. Y. S. 258 (1928). The defendant's brief in this suit published by the Workers' Education Bureau Press is deemed about the best presentation of the legal and economic arguments against the "yellow dog" ever compiled.

[16] In Vail Ballan Press v. Casey, 125 Misc. 689, 212 N. Y. S. 115 (1925), the court said: "it is illegal for any person to induce an employee to breach his contract of employment and to discontinue the same where the contract is still in force and has a definite time to run. The reason is that such a contract is a property right of value to an employer. The rule is different where there is no employment for an expressed definite term because it is not the duty of one man to work for another, unless he has agreed to, and if he has so agreed, but for no fixed period, either may end the contract whenever he chooses." *cf.* A. L. Reed Co. v. Whiteman, 238 N. Y. 545, 144 N. E. 885 (1924).

[17] WALSH ON EQUITY (1930) p. 258.

[18] *Supra* note 1.

[19] Witte, *"Yellow Dog" Contracts* (1930) 6 WIS. L. REV. 21, 30.

accidents without actual service on such defendants within the territorial confines of the state of New York. This new section [1] reads as follows:

> "The operation by a resident of a motor cycle or a motor vehicle on a public highway in this state, or the operation on a public highway in this state of a motor vehicle or motor cycle owned by such resident, if operated by his consent or permission, either express or implied, shall, in all cases where such resident shall have removed from this state, prior to the service of legal process upon him in actions hereafter described, and shall have been therefrom for thirty days continuously, be deemed equivalent to an appointment by such resident of the Secretary of State to be his true and lawful attorney upon whom may be served the summons in any action against him, growing out of any accident or collision in which such resident may be involved while operating a motor vehicle on such a public highway, or in which such motor vehicle or motor cycle may be involved while being operated on such a highway with the consent, express or implied, of such resident owner; and such operation shall be deemed a signification of his agreement that such summons against him which is so served shall be of the same legal force and validity as if served on him personally within the state. Service of such summons shall be made in the same manner, and with the same force and effect, as specified and set forth for the service of a summons upon a nonresident in section fifty-two of this chapter. The court in which the action is pending may order such extensions as may be necessary to afford the defendant reasonable opportunity to defend the action."

Prior to its enactment, Section 52 of the Vehicle and Traffic Law provided a similar method of obtaining personal service on non-residents.[2] It will be noted that Section 52-a applies only to residents who leave the state and remain away for a period of thirty days. No difficulty should be encountered in construing this section as to its applicability to residents who leave the state with intent to establish a domicile elsewhere, since both Section 52 and Section 52-a prescribe identical method of serving such process. It is therefore obvious that a defendant who leaves the state for a period of thirty days or more must fall within the purview of either of these two sections.

Skepticism as to the constitutionality of this section has been

[1] Laws of 1931, Ch. 154, effective March 27, 1931.
[2] Laws of 1929, Ch. 54 as amended by laws of 1930, Ch. 57, effective March 3, 1930.

expressed in some quarters. It is submitted that a careful analysis of this statute together with a review of the recent expressions of the United States Supreme Court on similar statutes of other states and closely analogous questions will resolve this doubt. Reduced to its lowest term this statute provides: 1. That a resident as a condition precedent to operating a motor vehicle on the public highways of this state must appoint the Secretary of State his agent for the purpose of accepting process if he absents himself for a period of thirty days from the state after an accident. 2. That he likewise appoints the Secretary of State his agent for the same purpose and under the same conditions to accept process arising out of accidents or collision of motor vehicles owned by him and operated with his consent.

The increased use of motor vehicles has given rise to many problems, especially that of obtaining jurisdiction by the courts of a state, over non-residents and residents who seek to evade service. The first state statute that attempted to deal with this problem and whose validity was passed upon by the United States Supreme Court was enacted by the Commonwealth of Massachusetts. This statute [3] provided that service might be obtained on defendants in motor vehicle cases by serving process on a state official and mailing a copy of the process by registered mail to the defendant and filing the return receipt. In the case of *Hess* v. *Pawloski* [4] a judgment obtained under this statute was attacked on the ground that it deprived defendant of his property without due process of law in contravention of the 14th Amendment. The United States Supreme Court in sustaining this statute said:

> "Motor vehicles are dangerous machines, and even when skilfully 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." [5]

The Court further pointed out that the requirement of notice and opportunity to be heard was adequately satisfied by the provisions of the statute in question. One year later the Supreme Court had occasion to pass on the constitutionality of a statute of the State of New Jersey [6] which undertook to solve this problem. This statute unlike the Massachusetts statute made no provision whatever for mailing a notice to the defendant but merely required service on a

[3] General Laws of Massachusetts, Ch. 90 as amended by Ch. 431, Section 2, Stat. 1923.
[4] 274 U. S. 352, 47 Sup. Ct. 632 (1927).
[5] 274 U. S. 356.
[6] Chapter 232 of Laws of 1924 (P. L. 1924, p. 517).

state official and did not even place any duty on that official to notify the defendant. In the case of *Wuchter* v. *Pizzutti*[7] the Supreme Court decided that a judgment obtained under this statute deprived the defendant of property without due process of law. The rationale of this decision is that a state may provide a method whereby a citizen may obtain an effective judgment against a non-resident or fleeing resident in these motor vehicle cases provided that such method include the sending of notice to the defendant and that there is a reasonable certainty that such notice will be received. The New York statutes dealing both with resident and non-residents have adopted the identical language of the Massachusetts statute except that the Massachusetts statute is limited to operators of motor vehicles and does not extend to motor vehicles operated by others with the consent of the owner. Thus it will readily be seen that there can be no question of the constitutionality of a statute which prescribes a method of obtaining jurisdiction over a resident when a similar statute prescribing an identical method of obtaining jurisdiction over a non-resident has been upheld by the Supreme Court.[8]

Therefore the only question to be considered is whether the New York statute in so far as it includes the owner of the vehicle when that owner is not the operator at the time of the accident, violates the Fourteenth Amendment. This question should not be confused with Section 59 of the Vehicle and Traffic Law[9] which changes the substantive law of the state of New York and imputes negligence to owners of vehicles when such vehicles are operated with their consent and the operators have been negligent. There is no question as to a state's right to change its substantive law in this respect.[10] It is submitted that the reasoning that upholds the constitutionality of these statutes as to operators is equally applicable to the extension of these statutes to owners who are not operators. While it does not appear that this specific question was ever passed on by the United States Supreme Court, the courts of the State of New York have not hesitated to sustain the right of the Legislature to impose such conditions on owners of motor vehicles.[11] In fact if a different conclusion were reached, corporations would be immune from the application of these statutes. Further, since the peril which is sought to be avoided is equally as great and as the requirement for notice is equally as reasonable, there seems to be no logical grounds on which the discrimination between owners who are operators and owners who are not operators can be sustained. In an age when the ideal in the law is no longer Austin's

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[7] 276 U. S. 13, 48 Sup. Ct. 259 (1928).

[8] *Ibid.* note 4.

[9] Laws of 1929, Chapter 54.

[10] Downing v. New York, 245 N. Y. 597 (1927); Dawley v. McKibbin, 245 N. Y. 557 (1927); New York C. R. Co. v. White, 243 U. S. 188, 37 Sup. Ct. 247 (1916).

[11] Bischoff v. Schnepp, 139 Misc. 293, 249 N. Y. S. 49 (1930).

"Will of the Sovereign," which thought permeates and shapes our rules for acquiring jurisdiction, but rather seems to be in the direction of cosmopolitan justice and a juridically controlled world, it would seem that any attempt to restrict jurisdiction and defeat justice on technical grounds based upon outworn concept should be frowned upon. It is submitted that the statute in question is sound legislation and will be sustained when its constitutionality is passed upon by the United States Supreme Court.

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