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Constitutional Law--State Statute Providing for Service of Process on Non-Residents (Wuchter v. Puzzutti, 276 U.S. 13 (1928))

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the Azoff Don Bank. Title was at all times vested in Lewine. He simply parted with the custody of the fund for a specified purpose and maintained the Russian bank as his agent for forwarding orders to defendant. That the latter was fully cognizant of the special nature of the account is aptly shown by the wording of its telegram in accepting the account: "Received Kidder, Peabody $200,000.—order Engineer A. Lewine." Why should either bank be concerned with the orders of this Russian merchant, if the funds were the property of the Russian bank? Most certainly, defendant contending that absolute ownership was vested in the bank, would not be, since it knew neither the individual nor his signature.

From this last statement it logically follows that defendant had no contractual relationship with plaintiff.[3] All its negotiations and dealings were with the Azoff Don Bank, but as previously stated the letter of transmission informed it that the former was not a principal but an agent acting for plaintiff. Concededly the wording of the Russian bank's letter is not entirely unambiguous and defendant complains that it was error for the trial court to exclude evidence of the practice of New York banks; evidence which, if admitted would explain the meaning of these words and show that disposition of funds so marked was controlled by custom.[4] Inasmuch as defendant has paid out the major portion of the deposit upon advice from the Russian bank by order of plaintiff, the evidence was properly excluded. The Court of Appeals in awarding its judgment for plaintiff has so decided.

CONSTITUTIONAL LAW—STATE STATUTE PROVIDING FOR SERVICE OF PROCESS ON NON-RESIDENTS.—Plaintiff, a resident of Pennsylvania, while driving an automobile on a highway in New Jersey, struck a wagon on which defendant Pizzutti was riding, damaging it and injuring him and his horses. Defendant instituted suit in the Supreme Court of New Jersey and, after serving Wuchter according to the terms of the statute, he obtained a judgment interlocutory against him. This statute provides for service upon the Secretary of State only, without requiring that official to notify the person sued. Notice of the proposed execution of a writ of inquiry of damages was served personally on Wuchter in Pennsylvania, though the statute was silent on the matter of service. A final judgment was entered. Wuchter, who hitherto had not appeared, appealed to the Supreme Court of New Jersey, contending that the act was unconstitutional,

[3] Morse, Banks and Banking (5th Ed.) 408 Sec. 178; Heath v. New Bedford Safe Dep. Co., 184 Mass. 481, 69 N. E. 215 (1904); Carthage Tissue Paper Mills v. Carthage, 200 N. Y. 1, 93 N. E. 60 (1910).

[4] Shoyer v. Wright-G. Co., 240 N. Y. 223, 148 N. E. 328 (1925); Merchants Bank v. State Bank, 10 Wall. (U. S.) 604 (1870); Humfrey v. Dale, 7 E. & B. 266 (1857); Mazukiewicz v. Hanover N. Bank, 240 N. Y. 317, 148 N. E. 535 (1925).

being in contravention of Section One of the Fourteenth Amendment to the Federal Constitution. That court's judgment for defendant was affirmed by the Court of Errors and Appeals, and plaintiff thereupon obtained a writ of error to review that decision. *Held,* judgment reversed. There is no reasonable probability that the proposed defendant, under such statute, would receive notice of the bringing of a suit. Wuchter v. Puzzutti, 276 U. S. 13, 48 S. Ct. 259 (1928).

Section One of the statute in question states that[1] "any * * * operator of any motor vehicle, not licensed under the laws of * * * New Jersey * * * who shall accept the privilege * * * of driving such a motor vehicle * * * in the State of New Jersey * * * shall * * * make the Secretary of State * * * his * * * agent for the acceptance of any process in any civil suit by any resident of the State of New Jersey * * * arising out of * * * any accident within the State in which a motor vehicle operated by such * * * operator is involved." That the State may legislate as to the use of its highways by non-residents has already been decided by the Supreme Court.[2] The license act of New Jersey, requiring a non-resident to appoint a State official his agent to accept service for civil suits growing out of such operation before registration, is valid.[3] A statute with the same tenor as the one at issue has been sustained in the Federal Courts.[4] The distinguishing feature of that statute, however, was that the State official was required to notify the non-resident by registered mail of the service. The question arises then, must the statute, to be valid, contain provisions making it probable that the notice of service on the State officer will be communicated to the non-resident defendant? As the court points out, the omission of such provision is manifesly unfair and opens the door to fraud. The mere fact that notice of a proposed assessment of damages was in this case served, does not avail the defendant, since the statute did not provide for it and it was, therefore, no service at all. That being so, the State Court of New Jersey never had jurisdiction of the plaintiff, and the judgment was in absolute disregard of the plaintiff's rights.

The New York Law Journal[5] editorially comments on this case, and its view is that the court has departed from its recognized practice to the evident detriment of this particular defendant. It states that the Supreme Court has always based its constructions of State statutes on those of the State courts and rarely, as in this case, has it ever anticipated such construction. It also says that the New Jersey Court of Errors and Appeals might quite logically have interpreted

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[1] Chap. 232, Laws 1924 (P. L. 1924 p. 517).

[2] Hendrick v. Maryland, 235 U. S. 610, 622, 59 L. Ed. 385, 35 Sup. Ct. 140 (1915).

[3] Kane v. New Jersey, 242 U. S. 160, 61 L. Ed. 222, 37 Sup. Ct. 30 (1916).

[4] Hess v. Pawloski, 274 U. S. 352 (1927).

[5] N. Y. L. J., August 4, 1928.

this statute as requiring such service as was held to be necessary to make it constitutional.

It is difficult to see how such interpretation could be made in the light of the Massachusetts case. There the statute specifically directs the Secretary of State to notify the defendant by registered mail. Here no such direction is incorporated, and it seems too conjectural to say that the New Jersey court might have read it in by implication.

CONSTITUTIONAL LAW—EQUAL PROTECTION—EFFECT OF TAXING POWER—RIGHT OF FOREIGN CORPORATION.—The defendant in this action sought to impose upon the plaintiff, a New Jersey corporation authorized to do business in Pennsylvania, a tax on gross receipts according to the terms of a statute of that State.[1] This law provides "that every * * * transportation company * * * now or hereafter incorporated or organized by or under any law of this commonwealth or now or hereafter organized or incorporated by any other State or by the United States or any foreign government and doing business in this commonwealth and owning (or) operating * * * any railroad * * * or other device for the transportation of freight or passengers or oil * * * shall pay to the State Treasurer a tax of 8 mills upon the dollar upon the gross receipts of said corporation * * * received from passengers and freight traffic transported wholly within this State * * *."

The plaintiff carried on a general hacking business in and about Philadelphia.

The highest court of Pennsylvania held the tax valid and affirmed a judgment in favor of the commonwealth.[2] Plaintiff obtained a writ of error contending that the statute imposing this assessment violates the equal protection clause of the 14th Amendment to the Constitution.

The United States Supreme Court held that a foreign corporation by obtaining permission to do business within a State is not estopped from objecting to the enforcement of that State's enactments which may conflict with the Federal Constitution, and further, that the United States Supreme Court is not bound by a State court's characterization of attacks but may be guided rather by the practical operation of the law and may deal with it according to its effect. The equality clause on which this appeal is grounded does not forbid a State to classify for purposes of taxation, but it does require that the classification be not arbitrary but based upon a real and substantial difference, having a reasonable relation to the subject of the particular legislation.[3] The Supreme Court, by a divided vote—6 to 3—decided in favor of the plaintiff. Quaker City Cab Co. v. Common-

[1] Act Pa. June 1, 1889, P. L. 431, Sec. 23 (Pa. St. 1920 Sec. 20388).
[2] 287 Penn. 161, ..34 A. 404 (1926).
[3] Power Co. v. Saunders, 274 U. S. 490, 493, 47 S. Ct. 678, 679 (1927).