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Jocye Allen

Richard B. Bostwick

Robert N. Chaffin

Frank C. Conley

Wilbur O. Henderson

See next page for additional authors

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Authors

Jocye Allen, Richard B. Bostwick, Robert N. Chaffin, Frank C. Conley, Wilbur O. Henderson, and James L. Thorpe

The rule of the *Scully* case seems to answer the problem more adequately than either of the other two. It does not allow recovery for the loss of the opportunity to sell a "chance", it imposes a just measure of recovery for the taking of a property interest, and it tends to prevent wilful trespass on oil interests.

FRANK P. HILL

LEGISLATION

The following notes discuss briefly some of the more important statutes passed by the Wyoming Legislature during the war years. Research for these notes was performed by the following members of the class in Legislation, given by Professor Edward P. Morton, at the University of Wyoming College of Law: Joyce Allen, Richard R. Bostwick, Robert N. Chaffiin, Frank C. Conley, Wilbur O. Henderson and James L. Thorpe.

SIMULTANEOUS DEATH—DISPOSITION OF PROPERTY

Chapter 94, S.L. 1941 adopts the Uniform Simultaneous Death Act,[1] the purpose of which is to establish rules for the devolution of property where such devolution has heretofore depended upon the priority of death among persons dying under such circumstances as to make it impossible for a court to determine that one decedent survived another.

At common law there was no presumption as to which of two persons died first in a common disaster where the facts could not be known;[2] but presumptions of survivorship, based upon the supposed probabilities according to the age, strength, and sex of the victims of the disaster were created by the Civil Law system. Statutes embodying these presumptions are in force in a few American states. Coming into Wyoming law evidently as a result of the adoption of certain California statutes, these statutory presumptions of survivorship were adopted by the Wyoming legislature in 1897.[3] In recent years, however, a growing realization that these presumptions are not valid[4] has resulted in the drafting of the Uniform Simultaneous Death Act. The Act does not create new presumptions; it repudiates the idea of presumptions, and substitutes positive rules for the disposition of property belonging to common disaster victims where the fact of priority of death cannot be known.

1. The Act is now Wyo. C.S. 1945, secs. 6-2511—6-2517.
2. See Wigmore on Evidence, 3d Ed., sec. 2532 and cases cited therein.
3. The Act is now Wyo. C.S. 1945, sec. 6-2510. In view of the repealing clause in the Uniform Simultaneous Death Act as adopted in Wyoming in 1941, it is not clear what effect, if any, sec. 6-2510 can now have. The Uniform Act was intended to abolish these presumptions of survivorship. At least as far as the disposition of property is concerned, this section would seem to have been completely superseded by secs. 6-2511—6-2517.
4. These presumptions seem unjustified in the light of what we know about human nature. If, for example, a husband and wife, both between 15 and 60 years of age, perish together in a common disaster, the presumption is that the wife perishes first, whereas experience seems to show that most men will sacrifice their own lives in an effort to save that of their wives. The same criticism can surely be made of the presumption that a child dies before his or her father; it is certainly reasonable to assume that the adult used every effort to prolong the child's life, and that the child in fact outlived the adult. For a strong criticism of the statutory presumptions, see Wigmore on Evidence, 3d. Ed., sec. 2532a.

The death of husband and wife in a common disaster where there is no evidence as to which outlived the other has always presented a difficult case with which to deal. The presumption theory reaches the doubtful result of giving the wife's property to the heirs of the husband instead of her own. Under the Act[5] each decedent is treated as having survived as far as his own property is concerned. Assuming both die intestate, property owned by the wife goes to her heirs and property of the husband goes to his heirs.

In case the two or more victims of a common disaster where the facts cannot be known are beneficiaries who would take successively, the property the beneficiaries would have taken in turn is simply divided according to the number of these successive beneficiaries, and is distributed among those persons who would have taken if each of the designated beneficiaries had survived.[6]

In the case of joint tenants or tenants by the entirety, killed in a common disaster, the Act really abolishes the doctrine of survivorship normally applicable to these two tenancies. Instead, a division of the property is made according to the number of tenants. Thus, in the case of two tenants the property is divided in half; one half is distributed as if one tenant had lived longer, and the other half as if the other tenant had been the one to survive.[7]

Where an insured and his beneficiary are killed in a common disaster and there is no sufficient evidence that they died other than simultaneously, the Act provides that the proceeds of the policy of insurance shall be paid to the heirs of the insured rather than to those of the beneficiary.[8]

The Act interposes no barriers to a distribution under a will in which the testator has expressly provided for distribution in the common disaster situation.[9] The Act purports to provide only for the normal situation where no provision has been made for "simultaneous death".

To the extent that the old rule of presumptions was unrealistic, the new rule established by the Uniform Act will tend to provide a fairer disposition of property. There seems something inherently objectionable about any rule that operates on the principle of "all or nothing". Especially is this true when the basis for determining whether it shall be all or nothing is dubious. Instead, a rule for dividing the property among claimants will probably appeal to the average man's sense of justice.

Acquisition of Property—Alien Land Law

Chapter 35 S.L. 1943 enacts for Wyoming an "Alien Land Law" not unlike those long in effect in California and in several other western states.[10]

5. Wyo. C.S. 1945, sec. 6-2511.
6. *Ibid.* sec. 6-2512.
7. *Ibid.* sec. 6-2513.
8. *Ibid.* sec. 6-2514.
9. *Ibid.* sec. 6-2515, which reads: "This Act shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this Act."
10. Wyoming is the tenth state to adopt these anti-Japanese land laws. For a general discussion, See McGovney, "The Anti-Japanese Land Laws of California and Ten Other States" (1947) 35 Cal. Law Rev. 7.

Specifically excepting Chinese nationals from its scope, the Act[11] bars other aliens "not eligible to citizenship under the laws of the United States" from "acquiring, possessing, enjoying, using, leasing, transferring, transmitting and inheriting any interest" in Wyoming real property. The Act contains penal provisions making violation a felony.

Obviously enacted to prevent West Coast Japanese, removed from their homes for security reasons at the outbreak of the war with Japan, from acquiring property in Wyoming, the Act raises interesting constitutional questions. As far as its prohibition against *inheritance* is concerned, the new Act conflicts with Wyo. Comp. Stat. 1945 Sec. 6-2506, which reads: "The alienage of the legal heirs shall not invalidate any title to real estate which shall descend or pass from the decedent". Presumably intended by the Legislature to do away with *all* discrimination against aliens for inheritance purposes, Sec. 6-2506 was enacted in 1876; and except for an amendment in 1931[12] it has been in force ever since its original enactment.

It would seem, however, that the inconsistent provisions of Sec. 6-2506 can prove no barrier to the enforcement of the new Act. Under the rule that the later of two conflicting expressions of the legislative will must prevail,[13] Sec. 6-2506 must be regarded as no longer expressing the will of the legislature with respect to Japanese aliens. To this extent the statute of 1876 must be treated as impliedly repealed. But the Wyoming Constitution, in Art. 1, Sec. 29, provides that "No distinction shall ever be made by law between resident aliens and citizens as to the possession, taxation, enjoyment and descent of property". In the light of this section, the constitutionality of the Alien Land Law, so far as *resident* aliens are concerned, is subject to the gravest doubts. Under a constitutional prohibition almost identical with Art. I, Sec. 29, provisions of the Alien Land Act of Arkansas similar to those in Wyoming's new Act were held unconstitutional as to a resident alien. *Applegate v. Lum Jung Luke,* 173 Ark. 93, 291 S.W. 978. Indeed it might also have been argued that a state statute discriminating against resident aliens is likewise in conflict with the injunction of the Fourteenth Amendment that no state shall deny to any person within its jurisdiction the equal protection of its laws,[14] although this point was not raised in the Arkansas case.

It seems clear from the foregoing analysis that an alien in fact resident in Wyoming cannot constitutionally be denied rights respecting real property not also denied the citizen. It is submitted that it is also fairly clear that an alien, once having arrived within the territorial limits of the state, might validly claim

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11. The Act is now Wyo. Comp. Stat. 1945, secs. 66-401 to 66-407.
12. Amended by S.L. 1931, Ch. 73, Sec. 143. Prior to this amendment the Act of 1876 applied only to *descendent* heirs. Bamforth v. Ihmsen, (1922) 28 Wyo. 282, 204 P. 345.
13. See Crawford, "Statutory Construction," Sec. 137.
14. It is generally believed that Terrace v. Thompson (1923) 263 U.S. 197, and Porterfield v. Webb, (1923) 263 U.S. 225, have settled the law on this point *contra* to the opinion expressed by the writer of this legislative note. But see the persuasive criticism of these two cases, pp. 41-48, in the McGovney article cited in note 10. It seems by no means clear that the present Supreme Court of the United States, facing the issue of discrimination against a resident alien, would apply the rule of the Terrace and Porterfield cases.

to *be* a resident. If the alien really intended to make Wyoming his place of abode, a court would have difficulty regarding him as other than a resident.*15* It is probable therefore that under the Wyoming Constitution—if not also under the Fourteenth Amendment—the Alien Land Law will prove a barrier only to those ineligible aliens who remain residents of states other than Wyoming. It is also probable that even this disability might be removed by an extremely brief presence in the state, if accompanied by a *bona fide* intent to acquire a residence here.

MORTGAGES—LIMITATION ON FORECLOSURE BY ADVERTISEMENT

Chapter 122, S.L. 1945 provides for a ten year limitation on foreclosure by advertisement of real estate mortgages under a power of sale. The act amended Wyo. Rev. Stat. 1931 Sec. 71-205,*16* which provided for foreclosure by advertisement, but placed no period of limitation on such proceedings.

Foreclosures of mortgages or trust deeds by action in this state have always been governed by the Statute of Limitation on specialties and contracts in writing,*17* but the Wyoming Court in 1926 had indicated that a foreclosure under a power of sale would not be subject to the application of that statute.*18* In 1941, however, the Court held that the rights of a mortgagee who forecloses under a power of sale should be the same as the rights accorded one who forecloses by action, in order that all statutes involved could be construed in harmony.*19* Therefore the amendment in question seems to be merely an enactment of law in regard to the Statute of Limitations already developed by the Wyoming Court.

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15. "Residence indicates merely a factual place of abode". Zimmerman v. Zimmerman, (Ore. 1945) 155 P. (2d) 293. "Residence simply requires *bodily presence* as an inhabitant in a given place". Rawstorne v. Maguire, (1934) 265 N.Y. 204, 192 N.E. 294. "Residence * * * means, as we understand it, one's actual home, in the sense of having no other home" whether he intends to reside there permanently, or for a definite or indefinite length of time." Shaeffer v. Gilbert, (1890) 73 Md. 66, 20 A.434. "A change of residence does not consist alone in going to and living in another place, but it must be with the intention of making that place a permanent residence." Duxtad v. Duxtad, (1909) 17 Wyo. 411, 100 P. (2d) 112. "Neither is any particular period of time required for a person to change his residence and acquire a residence elsewhere. A non-resident may become a resident of the state * * * upon the performance of some act indicative of an intention to establish a residence within the state * * * coupled with an actual present intention to establish such residence." City of Enderlin v. Pontiac Tp., Cass County, (1932) 62 N.D. 105, 242 N.W. 117.
16. The statute as amended is now Wyo. Comp. Stat. 1945 Sec. 59-201.
17. Wyo. Rev. Stat. 1931 Sec. 89-409. Ingersoll v. Davis, (1905) 14 Wyo. 120, 82 Pac. 867; Bank v. Maika, (1907) 16 Wyo. 141, 92 Pac. 619, 125 Am. St. Rep. 1032, 14 Ann. Cas. 977.
18. See State ex rel. Avenius v. Tidball, (1926) 35 Wyo. 496, 509, 252 Pac. 499, 504.
19. Stryker v. Rasch, (1941) 57 Wyo. 34, 122 P. (2d) 570, 136 A.L.R. 770. This was an action to quiet title brought by an adverse possessor against a mortgagee whose mortgage preceded the disseism. The court held that because the mortgage had not proceeded to foreclose within ten years of the date of the mortgage, his right was barred by the Statute of Limitation, Wyo. Rev. Stat. 1931 Sec. 89-409, even if he wished to foreclose by advertisement. See also Turner v. Binninger, (1941) 57 Wyo. 26, 31, 112 P. (2d) 568, 569 wherein the court said that a sale under a foreclosure by advertisement "is not strictly a judicial sale, or a sale on execution, but is analogous thereto, and there is no reason why the rules relating to the latter should not, in so far as applicable, be applied to sales under a power of sale contained in a mortgage." Quaere: Will all the attributes of the Statutes of Limitations on foreclosures by action be applied as well to foreclosures by advertisement, under the instant act as amended, such as suspension of the limitation period during defendant's absence from the state, under Wyo. Comp. Stat. 1945 sec. 3-519?

Acts in other states which have shortened the foreclosure period have been successfully attacked as unconstitutional when applied to mortgages or trust deeds existing at the time of enactment. The theory of the courts in such cases has been either that the statute deprives the mortgagee or trustee of his rights, thereby impairing the obligation of contracts,[20] or that the statute, although affecting merely a remedy, does not provide a reasonable time for action before the bar takes effect.[21] However, if a reasonable period does exist between the time of enactment and the time when the new Statute of Limitations prevents the remedy of foreclosure on existing mortgages, the act has been held valid.[22] Inasmuch as the Wyoming amendment apparently sets out existing case law in regard to the limitation period on foreclosure by advertisement, it is suggested that no similar objection on constitutional grounds can be raised.

VENUE OF ACTION AGAINST NON-RESIDENT MOTORISTS

Chapter 11, S. L. 1945 amends the statute providing that the operation of a motor vehicle by a non-resident upon the streets or highways of the state constitutes the secretary of state his agent for service of process in any action growing out of such operation, by adding a provision that the District Court of the county in which the cause of action arose or of the county in which the plaintiff resides shall have jurisdiction over such action.[23]

Prior to this amendment the law left uncertain the county in which the action should be instituted. Sec. 89-707, Rev. Stat. 1931, provided that actions against non-residents might be brought in any county in which there was property of, or debts owing to the defendant, or where the defendant might be found. Obviously none of these situations would fit the case of a non-resident motorist who left the state with his automobile. The statute was probably borrowed from some jurisdiction where the general laws concerning venue made some provision that would cover the situation.[24] Other states which found themselves in a similar position of having no specific venue provision aplicable have made curious adjustments by court decision. Tennessee adopted a theory that the secretary of state was the agent of the defendant in each of the counties of the state, and might be served as if the non-resident were a resident of plaintiff's county.[25] A federal court in Mississippi held that the action should be brought in the

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20. Steward v. Nelson, (1934) 54 Idaho 437, 32 P. (2d) 843 (mortgage); Le Sage v. Switzer, (1935) 116 W. Va. 657, 182 S. E. 797 (trust deed).
21. Adams & F. Co. v. Kenoyer, (1908) 17 N. D. 302, 116 N. W. 98, 16 L.R.A. (N. S.) 681; cf. Duke v. State, (1892) 56 Ark. 485, 20 S. W. 600; Jentzen v. Pruter, (1921) 148 Minn. 8, 180 N. W. 1004.
22. Eyeington v. Pardee, (1945) 184 Misc. 803, 54 N. Y. S. (2d) 512; Graves v. Howard, (1912) 159 N. C. 594, 75 S. E. 998, Ann. Cas. 1914C 565; see Farmers' L. Ins. Co. v. Walters, (Tex. Com. App. 1928) 10 S. W. (2d) 698, 703; note, 158 A.L.R. 1043 rehearing den. (Tex. Com. App. 1929) 14 S. W. (2d) 58.
23. The statute, as amended, is now Wyo. Comp. Stat. 1945, sec. 60-1101. At least 42 states have adopted similar statutes. See compiler's note to sec. 60-1101 and (1935) 20 Iowa L. Rev. 654. The constitutionality of the prototype statute was upheld in Hess v. Pawloski (1927) 274 U.S. 352, 47 Sup. Ct. 632, 71 L.Ed. 1091.
24. See Courtney v. Meyer (1943) 202 S.C. 437, 25 S.E. (2d) 481.
25. Carroll v. Matthews (1938) 172 Tenn. 540, 113 S.W. (2d) 742; Carter v. Schackne (1938) 173 Tenn. 44, 114 S.W. (2d) 787.

county where the secretary of state resided.[26] In New York the action might be brought in any jurisdiction in which the secretary maintained an office, but in 1937 this situation was corrected by an amendment allowing service of process on the secretary outside of the territorial jurisdiction of the court in which the action was brought.[27]

The amendment is based upon reasons of practical convenience. The non-resident defendant will be inconvenienced regardless of which Wyoming court tries the case; the resident plaintiff may choose to try it where he resides, to suit his own convenience, or where the accident occurred, to suit the convenience of witnesses. Curiously, a later enactment of the same session of the Legislature changed the general venue statute so as to provide that all actions against a non-resident (with certain exceptions not material here) may be brought in any county where the cause of action arose or where the plaintiff resides.[28] Had this statute been first passed, the necessity of the amendment under discussion would have been obviated.

PROBATE OF WILLS—LIMITATION ON TIME TO CONTEST

Chapter 3, S.L. 1945,[29] reduces from ten months to six the period within which the probate of a will may be contested in Wyoming; and Chapter 52 S.L. 1945, amends Section 88-707, R.S. 1931,[30] to eliminate an exception heretofore existing in the ten-month statutory limitation. As Section 88-707 stood before the 1945 amendment, an exception was made in the case of contests by infants or insane persons. For such persons the right to contest the probate continued until one year after the removal of the disability. Chapter 52, S.L. 1945, has wholly removed the exception from Wyoming statutes. It would seem, therefore, that any contest of probate must be made within six months, or it is conclusive to all.

Probably an *apparent* exception exists in the case where the "contest" takes the form of an offer for probate of a later will. By the weight of authority the offer for probate of a later will is not a contest of the earlier will admitted to probate.[31] The Supreme Court of California has held that the offer of a later will is not barred by the statutory limitation.[32] Since the probate laws of Wyoming are so largely patterned after those of California, it would seem likely that a Wyoming court would reach the same conclusion.

Although it is very common for statutes which limit the time within which a will must be contested to contain exceptions in favor of infants and persons of unsound mind, it would seem clear that such exceptions exist only by force of the statute creating them. The legislature need not create such exceptions unless it wishes to.[33] There thus seems no reason to doubt that the elimination of the

26. Bouchillon v. Jordon (E.D. Miss., 1941) 40 F. Supp. 354.
27. Praete v. Adams (1938) 169 Misc. 776, 8 N.Y.S. (2d) 235.
28. S.L. 1945 C. 56, codified as Wyo. Comp. Stat. 1945, sec. 3-807.
29. The statute is now Wyo. Com. Stat. 1945, sec. 6-408.
30. The statute as amended is now Wyo. Com. Stat. 1945, sec. 6-414.
31. See Page on Wills, Lifetime Ed., sec. 607.
32. Estate of Moore, 180 Cal. 570, 182 Pac. 285.
33. Garrison v. Hill, 81 Md. 551, 32 Atl. 191; Massin v. Bassford, 381 Ill. 569, 46 N.E. (2d) 366; Page on Wills, Lifetime Ed., sec. 605.

exception from Section 88-707 has had the effect of barring a true contest of the probate of a will within six months even as to persons under disability of infancy or insanity.

WYOMING SMALL LOAN ACT

Chapter 128, S.L. 1945[34] establishes the Wyoming Small Loan Act,[35] a peculiar statute in that its substance is in a section which appears to contain only definitions. Applying to loans of $150.00 or less, the Act provides for a "maximum rate of charge of 3½% per month on the unpaid balance of the loan. Prepayment of the charge is not permitted. A service fee of $1.00 is allowed in certain instances, but any other charge, direct or indirect, is specifically prohibited.[36] This wording would seem to effectively prevent the lender from charging, above the prescribed maximum rate, for expenses of securing or collecting a loan. However, there is some conflict under similar small loan acts as to the right of the lender to include a charge for attorneys' fees in case of default.[37] In the states that have decided the question, probably the slight majority hold that attorneys' fees in addition to the maximum charge render the loan usurious.[38] But there are no restrictions in the Wyoming Act to prevent the lender from demanding any security he pleases.

Exempted from the application of this Act are banks, savings banks and associations, loan and trust companies, building and loan associations, and credit unions.[39] All others who are in the business of making loans under the statute must be licensed,[40] and in case of a violation of any of the Act's provisions, penalties in the form of criminal sanctions as well as loss of principal and interest may be imposed.

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34. Wyo. Comp. Stat. 1945 secs. 39-1111 and 39-1112.

35. Repealing Wyo. Rev. Stat. 1931 secs. 58-112 and 58-113, which also regulated small loans. These sections had been held constitutional as a police regulation, and not within the meaning of Wyo. Const. Art. III, sec. 27, which prohibits local or special laws regulating the rate of interest. State v. Sherman, (1909) 18 Wyo. 169, 105 Pac. 299.

    Other states which have passed somewhat similar small loan acts include: Arizona, California, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, New York, Oregon, Pennsylvania, Tennessee, Utah, Virginia, West Virginia and Wisconsin. Most of these acts, however, apply to loans up to $300.00.

36. Previously, Wyo. Rev. Stat. 1931 sec. 58-112 provided for a maximum rate of interest, increase and profit of 25% per annum on any loan up to $200.00 Such rate was to "cover all commissions, fees, charges, interest and increase of every character whatsoever."

37. Williston, Contracts (6th Ed. 1938) sec. 1694, p. 4796; see Note, 143 A.L.R. 1323.

38. Ideal Financing Ass'n v. LaBonte, (1935) 120 Conn. 190, 180 Atl. 300; Lackawanna Thrift & Loan Corp. v. Kabatchnik, (1941) 145 Pa. Super. Ct. 52, 20 A.(2d) 903; *cf.* London Realty Co. v. Riordan, (1913) 207 N.Y. 264, 100 N.E. 800, Ann. Cas. 1914C 408; Schultz v. Provident Loan Ass'n., (1941) 289 Ky. 25, 157 S.W. (2d) 736; *contra,* Walker v. People's Finance & Thrift Co., (1935) 45 Ariz. 226, 42 P. (2d) 405, *rev'd on other grounds* (1935) 46 Ariz. 224, 49 P. (2d) 1005; Mason v. City Finance Co., (1933) 113 Fla. 73, 151 So. 521; Foundation Finance Co. v. Robbins, (1934) 179 La. 259, 153 So. 833.

39. The exempted banks, trust and finance companies are regulated on loans of $1000 or less by Wyo. S.L. 1941 Ch. 95, Secs. 1-3; Wyo. Comp. Stat. 1945, Secs. 39-1113—39-1115.

40. An annual payment of $10.00 to the Clerk of the municipality entitles one to a license.

SERVICE BY PUBLICATION ON DEFECTIVE CORPORATIONS

Chapter 63, S.L. Wyoming 1945 amended the statute providing for service by publication in actions relating to real or personal property by including in the list of those who may be so served three types of defective domestic corporations: dissolved corporations which have no trustee for creditors and stockholders who resides at a known address in Wyoming, corporations which have failed to elect officers or other representatives who may be served and which have no place of doing business in this State, and corporations whose certificates have been forfeited and which have no trustee for creditors and stockholders who resides at a known address in Wyoming.[41]

The statute prior to this amendment referred only to foreign corporations, non-resident individuals, and defendants whose place of residence could not be ascertained. Thus there was no clear cut provision for serving defective domestic corporations, and as a result titles might be held subject to a cloud with no remedy for effectuating the removal of the cloud.

The constitutionality of this amendment would seem to be clear. A corporation is the creation of a sovereign, and during its continuing existence it must conform to the laws of its creator with regard to all matters of regulation, including statutes relating to the methods by which it may be served with process.[42] Strictly speaking, there can be no personal service upon a corporation, but only the constructive or substituted service provided by the law of the particular jurisdiction.[43] However such service, in order to confer jurisdiction, must be reasonably calculated to give notice of the claim and an opportunity to make a defense.[44] Similar statutes of other states have been upheld in actions against domestic corporations whose officers could not be found,[45] but a Georgia statute which provided for publication upon a mere showing that within plaintiff's knowledge defendant had no place of business, or officers, was held to violate the due process clause.[46] The Wyoming statute evidently requires as a jurisdictional fact the actual lack of a trustee, officer or agent upon whom process could be served and hence would not seem to be subject to the same objection.

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41. The statute and the amendment are codified as the 4th sub-division of Wyo. Comp. Stat. 1945, sec. 3-1101.
42. Pinney v. Providence Loan and Investment Co. (1900) 106 Wis. 396, 82 N.W. 308.
43. Clearwater Mercantile Co. v. Roberts, Johnson, Rand Shoe Co. (1906) 51 Fla. 176, 40 So. 436.
44. Pinney v. Providence Loan & Investment Co. (1900) 106 Wis. 396, 82 N.W. 308.
45. Clearwater Mercantile Co. v. Roberts, Johnson, Rand Shoe Co. (1906) 51 Fla. 176, 40 So. 436; Town of Hinckley v. Kettle River R. Co. (1897) 70 Minn. 105, 72 N.W. 835.
46. Piggly Wiggly Georgia Co. v. May Investment Corp. Inc. (1939) 189 Ga. 477, 6 S.E. (2d) 579.