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Kim McDonald

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WYOMING NONRESIDENT MOTORIST STATUTE

The Wyoming Nonresident Motorist Statute, as laid out in section 1-52 of the Wyoming Compiled Statutes (1957) and as amended in 1963, basically provides for a method of service of process upon a nonresident or a resident upon whom service cannot be made within the state. Also coming within the scope of the Wyoming Nonresident Motorist Statute is the agent of such nonresident or resident, personal representative, executor or administrator.

The use and operation of a motor vehicle over or upon any street or highway within the state is deemed an appointment of the Secretary of State as attorney upon whom service of process may be had in any action growing out of such use and operation. Service of process is made by serving a copy upon the Secretary of State. Within ten days thereafter the plaintiff must also send a copy of the process, by certified mail, to the defendant's last known address. The plaintiff must then file an affidavit that he has complied with such requirements; or in the alternative personal service outside the state may be used.

The district court of the county in which the cause of action arose or the district court of the county where the plaintiff resides shall have jurisdiction over such actions.

All fifty states have adopted similar statutes.¹ Nonresident motorist statutes have been upheld as not violating "Due Process,"² "Privilege and Immunities,"³ and the "Equal Protection"⁴ clauses of the Constitution and therefore as constitutional, thus greatly expanding the concept of jurisdiction as laid out in *Pennoyer v. Neff*.⁵

The courts began by saying that whenever a nonresident uses the highway of another state he is consenting to be sued there.⁶ The fiction of consent eventually gave way to the realization that activities within the state are the basis of jurisdiction.⁷ The Supreme Court in *International Shoe v. State of Washington* held that due process requires only that in order to subject a defendant who is not present within the forum to a judgment in personam, there must be certain minimum contacts with the forum so that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.⁸ It is felt that driving an

1. Note 1, 44 Iowa L. Rev. 384; Wyo. Comp. Stat. 1-52 (1957); Alaska Session Laws Chap. 174 § 3 (1959); Hawaii Rev. Statutes § 230-33 (1957).

2. *Hess v. Pawloski*, 274 U.S. 352. (1927).

3. *State v. Lewis*, 118 Fla. 536, 159 So. 792, 99 A.L.R. 123 (1935).

4. *Kane v. State of New Jersey*, 242 U.W. 160, 37 S.Ct. 30, 61 L.Ed. 222 (1916).

5. 95 U.S. 714, 24 L.Ed. 565 (1877). Jurisdiction is based upon presence within the state and service while there.

6. *Supra* note 2.

7. The language of the nonresident motorist statutes is, however, still coined in the terms of consent.

8. 326 U.S. 310, (1945); *Hansen v. Denckla*, 355 U.S. 22, (1957), established the jurisdictional limits of minimal contacts.

automobile in a state is such sufficient minimum contact that maintenance of a suit does not offend traditional notions of fair play and substantial justice.⁹

The constitutionality of a nonresident motorist statute phrased within the limits imposed by the due process clause, which is the only serious constitutional limitation, is no longer questioned.¹⁰ Litigation has shifted from an attack on the jurisdictional basis of the statutes to questions concerning the proper construction of their terms. Basically there is very little variation in the different state nonresident motorist statutes. However, diverse terminology has led to a variety of results in similar cases.¹¹

Generally, the courts strictly construe the nonresident motorist statutes as being in derogation of the common law.¹² However, the courts are not justified in using strict construction to defeat the intention of the legislature¹³ and to restrict the remedy provided.¹⁴ One court considered the nonresident motorist statute as remedial in nature, procedural, and therefore to be liberally construed.¹⁵ Section 1-2 of the Wyoming Compiled Statutes (1957) provides:

The provisions of this act and all proceedings under it shall be liberally construed in order to promote its object and assist the parties in obtaining justice; and the rule of the common law that statutes in derogation thereof must be strictly construed, has no application to this act; but this section shall not be so construed as to require a liberal construction of provisions affecting personal liberty, relating to amercement, or of a penal nature.

The Wyoming Nonresident Motorist Statute will be examined to determine if it is in harmony with the constitutional requirements and the extent of its coverage.

Under the Wyoming Nonresident Motorist Statute, service of process is made by serving a copy upon the Secretary of State and within ten days after such service the plaintiff must send, by certified mail, to the defendant's last known address, a copy of the process.

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reason-

9. The idea of minimal contacts has been adopted in Wyoming and is laid out in *Ford Motor Co. v. Arguello*, 382 P.2d 886 (Wyo. 1963).

10. *Supra* note 2.

11. *Parr v. Gregg*, 70 O.A. 235, 42 N.E.2d 922 (1942); *Cody v. Francil Schwarz*, 152 F.Supp. 379 (S.D. Ohio W.D. 1957); *Johnson v. Ciegel*, 110 N.J.L. 374, 165 Atl. 869 (1933); *Eckman v. Baker*, 224 F.2d 954 (3rd Cir. 1955); *Weaver v. Winn Dixie Stores*, 160 F.Supp. 621, (N.D. Ohio E.D. 1958); *Tipton v. Fleet Maintenance*, 75 Abs. 516, 152 N.E.2d 882 (1957); *Pray v. Maier*, 69 O.A. 141, 40 N.E.2d 850 (1942); *McLeod v. Birnbaum*, 14 N.J.M. 485, 185 Atl. 667 (1936).

12. *Jeramaine v. Graf*, 225 Iowa 1063, 283 N.W. 428 (1939); *Harris v. Owens*, 142 Ohio 379, 52 N.E.2d 522 (1943); *Bond v. Golden*, 273 F.2d 265 (10th Cir. 1959); *Carlson v. Dist. Ct. of City and County of Denver*, 116 Colo. 330, 180 P.2d 525 (1947).

13. *Jones v. Pebler*, 371 Ill. 309, 20 N.E.2d 592 (1939).

14. *Kohanovick v. Youree*, 51 Del. 440, 147 Atl.2d 655 (1959).

15. *State v. Dist. Ct. of 6th Jud. Dist.*, 112 Mont. 253, 114 P.2d 1047 (1941).

ably calculated under all the circumstances, to appraise interested parties of the pendency of the action and afford them an opportunity to present their objections.¹⁶

The question is, does the Wyoming Nonresident Motorist Statute comply with the requisites of due process? In *Schilling v. Odelbak* a non-resident motorist statute similar to Wyoming's was upheld as constitutional¹⁷ The court stated, "the statute provides such prerequisites that it is safe to conclude that it was reasonably certain that the defendant would receive actual notice and that adequate opportunity was afforded him to defend."¹⁸

The term "last known address" has led to some confusion. It does not mean the last address known to the plaintiff.¹⁹ "Last known address" is the one that is most likely to give the party to be served notice, although actual notice is not essential, and such address may be a non-resident's place of business or his residence.²⁰ Some courts have held that the phrase "last known address," means his last address so far as it is reasonably possible to ascertain, and this the plaintiff must learn at his peril.²¹ The trend is to sustain the validity of the process if there is a probability that if the statute is complied with the defendant will receive actual notice.²²

It was held in *Freedman v. Poirier* that a statute providing for mailing notice of service to the nonresident's "last known address" was unconstitutional for failure to make it reasonably probable that notice of service on the Secretary of State would be communicated to the defendant.²³ The nonresident motorist statute relied on failure to provide a specific time limit in which a copy of the process was to be mailed to the defendant. This prompted the court to say that in absence of a provision to the contrary, a copy of the process might be delivered to the defendant at any time before or even after the return day. Some states that do not provide a specified time limit say that notice of service should be given with all reasonable dispatch and do not seem to worry about the time limit.²⁴ Wyoming puts a time limit of ten days after service and thus avoids this problem.

Is the defendant deprived of his rights without due process when he

16. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

17. 177 Minn. 90, 224 N.W. 694 (1929).

18. *Id.* at 696.

19. *Glen v. Holub*, 36 F. Supp. 941, 942, (S.D. Iowa 1941).

20. *Conner v. Miller*, 154 Ohio 313, 96 N.E.2d 13, 17 (1950). Defendant had a known business address at a time subsequent to his leaving the last known residential address. The court held that a copy of the process sent to that residence and not received by such defendant was not sent to "last known address" of such defendant within the meaning of the statute.

21. *Hartley v. Vitiello*, 113 Conn. 74, 154 Atl. 255, 259 (1931); *Drinkard v. Eastern Airlines*, 290 S.W.2d 175 (1956).

22. *Sorenson v. Stowers*, 251 Wisc. 398, 29 N.W.2d 512 (1957). The court held that the plaintiff was entitled to rely on the address stated in the police report and was not obliged at his peril to ascertain the last absolute or true address of the defendant.

23. 134 Misc. 253, 236 N.Y.S. 96 (1929).

24. *Supra* note 21.

has not received actual notice of the action? The Wyoming Nonresident Motorist Statute does not contain a provision requiring a return receipt from the defendant. Without a return receipt the defendant could argue that he did not have notice. Any action commenced against a defendant would not be a complete surprise since everyone is usually aware of the fact that they have been involved in an accident. But knowing of an accident isn't knowledge as to the particular time the suit is to be commenced so as to permit a defendant an opportunity to appear and defend. Many nonresident motorist statutes require the filing of a return receipt.²⁵ Such provisions have been construed to mean that the defendant must have actual notice of the action before jurisdiction over him is acquired.²⁶ Even in those jurisdictions where a return receipt is required this does not mean that the defendant may refuse to receive the notice and sign a receipt and thus invalidate the service.²⁷ Other jurisdictions with nonresident motorist statutes requiring a return receipt have held that it is not an absolute requirement that the defendant actually receive the notice, provided the plaintiff has acted in good faith.²⁸ In view of these decisions it may be inferred that it is not an absolute requirement that a provision for a return receipt be embodied in the nonresident motorist statute. In *Milliken v. Meyer* the court stated that whether or not due process is satisfied does not depend upon actual notice but open whether or not it is reasonably calculated to give him actual notice.²⁹ Where a return receipt is not required, jurisdiction is acquired by service upon the secretary of State and not upon the defendant. It is therefore not considered fatal if the defendant does not actually receive notice. Throughout this discussion the fundamental requisite of due process must be kept in mind, viz., the opportunity to be heard. Even if the service is reasonably calculated to give notice, what good is the service if you are not actually informed?

Another area that has been attacked on constitutional grounds is the venue provision of the nonresident motorist statutes. The venue provision in the Wyoming Nonresident Motorist Statute provides that the district court of the county in which the cause of action arose or where the plaintiff resides may hear the action. On the other hand, if the action is against a resident, section 1-37 of the Wyoming Compiled Statutes (1957) provides that the action must be brought where the defendant resides or where he may be summoned. It might be said that discrimination results by reason of these two statutes. When the action is against a resident defendant,

25. *Hart v. Wiener*, 258 App. Div. 371, 17 N.Y.S.2d 87, (1940); *Weiss v. Magnussen*, 13 F. Supp. 948, (D.C. Va. 1936).

26. *Bucholz v. Hulton*, 153 F. Supp. 62 (D.C. Mont. 1958); *Alexander v. Bush*, 199 Ark. 562, 134 S.W.2d 519 (1939); *Muncie v. Westcraft Corp.*, 58 Wash.2d 36, 360 P.2d 744 (1961).

27. *State ex rel. Charette v. Dist. Ct. of Silver Bow County*, 107 Mont. 489, 86 P.2d 750 (1939); *Creadivk v. Keller*, 160 Atl. 909 (Del. 1932).

28. *William v. Egan*, 308 P.2d 273, (Okla. 1957); *Volmer v. Hoel*, 87 Ohio App., 93 N.E.2d 416, (1950).

29. 311 U.S. 457, 132 A.L.R. 1357, (1940).

the plaintiff has to go after him and the defendant cannot be subjected to suit at plaintiff's residence, unless it happens that he is found and served while there. When the action is against a nonresident defendant, the nonresident can be forced to defend where plaintiff resides even if the action arises in another county and even though the defendant is not found within the county of the plaintiff's residence.

In *Henry Fisher Packing Co. v. Mattox*³⁰ a nonresident motorist statute similar to Wyoming's was held unconstitutional for the reason that the venue provision was discriminatory and violated the "Equal Protection Clause" of the Constitution.

If the law with relation to the use of highways should be uniform when dealing with residents and nonresidents it should be uniform when redress is sought for injury occurring on the roads. The procedure provided should not result in a disadvantage or advantage against or in favor of either one or the other; if it does so the law is discriminatory and constitutes a lack of equal protection.³¹

In reaching this conclusion the court relied on the *Power Mfg. Co. v. Saunders* case.³² Here the venue provision permitted a foreign corporation to be sued in any county of the state; whereas if the suit was against a resident the suit was required to be brought in the county where the corporation had its place of business or where an agent resided. The United States Supreme Court held that the statute discriminated against foreign corporations and was in violation of the "Equal Protection Clause" of the Constitution. The court went on to say,

The clause in the fourteenth amendment forbidding a state to deny any person within its jurisdiction the equal protection of equal laws does not prevent a state from adjusting its legislation to differences in situations or forbid classification in that connection, but it does require that the classification be not arbitrary, but based on real and substantial difference having a reasonable relation to the subject of the legislation.³³

The statute in the *Power* case permitted nonresidents to be sued in any county of the state; whereas in the *Fisher* case the nonresident could only be sued in the county where the injury occurred or where the plaintiff resided. It seems that the court in the *Fisher* case broadened the doctrine as set forth in the *Power* case, overlooked the fact that a state can under its police powers make such regulations as long as they do not arbitrarily discriminate, and failed to discuss to any extent the meaning of the word arbitrary.

A defendant in Wyoming, whether a resident or a nonresident, may be forced to defend where the plaintiff resides. A nonresident may be

30. 262 Ky. 318, 90 S.W.2d 70 (1936).

31. Id. at 71.

32. 274 U.S. 490, (1927).

33. Id. at 498.

forced to defend at plaintiff's residence a greater number of times than the resident, but this alone is not discrimination. If the nonresident feels that it will be hardship he can move for a change of venue or remove the action to a Federal court on the ground of diversity of citizenship.³⁴

It has also been determined that a nonresident motorist statute does not deprive a person of the equal protection of the laws for the reasons that it accords a fair trial in a court of competent jurisdiction to all who are in the same category and that the legislature is not without power to make exceptions to the general rule.³⁵

The Wyoming Nonresident Motorist Statute is broad enough to include constructive service upon the personal representative of a deceased nonresident motorist. One court has said that a statute which provides for service upon the personal representative is unconstitutional.³⁶ One of the arguments used to attack such a provision is that since the statute rests upon the implied consent of the nonresident for the appointment of the Secretary of State as his agent, the agency is revoked by death. The court in *Brook v. National Bank of Topeka* said, "the state police power is not limited by the ordinary rules of agency."³⁷ A second argument as laid out in *Knopp v. Anderson*, which is the only case so holding, is that an action against the estate is in rem and the state where the accident occurred cannot create a right against property wholly within another jurisdiction.³⁸ In spite of these analyses the validity of such provisions has been upheld.³⁹

Setting the constitutional issues aside, the nonresident motorist statute will be probed to determine the scope of its coverage. Uncertainty arises as to what specific acts are included within the meaning of the words "use and operation." It is felt that the operation of a motor vehicle includes more than its movements over the highways.⁴⁰ Some courts feel that a motor vehicle can be operated even when it is standing or parked at the time of the accident.⁴¹ Another jurisdiction holds that such actions as

34. In the ordinary case, extreme hardship to a defendant can be mitigated if the defendant moves to a federal court on the ground of diversity of citizenship under 28 U.S.C. § 1441, and then moves for a change of venue pursuant to 28 U.S.C. § 1404 (a). The principle of *forum non conveniens* may also be available. *Gilbert v. Gulf Oil Corp.*, 153 F.2d 883, (C.C.A. N.Y. 1946); *Price v. Atchinson T&S.F. Ry. Co.*, 42 C.2d 577, 43 A.L.R.2d 756, 268 P.2d 457, 458 (1954). A defendant may also ask for change of venue pursuant to section 1-53 of the Wyoming Compiled Statutes 1957.

35. *Panzram v. O'Donnell*, 48 F. Supp. 74, (S.D. Minn. 1942).

36. *Knopp v. Anderson*, 71 F. Supp. 832 (N.D. Iowa 1947).

37. 251 F.2d 37 (8th Cir. 1958).

38. *Supra* note 36.

39. *Oviatt v. Garretson*, 205 Ark. 792, 171 S.W.2d 287 (1943); *Leighton v. Roper*, 300 N.Y. 434, 91 N.E.2d 876, 18 A.L.R.2d 537 (1950). Certain rules of jurisdiction must yield to the reasonable use of police power. *Plopa v. DuPre*, 327 Mich. 660, 42 N.W.2d 777 (1950).

40. *McDonald v. Superior Ct.*, 43 Calif. Rep.2d 621, 275 P.2d 464 (1954).

41. *Hand & Frazer*, 248 N.Y.S. 557 (1931); *Chiarello v. Guerin Special Motor Freight*, 92 A.2d 136 (N.J. 1952).

loading or unloading or injury occurring while parked have no relation to the use of the highway and therefore do not come within the scope of the statute.⁴²

In *Brauer v. Parkhill*⁴³ a statute similar to Wyoming's was brought into operation. An injury occurred when a truck, which was parked off the highway, was being unloaded. The court said, "It make no difference where the injury actually occurs if it may be attributed to the use of the highway and naturally flows therefrom." It was felt that this injury did not result from the use and operation of a motor vehicle on the highway. More emphasis was placed on the fact that the truck was not on the highway at the time of the accident than on the terms "use and operation." The decision might have been different if the truck had been parked on the highway at the time it was being unloaded.

The question arises as to just who is a nonresident within the meaning of a nonresident motorist statute. Generally, the statutes have been construed to apply to the designated class of nonresident defendants in strict accord with the purpose intended to be accomplished.⁴⁴ Residence has three possible meanings: legal domicile, temporary abode, and actual residence.⁴⁵ "The courts are inclined to adopt the concept of actual residence as distinguished from domicile as governing the applicability of the nonresident motorist statutes."⁴⁶ In *Chapman v. Davis*⁴⁷ the court said:

Applying this concept of actual residence, if a person legally domiciled in one state has an actual residence in another state, he may be served as a nonresident in a suit arising out of the operation of his car in the state of his domicile. On the other hand, if the person actually resides within the state when and where the accident occurs, he is not subject to constructive service of process even though his domicile is elsewhere. While actual residence has a less permanent connotation than domicile, it is not mere temporary abode. A temporary absence from the usual place of abode does not terminate an actual residence. Thus if a person who is living in a state for a limited time without any intention of making it his home and while there, injures a person through the operation or use of an automobile he could be served under the statute as a nonresident.⁴⁸

A nonresident motorist statute does not apply to a person who is employed within the state, who makes a home for himself and his family within the state and who during a reasonable period of time is available

42. *Brown v. Hertz*, 203 Misc. 728, 116 N.Y.S.2d 412 (1952).

43. 383 Ill. 569, 50 N.E.2d 836 (1943).

44. *Clark v. Reichman*, 130 Colo. 329, 275 P.2d 952 (1954).

45. *Chapman v. Davis*, 233 Minn. 62, 45 N.W.2d 822 (1951).

46. 53 A.L.R.2d 1192.

47. *Supra* note 45.

48. *Supra* note 45 at p. 826.

for personal service of process, but applies only to a transient motorist who is here today and gone tomorrow.⁴⁹

It has been established that a corporation,⁵⁰ partnership,⁵¹ minor,⁵² resident of a foreign country,⁵³ and one physically present in a foreign country,⁵⁴ are nonresidents within the meaning of a nonresident motorist statute.

In the absence of a statute providing otherwise, it is generally held that one who is resident at the time of the accident, but subsequently becomes a nonresident, is not subject to constructive service under the act.⁵⁵ Some states, including Wyoming, have overcome this problem by specifically including within the scope of their nonresident motorist statute a resident who becomes a nonresident prior to service within the state.

The Wyoming Nonresident Motorist Statute also expressly covers agents. According to *Austinson v. Kilpatrick* "if an agent was not acting within the scope of his employment this would not permit the defendant to challenge the substituted service, but would be a defense to be brought up at the trial of the action."⁵⁶ When a member of the family is driving the automobile at the time it is involved in an accident, the family purpose doctrine has been used to bring them within the scope of the nonresident motorist statute.⁵⁷

The term "motor vehicle" has created a dilemma in some states because it is not clear as to what type of vehicles are included within the term. Some states have supplied a definition that is applicable to the nonresident motorist statute. Section 31-12 of the Wyoming Compiled Statutes (1957) provides the following definition of a motor vehicle:

"Motor vehicle" shall include all vehicles propelled or drawn other than by muscular power, operated upon public highways, except trailers, machinery used in construction work, not designed as a motor truck and not used for transportation of property over the highways, and implements used exclusively for farm husbandry.

49. *Honeycutt v. Nyquist, Peterson & Co.*, 12 Wyo. 183, 74 P. 90 (1903).

50. *Dealers Transport Co. v. Reese*, 138 F.2d 638 (5th Cir. 1943). A domestic corporation is not a nonresident within the meaning of the statute. *Sease v. Central greyhound Lines*, 306 N.Y. 284, 117 N.E.2d 899 (1954). Nor is a foreign corporation which has a place of business in the forum state in the charge of an agent upon whom service can be made. *194 Ga. 113, 20 S.E.2d 575 (1942)*.

51. *Rigutto v. Italian Terrozza Mosaic Co.*, 93 F. Supp. 124 (W.D. Pa. 1950).

52. *Silver Swan Liquor Corp. v. Adams*, 43 Cal. App.2d 851, 110 P.2d 1097 (1941).

53. *Lulevitch v. Hill*, 82 F. Supp. 612 (E.D. Penn. 1949); *Ewing v. Thompson*, 233 N.C. 564, 65 S.E.2d 17 (1951).

54. *Supra* note 52.

55. *Warwick v. Dist. Ct. of City and County of Denver*, 269 P.2d 704 (Colo. 1954); *Clendening v. Fitterer*, 261 P.2d 896 (Okla. 1953); *Teague v. Dist. Ct.*, 289 P.2d 331 (Utah 1955).

56. 82 N.W.2d 388 (N.D. 1957).

57. *Ewing v. Thompson*, 233 N.C. 564, 65 S.E.2d 17 (1951).

A somewhat similar definition is found in section 31-78 of the Wyoming Compiled Statutes (1957). The problem then arises as to whether or not these definitions of motor vehicle can be used in the context of the nonresident motorist statute. In *Hayes Freight Lines v. Clealton*⁵⁸ the court refused to apply a definition of motor vehicle appearing in the statute on motor carriers, which included a trailer, and held that a trailer was not a motor vehicle within the scope of the nonresident motorist statute.

The place where the accident occurred must be considered, since the Wyoming Nonresident Motorist Statute limits it to "street or highway within the State." Such statutes are usually construed not to include accidents occurring on private property.⁵⁹ However, accidents occurring on undedicated public roads,⁶⁰ sidewalks,⁶¹ or public driveways,⁶² have been included within the scope of "street or highway."

The availability of the nonresident motorist statute in actions commenced by a nonresident plaintiff against a nonresident defendant is well settled in state courts.⁶³ In federal courts a nonresident plaintiff may not sue a nonresident defendant in view of the Supreme Court decision in *Olberding v. Ill. Cent. RR.*⁶⁴ because there is no federal venue. The court said,

A civil action wherein jurisdiction is founded only on diversity of citizenship, may, except as otherwise provided by law be brought only in the judicial district where all the plaintiffs or all defendants reside.⁶⁵

The effect of this decision is to deprive a nonresident plaintiff of a federal forum at the locus of the accident.⁶⁶

There has been some discussion in the federal courts as to the availability of a state's nonresident motorist statute in a suit originating in the federal courts. The general consensus seems to permit such use.⁶⁷ The rule is that any form of service which would be good in the state where the district court is sitting shall also be good in the federal court. Any doubt that may have existed on this point has been removed by the 1963 amendment to the Federal Rules of Civil Procedure 4 (d) (7), (e), and (f).

Since the nonresident motorist statutes have generally been upheld

58. 277 P.2d 622 (Okla. 1954).

59. *Brauer Machine & Supply Co. v. Parkhill Truck Co.*, 383 Ill. 569, 50 N.E.2d 836 (1943); *Kelley v. Koetting*, 164 Kan. 542, 190 P.2d 361 (1948); *Rilling v. Jones*, 130 F.Supp. 834 (D. Md. 1955).

60. *Galloway v. Wyatt Metal and Boiler Works*, 189 La. 837, 181 So. 187 (1938).

61. *Morrissey v. Crabtree*, 143 F. Supp. 105, (M.D. N.C. 1956).

62. *Bertrand v. Wilds*, 198 Tenn. 543, 281 S.W.2d 390 (1955).

63. *Peeples v. Ramspacker*, 29 F.Supp. 632 (E.D. S.C. 1939); *Fine v. Wencke*, 117 Conn. 683, 169 Atl. 58 (1933); *Welsh v. Ruop*, 228 Iowa 70, 289 N.W. 760 (1940).

64. 346 U.S. 338 (1953).

65. *Id.* at 341.

66. *Weber v. Threlkel*, 126 F. Supp. 98 (D. Wyo. 1954).

67. 27 U. Chi. L. Rev. 751.

as constitutional, the only condition that will prevent a plaintiff from using the statute to procure the desired relief is if the particular accident or defendant does not fall within the scope of the terminology of the statute.

—KIM McDONALD