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History of the State
(1890-1900)

New Jersey Superior Court

Superior Court

1890
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1900

Notice of Appeal.

(Served and filed Dec. 7, 1926.)

New Jersey Supreme Court

MERCER COUNTY.

ADA B. SALMONS, Administratrix
of the Estate of Leroy Salmons,
deceased,

Plaintiff,

v.

ARCHIE RUGYERI, trading under
the firm name and title of
MUSHROOM TRUCKING COM-
PANY,

Defendant.

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Action at Law

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TAKE NOTICE that the defendant herein, appearing specially for the purpose of contesting the jurisdiction of the court hereby appeals from the order of the New Jersey Supreme Court, dated the second day of December, 1926, denying motion to set aside service of process and quash writ to the New Jersey Court of Errors and Appeals, being the last resort in all causes.

WM. E. HOLMWOOD,

Attorney Appearing Specially for
Defendant Archie Rugyeri, trad-
ing under the firm name and
style of Mushroom Trucking
Company, and for the sole pur-
pose of contesting jurisdiction of
the court.

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To

Messrs. HENRY M. HARTMAN and JOHN H. KAFES,
Attorney for Plaintiffs.

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Summons.

(Filed Oct. 16, 1926.)

The State of New Jersey to Archie Rugyeri, trading under the firm name and title of
 (Seal) Mushroom Trucking Company:

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You are summoned to answer the annexed complaint of Ada B. Salmons, Administratrix of the Estate of Leroy Salmons, deceased in an action at law in the Supreme Court, and take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

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WITNESS, William S. Gummere, Esquire, Chief Justice of our said Court, at Trenton, this Eighteenth day of September, nineteen hundred and twenty-six.

EDWARD J. KELLEHER,
 Clerk.

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JOHN H. KAFES,
 HENRY M. HARTMAN,
 Attorneys.

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Complaint.NEW JERSEY SUPREME COURT,
MERCER COUNTY.

ADA B. SALMONS, Administratrix
of the Estate of Leroy Salmons,
deceased,

Plaintiff,

v.

ARCHIE RUGYERI, trading under
the firm name and title of
MUSHROOM TRUCKING COM-
PANY,

Defendant.

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Action at Law

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Plaintiff residing in Toms River, in the County
of Ocean and State of New Jersey, says:

1. On April 7th, 1925, the defendant, his agents,
servants and employees had under their control
and management and were engaged in driving a
certain automobile on and upon the public highway
known as the Brunswick Pike, at a point about one
and one-half miles South of Penns Neck, in the
County of Mercer and State of New Jersey.

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2. At the time and place aforesaid the said Leroy
Salmons, plaintiff's intestate, was lawfully upon
the said highway when the said defendant, his
agents, servants and employees, carelessly and neg-
ligently ran the automobile operated by the said
defendant, his agents, servants and employees, care-
lessly and negligently upon and over the said
Leroy Salmons, dragging him for a considerable
distance upon said highway.

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Complaint.

3. The injuries sustained by plaintiff's intestate were so serious that he died almost instantly as a result thereof.

10 4. The negligence of which the plaintiff complains and of which the defendant, his agents, servants and employees are guilty consists of the fact that the said automobile was operated in a reckless manner; at a high and unreasonable rate of speed under the circumstances; that no horn or other warning was given of the approach of said automobile and the said Leroy Salmons was carelessly and negligently run down on a public highway.

20 5. The next of kin of the said Leroy Salmons, deceased, is: His wife, Ada B. Salmons aforesaid.

6. On June 13th, 1925, the Surrogate of the County of Ocean and State of New Jersey, granted to the plaintiff Letters of Administration upon the estate of Leroy Salmons, deceased.

7. That this action is commenced within twenty-four calendar months from the date of the decease of the said Leroy Salmons.

30 Plaintiff demands as damages the sum of Fifteen thousand (\$15,000.00) Dollars.

JOHN H. KAFES,
HENRY M. HARTMAN,
Attorneys for Plaintiff.

Sheriff's Return.

I hereby deputize and appoint Frank Conrad of Trenton, N. J., a Special Deputy to serve the within Writ and make return thereto.

WITNESS my hand and seal this 8th day of Oct. A. D. 1926.

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CHAS. H. REICHERT (L. S.)
Sheriff of Mercer County.

Served within Summons and Complaint Oct. 8, A. D. 1926, upon Archie Rugyeri, trading under the firm name of Mushroom Trucking Co., Defendant, by leaving a copy of the same in the office of the Secretary of State of N. J., at the State House, Trenton, N. J., with Ernest R. Kerr, Chief Clerk in said Office (the Secretary of State being absent from his Office) with a service fee of Two Dollars.

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CHARLES H. REICHERT,
Sheriff.

By FRANK CONRAD,
Spec. Dep.

Sheriff's Fees	\$3.62
Sec. of State	2.00

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\$5.62

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**Notice of Motion to Set Aside Service
of Summons and Complaint and
Quash Writ.**

(Filed Oct. 28, 1926.)

NEW JERSEY SUPREME COURT,
MERCER COUNTY.

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ADA B. SALMONS, Administratrix
of the Estate of Leroy Salmons,
deceased,

Plaintiff,

v.

ARCHIE RUGYERI, trading under
the firm name and title of
Mushroom Trucking Company,
Defendant.

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Gentlemen:

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TAKE NOTICE that the undersigned will apply to the Honorable Thomas W. Trenchard, Justice of the New Jersey Supreme Court on the 4th day of November, 1926, at ten o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard at the State House, in the City of Trenton, New Jersey, for an order to set aside the service of the summons and complaint in the above entitled cause and to quash the writ of summons issued therein upon the following grounds:

1. Because this court is without jurisdiction over the defendant named herein.

2. Because the defendant Archie Rugyeri, trad-

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*Notice of Motion to Set Aside Service of Summons
and Complaint and Quash Writ.*

ing under the firm name and style of Mushroom Trucking Company, is not a resident of the State of New Jersey, and was not served with process or a summons within the territorial jurisdiction of the state.

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3. Because the return of the sheriff shows that proper and legal service of the summons was not made upon the defendant within the jurisdiction of the State of New Jersey, and because said return fails to show that actual or legal service was made upon the defendant.

4. Because of the service made by the Sheriff upon the Secretary of State of New Jersey is invalid, in that such service was not authorized by power of attorney executed by this defendant or by reason of any authority conferred by this defendant upon the Secretary of State of New Jersey.

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5. Because of the service alleged to have been made by the sheriff upon the Secretary of State of New Jersey is invalid in that it attempts to bring a non-resident defendant to the courts of this State to answer to an action in personam by process which was not served personally upon the defendant, or upon his authorized agent.

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6. Because of the act of the Legislature of the State of New Jersey authorizing such service is unconstitutional and void, in that it contravenes

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*Notice of Motion to Set Aside Service of Summons
and Complaint and Quash Writ.*

and is repugnant to Article 14, Section 1 of the
Constitution of the United States.

Yours respectfully,

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WM. E. HOLMWOOD,
Attorney Appearing Specially for
Defendant Archie Rugyeri, trad-
ing under the firm name and style
of Mushroom Trucking Company,
and for the sole purpose of con-
testing jurisdiction of the court.

To

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Messrs. JOHN H. KAFES and
HENRY M. HARTMAN,
Attorneys for Plaintiffs.

I, Edward J. Kelleher, Clerk of the Supreme
Court of the State of New Jersey do certify that
the foregoing is a true transcript of the pleadings
in the above-stated cause as the same remain on
file in my office.

30

(Seal) IN TESTIMONY WHEREOF I have set my
hand and the seal of said Court at
Trenton, this thirtieth day of Octo-
ber, A. D. nineteen hundred and
twenty-six.

EDWARD J. KELLEHER,
Clerk.

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Order.

(Filed Dec. 4, 1926.)

NEW JERSEY SUPREME COURT,
MERCER COUNTY.

<p>ADA B. SALMONS, Adminis- tratrix, &c., Plaintiff, v. ARCHIE RUGYERI, trading, &c., Defendant.</p>	}	<p>On Motion to Set Aside Service.</p>	10
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This matter being opened to the court by Wil-
liam E. Holmwood, appearing specially for the de-
fendant, Archie Rugyeri, &c., and Henry M. Hart-
mann appearing for the plaintiff, Ada B. Salmons,
Administratrix, &c., and the motion to set aside
service of the Summons and Complaint having been
argued by the respective counsel,

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IT IS on this second day of December, A. D.
1926, ORDERED that the said motion to set aside
the service in the above entitled suit be and the
same is hereby denied, with costs, and

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IT IS FURTHER ORDERED that the defend-
ant have five days within which to file his answer.

THOMAS W. TRENCHARD,
J. S. C.

Grounds of Appeal.

(Filed Dec. 30, 1926.)

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10 ADA B. SALMONS, Administratrix
of the Estate of Leroy Salmons,
deceased,
Plaintiff-Respondent.

v.

20 ARCHIE RUGYERI, trading under
the firm name and title of
MUSHROOM TRUCKING COM-
PANY,
Defendant-Appellant.

The following are the grounds of appeal in the above entitled cause.

1. Because the New Jersey Supreme Court erred in making the order dated December 2nd, 1926, denying defendant's motion to quash the writ of summons and to set aside the service of the summons in the above entitled cause.
- 30 2. Because the Supreme Court was without jurisdiction over the defendant named herein.
3. Because the defendant Archie Rugyeri, trading under the firm name and style of Mushroom Trucking Company, is not a resident of the State of New Jersey, and was not served with process or a summons within the territorial jurisdiction of the state.
- 40 4. Because the return of the sheriff shows that

proper and legal service of the summons was not made upon the defendant within the jurisdiction of the State of New Jersey, and because said return fails to show that actual or legal service was made upon the defendant.

5. Because of the service made by the Sheriff upon the Secretary of State of New Jersey is invalid, in that such service was not authorized by power of attorney executed by this defendant or by reason of any authority conferred by this defendant upon the Secretary of State of New Jersey.

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6. Because of the service alleged to have been made by the Sheriff upon the Secretary of State of New Jersey is invalid in that it attempts to bring a non-resident defendant to the Courts of this State to answer to an action in personam by process which was not served personally upon the defendant, or upon his authorized agent.

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7. Because of the act of the Legislature of the State of New Jersey authorizing such service is unconstitutional and void, in that it contravenes and is repugnant to Article 14, Section 1 of the Constitution of the United States.

Yours respectfully,

WM. E. HOLMWOOD,

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Attorney Appearing Specially for Defendant Archie Rugyeri, trading under the firm name and style of Mushroom Trucking Company, and for the sole purpose of contesting jurisdiction of the court.

To

Messrs. JOHN H. KAFES and

HENRY M. HARTMAN,

Attorneys for Plaintiffs.

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1870

Received of the Treasurer of the
Board of Education the sum of
\$100.00 for the year 1870

Witness my hand and seal this
10th day of January 1870

John J. [Name]

Superintendent of Schools

City of New York

1870

Received of the Treasurer of the
Board of Education the sum of
\$100.00 for the year 1870

Witness my hand and seal this
10th day of January 1870

John J. [Name]

Superintendent of Schools

City of New York

New Jersey Court of Errors and Appeals

ADA B. SALMONS, Administratrix
of the Estate of Leroy Salmons,
deceased,

Plaintiff-Respondent,

v.

ARCHIE RUGYERI, trading under
the firm name and title of
Mushroom Trucking Company,
Defendant-Appellant.

Action at Law.

On Appeal
from Supreme
Court.

BRIEF FOR APPELLANT.

This appeal brings up for review an order of the New Jersey Supreme Court dated December 2nd, 1926 (Case, p. 9) denying a motion to set aside service of writ of summons and to quash the writ, upon the ground that the court below is without jurisdiction, in that the summons was served upon the Secretary of State of New Jersey under the provisions of Chapter 232 of the Laws of 1924.

The appellant, the defendant below, appeared specially for the sole purpose of contesting the jurisdiction of the court and moved to quash the writ on the various grounds set forth in the State of Case (Case, p. 6), which motion was denied.

It is submitted that the order of the Supreme Court refusing to quash the writ and to set aside service is in the nature of a final judgment upon

the question of the jurisdiction of the court, and that such order may be reviewed by this court on appeal. *Jaudel v. Schoelzke*, 112 Atl., page 328.

This order is in the nature of a final judgment, as the remedy now invoked by this appellant appearing specially is the only remedy open to him, unless he is willing to accept as final the order of the court below. If this appellant had not taken this appeal he would be required to file answer, or else permit judgment by default to be rendered against him. If he filed an answer such action would have operated as a general appearance and would have been a waiver of any contention as to the jurisdiction of the court. On the other hand, if he permitted judgment by default to go against him he would be deprived of his substantial right to contest this case upon the merits, and be deprived of his right to be heard upon the question of damages. Upon this preliminary question of jurisdiction therefore of the order appealed from is in the nature of a final judgment upon the question of the jurisdiction of the court below.

As to the main question raised by this appeal, viz.: the constitutionality of Chapter 232 of the Laws of 1924, counsel for the appellant is aware of the fact that this court has affirmed the constitutionality of that statute by its decision in the case of *Pizzutti v. Wuchter*, Vol. 134 Atl., page 727.

The case referred to has been carried by writ of error to the Supreme Court of the United States, so that the sole purpose of again raising this question before this court is to preserve the right of the defendant-appellant in the event that the decision of this court in the *Wuchter* case is overruled.

Grounds of Appeal Relied Upon.

The defendant-appellant urges the following grounds of appeal (Case, p. 10) :

1. Because the New Jersey Supreme Court erred in making the order dated December 2nd, 1926, denying defendant's motion to quash the writ of summons and to set aside the service of the summons in the above entitled cause.

2. Because the Supreme Court was without jurisdiction over the defendant named herein.

3. Because the defendant Archie Rugyeri, trading under the firm name and style of Mushroom Trucking Company, is not a resident of the State of New Jersey, and was not served with process or a summons within the territorial jurisdiction of the state.

4. Because the return of the sheriff shows that proper and legal service of the summons was not made upon the defendant within the jurisdiction of the State of New Jersey, and because said return fails to show that actual or legal service was made upon the defendant.

5. Because of the service made by the Sheriff upon the Secretary of State of New Jersey is invalid, in that such service was not authorized by power of attorney executed by this defendant or by reason of any authority conferred by this defendant upon the Secretary of State of New Jersey.

6. Because of the service alleged to have been made by the Sheriff upon the Secretary of State of New Jersey is invalid in that it attempts to bring a non-resident defendant to the courts of this State to answer to an action in personam by process which was not served

personally upon the defendant, or upon his authorized agent.

7. Because of the act of the Legislature of the State of New Jersey authorizing such service is unconstitutional and void, in that it contravenes and is repugnant to Article 14, Section 1 of the Constitution of the United States.

POINT I.

The attempted service under the Statute of 1924 is void.

As this matter has been argued thoroughly before this court in the case of Pizzutti v. Wuchter, *supra*, it is sufficient for the purpose of this brief to merely cite the cases upon which appellant relies for a reversal of the order below.

Pennoyer v. Neff, 95 U. S., 714;
 Highan v. Ohio State Travelers Association, 183 Federal, 347;
 Schwartz v. Christie, 166 Federal, 338;
 Redzena v. Provident Savings Institution, 2 N. J. Advance Reports, 966;
 McDonald v. Mabee, 243 U. S., 90.

It is respectfully submitted that where an implied authority to an agent to accept service of process is attempted to be drawn from the mere doing of an act, that the act from which the implication is drawn should be germane to the authority sought to be derived. In other words, there should be an intelligent mental operation connecting the doing of the act with the authority claimed to be impliedly given by such action. The mere act of an individual in driving his automobile upon

the highway does not impress him with the idea that he is thereby authorizing some foreign official over whom he has no control and of whose very existence he may be ignorant to accept service of process upon his behalf which may result in depriving him of his property by judicial proceedings. There is no relation between the act of driving an automobile and the establishment of an agency. If the mere act of driving a machine across the state line establishes an agency, so, also, agency could be established by crossing the state line on foot and using the public sidewalk, and it might also be said that an act of a foreigner in breathing the ozone of this state would also confer a right upon some state official to accept service in his behalf.

There is no provision in the statute to protect the non-resident by making certain that he will receive notice of the suit. In the Massachusetts Act passed upon in *Pawloski v. Hess*, 250 Mass., 22; 144 N. E., 760, provision is made requiring the Secretary of State to forward the summons by registered mail demanding a return postal receipt, which receipt is to be filed as part of the record. Under our Act of 1924 the Secretary of State is not required to take any action in connection with process served upon him and no machinery is provided for compelling actual notice of the suit to be given to a defendant.

It is respectfully submitted that the order appealed from should be set aside and the writ quashed.

WILLIAM E. HOLMWOOD,
Attorney for and of Counsel with
defendant appearing specially to
contest the jurisdiction of the
Court.

[45441]

PRESS OF FREMONT PAYNE, 80 Washington Street, New York City.

**New Jersey Court of Errors and
Appeals**

**ADA B. SALMONS, ADMINISTRATRIX OF THE
ESTATE OF LEROY SALMONS, DECEASED,
Plaintiff-Respondent,**

vs.

**ARCHIE RUGYERI, TRADING UNDER THE
FIRM NAME AND TITLE OF MUSHROOM
TRUCKING COMPANY,
Defendant-Appellant.**

ON APPEAL FROM SUPREME COURT

BRIEF FOR PLAINTIFF-RESPONDENT

**HENRY M. HARTMANN,
Attorney for Plaintiff-Respondent**

New Jersey Court of Errors and Appeals

ADA B. SALMONS, ADMINIS-
TRATRIX OF THE ESTATE OF
LEROY SALMONS, DECEASED,
Plaintiff-Respondent,

v.

ARCHIE RUGYERI, TRADING
UNDER THE FIRM NAME AND
TITLE OF MUSHROOM TRUCK-
ING COMPANY,
Defendant-Appellant.

On Appeal from
Supreme Court.

Brief for Plaintiff-Respondent

STATEMENT OF THE CASE

On October 16, 1926, Ada B. Salmons, Administratrix of the Estate of Leroy Salmons, deceased, plaintiff-respondent, instituted suit in the Supreme Court for Fifteen Thousand Dollars Damages for the death of her husband, Leroy Salmons, who met his death on April 7th, 1925 on the Brunswick Pike, in the County of Mercer and State of New Jersey by the negligent acts of the defendant.

At the time of the accident the defendant's car was being driven by his servant over and upon the highways of this State, although the defendant was a resident of the State of Pennsylvania. The defendant being a non-resident of New Jersey, service of process was made upon the Secretary of State in pursuance of the provisions of Chapter 232 of the

laws of 1924 (P. L. 1924, p. 517). Counsel for the defendant-appellant entered a special appearance in the action and moved to set aside the service of the summons and complaint because the defendant was not served within the territorial jurisdiction of the State and that the statute under which service was made was unconstitutional.

Argument on this motion was heard by Mr. Justice Trenchard and the motion was denied. An appeal from the denial of this motion is now taken by the defendant-appellant seeking a reversal of the order made in the Supreme Court.

ARGUMENT

There is but a single question to be considered by the Court in this case and that is, was the service made upon the non-resident defendant legal service. Since this Court has passed upon this very question in the case of Pizzutti vs. Wuchter, 134 Atl. 727, and Mr. Justice Katzenbach speaking for the Court of Errors and Appeals has most learnedly expounded the arguments on which the decision is based, it seems useless for counsel for the plaintiff-respondent to make any further argument in this cause. We therefore rest our case entirely upon this decision of the Court.

Plaintiff-respondent respectfully submits that the order dismissing the motion to set aside service should be affirmed.

HENRY M. HARTMANN,
Attorney for Plaintiff-Respondent.





