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Judgment Record on Writ of Inquiry and Inquisition.

New Jersey Supreme Court,

Summons.

State of New Jersey to James W. Wuchter:

(L. S.) You are summoned to answer the annexed complaint of Michael Pizzutti in an action at law in the New Jersey Supreme Court. And take notice that unless you file your answer to the said complaint with the Clerk of the New Jersey Supreme Court, at Trenton, N. J., within twenty days after service upon you of this writ, and the annexed complaint the plaintiff may proceed in the suit and judgment be entered against you.

WITNESS, William S. Gummere, Chief Justice of New Jersey Supreme Court, at Trenton, New Jersey, this 16th day of November, Nineteen Hundred and Twenty-five.

EDWARD J. KELLEHER,
Clerk.

JACOB R. MANTEL,
Attorney.

Complaint.

NEW JERSEY SUPREME COURT,

UNION COUNTY.

Action at Law.

MICHAEL PIZZUTTI,

Plaintiff,

vs.

JAMES W. WUCHTER,

Defendant.

FIRST COUNT.

Plaintiff, Michael Pizzutti, residing in the City of Summit, County of Union and State of New Jersey, says that:

1. On or about the 17th day of September, 1925, the plaintiff, Michael Pizzutti, was driving a team of horses on a public highway, known as Hawthorne Parkway, in the Township of Millburn, County of Essex and State of New Jersey, and was driving the said team of horses on the right side of said road in a careful and prudent manner.

2. At the same time and place as mentioned in paragraph one hereof, the defendant was driving an automobile in a rapid, careless and negligent manner and without any warning crashed into the rear of the said wagon, which the plaintiff

was driving and upon which the plaintiff was seated.

3. As a result of the negligence of the defendant, the plaintiff, Michael Pizzutti, sustained severe and permanent injuries and he suffered to a great extent both physically and mentally and was obliged to remain away from his employment for a long period of time in an endeavor to cure the injuries to his body, limbs and nervous system and will in the future be handicapped for life as a result of said injuries.

SECOND COUNT.

Paragraphs one and two of the first count are hereby repeated and made paragraphs one and two of the second count.

3. As a result of the carelessness and negligence of the said defendant, James W. Wuchter, the horses, wagon and harness of the plaintiff were greatly damaged to the loss of the plaintiff herein.

THIRD COUNT.

Paragraphs one and two of the first count are hereby repeated and made paragraphs one and two of the third count.

3. As a result of the carelessness and negligence of the defendant, James W. Wuchter, the plaintiff was obliged to hire a team of horses and

wagon in order to conduct his business to his great damage.

Plaintiff demands as damages on the first count in the sum of $1,500, the sum of $1,000 on the second count and the sum of $500 on the third count.

JACOB R. MANTEL,
Attorney for Plaintiff.

I hereby deputize and appoint George B. Hulit of Pennington, N. J., a Special Deputy, to serve the within writ and make return thereto. Witness my hand and seal this 19th day of Nov. A. D. 1925.

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

By ....., Under Sheriff.

Served within Summons and Complaint November 19th, A. D. 1926, upon James W. Wuchter, Deft., by leaving a copy of the same in the office of the Secretary of State, 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.

CHARLES H. REICHERT,
Sheriff.

By ....., Spec. Dep.

Sheriff's Fees $3.62
Sec. of State 2.00

$5.62

Rule for Judgment Interlocutory by Default.

NEW JERSEY SUPREME COURT,

UNION COUNTY.

Action at Law.

MICHAEL PIZZUTTI,

Plaintiff,

vs.

JAMES W. WUCHTER,

Defendant.

The summons and complaint in this cause having been duly served upon the defendant on November 19th, 1925, and defendant having failed to file an answer or take any other step in response to the complaint, within the time limited by the rules of Court:

It is ORDERED that Judgment interlocutory be entered against the defendant, James W. Wuchter, and in favor of the plaintiff, Michael Pizzutti, and that a writ of inquiry do issue, directed to the Sheriff of the County of Union, to assess the damages which the plaintiff has sustained.

On motion of

JACOB R. MANTEL,
Attorney for Plaintiff.

Rule entered this 6th day of January, 1926.

Notice.

NEW JERSEY SUPREME COURT,

UNION COUNTY.

Action at Law.

MICHAEL PIZZUTTI,

Plaintiff,

vs.

JAMES W. WUCHTER,

Defendant.

Sir:

Take notice that a writ of inquiry of damages will be executed in this cause, on Wednesday the 27th day of January next, at 10:00 o'clock in the forenoon of that day, at the Court House at the City of Elizabeth.

Yours, etc.,

JACOB R. MANTEL,
Attorney for Plaintiff.

To:

JAMES W. WUCHTER,
Defendant.

Notice.

State of Pennsylvania,
County of Lehigh—ss.:

On this sixteenth day of January, 1926, personally appeared before me John H. Diefenderfer, who being by me duly sworn according to law, deposes and says that he is over the age of twenty-one, and that he served a copy of the within notice personally upon James W. Wuchter, at his residence, 103 S. Madison Street, Allentown, Pa., the day and year first above written.

JOHN H. DIEFENDERFER.

Sworn and subscribed before me this
18th day of January, 1926.

RUTH C. RICKER,
Notary Public.
My Commission Expires Jan. 15, 1927.
(Seal)

Affidavit of Jacob R. Mantel.

NEW JERSEY SUPREME COURT,

UNION COUNTY.

Action at Law.

MICHAEL PIZZUTTI,

Plaintiff,

vs.

JAMES W. WUCHTER,

Defendant.

State of New Jersey,
County of Union—ss.:

JACOB R. MANTEL, of full age, being duly sworn according to law on his oath, deposes and says:

I am the attorney for the plaintiff in the above entitled matter. I caused to be served upon James W. Wuchter, the defendant herein, a notice of the execution of the writ of inquiry in this matter and also a notice of motion to enter up judgment final in this matter. I paid to John H. Diefenderfer, the sum of five dollars ($5) for his services in connection with serving these papers upon the defendant. It was necessary to make this service out of the State of New Jersey, to wit, Allentown, Pennsylvania, the residence of

the defendant. I therefore request that the sum of $5 be included in the tax costs in this matter.

JACOB R. MANTEL.

Sworn and subscribed to before me this
17th day of February, 1926.

(Signature Illegible),
An attorney at law of New Jersey.

(Filed February 19, 1926.)

Writ of Inquiry.

State of New Jersey,
Union County—ss.:

An inquisition, indented and taken at the Court House in Elizabeth, in the County of Union, on the Twenty-seventh day of January, A. D., 1926, before Harry Simmons, Sheriff of the County of Union, by virtue of the Writ of Inquiry to the said Sheriff directed and to this inquistion annexed, to inquire of certain matters in the said writ specified by the oath of George Carroll, William Runyon, Raymond Bolle, Moe Lowy, Walter Scholes, Charles Lieb, Theodore Pfarrer, Harry Woelfel, Moses Fletcher, Fred W. Marhart, William F. Krauss, John J. Lawrence, honest and lawful men of said County, who, upon their oath and affirmation aforesaid, say:

That they find in favor of the plaintiff, Michael Pizzutti, and against the defendant, James W.

Wuchter, in the sum of Seven Hundred and Seventy Dollars and Twenty-five cents ($770.25) as follows:

Loss of services, 6 weeks at $90 per week	$540.00
Injuries to horse	150.00
Harness	65.00
Repair to wagon	10.25
Dr. Tator, medical bill	5.00
	$770.25

IN WITNESS WHEREOF, as well I, the said Sheriff as the said Jurors, have hereto set their hands and seals to this inquisition, the day and year above written.

HARRY SIMMONS,
Sheriff.

GEO. T. CARROLL	(L.S.)	THEO. PFARRER	(L.S.)
WM. RUNYON	(L.S.)	HARRY WOELFEL	(L.S.)
RAYMOND BOLLE	(L.S.)	M. FLETCHER	(L.S.)
MOSES LOWY	(L.S.)	FRED W. MARHART	(L.S.)
WALTER SCHOLES	(L.S.)	WM. F. KRAUSS	(L.S.)
CHAS. O. LIEB	(L.S.)	J. L. LAWRENCE	(L.S.)

Writ of Inquiry.

Union County—ss.:

The State of New Jersey to the Sheriff of the County of Union: GREETING:

WHEREAS James W. Wuchter was summoned to appear in the New Jersey Supreme Court, Union Circuit, to answer (Seal) unto Michael Pizzutti, in an action at law for that, on or about the 17th day of September, 1925, the defendant drove his automobile in a careless, negligent and reckless manner on a public highway known as Hawthorne Parkway, Millburn Township, County of Essex and State of New Jersey, and as a result thereof crashed into the horses and wagon that the plaintiff was driving carefully on said highway, damaging the plaintiff therefor and plaintiff demanding as damages the sum of ($3,000) Three Thousand Dollars, and such proceedings were thereupon had in our said Court that the said Michael Pizzutti ought to recover against the said James W. Wuchter, his damages on occasion of the premises: But because it is unknown to our said Court what damages the said Michael Pizzutti hath sustained by reason thereof, therefore we command you that by the oath, or if conscientiously scrupulous of taking an oath, by the solemn affirmation of twelve good and lawful men of your county, you diligently inquire what damages the said Michael Pizzutti hath sustained, as well by reason of the premises, as for his costs and charges by him about his suit in this behalf expended.

Writ of Inquiry.

And that you send to our said Court, before our Judge thereof, at Trenton, on the third Tuesday of Feb. next, the inquisition which you shall thereupon take, under your seal and the seals of those by whose oath or affirmation you shall take the inquisition, together with this writ.

Witness, William S. Gummere, Esq., Chief Justice of the New Jersey Supreme Court, at Trenton, the sixth day of January in the year of our Lord, One thousand nine hundred and twenty-five.

EDWARD J. KELLEHER,
Clerk.

JACOB R. MANTEL,
Attorney.

NEW JERSEY SUPREME COURT,

UNION COUNTY.

MICHAEL PIZZUTTI,

Plaintiff,

—against—

JAMES W. WUCHTER,

Defendant.

Action at Law.

WRIT OF INQUIRY.

Returnable Feb. 16th, 1926.

JACOB R. MANTEL,
Attorney for Plaintiff,
Mantel Building,
Summit, N. J.

The execution of this writ appears by the inquisition thereto annexed.

HARRY SIMMONS,
Sheriff.

Fees $2.00
Jurors 36.00

Filed Feb. 18, 1926.

EDWARD J. KELLEHER,
Clerk.

Notice of Motion.

NEW JERSEY SUPREME COURT,

UNION COUNTY.

Action at Law.

MICHAEL PIZZUTTI,

Plaintiff,

vs.

JAMES W. WUCHTER,

Defendant.

Sir:

TAKE NOTICE that the writ of inquiry of damages issued in the above entitled cause has been executed and returned; and that on Saturday, the 13th day of February, 1926, I will move before Honorable Samuel Kalisch, Justice of the New Jersey Supreme Court, at his chambers, 738 Broad Street, Newark, New Jersey, for an order to enter final judgment thereon.

Yours, etc.,

JACOB R. MANTEL,
Attorney of Plaintiff.

To:

JAMES W. WUCHTER,
Defendant.

Notice of Motion.

State of Pennsylvania,
County of Lehigh—ss.:

On the 9th day of February, 1926, before me, the subscriber, a Notary Public, in and for said County and State, personally appeared John H. Diefenderfer, who, being duly sworn according to law, deposes and says that he served a copy of the within notice on James W. Wuchter on the 1st day of February, 1926, by handing him a copy of said notice personally at his residence No. 103 S. Madison St., Allentown, Pa., and making known to him the contents thereof.

JOHN H. DIEFENDERFER.

Sworn and subscribed before me this
9th day of Feb., 1926.

HELEN R. LARKIN,
Notary Public.
My Commission Expires July 10, 1929.
(Seal)

(Filed Feb. 19, 1926.)

Rule for Entry of Judgment Final.

NEW JERSEY SUPREME COURT,

UNION COUNTY.

Action at Law.

MICHAEL PIZZUTTI,

Plaintiff,

vs.

JAMES W. WUCHTER,

Defendant.

The writ of inquiry in the above stated cause having been duly issued and returned and it appearing thereby that there is due to said plaintiff from the said defendant, the sum of Seven Hundred Seventy Dollars and Twenty-five cents ($770.25);

It is, on motion of Jacob R. Mantel, attorney for the above named plaintiff, ORDERED that judgment final be entered in the above stated cause in favor of the plaintiff and against the defendant for the sum of Seven Hundred Seventy Dollars ($770.25) and Twenty-five cents, besides costs to be taxed.

Let the above order be entered in the minutes of the Court.

Dated, February 13th, 1926.

SAMUEL KALISCH,
Justice of the New Jersey Supreme Court.

Rule actually entered, February 19, 1926.

JACOB R. MANTEL,
Attorney for Plaintiff.

NEW JERSEY SUPREME COURT,

UNION COUNTY.

MICHAEL PIZZUTTI,

Plaintiff,

VS.

JAMES W. WUCHTER,

Defendant.

Action at Law.

RULE FOR ENTRY OF JUDGMENT FINAL.

JACOB R. MANTEL,
Attorney for Plaintiff,
Mantel Building,
Summit, N. J.

Damages	$770.25
Costs	86.22
	$856.47

Filed Feb. 19, 1926.

EDWARD J. KELLEHER,
Clerk.

Final Judgment.

Plaintiff served and filed his complaint, but defendant failed to file an answer or take any other step in response to the Complaint, and thereupon a writ of inquiry was duly issued to assess the damages of the plaintiff, and after due proceedings thereon the damages of said plaintiff were duly assessed by the verdict of the jury upon said writ of inquiry, at the sum of $770.25, and the Court having ordered final judgment entered on said writ of inquiry and inquisition pursuant to the Statute.

WHEREUPON it is adjudged that the plaintiff, Michael Pizzutti, recover of the defendant, James W. Wuchter, the sum of Seven Hundred Seventy Dollars and Twenty-five cents and his costs, which are taxed at the sum of Eighty-six Dollars and Twenty-two cents, making in the whole the sum of Eight Hundred Fifty-six Dollars and Forty-seven cents.

$770.25	
86.22	
$856.47	

Judgment entered February 19, 1926.

WILLIAM S. GUMMERE,
C. J.

Notice of Appeal and Grounds of Appeal.

NEW JERSEY SUPREME COURT.

Action at Law.

MIKE PIZZUTTI,
Plaintiff-Appellee,

vs.

JAMES W. WUCHTER,
Defendant-Appellant.

To:

JACOB R. MANTEL, ESQ.,
Attorney of Plaintiff.

TAKE NOTICE that the defendant, James W. Wuchter, a resident and citizen of Allentown, in the State of Pennsylvania, does hereby appeal from the whole and every part of the final judgment entered in the above entitled cause in the New Jersey Supreme Court the nineteenth day of February, 1926, to the New Jersey Court of Errors and Appeals, in the last resort in all causes.

FURTHER TAKE NOTICE the said defendant does hereby specify the following as his grounds of appeal:

(1) Because the New Jersey Supreme Court did not have jurisdiction over this defendant because process was not served personally upon this defendant in the State of New Jersey, and he did not appear in this action.

(2) The New Jersey Supreme Court was without jurisdiction over the defendant because Chap-

ter 232 of an Act of the Legislature of the State of New Jersey of 1924, under the terms of which the New Jersey Supreme Court claimed to have and exercised jurisdiction over the defendant in an action in personam, was repugnant to the Fourteenth Amendment of the Constitution of the United States, Section One, in that it deprives the defendant of liberty and property without due process of law and is therefore void.

(3) The New Jersey Supreme Court was without jurisdiction over the defendant because Chapter 232 of an Act of the Legislature of the State of New Jersey of 1924, under the terms of which the New Jersey Supreme Court claimed to have and exercised jurisdiction over the defendant in this action, is repugnant to the Fourteenth Amendment of the Constitution of the United States, Section One, in that it abridges the privileges and immunities of citizens of the United States and is therefore void.

(4) The New Jersey Supreme Court was without jurisdiction over the defendant because Chapter 232 of an Act of the Legislature of the State of New Jersey of 1924, under the terms of which the New Jersey Supreme Court claimed to have and exercised jurisdiction over the defendant, is repugnant to the Fourteenth Amendment of the Constitution of the United States, Section One, in that it denies to persons within the jurisdiction of the State of New Jersey equal protection of the laws and is therefore void.

(5) The New Jersey Supreme Court did not have jurisdiction over the defendant, a citizen

of the State of Pennsylvania, because process was not served upon the defendant personally in the State of New Jersey, but service thereof was attempted to be acknowledged by the Secretary of State of the State of New Jersey, pretending to act in compliance with the provisions of Section 3 of Chapter 232 of an Act of the Legislature of the State of New Jersey of 1924, and that any such attempt to pretended service was void and repugnant to the Fourteenth Amendment to the Constitution of the United States and deprives this defendant of liberty and property without due process of law.

(6) The New Jersey Supreme Court was without jurisdiction over the defendant because Chapter 232 of an Act of the Legislature of the State of New Jersey of 1924, under the terms of which the New Jersey Supreme Court claimed to have and exercised jurisdiction over the defendant, was repugnant to Article IV, Section 2 of the Constitution of the United States, in that it deprived this defendant of all privileges and immunities of the citizens in the several States, and is therefore void.

For all of which matters defendant prays that the said judgment in the New Jersey Supreme Court may be reversed and set aside.

Dated, March 8th, 1926.

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys for Defendant-Appellant specially appearing for the purpose of prosecuting this appeal and for no other purpose.

NEW JERSEY SUPREME COURT.

MIKE PIZZUTTI,
Plaintiff-Appellee,

VS.

JAMES W. WUCHTER,
Defendant-Appellant.

Action at Law.

NOTICE OF APPEAL AND GROUNDS OF APPEAL.

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys for Defendant-Appellant, specially appearing for the purpose of prosecuting this appeal and for no other purpose,
75 Montgomery Street,
Jersey City, N. J.

Service of a copy hereof is hereby acknowledged this 9th day of March, 1926.

JACOB R. MANTEL,
Attorney of Plaintiff-Appellee.

Filed March 11, 1926.
EDWARD J. KELLEHER,
Clerk.

Record Press, Law Printers, Beechwood Road, Summit, N. J.

New Jersey Court of Errors and Appeals

MICHAEL PIZZUTTI, *Plaintiff-Appellee,*	*Action at Law.*
vs.	*On Appeal from Supreme Court.*
JAMES W. WUCHTER, *Defendant-Appellant.*	

BRIEF OF JACOB R. MANTEL FOR PLAINTIFF-APPELLEE

This appeal brings up a final judgment entered in the New Jersey Supreme Court on February 19, 1926, in favor of the Plaintiff, a resident of New Jersey, against the defendant, who is a resident of Allentown, Pennsylvania.

The facts apparently are undisputed and the merits of the case are unquestioned, and therefore presumed to be conceded in favor of the plaintiff-appellee.

The appellant's only ground for appeal rests upon the issue, as to whether our Statute, viz. Chapter 232, P. L. 1924, relating to service of process in civil suits upon non-residents, is constitutional. Each and every one of the grounds of appeal argued upon by appellant rests upon the basis as to the constitutionality of such a statute, designed to protect citizens of this State from the

attempts of non-residents to avoid the jurisdiction of our Courts by evading the specific consequences of an intentional and intelligent act.

POINT 1

The Attempted Service Under the Statute of 1924 was Valid

The Supreme Court of this State has upheld the validity and constitutionality of this statute in the very recent case of Martin vs. Condon, 129 Atlantic, 738, 3 Miscellaneous Reports 727. This latter case is identically in point with the present one, wherein the defendant sought to set aside the service of summons and which application was denied.

In Martin vs. Condon, 129 Atlantic, 738, 3 Miscellaneous Reports, page 727, the following grounds were urged to set aside such a service:

> "Because such service is not valid, in that it attempts to bring a non-resident defendant to the courts of this State to answer to an action in *personem* by process which is not served personally upon the defendant, but which was sent to him by mail.
>
> "Because the act authorizing such service is unconstitutional and void, in that it contravenes and is repugnant to article 14, section 1, of the U. S. Constitution."

The Supreme Court in an opinion by Mr. Justice Campbell said:

> "I am of the opinion that neither of these grounds is legally substantial."

"The Court is drawn to the argument that, in permitting the use of its highways by motor vehicles, the state has power to establish reasonable requirements as a condition precedent to such right of use, and that it is not an unreasonable requirement to make provisions for the jurisdiction of its courts for non-resident as well as resident users in cases of accident resulting from negligence in such use."

The right of a State to make such reasonable regulations is a recognized component of its police power. In support of this Supreme Court decision of Martin vs. Condon *supra* reference is made to the case of Kane vs. New Jersey, 242 U. S. 160, 61 L. Ed. 22, 37 Supreme Court Reporter 30. The defendants in their brief, in referring to this case before the highest Court in the land, quoted:

"That a State has a valid right in the exercise of its police power, to impose reasonable regulations upon persons driving automobiles through the State. Such regulations, as imposing a fine for improper use of license tags, or for excessive speed, are such measures, and if properly exercised while the defendant is within the confines of the State by arrest, etc., are valid."

The Courts of Massachusetts have held valid and constitutional such a statute almost identically like our New Jersey Statute, see Pawloski vs. Hess, 144 N. E. Rep. 760.

In Pawloski vs. Hess, 144 N. E. Rep. 760, The Supreme Judicial Court of Massachusetts declared that their statute, almost similar with ours, is not

unconstitutional, and within the police power. The Court said that:

> "The purpose of this Statute is designed to afford protection to the personal safety of travelers on the highways of our State. Its purpose is to promote the public safety and to conserve public health. These ends are universally recognized as appropriate objects for the exercise of police power. There is no constitutional mandate which compels the government of any State to provide highways for general public use. Having constructed them, reasonable and uniform regulations may be enforced concerning their use. Legislation attempting to put nonresidents on the same general footing as our own citizens with respect to the use of such public highways does not violate any constitutional guarantee. These considerations cannot override fundamental rights at unauthorized extensions of jurisdictions. They merely serve to exercise the well recognized presumption in favor of the constitutionality of every statute, and, that a statute will be refused enforcement *only* when they conflict with the Constitution is beyond reasonable doubt."

Likewise in Hendrick vs. Maryland, 235 U. S. 610, it is said:

> "The absence of Federal legislation upon the subject leaves the States free to prescribe uniform regulations, reasonably necessary for public safety, order and health."

The right of a State to make such reasonable regulations is a recognized component of its police power. In Sligh vs. Kirkwood, Sheriff of Orange County, Fla., 237 U. S. 52, it was said:

"The limitations upon the police power are hard to define, and its far reaching scope has been recognized in many decisions of this Court. The police power in its broadest sense, include all legislation and almost every function of civil government. It is not subject to definite limitations, but is co-extensive with the necessities of the case, and the safeguards of its interests." Barbier vs. Connolly, 113, U. S., 27. Camfield vs. U. S., 167 U. S. 518, 524."

In the case of City of Chicago vs. Sturges, 222 U. S. 313, 56 L. Ed. 215, an Illinois statute provides for indemnifying the owners of property for damages occasioned by mobs and riots by compelling the City to pay over three-fourths of the damage resulting. It was argued that such a statute denies to the city due process of law. The Court said:

"The law provides for a judicial hearing. If such legislation be reasonably adapted to the end in view, afford a hearing before judgment and is not forbidden by some other affirmative provision of constitutional law it is not to be regarded as denying due process of law under provisions of the 14th amendment."

In passing this point, it is well to understand that appellant in the case at bar was informed of a pending cause of action in which he was involved. Such information was conveyed to him by virtue of personal service upon him in the State of Pennsylvania, informing him of the various rules and orders of the Court before and after they were entered, strictly in accordance with our Statute of 1924.

POINT 2

Pennoyer vs. Neff, 95 U. S. 714, and the other cases cited by appellant, in no way involve the question of police power and are therefore inapplicable.

The plaintiff-appellee grants the fact that the principle of law relating to jurisdiction in Pennoyer vs. Neff is sound. The Question in the case at bar goes one step further.

In Pawloski vs. Hess, supra, 144 N. E. Reporter, at pages 762 and 763, the Court in distinguishing Pennoyer vs. Neff from the case at bar said:

> "The authorization of every tribunal is necessarily restricted by the territorial limits of the State in which it is established. This Court, of course is bound by these decisions (referring to Pennoyer vs. Neff). Our ONLY concern is to follow the doctrine therein declared."

But the case at bar (like in Pawloski vs. Hess, pages 762 and 763):

> "Rests upon the implied consent of the defendant arising by virtue of his voluntary act in driving his motor car on a highway of this State, which is deemed to have the effect of a formal appointment of a designated public officer as agent of the driver."

We now come to the proposition that in the regulation of its police power, always encompassed by the test of reasonableness, a personal judgment is valid where it is secured either by the ACTUAL CONSENT of the defendant to receive process as by voluntary appointment of agent, or by the IMPLIED CONSENT of the defendant by virtue

of his voluntary act in driving his motor car on a public highway of this State, which is deemed to have the effect of a formal appointment of an agent.

These points are clearly brought forth in the very case of Pennoyer vs. Neff.

(PENNOYER vs. NEFF, 95 U. S. at Page 735, first paragraph.)

(a) ACTUAL CONSENT.

"Neither do we mean to assert that a State may not require a non-resident or association within its limits to appoint an agent in the State to receive process. Judgments rendered upon such service are binding upon non-residents, both within and without the State."

(b) IMPLIED CONSENT.

"It is not contrary to natural justice that a man who has agreed to receive a particular mode of notification should be bound by a judgment, even though, he may not have actual notice of them."

"In the present case (Pennoyer vs. Neff) there is no feature of this kind."

But, in the case at bar such implied consent, by virtue of the police power, is the paramount distinguishing feature.

Conclusion

It is therefore respectfully submitted that the judgment obtained against the defendant in this case should be affirmed and the statute in question, viz. Chapter 232, P. L. of N. J., 1924, should be declared constitutional.

JACOB R. MANTEL,
Attorney for Plaintiff-Appellee.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

MIKE PIZZUTTI, *Plaintiff-Appellee,* *vs.* JAMES W. WUCHTER, *Defendant-Appellant.*	*Action at Law.* *On Appeal from Supreme Court.*

BRIEF OF McDERMOTT, ENRIGHT & CARPENTER FOR APPELLANT.

This appeal brings up a final judgment entered in the New Jersey Supreme Court on February 19, 1926, in favor of the plaintiff, a resident of New Jersey, against the defendant, who is a resident of Allentown, Pennsylvania.

The return of the Sheriff shows:

> "Served within Summons and Complaint November 19th, A. D. 1926, upon James W. Wuchter, Deft., by leaving a copy of the same in the office of the Secretary of State, 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.
>
> Charles H. Reichert,
> Sheriff."

(Record p. 4).

Defendant entered no appearance and filed no answer. Judgment interlocutory by default was entered January 6, 1926. A writ of inquiry issued on the same day and a Sheriff's Jury assessed plaintiff's damages at $770.25, in the absence of the defendant.

Undoubtedly the plaintiff attempted to get jurisdiction over the defendant under Chapter 232, P. L. 1924.

This Act is entitled:

> "An Act providing for the service of process in the civil suits upon non-resident chauffeurs, operators or non-resident owners whose motor vehicles are operated within the State of New Jersey, without being licensed under the provisions of the laws of the State of New Jersey, providing for the registration and licensing of drivers and operators and of motor vehicles, requiring the execution by them of a power of attorney to the Secretary of State of the State of New Jersey to accept civil process for them under certain conditions."

Section 1 of this Act provides that any chauffeur, operator or owner of a motor vehicle, not licensed under the laws of New Jersey, who shall accept the privilege extended to non-resident chauffeurs, operators and owners by law to drive such a motor vehicle, or of having same driven or operated in the State of New Jersey, without a New Jersey registration or license, shall, by such acceptance and the operation of such automobile within the State of New Jersey, make and constitute the Secretary of State of the State of New Jersey, his or her agent for the acceptance of process in any civil suit or proceeding by any resident of the State of New Jersey against any chauffeur, operator or the owner of such motor vehicle, arising out of or by reason of any accident or collision occurring within this State in which a motor vehicle operated by such chauffeur, or operator, or such motor vehicle is involved.

The appellant filed no power of attorney with the Secretary of State.

GROUNDS OF APPEAL RELIED UPON.

The defendant-appellant urges the following grounds of appeal:

(1) The Supreme Court did not have jurisdiction over this defendant because process was not served personally upon this defendant in this State, and he did not appear in this action.

(2) The Supreme Court was without jurisdiction because Chapter 232 of the Laws of 1924, under the terms of which the Supreme Court claimed to have and exercise jurisdiction over the defendant, is repugnant to the Fourteenth Amendment of the Constitution of the United States, Section 1, in that it deprives the defendant of liberty and property without due process of law and is therefore void.

(3) The Supreme Court was without jurisdiction because said statute under which the Supreme Court claimed to have and exercise jurisdiction over the defendant, is repugnant to the Fourteenth Amendment of the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States and is therefore void.

(4) Because said statute is repugnant to the Fourteenth Amendment of the Constitution of the United States, Section 1, in that it denies to persons within the jurisdiction of the State of New Jersey equal protection of the laws and is therefore void.

(5) Because the attempted service was void and repugnant to the Fourteenth Amendment of the Constitution of the United States and deprived the defendant of liberty and property without due process of law.

(6) The Supreme Court was without jurisdiction because said statute under the terms of which the Court claimed to have and exercise jurisdiction over the defendant, is repugnant to Article IV, Section 2 of the Constitution of the United States, in that it deprives this defendant of all the privileges and immunities of the citizens in the several states, and is therefore void.

POINT I.

The attempted service under the statute of 1924 was void.

A long line of decisions in the Supreme Court of the United States, starting with the famous case of *Pennoyer* v. *Neff,* 95 U. S. 714; 24 L. Ed. 565, have firmly established the rule in that court that under Amendment 14, Section 1 of the Constitution of the United States, service on a non-resident by publication, or upon an agent who has not been specifically authorized to receive service for the non-resident deprives such non-resident of property without due process of law where the Court has attempted to render a personal judgment against the non-resident.

Pennoyer v. *Neff, supra,* 95 U. S. 714; 24 L. Ed. 565.

Goldey v. *Morning News,* 156 U. S. 517; 39 L. Ed. 517.

Bigelow v. *Old Dominion Copper Mining Co.,* 225 U. S. 110; 56 L. Ed. 1009.

In *Henry D. McDonald* v. *F. N. Mabee,* 242 U. S. 90; 61 L. Ed. 608, the plaintiff sued upon a promissory note. Service upon the defendant a former resident of Texas, was made by publication in the newspaper pursuant to a Texas Statute, on the theory that a resident of Texas should take cognizance of the jurisdiction of his own State, even though he had left it. Mr.

Justice Holmes held that such service was void, and that the statute was itself unconstitutional since it violated the due process clause of the Fourteenth Amendment. At page 91 he said:

> "The foundation of jurisdiction is physical power, although in civilized times it is not necessary to maintain that power throughout proceedings properly begun, and although submission to the jurisdiction by appearance may take the place of service upon the person.
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> Michigan Trust Co. *v.* Ferry, 228 U. S. 346, 353, 57 L. Ed. 867, 874, 33 Sup. Ct. Rep. 550; Pennsylvania F. Ins. Co. *v.* Gold Issue Min. & Mill Co. decided today (243 U. S. 93, *post,* 610, 37 Sup. Ct. Rep. 344). No doubt there may be some extension of the means of acquiring jurisdiction beyond service or appearance, but the foundation should be borne in mind. Subject to its conception of sovereignty even the common law required a judgment not to be contrary to natural justice. Doublas *v.* Forrest, 4 Bing. 686, 700, 701, 130 Eng. Reprint 933, 1 Moore & P. 663, 6 L. J. C. P. 157, 29 Revised Rep. 695; Becquet *v.* MacCarthy, 2 Barn. 'Ad. 951, 959, 109 Eng. Reprint, 1396; Maubourquet *v.* Wyse, Ir. Rep. I. C. L. 471, 481.' And in states bound together by a Constitution and subject to the 14th Amendment, great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact. Baker *v.* Baker, E. & Co. Jan. 8, 1917 (242 U. S. 394, *ante,* 386, 37 Sup. Ct. Rep. 152)."

In *Bernard Flexner* v. *John Farson, Jr.*, 248 U. S. 289, 63 L. Ed. 250, where a non-resident partnership was doing business in the State of Kentucky, and service was made upon an agent representing them within the State of Kentucky, pursuant to a Kentucky statute allowing such service, and a personal judgment was rendered against the partners, Mr. Justice Holmes again

held that such a judgment was void when sued upon in the State of Illinois, and that the statute which authorized such service was unconstitutional, violating the due process clause of the Fourteenth Amendment. This case came up on appeal from the Supreme Court of the State of Illinois which refused to recognize the validity of the Kentucky judgment.

The Supreme Court of the United States has consistently held that nothing short of personal service within the State or voluntary appearance will bind a non-resident when a personal judgment is rendered against him, and that any personal judgment based on anything less is not only voidable but void, and of no effect not only in the State where it is rendered, but in every State, and that a statute which provides for anything short of personal service upon a non-resident is unconstitutional when applied so as to allow a personal judgment to be rendered against a non-resident.

To the same effect is *Christian* v. *International Association of Machinists, et al.*, 7 Fed. 2d, 481, holding that a labor union and its members outside the State could not be brought into court by service upon one of the members residing within the State. Judge Cochran at page 282, citing *Flexner* v. *Farson, supra,* stated that a statute providing for such service would be unconstitutional.

Not only are the cases in the Federal Courts uniform in holding that such service upon a non-resident is void, and that the statute creating this method of service is unconstitutional but the courts of our own state have so held.

In *Blessing* v. *McLinden,* 81 N. J. Law, 379, where an act provided that judgment might be

taken against a joint debtor not served with process of the Court, one of the joint debtors was served personally, and the other was not. Chancellor Pitney, speaking for this Court, held that any statute of this State which authorized the taking of a judgment against one or both of the joint debtors, where one of the joint debtors was a non-resident of this State and was not amenable to service was unconstitutional, and in direct violation of the due process clause of the Fourteenth Amendment.

At page 386, Chancellor Pitney in speaking of the Fourteenth Amendment, and having first discussed the case of *Pennoyer* v. *Neff, supra,* said:

> "We deem it clear that one effect of the amendment as thus construed, was to render it unlawful in an action against joint debtors, under our statute, to give judgment against any debtor not brought into court by virtue of its process, at least in case such debtor be not a citizen or resident of this State. And so our Supreme Court intimated in United States *v.* Griefen, 44 Vroom 195, 197."

In *Redzina* v. *Provident Inst. for Savings in Jersey City, et al.,* 125 Atlantic 133, one of the defendants in the case who was not to be found in the State, was served by publication as provided for in section 73 of the Chancery Act, P. L. 1902, page 514, and upon her failure to appear, a decree *pro confesso* was made and filed in accordance with the procedure authorized in section 14 of the same act, P. L. 1902, page 515. The Vice-Chancellor below considered that the courts of New Jersey had no jurisdiction to determined the question where such service had been made, and dismissed the bill. An appeal was taken to this Court where Judge Clark, said,

in sustaining the opinion of the Vice-Chancellor page 134:

> "That the jurisdiction of the courts of a state depends upon physical power is fundamental. McDonald *v.* Mabee, 243 U. S. 90, 37 Sup. Ct. 343, 61 L. Ed. 608, L. R. A. 1917 F, 458. So, a party resident beyond the confines of a state cannot be required to come within its borders and subject his personal controversy to its tribunals, even upon receiving notice of the suit at the place of his residence. To hold otherwise would be a futile attempt to extend the authority and control of a state beyond its own territory. Baker *v.* Baker, Eccles & Co., 242 U. S. 394, 37 Sup. Ct. 152, 61 L. Ed. 386. Conversely, a state and its courts have power and jurisdiction over all things, tangible and intangible, whose situs is within its physical limits. Coe *v.* Erroll, 116 U. S. 517, 6 Sup. Ct. 475, 29 L. Ed. 715. Our law 'hears before it condemns,' and therefore considers it contrary to the first principles of justice to hold one bound by a judgment who has not had such opportunity. Pennoyer *v.* Neff, 95 U. S. 714, 24 L. Ed. 565; Grannis *v.* Ordean, 234 U. S. 385, 34 Sup. Ct. 779, 58 L. Ed. 1363. The adoption of the Fourteenth Amendment (1868) established these principles of private international law (conflict of law) as law for all of the states. Smith *v.* Colloty, 69 N. J. Law, 365, 371, 55 Atl. 805. Thereafter the assertion of the invalidity of a state court's judgment in violation thereof was made a matter of federal right. Baker *v.* Baker, Eccles & Co., *supra.*"

The act of 1924, under which service was attempted to be made upon the non-resident defendant in this case, by serving the Secretary of State and forwarding a copy of the summons and complaint to the defendant's address in Pennsylvania, has been held valid by Mr. Justice Campbell sitting alone in the Supreme Court,

in *Martin* v. *Condon,* 129 Atl. Rep. 738, and a similar statute was upheld in Massachusetts in *Powloski* v. *Hess,* 144 N. E. 760, 35 L. A. R. 945.

However, it is respectfully submitted that these two decisions are in direct conflict with the cases above mentioned, and that the decisions in the Supreme Court of the United States are controlling.

It is undoubted, as was held in *Kane* v. *New Jersey,* 242 U. S. 160, 61 L. Ed. 22, that a state has a valid right in the exercise of its police power to impose reasonable regulations upon persons driving automobiles through the state. Such regulations, as imposing a fine for improper use of license tags, or for excessive speed, are such measures, and if properly exercised while the defendant is within the confines of the state by arrest, etc., are valid.

It is to be noted that under the act of 1924 a non-resident who drives through the state is not compelled to file a power of attorney with the Secretary of State, but that by merely coming into the state, it is declared that he thereby makes the Secretary of State his attorney for service. A more fictitious situation cannot be imagined. No theory of agency can possibly be suggested to support such a doctrine.

The statute strikes directly at the situation the Fourteenth Amendment of the Constitution of the United States was designed to prevent.

The right of the appellant to raise these questions on appeal, without first applying in the Court below is given in the cases of *Stehr* v. *Ollbermann,* 48 N. J. Law, 633; *Barrett* v. *Kitchell,* 84 N. J. Law, 326; *Jaudel* v. *Schoelzke,* 112 Atl. 328.

Conclusion.

It is respectfully submitted that the judgment obtained against the defendant in this case should be declared void, and of no effect, and that the statute chapter 232, P. L. of N. J. 1924, under which the action was started should be declared unconstitutional.

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys for Defendant, specially appearing for the purpose of prosecuting this appeal and for no other purpose.

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Of Counsel.