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## Venue–Nonresident Motorist Statute

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the record itself." (Emphasis by the court.) Under the construction adopted in that case, the writ would be quashed only if the defect appeared on the face of the writ and the defect was so substantial as to render the writ void. The *Hall* case was cited in the principal case but was not distinguished, so that now, apparently, the rule has been changed.

Assuming that the motion to quash should have been sustained but was overruled, with an exception duly saved, did *D* waive his objection by proceeding to trial upon the merits? This question was answered in the negative in the principal case, although it has not always been so answered in this state. See Carlin, *A Decade of Pleading, Practice and Procedure*, 53 W. VA L. REV. 1 (1950). In fact, in the recent case of *Stone v. Rudolph*, 127 W. Va. 335, 340, 32 S.E.2d 742, 745 (1944), not alluded to in the principal case, the court observed that ". . . whatever the rule may have been at one time, we think it clear that, as the law now is, a general appearance after a plea or motion attacking the form of, or the return of service of process waives any defect in the process or the service thereof, on the general theory that the office of a process is to bring a defendant into court and give him notice of the proceeding; and while he may appear specially to attack the form of return of service thereof, he cannot afterwards appear generally for any purpose without a waiver of his objections thereto."

There is little quarrel with the application of the rules enunciated in the principal case but there are serious doubts concerning the advisability of the changes in interpretation which are effected by this decision. Since procedural rules are only a means to an end, it is especially important that their construction not be changed in the absence of a pressing need therefor.

G. M. S.

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VENUE--NONRESIDENT MOTORIST STATUTE.—*P* brought an action based on an alleged collision between *P*'s motor vehicle and a motor vehicle owned by *D* foreign corporation and driven by non-resident *D* as an employee of *D* corporation. *Held*, that the venue of the action was in the county in which the collision occurred, and that the statute, providing that operation by nonresidents of motor vehicles upon public roads of this state is equivalent to appointment of the state auditor to be the nonresident's attorney upon whom process may be served in an action against the nonresident growing out of an accident or collision in the state, did not author-

ize maintenance of such action in the county in which *P* resided. *Crawford v. Carson*, 78 S.E.2d 268 (W. Va. 1953).

Syllabus 1 of the case states that this statute, W. VA. CODE c. 56, art. 3, § 31 (Michie, 1949), providing for appointment of the state auditor as a nonresident's attorney, relates only to service of process on persons coming within its provisions and does not modify or extend statutes or common law principles concerning venue.

The Maryland court, under a similar statute, determined the venue of the action under common law principles, and held that, the action being a transitory one at common law, the action might be brought in any county in the state. *Alcaresse v. Stinger*, 197 Md. 236, 78 A.2d 651 (1951). However, there have been such extensive changes in the statutes of this state relating to venue that the common law principles have been superseded. *Crawford v. Carson*, *supra*. The statutes relating to corporations are exclusive. *L. Sonneborn Sons v. Ansonia Copper & Iron Works*, 121 W. Va. 736, 6 S.E.2d 249 (1940). Venue must therefore be determined according to the applicable statutes, and not under the common law.

The principal case was decided under W. VA. CODE c. 56, art. 1, § 2 (Michie, 1949), which reads, "An action, suit or proceeding may be brought in any county where the cause of action, or any part thereof, arose, although none of the defendants reside therein, in the following instances: (a) When the defendant, or if more than one defendant, one or more of the defendants, is a corporation. . . ." This is the applicable statute relating to a foreign corporation, unless the corporation is within W. VA. CODE c. 56, art. 1, § 1 (b) (Michie, 1949).

If none of the defendants are corporations, this part of the statute would not apply, and the action could not be maintained in the county where the accident occurred, unless it came within W. VA. CODE c. 56, art. 1, § 2 (b) (Michie, 1949), "where the defendant, or if more than one defendant, one or more of the defendants, are served in such county with process or notice commencing such action, suit or proceeding." The general venue statute, W. VA. CODE c. 56, art. 1, § 1 (Michie, 1949) reads, "Any action or other proceeding at law or suit in equity, except where it is otherwise specially provided, may hereafter be brought in the circuit court of any county: . . . (d) If it be against one or more nonresidents of the State, wherein any one of them may be found and served with process. . . ." The problem presented by these sections of the code relates to the question where the defendant is

found and served, when process is served on the state auditor.

Two views are taken of this problem:

1. One view is that the state officer is the agent of the non-resident in any county of the state in which the action is otherwise properly brought. *Carter v. Schackne*, 173 Tenn. 44, 114 S.W.2d 787 (1938); *Bessan v. Public Service Co-Ordination Transport*, 135 N.Y. Misc. 368, 237 N.Y. Supp. 689 (1929).

2. The other view is that, the effect of the statute being that the state officer automatically becomes the agent of the defendant, the defendant is found, through this agent, in the county where the agent resides. It was held in *Bouchillon v. Jordan*, 40 F. Supp. 354 (E.D. Miss. 1941), that the county where the accident occurred did not and could not acquire jurisdiction of the defendant under statutes similar to ours; but suit should have been filed in the county wherein the state officer was a resident. One court permits this action to be brought either in the parish where the state officer performs his duties as statutory agent for service of process, or in the parish where the injury occurred. *Bergstedt v. Neff*, 17 F. Supp. 753 (D.C. La. 1937).

The court in the principal case rejected the first view and stated that the official residence of the auditor did not exist in every county in the state by reason of the fact that he had state-wide authority. The court refused to depart from the rule enounced in earlier West Virginia cases. *Rorer v. People's B., L. & S. Ass'n*, 47 W. Va. 1, 34 S.E. 758 (1899); *Sovereign Coal Co. v. Britton*, 77 W. Va. 566, 87 S.E. 925 (1916); *Sonneborn Sons v. Ansonia Copper & Iron Works*, *supra*.

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