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Procedure - Service of Process upon Non-Resident Motor Vehicle Operators (Virginia Code, Section 2154 (70)i)

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PROCEDURE -
SERVICE OF PROCESS UPON NON-RESIDENT MOTOR VEHICLE OPERATORS

The following is a brief version of Virginia Code, Section 2154 (70)i:

The acceptance by a non-resident of the privilege conferred upon him in permitting him to operate a motor vehicle in this state shall operate to appoint the Director of the Division of Motor Vehicles as his agent for the service of process, and such service shall have the same legal effect as service upon his person for acts arising out of the operation of such vehicle - provided that the Director mails to the defendant by registered mail a copy of the process with registered delivery receipt requested.

The constitutionality of the statute can no longer be seriously questioned. (1) The constitutional requirements of notice are met by the provision that "the Director mail the notice to the defendant by registered mail with return receipt requested. (2) Whether omission of the provision requesting a "return receipt" would alter the validity of the statute has not been fully answered - though one case held that it would not. The question still open for discussion is "what constitutes a sufficient compliance with the Statute?" Do the words "to the defendant" mean that the defendant must actually receive the notice?

A conservative Georgia Court held that though the Statute was complied with the Court did not have personal jurisdiction because the notice was not received by the defendant. (3) The applicable Statute in Georgia is similar to the Virginia Statute. In effect, the Georgia court held that the defendant either had to receive the notice, or know that it was in the post office for him. The Court based their decision on the principle that "the Statute was in derogation of the common law and must be strictly construed." (Statutes providing for service upon non-resident motorist must be strictly construed.)(4) The Courts which have taken the "strict construction" or conservative view have all used the same reasoning as did the Georgia court, a reasoning which did not carry out the intention of the Legislature or the spirit of the Statute.

The liberal view is expressed in the holding of a Texas Court that a non-resident motorist by operating a vehicle in the State of Texas by such act submits himself to the jurisdiction of the court and consents to be sued in the courts of that state. (5) Service under the Pennsylvania Statute was held valid even though the vehicle at the time of the accident was on a private road. (6) The rationale is that the inherent danger connected with automobiles is not restricted to public highways. This decision expresses the tendency of a majority of the Courts.

Proceeding from the principle in the latter case we find two tests have been laid down, one of "reasonable probability" (7) and the other of "best practicable notice". (8) Whether the two tests are different is an open question.

In a leading and recent case (9) the Court, in upholding service under the Virginia Statute, stated, "it will be presumed that the Director will exercise reasonable discretion, and if facts upon inquiry indicate that the address furnished is one from which it is probable

that delivery will be made, service shall be held good." Whether or not it was probable that the defendant actually received notice in this case is a somewhat different question from whether or not the Director acted reasonably in view of the facts before him. The defendant in the case was the wife of an enlisted man in the Navy. Facts tended to show that she had very little contact with any of the places to which the Director mailed the notice. She was obviously a transient and inclined to very little contact with any home ties. The likelihood of her receiving notice under such circumstances is distinctly different from whether the Director acted reasonably in view of the information available to him. The Director did mail a notice to each of the addresses he could obtain respecting the defendant. Certainly such was reasonable and the best practicable notice. The defendant did enter a special appearance, indicating that in some way she received notice, but this should be immaterial in deciding whether the Statute has been complied with. In effect, this case holds that if the Director mails the notice to the best available address or one most likely to reach the defendant, service will be held good. In view of this we do not need to argue about "probability".

(1) Weiss v. Magnussen, 13 F Supp. 948 (1936)

(2) Carroll v. Hutchinson, 172 Va. 43, 200 S.E. 644, (1939)

(3) Stone v. Sinkfield 29 S.E. 2nd 310, 70 Ga. App. 787, (1944)

(4) Burdick v. Powell Brothers Truck Line, 124 F 2nd 694, (1941)
Supra Vecchione v. Palmer, 291 N.Y.S. 537 (1936)

(5) Andrews v. Joseph Cohens and Sons, 45 F Supp. 732, (1941)

(6) Sipe v. Moyers, 44 Atl. 2nd 263, 263 Pa.____ (1945)

(7) Wutcher v. Pizzutti, 276 U.S. 13, 48 S Ct. Rep. 259 (1928)

(8) McDonald v. Mabee, 243 U.S. 90, 37 S. Ct. Rep. 343 (1917)

(9) Powell v. Knight, 74 F. Supp. 191 (1947)