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Conflict of Laws -- Residence or Domicile -- Non-Resident Motorist Statutes

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quaere. A case closely following the *Flake* case implies that it would not be necessary.[25]

On the surface the majority rule may seem to be a good one. However, if a departure from the common law is deemed desirable, instead of bringing the special damage concept over from slander into libel, it would seem far better to abolish the special damage concept altogether in the field of defamation. There was no legal reason nor logic for the original common law rule that in all cases of slander special damages had to be alleged and proved. There was even less reason for making exceptions as to the three narrow categories of slander per se. All defamation should either be actionable or not actionable. When proof of special damages is required where extrinsic evidence is necessary to show the defamatory meaning, the court is, in effect, holding that the defamatory meaning was understood only by those who understood the innuendo and knew the circumstances, and that this is not sufficient to make it actionable unless the plaintiff has suffered pecuniary damages because of it. Yet it is among those who understood the defamatory meaning that plaintiff's reputation has been damaged—and it is for damages to reputation that an action for defamation lies.

ALEXANDER H. BARNES.

Conflict of Laws—Residence or Domicile—Non-Resident Motorist Statutes

In a recent decision[1] the defendant was served with summons under the North Carolina Non-Resident Motorist Statute.[2] He moved to set aside the service of process as invalid on the ground that at the time of the accident he was a resident of North Carolina.[3]

It appeared from the facts that some time prior to November, 1952, the defendant was assigned to active duty in the armed services at Camp Lejeune, near Jacksonville, North Carolina. The accident occurred in January 1954, and nine days later the defendant was transferred to

[25] Scott v. Harrison, 215 N. C. 427, 2 S. E. 2d 1 (1939).

[1] Hart v. Queen City Coach Co., 241 N. C. 389, 85 S. E. 2d 319 (1955).

[2] N. C. GEN. STAT. § 1-105 (1953). All forty-eight states and the District of Columbia have now enacted non-resident motorist statutes. For a complete list of citations as of 1947 see, Knoop v. Anderson, 71 F. Supp. 832 (W. D. Iowa 1947).

[3] Unless otherwise provided, it is the residence of the defendant at the time of the accident which controls in the application of statutes authorizing constructive service on non-resident motorists. Rompza v. Rucas, 337 Ill. App. 106, 85 N. E. 2d 467 (1949) (One of the basic jurisdictional facts is the non-residence of the defendant at the time of the accident.); Netter v. King, 331 Ill. App. 619, 73 N. E. 2d 798 (1947); Welsh v. Ruopp, 228 Iowa 70, 289 N. W. 760 (1940) (Non-residence at the time of the accident cannot be assumed.); Bigham v. Foor, 201 N. C. 14, 158 S. E. 548 (1931). *Contra:* Hendershot v. Ferkel, 144 Ohio St. 112, 56 N. E. 2d 205 (1944) (Act applies to residents who subsequently became non-residents or who conceal their whereabouts.)

Portsmouth, Virginia, where he was on duty at the time process was served on the Commissioner of Motor Vehicles. It also appeared that before entering the armed services his home was in Virginia. The court held that the defendant was a "non-resident" and was amenable to service of process under the statute.

The court, it is believed, based its decision primarily on the fact that the defendant was a member of the armed services.[4] It is stated as an accepted view that members of the armed services stationed in this state under military orders do not acquire residence here. However, in support of this view the court cited and quoted from a recent decision of the Supreme Court of Arkansas, which concerned the acquisition of an Arkansas *domicile* by a serviceman.[5]

This raises the question as to what is meant by "non-resident" as used in the North Carolina Non-Resident Motorist Statute. The court said: "What constitutes non-residence under G. S. 1-105 has not been the subject of direct judicial review."[6] The issue is whether the term "non-resident" requires domicile or merely actual residence.[7] Stating

[4] For cases under the non-resident motorist statutes in accord see: Briggs v. Superior Court of Alameda County, 81 Cal. App. 2d 240, 183 P. 2d 758 (1947) (defendant from New York held not to have become a resident of California while stationed there in the Navy, the court defining a non-resident as one who has not established actual residence, irrespective of domicile). In Hughes v. Lucker, 233 Minn. 207, 213, 46 N. W. 2d 497, 501 (1951), speaking of the effect of entering the armed services, the court said: "His military service, without regard to where he was stationed from time to time, did not of itself, without more, preclude or effect any change of residence." United States Automobile Ass'n v. Harman, 151 S. W. 2d 609 (Tex. Civ. App. 1941) (A former resident and domiciliary of Texas contended that he became a resident of Maryland by his assignment there in the Army. The court rejected the contention saying in effect that his lack of volition and his living in the barracks made it impossible for him to establish a residence in Maryland.) *Cf:* De Pier v. Maddow, 87 Cal. App. 2d 460, 197 P. 2d 87 (1948) (resident of Alabama stationed in the Marines in California held to have become a resident by living off the base for five years); Suit v. Shailer, 18 F. Supp. 568 (D. Md. 1937) (California defendant lived with husband who was stationed in Maryland. They lived off the base. The court said the wife definitely became a resident and that it would be difficult to see how the husband could be classed as a non-resident.)

The facts in the principal case do not indicate where the defendant lived, whether in government housing or off the base. As illustrated by the decisions in this note, this is sometimes the controlling factor in a determination of a serviceman's residence.

[5] "The domicile of a soldier or sailor in the military or naval service of his country generally remains unchanged, domicile being neither gained nor lost by being stationed in the line of duty at a particular place, even for a period of years." Central Manufacturer's Mut. Ins. Co. v. Friedman, 213 Ark. 9, 11, 209 S. W. 2d 102, 104 (1948).

[6] Hart v. Queen City Coach Co., 241 N. C. 389, 391, 85 S. E. 2d 319, 320 (1955).

[7] Domicile is said to be that place where a man has his true, fixed and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning. *In re* Stabile, 348 Pa. 587, 36 A. 2d 541 (1944).

Residence indicates merely a factual place of abode; the living in a particular locality. Zimmerman v. Zimmerman, 175 Ore. 585, 155 P. 2d 293 (1945).

As domicile and residence are usually in the same place, they are sometimes used as if they had the same meaning, but they are not identical terms, for a person may have more than one place of residence, but only one domicile. Residence means living in a particular locality, but domicile means living in that locality with intent

the problem in another way, is one required to have his domicile in a state other than North Carolina to be a non-resident and thus make the Commissioner of Motor Vehicles his agent for the purpose of service of process?

In *Baker v. Varser*,[8] the plaintiff sued to compel the North Carolina Board of Law Examiners to permit him to take the Bar Examination. One of the requirements was that the applicant have been a resident of North Carolina for one year. It was established that the plaintiff's domicile was not in North Carolina. The supreme court said, in upholding the Board's refusal to allow him to take the examination: "In our opinion, the term resident as used in Rule Five, means that residence is synonymous with domicile."[9] The test used by the court in reaching this conclusion was: "Whether the term residence . . . is synonymous with domicile depends on the purpose of Rule Five, the nature of the subject matter, as well as the context in which the term is used."[10]

It would seem to follow, then, that whether the term residence is synonymous with domicile in the North Carolina Non-Resident Motorist Statute depends on the purpose of the act,[11] the nature of the subject matter,[12] and the context in which the term is used.[13]

In *Ewing v. Thompson*,[14] the plaintiff and defendant were involved in an automobile accident on a North Carolina highway. The plaintiff proceeded under the non-resident motorist statute and served the defendant with process through the statutory agent, the Commissioner of Motor Vehicles. The defendant, a resident of Canada, made a special appearance and moved to set aside the service of process as invalid on the ground that he was not such a non-resident as was contemplated by

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to make it a fixed and permanent home. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile. *In re* Riley, 148 Misc. 588, 266 N. Y. S. 209 (Surr. Ct. 1933).

[8] 240 N. C. 260, 82 S. E. 2d 90 (1954).

[9] *Id.* at 269, 82 S. E. 2d at 97. Residence has been held to mean domicile in rules concerning admission to the state bar in several other jurisdictions. *In re* Benedetto, 196 Ind. 323, 148 N. E. 413 (1925); *Re* Horowitz, 276 App. Div. 918, 94 N. Y. S. 2d 490 (3d Dep't 1950); *Re* McGrath, 243 App. Div. 803, 278 N. Y. S. 135 (3d Dep't 1935); *In re* Pierce, 189 Wis. 441, 207 N. W. 966 (1926); *In re* Mosness, 39 Wis. 509, 20 Am. St. Rep. 55 (1876).

[10] Baker v. Varser, 240 N. C. 260, 267, 82 S. E. 2d 90, 96 (1954).

[11] "The broad purpose of the statute is to enable an injured resident of this state to bring back to answer for his tort a non-resident motorist who has inflicted injury while using the state's highways and by the time suit can be instituted would otherwise be beyond this jurisdiction." Hart v. Queen City Coach Co., 240 N. C. 389, 391, 85 S. E. 2d 319, 320 (1955).

[12] The subject matter of the non-resident motorist statutes seems primarily to be "the non-resident transient motorist who is here today and gone tomorrow." Johnson v. Jacoby, 195 F. 2d 563, 565 (D. C. Cir. 1951).

[13] That the term expresses different concepts according to the context in which it is used, see: Chapman v. Davis, 233 Minn. 62, 45 N. W. 2d 822 (1951); Note, 33 N. C. L. Rev. 697 (1955); notes 27 through 31 *infra*.

[14] 233 N. C. 564, 65 S. E. 2d 17 (1950).

the statute and, therefore, was not amenable to the substituted service. The court refused to set aside the process. In construing the term non-resident, the court turned to other statutes in which that term is used. "The word non-resident, as used in the Motor Vehicle Act . . . is defined by the General Assembly as every person who is not a resident of this state. The trend of decisions in this court in matters pertaining to attachment proceedings is of like tenor."[15]

The court's reference to the definition in the Motor Vehicle Act and to decisions pertaining to attachment proceedings could be said to be two very strong arguments that would support the conclusion that residence as used in the North Carolina Non-Resident Motorist Statute is not used synonymously with domicile.

In Chapter 20 of the General Statutes of North Carolina (the Motor Vehicle Act), non-resident is defined in three different places: (1) legal residence,[16] (2) bona fide resident,[17] and (3) resident.[18] The supreme court in choosing the latter definition in *Ewing v. Thompson,* seems to indicate that the purpose of the non-resident motorist statute will be accomplished by a requirement, not of domicile, but of actual residence.

By making the reference to attachment proceedings in the *Ewing* case, it would seem safe to assume that the court would construe "non-resident" in the non-resident motorist statute as it has been construed in foreign attachment proceedings. In *Brann v. Hanes,*[19] the trial court had held that the defendant was a non-resident, upholding the clerk's order for service of summons and warrant of attachment. It was clear that the defendant had his domicile in North Carolina but he had been at Saranac Lake, New York, for health purposes for about eleven months. In affirming the trial court's holding, the supreme court said: "Whether or not the defendant has retained his domicile in this state is not determinative of the question here presented for decision."[20] The court added:

> "In *Wheeler v. Cobb,* 75 N. C. 21, it is said that one may be a non-resident without losing his domicile or rights of citizenship in

[15] *Id.* at 568, 65 S. E. 2d at 20.

[16] N. C. GEN. STAT. § 20-6 (1953) (Uniform Driver's License Act): "'Non-resident' shall mean any person whose legal residence is in some state other than North Carolina or in a foreign country."

A distinction exists between legal and actual residence, since a person may have his legal residence in one place and his actual residence in another. A person's legal residence is his domicile. Roof v. Tiller, 195 S. C. 132, 10 S. E. 2d 333 (1940).

[17] N. C. GEN. STAT. § 20-279.1 (1953) (Motor Vehicle Safety and Financial Responsibility Act): "'Non-resident' means every person who is not a bona fide resident of this state."

[18] N. C. GEN. STAT. § 20-38 (1953): "Non-resident—Every person who is not a resident of this state." (This is the definition quoted by the court in *Ewing v. Thompson.*)

[19] 194 N. C. 571, 140 S. E. 292 (1927).

[20] *Id.* at 574, 140 S. E. at 294.

> the state of his origin or gaining a domicile in another state. It is there held that one may have his domicile in North Carolina and his residence elsewhere, and that, therefore where one voluntarily removes from this to another state, for the purpose of discharging the duties of an office of indefinite duration, which requires his continued presence there for an unlimited time such person is a non-resident of this state for the purpose of attachment."[21]

In construing the term "non-resident" in the non-resident motorist statutes, courts of other jurisdictions[22] have made the same comparison with their attachment proceedings as did North Carolina in the *Ewing* case. Those jurisdictions, however, made it clear that residence was not to be treated as synonymous with domicile.[23] Yet as previously pointed out, without reference to the *Ewing* case the court said in the principal case that "non-residence" under G. S. 1-105 had not been the subject of direct judicial review.[24]

The meanings given to residence in other statutes have also varied according to the purpose, the nature of the subject matter, and the context in which the term is used. For example, in the chattel mortgage and conditional sales recordation statutes the word is said to mean only actual residence,[25] while in the divorce[26] and voting[27] statutes the term is treated

[21] *Ibid.* Residence as the term is used in attachment statutes does not normally mean domicile but merely actual residence. Hanson v. Graham, 82 Cal. 631, 23 Pac. 56 (1890); Union National Bank v. Finely, 180 Ind. 470, 103 N. E. 110 (1913); Mahoney v. Tyler, 136 N. C. 40, 48 S. E. 549 (1904); Howland v. Marshall, 127 N. C. 427, 37 S. E. 462 (1900); Carden v. Carden, 107 N. C. 214, 12 S. E. 197 (1890); Raymond v. Leishman, 243 Pa. 64, 89 Atl. 791 (1914).

[22] *E.g.,* Colon v. Pennsylvania Greyhound Lines, Inc., 27 N. J. Super. 280, 99 A. 2d 181 (1953); Chapman v. Davis, 233 Minn. 62, 45 N. W. 2d 822 (1951).

[23] See notes 32 and 36 *infra.*

[24] Hart v. Queen City Coach Co., 241 N. C. 389, 391, 85 S. E. 2d 319, 320 (1955).

[25] Sheffield v. Walker, 231 N. C. 556, 560, 58 S. E. 2d 356, 359 (1950) ("It thus appears that under these statutes 'residence' means something more than a mere physical presence in a place and something less than a domicile."); Industrial Discount Corp. v. Rodesky, 205 N. C. 163, 165, 170 S. E. 640, 641 (1933) ("The word signifies the actual residence of the mortgagor and not his domicile or legal residence."); *In re* Watson, 99 F. Supp. 49 (W. D. Ark. 1951); Commercial Bank of Crawford v. Pharr, 75 Ga. App. 364, 43 S. E. 2d 439 (1947). *Contra:* Petition of McLauchlan, 1 F. 2d 5 (1st Cir. 1924) (equivalent to domicile); Fidelity and Deposit Co. v. First National Bank, 113 S. W. 2d 622 (Tex. Civ. App. 1938) (equivalent to domicile).

[26] Such statutes ordinarily provide that in order to secure a divorce the plaintiff must have been a resident of the state for a prescribed period of time, and the courts interpret this to mean domicile. Williams v. North Carolina, 317 U. S. 287 (1942) (one of the parties must be domiciled in the state before the court can have jurisdiction); Stewart v. Stewart, 185 F. 2d 436 (D. C. Cir. 1930); Snyder v. Snyder, 240 Iowa 239, 35 N. W. 2d 32 (1948); Wray v. Wray, 149 Neb. 376, 31 N. W. 2d 228 (1948); Welch v. Welch, 226 N. C. 541, 39 S. E. 2d 457 (1946); Lynch v. Lynch, 210 Miss. 810, 50 So. 2d 378 (1951); RESTATEMENT, CONFLICT OF LAWS § 111 (1934).

[27] Residence in a state, or a local subdivision thereof, is a normal statutory requirement for eligibility to vote. The term is usually synonymous with domicile. State v. Carter, 194 N. C. 293, 296, 139 S. E. 604, 606 (1927) ("Residence as the

as synonymous with domicile. Statutes that accord jurisdiction to the courts on the basis of residence are frequently treated as referring to domicile, as in the case of statutes for the probate of a will[28] or the appointment of an administrator.[29]

Several states have faced this issue squarely and have made it clear how the term "non-resident" should be construed in their non-resident motorist statutes. In *Colon v. Pennsylvania Greyhound Lines, Inc.*,[30] the defendant at the time of the accident was domiciled outside the state of New Jersey but resided therein. He was living with his wife's family while serving in the Army. Before service of process was completed he had moved out of the state. The court, after deciding that the statute refers to residence at the time of the accident, said: "The statute is not concerned with domicile. In our opinion the word 'resident' is to be taken to refer to a person who has a dwelling place or usual place of abode . . . at which a summons can be served. Thus the defendant cannot be served with process under the statute."[31]

In *Northwestern Mortgage and Security Co. v. Noel Construction Co.*,[32] the defendant and his wife left their home in North Dakota with the intention of establishing themselves in Washington. While still in North Dakota, he had an automobile accident with the plaintiff. Shortly after the collision, he resumed his journey and later established a permanent residence in the state of Washington. The plaintiff attempted substituted service of process on the defendant under the North Dakota non-resident motorist statute. The court found that at the time of the accident the defendant still retained his domicile in North Dakota and because of this could not be served with process under the statute. "The term residence as employed by the legislature in this statute is synonymous with domicile."[33]

The Minnesota court in *Chapman v. Davis*,[34] had to decide the

word is used in this section in defining political rights, is, in our opinion, essentially synonymous with domicile."); Vanderpool v. O'Harlon, 53 Iowa 246, 5 N. W. 119 (1880); Everman v. Thomas, 303 Ky. 156, 197 S. W. 2d 58 (1946); Berry v. Wilcox, 44 Neb. 82, 62 N. W. 249 (1895); Hannon v. Grizzard, 89 N. C. 115 (1883); *In re* Stabile, 348 Pa. 587, 36 A. 2d 541 (1944).

[28] Ford v. Pack, 116 Kan. 74, 225 Pac. 1054 (1924); Johnson v. Harvey, 261 Ky. 522, 88 S. W. 2d 42 (1935); *In re* Ellis, 187 N. C. 840, 123 S. E. 82 (1924); *In re* Strobel's Estate, 264 Pa. 552, 107 Atl. 888 (1919).

[29] Sherton v. Abbott, 178 Md. 526, 15 A. 2d 906 (1940); *In re* Webber's Will, 187 Misc. 135, 64 N. Y. S. 2d 281 (Surr. Ct. 1950); Reynolds v. Lloyd Cotton Mills, 177 N. C. 412, 99 S. E. 240 (1919).

[30] 27 N. J. Super. 280, 99 A. 2d 181 (1953).

[31] *Id.* at 281, 99 A. 2d at 182.

[32] 71 N. D. 256, 300 N. W. 28 (1941).

[33] *Id.* at 261, 300 N. W. at 31. The same result would have been reached if the court had used a test of actual residence rather than domicile because the defendant was probably also not a non-resident at the time of the accident. However, this construction will likely be followed in subsequent decisions even when the defendant is residing outside the state but proves a retention of his domicile within.

[34] 233 Minn. 62, 45 N. W. 2d 822 (1951).

applicability of the non-resident motorist statute to the defendant, a school teacher in Minnesota, who returned each summer to her home in Missouri. The plaintiff contended that the defendant was a non-resident at the time of the accident and served her through the statutory agent, the Secretary of State. Speaking generally of the term non-residence, the court said that it expresses different concepts according to the context in which it is used and could mean either a legal domicile or an actual residence. In accepting the latter concept as the desired one, the court said: "if the first concept of residence, namely, legal domicile, is adopted and no one is to be deemed a non-resident . . . whose domicile is in the state, the purpose of the statute would to a great extent be defeated. For example, a motorist could leave this state with the intent of returning; as a result his domicile would still be in the state, although he no longer maintained a place of abode in it. An man may have a residence in one state and his domicile in another."[35]

In a later case,[36] the same court said, when speaking of the concept of residence as used in the non-resident motorist statute, that: "it was not intended to be synonymous with legal domicile and that if actual residence within the state at the time of the accident on the highways were established the provisions of the statute relative to service upon non-residents would be inapplicable."[37]

What constitutes residence under the non-resident motorist statutes of several other jurisdictions has been the subject of direct judicial review and those jurisdictions have all decided that it should not be construed as being synonymous with domicile.[38] Thus, an examination of the decisions has revealed only one jurisdiction[39] interpreting residence to be the equivalent of domicile. It is believed that such a construction will defeat the purposes for which the statutes have been enacted.

Another problem arising frequently under the non-resident motorist statutes is illustrated by a decision from Oklahoma.[40] There the plaintiff

[35] *Id.* at 68, 45 N. W. 2d at 825-826.

[36] Hinton v. Peter, 238 Minn. 48, 55 N. W. 2d 422 (1952).

[37] *Id.* at 51, 55 N. W. 2d at 424.

[38] Johnson v. Jacoby, 195 F. 2d 563, 565 (D. C. Cir. 1951) ("one may be a resident of the District for the purposes of the Act, even though domiciled elsewhere"); Suit v. Shailer, 18 F. Supp. 568 (D. Md. 1937); De Pier v. Maddox, 87 Cal. App. 2d 460, 179 P. 2d 87 (1948); Briggs v. Superior Court of Alameda County, 81 Cal. App. 2d 240, 183 P. 2d. 758 (1947); Warwick v. District Court of City and County of Denver, 269 P. 2d 704 (Colo. 1954); Carlson v. District Court of City and County of Denver, 116 Colo. 330, 180 P. 2d 525 (1947); Sease v. Central Greyhound Lines, Inc. of New York, 281 App. Div. 192, 118 N. Y. S. 2d 433 (3d Dep't 1952) (The term residence is not synonymous with domicile. A person who is domiciled in New York may nevertheless be a resident of another state within the meaning of the non-resident motorist statute.); Uslan v. Woronoff, 173 Misc. 693, 18 N. Y. S. 2d 222 (N. Y. City Ct. 1940).

[39] Northwestern Mortgage and Security Co. v. Noel Construction Co., 71 N. D. 256, 300 N. W. 28 (1941).

[40] Clendening v. Fitterer, 261 P. 2d 896 (Okla. 1953).

attempted substituted service upon the defendant alleging that he (the defendant) was a resident of Texas. The defendant proved that he was a resident of Oklahoma at the time of the accident. The court, in construing the statute, said that it did not apply to a resident who later left the state, and the service of process was set aside. A North Carolina example of this problem is seen in *Foster v. Holt*,[41] where the defendant, a resident, left the state after the accident to return to duty in the armed services and he court held that the statute was inapplicable to him.

The New Mexico court, in *Fisher v. Terrell*,[42] was faced with the same problem when the plaintiff alleged that the defendant was a non-resident, but it was shown that at the time of the accident the defendant was a resident of New Mexico. The court after holding that for the service to be valid the defendant must have been a non-resident at the time of the accident and not at the time the suit was filed, said: "It is unfortunate that we do not have a statute . . . where service may be had on the Secretary of State when a resident is involved in a motor car accident and leaves the state before suit is filed, or process served on him, or where after diligent search he cannot be found in the state even though he does not leave."[43]

As these statutes were enacted for the purpose of enabling the injured plaintiff to serve the defendant who has inflicted injury on him while using the state's highways and who, by the time suit can be instituted, would otherwise be beyond the jurisdiction of the courts, it is evident that some provision is needed to remedy such an apparent gap.

This defect has been corrected in several states[44] by making the non-resident motorist statute applicable to residents of the state, who, after the accident, cannot with due diligence be found in the state, and to residents who have, after the accident, left the state and remained away for a specified period.[45]

[41] 237 N. C. 495, 75 S. E. 2d 319 (1953).

[42] 51 N. M. 427, 187 P. 2d 387 (1947).

[43] *Id.* at 428, 187 P. 2d at 388. Other cases reaching the same result are: Warwick v. District Court of City and County of Denver, 269 P. 2d 704, 706 (Colo. 1954) ("the fact that the resident left the state after the accident was immaterial."); Cassan v. Fern, 109 A. 2d 482 (N. J. Super. 1954).

[44] ARIZ. CODE ANN. § 66-266 (1949) ("The provisions of this section shall also apply to a non-resident defendant who was a resident of the state at the time of the accident or occurrence which gave rise to the cause of action sued on."); ILL. REV. STAT. c. 95½, § 23 (1953); IOWA CODE ANN. §§321.498, 321.499 (1953); ME. REV. STAT. c. 22, § 70 (1954); MD. ANN. CODE GEN. LAWS art. 66½, § 113(h) (1953); MINN. STAT. ANNOTATIONS § 170.55 (1949); MO. REV. STAT. § 506.220 (1949); MONT. REV. CODES ANN. §§ 53-202, 53-203 (1947); N. H. REV. LAWS c. 116, §§ 42 through 45 (1942); N. Y. VEHICLE AND TRAFFIC LAW §§ 52, 52a ("The provisions of section fifty-two of this chapter shall also apply to a resident who departs from the state subsequent to the accident or collision and remains absent therefrom for thirty days continuously, whether such absence is intended to be temporary or permanent."); OHIO GEN. CODE ANN. § 2703.20 (1953); PA. STAT. tit. 75, §§ 1201 through 1206 (Purdon's 1953).

[45] MD. ANN. CODE GEN. LAWS, art. 66½ § 113(h) (1953) (six months); MINN.

The General Assembly of North Carolina in the 1955 session, incorporated such a provision into the North Carolina statute.[46] Decisions from other jurisdictions interpreting and applying such a provision have demonstrated its usefulness.[47]

It is believed that the recent amendment to the North Carolina statute will aid in the accomplishment of the purposes for which it was enacted by making the absent resident amenable to the substituted service. It is also believed that the amendment will eliminate, to a great extent, the issue raised in the principal case, but for one possible exception. This would arise when a motorist, who is an actual resident of North Carolina but has his domicile in another state, has an accident in North Carolina, and the plaintiff attempts to serve him under the non-resident motorist statute. If the defendant claims to be a resident of North Carolina and thus not amenable to service under the statute, a "direct judicial review" of the meaning of "non-resident" would be required.

Because of the fact "that the holdings as to what constitutes residence, domicile, etc., vary according to the purposes of the statutes,"[48] the legislature should make it clear what meaning is to be given "non-resident" as used in the North Carolina Non-Resident Motorist Statute.

ROBERT L. SPENCER.

Taxation—Tax Fraud Cases—Use of Net Worth Method

In December of 1954, the United States Supreme Court handed down four decisions involving the use of the net worth method of discovering unreported income in prosecutions for attempted evasion of income taxes.[1] This note is an effort to examine the state of the law as it exists in the lower federal courts and to determine what effect the decisions of the Supreme Court will have upon the rules as laid down by the lower courts.

STAT. ANNOTATIONS § 170.55 (1949) (six months); N. Y. VEHICLE AND TRAFFIC LAW § 52a (thirty days).

[46] N. C. Sess. Laws (1955) c. 232. See, Survey of Statutory Changes, p. —, *supra*.

[47] Ogdon v. Granakos, 415 Ill. 591, 114 N. E. 2d 686 (1953); State *ex rel.* Thompson v. District Court, 108 Mont. 362, 91 P. 2d 422 (1939); Reed v. Lombardi, 266 App. Div. 44, 44 N. Y. S. 2d 382 (2d Dep't 1943).

[48] Hart v. Queen City Coach Co., 241 N. C. 389, 391, 85 S. E. 2d 319, 321 (1955).

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[1] Holland v. United States, 348 U. S. 121; Friedburg v. Unoted States, 348 U. S. 142; Smith v. United States, 348 U. S. 147; United States v. Calderon, 348 U. S. 160.

In Sullivan v. United States, 348 U. S. 170, decided at the same time, the Government had used the net worth method in prosecuting the case, but the issues raised on appeal were whether a federal district attorney could prosecute a tax case without the sanction of the Department of Justice and whether the trial court erred in denying defendant's post-sentencing motion to withdraw pleas of nolo contendere. Since no issues as to the use of the net worth method were raised on appeal, the case will not be considered.