Practice—Service upon Foreign Corporations—[Federal].—The petitioner, a foreign corporation, had never been licensed to do business in Wisconsin, had no place of business or property there, and had no agent there. The president of the corporation came to Wisconsin to induce an attorney to refrain from seeking final judgment in a suit he was then prosecuting against the corporation and to deposit bonds of the corporation with a bondholders' committee. While in the attorney's offices he was served with summonses addressed to the corporation in suits to recover on some of the bonds. A petition for a writ of prohibition sought in the Wisconsin Supreme Court was denied and the matter was appealed. *Held*, judgment reversed and remanded. *Consolidated Textile Corp. v. Gregory, Judge*, 289 U.S. 85, 53 Sup. Ct. 529 (1933).

The petitioner, a foreign corporation, in 1926, qualified to do business in the State of Washington and under statute appointed a resident agent to accept service of process. Wash. Rem. Comp. Stats. Ann. (1922), § 3854. In 1929 the corporation ceased business in the state and formally withdrew. The same year the corporation dissolved and the agent left the state although his agency was never revoked. In 1932, in a suit against the corporation, a summons was served on the Secretary of State. No notice was forwarded to the corporation, nor was it required by statute. Petitioner sought a writ of prohibition after a motion to quash service was overruled. The state Supreme Court refused and the corporation appealed. *Held*, the judgment affirmed. *State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court for Spokane County*, 289 U.S. 361, 53 Sup. Ct. 624 (1933).

The court relied on different theories of jurisdiction in reaching the results of the two cases.

In the first case the court discussed the ultimate issue of whether or not the writ of prohibition should be granted from the point of view that jurisdiction, if it existed, would be based on the presence theory and the idea that the corporation was doing business in the state. Cahill, Jurisdiction over Foreign Corporations, 30 Harv. L. Rev. 676, 686–696 (1917); Fead, Jurisdiction over Foreign Corporations, 24 Mich. L. Rev. 633, 636 (1926). In the case of *Chambe v. Delaware and Hudson Ry. Co.*, 288 Pa. St. 240, 246, 135 Atl. 755, 757 (1927) the court made a comprehensive attempt to devise a formula for determining when a foreign corporation is doing business in a state. All of the considerations there listed are not called into question but it seems that in the principal case the "business engaged in" was not sufficient in quantity and quality. See Farrier, Jurisdiction over Foreign Corporations, 17 Minn. L. Rev. 270, 293–298 (1933). This is the view the United States Supreme Court took of the situation and the cases of *Rosenberg Co. v. Curtis Brown Co.*, 260 U.S. 516, 43 Sup. Ct. 170, 67 L. Ed. 372 (1922) and *James-Dickinson Co. v. Harry*, 273 U.S. 119, 122, 47 Sup. Ct. 308, 309, 71 L. Ed. 569 (1926) cited in the opinion seem amply to justify the holding. For the Wisconsin Supreme Court decision, see *Consolidated Textile Corp. v. Gregory, Judge*, 209 Wis. 476, 245 N.W. 194 (1932).

The second case goes to rather extreme limits on the doctrine of jurisdiction based on consent to a form of substituted service. The court based its opinion on the ground that the corporation *could* be excluded from operating in the state. *Bank of Augusta v. Earl*, 13 Pet. 519, 38 U.S. 519, 10 L. Ed. 274 (1839); *Lafayette Ins. Co. v. French*, 18 How. 404, 407, 59 U.S. 404, 407, 15 L. Ed. 451 (1855). Hence, "Admission might be conditioned upon . . . . the terms that if the corporation had failed to appoint or maintain an agent service should be upon a state officer. *American Railway Express Co. v. Royster Co.*, 273 U.S. 274, 280." Also, liability to be served in this manner might

by statute continue after a corporation had ceased to do business in, and had withdrawn all agents from the state. *Mutual Reserve Fund Life Assn. v. Phelps*, 190 U.S. 147, 23 Sup. Ct. 707, 47 L. Ed. 987 (1903). By applying the combined propositions as to substituted service and liability to service after removal from state, the court concluded that the service was proper in the principal case. However, the Washington statute made no provision for notice being sent by the state officer designated to be served to the foreign corporation. In this the statute differed from those under consideration by the court in the two cases cited by it as sustaining the above propositions. *American Railway Express Co. v. Royster*, *supra* and *Mutual Reserve Fund Life Assur. v. Phelps*, *supra*. Seemingly, the instant decision goes beyond prior holdings in the field of substituted service upon foreign corporations. See Washington Supreme Court decision in principal case, 169 Wash. 688, 15 P. (2d) 660 (1932), commented on in 33 Col. L. Rev. 359 (1933), 81 Univ. Pa. L. Rev. 469 (1933).

JOHN P. BARNES, JR.

Torts—Gross Negligence—Interpretation of "Host-Guest" Automobile Statutes—[Nebraska].—P was a guest in D's automobile. Against P's admonition D drove at 65 miles per hour and lost control of the car which crashed injuring P. *Held*, under a statute providing that a host shall not be liable to a guest injured in the former's automobile unless his driving was grossly negligent, that judgment for P be affirmed. *Morris v. Erskine*, 248 N.W. 96 (Neb. 1933).

Several states have adopted "host-guest" statutes respecting automobiles incorporating such phrases as: "intoxication . . . . or wilful misconduct," Cal. Deering's Gen. Laws, Act 5128 (1931), § 141¾; "intentional injury . . . . heedlessness . . . . or reckless disregard," Conn. Gen. Stats. (1930), § 1628; "wilful and wanton misconduct," Ill. Smith-Hurd's Rev. Stats. (1933), c. 121, § 243; "intoxication or reckless operation," Iowa Code (1931), c. 251, § 5026; "gross negligence or wilful and wanton misconduct," Mich. Comp. Laws (1929), c. 73 § 4648; "under influence of intoxicating liquor or gross negligence," Neb. Laws of 1931, c. 105; "intentional . . . . gross negligence . . . . intoxication . . . . reckless disregard," Ore. Code Ann. (1930), §§ 55–1209.

"Guest" is variously defined in these statutes, but usually refers to a non-paying invited passenger. See *Russell v. Parlee*, 115 Conn. 687, 163 Atl. 404 (1932). Aside from such statutes the general rule is that the host owes his invited guest the duty of exercising ordinary and reasonable care. See 12 Mich. L. Rev. 685 (1914). Quite apparently the legislative purpose is to abandon the general rule and to expose the host to an action only when he has created an extraordinary hazard. *Naudzius v. Lahr*, 253 Mich. 216, 234 N.W. 581 (1931).

The main issue in applying such statutes is the interpretation of the phrases: "gross negligence," "wanton and wilful misconduct," et cetera. *Slobodnjak v. Coyne*, 116 Conn. 545, 165 Atl. 681 (1933).

Under a "host-guest" statute employing the term "wilful or wanton misconduct" one might expect a court in applying it to hold to be actionable only deliberate and intentionally committed wrongs. But, surprisingly enough, not only have statutes reading "wilful and wanton" been construed to include acts of gross negligence, but the concept of gross negligence has been interpreted as being "wilful and wanton." *Oxenger v. Ward*, 256 Mich. 499, 240 N.W. 55 (1932); *Denman v. Johnson*, 85 Mich. 389, 48 N.W. 565 (1891); 42 C.J. 892.