Under the ruling of the principal case, the administrator, almost certain to fail in a federal court because of Rule 13 (a), averted defeat by bringing his action for wrongful death in a state court. A state court should not be party to the evasion of an unfavorable jurisdiction in order to secure a favorable judgment. It was this very practice which caused so much criticism of the doctrine of Swift v. Tyson and finally resulted in the overruling of that case.

SERVICE ON FOREIGN EXECUTORS AND ADMINISTRATORS UNDER NON-RESIDENT MOTORIST STATUTES

Service was made on the domiciliary administratrix of the estate of a South Dakota decedent whose son had injured the plaintiff while driving decedent's truck in Iowa. This service was in accordance with the Iowa Non-Resident Motorist Statute, which provides for service upon the executor or administrator of the estate of a non-resident motorist who had been a party to an accident in Iowa. Upon application of the defendants, the case was removed to a federal court on the ground of diversity of citizenship. This court, on its own motion, heard arguments as to its jurisdiction and held that despite the voluntary appearance of the defendant before the court, it lacked jurisdiction over her because of the doctrine that an executor or administrator has no legal standing as such outside of the state in which he was appointed. The court went even further and declared that portion of the Iowa statute allowing suit against foreign executors and administrators invalid. Knoop v. Anderson.

In reaching its decision, the court followed the general rule that an executor or administrator cannot sue or be sued in his representative capacity outside the state of his appointment. While there has been some tendency to permit foreign executors or administrators to sue, the rule barring suits against them in courts

25 Ikeler v. Detroit Trust Co., 30 F. Supp. 643 (Mich., 1939). A party should not be permitted to bring in a federal court an action which should have been litigated in a state court, by a strained construction of Federal Rules 13 and 14. Converse reasoning also applies. Prior to the Federal Rules it had been held that a suit brought in a federal court under diversity of citizenship would not permit a party to intervene as plaintiff when his residence was the same as that of the defendant. Such an attempt by the intervenor to circumvent state jurisdiction was perceived and prevented. De Graffenreid v. Yount-Lee Oil Co., 30 Fed. 2d 574 (C.C.A. 5th, 1939); Lauss v. Palmer Union Oil Co., 222 Fed. 870 (C.C.A. 9th, 1915); Forest Oil Co. v. Crawford, 101 Fed. 849 (C.C.A. 3d, 1900).

26 16 Pet. (U.S.) 1 (1842).


2 71 F. Supp. 832 (Iowa, 1947).


other than those of the state of appointment has been more inflexible. Neither personal service on the executor nor his voluntary appearance will give jurisdiction over the estate of the decedent where no property of the decedent is located within the state. The policy behind this rule is grounded in property concepts, especially the notion that any other view would presumably allow a state to administer property outside of its borders. Similarly, the executor or administrator is frequently regarded as an officer of the court from which his authority stems, and an action against him is thought by some to be an action against his sovereign, and is therefore barred.

The rule has become so deeply entrenched that legislative attempts to limit its scope have been narrowly applied. Thus, a New York statute expressly providing for suit against foreign executors and administrators was limited to executors and administrators of estates with property in the state. However, several exceptions to the rule have appeared, and not all the states have been so severe as New York in statutory construction. The rule has frequently been circumvented to satisfy broad equity principles. In Pennsylvania the rule has been largely qualified. There, a foreign representative within the territorial jurisdiction of the Pennsylvania courts may be sued unless "such suit . . . trenches unduly on the jurisdiction of another court already attached or would expose parties subject to such jurisdiction to inequitable burdens."

6 Jefferson v. Beall, 117 Ala. 436, 23 So. 44 (1898); Judy v. Kelly, 11 Ill. 211 (1849).
7 The court in the instant case did not discuss the interesting point raised by plaintiff's brief that the liability of an insurance company to the estate constitutes an asset of the estate justifying a grant of administration. See In re Vilas, 166 Ore. 115, 110 P. 2d 940 (1941); Furst v. Brady, 375 Ill. 425, 31 N.E. 2d 606 (1940); Gordon v. Shea, 300 Mass. 95, 14 N.E. 2d 205 (1938). All these cases follow Robinson v. Dana, 87 N.H. 114, 174 Atl. 772 (1934), where the insurer's obligation, even though immature, was held to be an asset within the meaning of the statute. The result if the insurer is not under the court's jurisdiction is not discussed. But cf. In re Walker's Estate, 36 N.E. 2d 600 (Ohio App., 1940).
8 The Liability of Foreign Executors and Administrators, 24 Harv. L. Rev. 664 (1911).
10 Johnson v. Powers, 139 U.S. 156 (1891); Stacy v. Thresher, 6 How. (U.S.) 43 (1848).
12 Helme v. Bucklew, 229 N.Y. 363, 128 N.E. 216 (1920); McMaster v. Gould, 249 N.Y. 379, 148 N.E. 536 (1925). The New York view would seem to indicate that suits against executors and administrators of non-resident motorists, even though authorized by statute, are limited to assets within the state where the action was brought.
14 A foreign administrator was permitted to apply for modification of his decedent's divorce decree insofar as it directed payment of alimony after remarriage of the divorced wife. Kirkbride v. Van Note, 275 N.Y. 444, 9 N.E. 2d 852 (1937); see Cutrer v. Tennessee, 98 Miss. 841, 54 So. 434 (1911); Johnson v. Jackson, 56 Ga. 320 (1875).
It is a corollary of the general rule that a judgment against a foreign executor or administrator will not be binding in the domiciliary state or any other state in which property of the estate is located. In the instant case the court seems to have decided the question of its own jurisdiction under the Non-Resident Motorist Statute in terms of what force and effect the South Dakota courts would give its judgment. It is submitted that these two questions should be considered separately, and that an opinion as to the effect of the judgment in the domiciliary state should not deter the court from deciding the questions of its jurisdiction and the validity of the statute apart from such an opinion. Furthermore, it is questionable whether the defendant should be allowed to object on the ground that the plaintiff might find it difficult to collect on his judgment.

In *Morris v. Jones* an Illinois unincorporated association was sued in tort in a Missouri court, and during the pendency of the suit a liquidator appointed by an Illinois court took over the assets of the association. Although the liquidator failed to appear in Missouri after the withdrawal of the association from the litigation, the Missouri court entered judgment against him. Despite the general rule that no recognition need be given in the state of incorporation to a judgment rendered against the corporation in a sister state after dissolution of the corporation, the United States Supreme Court held that the judgment was conclusive as to the nature and amount of the claim. The holding that a Missouri judgment against an Illinois liquidator is conclusive as to the amount of the claim in Illinois, where all the assets are located, seems to be a serious inroad on the fundamental doctrine of state determination of claims to property administered by its own courts, and some feel that it goes too far. However, despite the Court's statement that its decision "in no way affects title to the property" in Illinois, the analogy of the liquidator to the administrator serves to indicate that the rule against such adjudication by one state affecting property in another state is not immutable.

It may well be that the addition of clauses authorizing service on foreign executors and administrators in the non-resident motorist statutes will be regarded as a new exception to the general rule barring suit against foreign representatives. In the absence of statutory provisions, service on the representative of the estate of a non-resident motorist is clearly of no effect. Although all forty-

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22 67 S. Ct. 451, 455 (1947).
eight states have provided for service on non-resident motorists, only six\textsuperscript{24} have provided for service on executors and administrators. The courts have divided in dicta discussing the constitutionality of such measures,\textsuperscript{25} but to date only one other case\textsuperscript{26} has actually involved such a provision. In that case the issue as to its validity was not really met, as the defendant relied on the assumption that the implied consent of the non-resident motorist to appoint the Secretary of State his agent for service of process in actions arising out of the non-resident motorist's use of the highways was terminated by the motorist's death.\textsuperscript{27} The holding of the court invalidating the Iowa statute in the instant case is most unsatisfactory, as the court failed, despite the length of its opinion, to cite any constitutional provisions violated by the statute.

The problem\textsuperscript{28} represented by the passage of these amendments to the non-resident motorist acts should be given full consideration by the courts. The weakness in the early acts\textsuperscript{29} necessitated further legislative action to correct the errors, and the pressing need for such statutes should cause the courts to hesitate before invalidating their provisions. Of course, in the principal case the plaintiff might well have brought his suit in South Dakota without great inconvenience, but the next situation might involve a citizen of California, which would work a real hardship on an Iowa plaintiff. It seems unfortunate, therefore, that the court took the course it did in refusing to decide on the merits, instead of applying the statute and passing the question of its jurisdiction on to the South Dakota court.


\textsuperscript{25} Before New York amended its act, the opinion was expressed that such an amendment would be futile and would not confer jurisdiction over foreign representatives. Balter v. Webner, 175 N.Y. Misc. 184, 23 N.Y.S. 2d 918 (1940). If the legislature had wished to extend the agency it would have been easy to make service good against foreign representatives. Young v. Potter Title & Trust Co., 114 N.J.L. 561, 178 Atl. 177 (1935); see also State ex rel. Ledin v. Davidson, 216 Wis. 216, 256 N.W. 718 (1934); Rogers, Conflict of Laws: Jurisdiction over Non-residents: Validity of Substituted Service on the Executor or Administrator of Non-resident Motorists, 21 Corn. L.Q. 458 (1936).

\textsuperscript{26} Oviatt v. Garretson, 205 Ark. 792, 171 S.W. 2d 287 (1943).

\textsuperscript{27} The court distinguished the "consent" of non-resident motorists to appoint the Secretary of State as agent or attorney from common law agency as being based on the police power of the state. Ibid., at 797, 290. However, it is submitted that the question of revocable agency does not go to the heart of the problem, namely, "what recognition, if any, might be given the judgment against the executor in the state of his appointment." Knoop v. Anderson, 71 F. Supp. 832, 849 (1947).

\textsuperscript{28} "The state may use its power over the highways to attain procedural results otherwise barred by the due process clause." Committee to Study Compensation for Automobile Accidents, Report Made to Columbia University Council for Research in the Social Sciences 171 (1932).

\textsuperscript{29} Three situations were found not to be covered by the original acts: 1) suit by a non-resident against a non-resident, 2) agent of a non-resident motorist, 3) suit against executor or administrator. Recent Legislation Affecting Non-resident Motorist, 20 Iowa L. Rev. 654 (1935).
RECENT CASES

The weight of authority would seem to indicate that notions of jurisdiction over property and control of the res in actions in rem serve to invalidate extensions of non-resident motorist acts to executors and administrators. However, a closer examination into the special circumstances of the non-resident motorist acts, an awareness of the trend implicit in Morris v. Jones, as well as a review of the whole basis for the general rule, might justify another exception. Since all states may be expected eventually to enact provisions allowing suit against foreign executors and administrators, an awareness of the force of comity and the particular hazard presented by the non-resident motorist should justify a decision excluding this situation from the operation of the prevailing rule barring suit against foreign representatives. At the very least, it would seem desirable that the courts assume jurisdiction, thus allowing courts of the states in which property of the estate is located to decide what effect should be given the judgment, in the hope that the force of comity might prevail to permit acceptance of these statutes.

REVIEW OF ADMINISTRATIVE FINDING OF ALIENAGE IN EXCLUSION PROCEEDING

In Ex parte Delaney immigration authorities sought to exclude a seaman who had served meritoriously in the United States Merchant Marine upon his return to the United States from a tour of duty to foreign ports. The Board of Special Inquiry denied Delaney admission on the basis of its finding that he was an alien without an unexpired immigration visa or an official passport in his possession. Delaney then petitioned for a writ of habeas corpus, alleging that he was a native-born American citizen and that his detention was, therefore, unlawful. He contended that, even if he had in fact been an alien in 1945, at the time of his detention, his last "entry" into the United States had been in 1924, and that as a matter of law his arrival in 1945 was not an "entry" within the meaning of Section 19(a) of the Immigration Act of 1917, as amended. In support of his claim of citizenship Delaney offered in evidence his parents' certificate of marriage in the United States, a delayed birth certificate in which Delaney represented himself as having been born in Brooklyn, New York, an oral statement that his father had told him that he (the petitioner) had been born in America, and other testimony showing good moral character and personal belief that he was an American citizen. He testified that he had been taken to

1 72 F. Supp. 312 (Cal., 1947).
5 If the person responsible for reporting the birth is unavailable, "... then the person making application for the certified copy of the record may file such certificate of birth... together with such sworn statements, affidavits and other evidence as the state commissioner of health may require. The state commissioner of health shall file such certificate and issue a certified copy thereof to said applicant..." N.Y. Public Health Law (McKinney, Supp. 1947) c. 45, § 391.