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Jury Instruction: Hung Juries-Admonitions Urging Agreement and Direction as to Methods of Deliberation

JURY INSTRUCTIONS

HUNG JURIES—ADMONITIONS URGING AGREEMENT AND DIRECTIONS AS TO METHODS OF DELIBERATION

Following a charge of assault with intent to kill, the defendant pleaded insanity. On this point the evidence conflicted. After the jury had been out for fifty-two hours, the judge called them in and instructed that while the verdict of each juror must be his own and not a mere acquiescence in the conclusions of others, it was the duty of jurors to agree if they could do so without yielding conscientious convictions. He further stated that each juror should listen with a disposition to be convinced by the arguments of the others and that minority jurors should, since they were outnumbered, consider their views as possibly unreasonable.[1]

Fifteen minutes after listening to this instruction the jury returned a verdict of guilty. Defendant claimed on appeal that the instruction coerced the jury into arriving at a verdict. It was not coercive, the court held, since it did not intimate what verdict was to be reached and did not tend to make a juror yield a conscientious conviction. Defendant also asserted without success that the instruction amounted to a comment on the evidence.[2] *State v. Voeckell,* 210 P.2d 972 (Ariz. 1949).[3]

Coercive instructions and comments on the evidence, which are related in that both involve the "inviolability" of jury trials, represent essentially

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1. ". . . You are further instructed, members of the jury, that although the verdict to which each juror agrees, must, of course, be his own verdict and the result of his own convictions and not a mere acquiescence in the conclusion of his fellows, yet in order to bring twelve minds to a unanimous result you must examine the question submitted to you with candor and with proper regard and deference to the opinions of each other. There is no reason to suppose that this case will ever be submitted to twelve more intelligent, more impartial or more competent jurors to decide it, or that more or clearer evidence will be produced on one side or the other. With this in view it is your duty to decide this case if you can without yielding your conscientious convictions. In conferring together you ought to pay proper attention to each other's opinions and listen with a disposition to be convinced by each other's arguments, and, on the other hand, if a larger number of your panel are for conviction a dissenting juror should consider whether a doubt in his own mind is a reasonable one which makes no impression on the minds of so many jurors equally honest, equally intelligent with himself, who have heard the same evidence, with the same oath; and if on the other hand, the majority are for the defendant the minority should ask themselves whether they may not and ought to reasonably doubt seriously the correctness of a judgment which is not concurred in by most of those with whom they are associated, and distrust the weight and sufficiency of that evidence which fails to carry conviction to the minds of their fellow jurors *** and with that instruction you will continue your deliberations . . ." State v. Voeckell, 210 P.2d 972, 974 (Ariz. 1949).

2. ARIZ. CONST. ART. VI, § 12 prohibits trial judges from commenting on the evidence. In Indiana this practice is prohibited by judicial decision. Wood v. Deutchman, 75 Ind. 148 (1881).

3. Comment, 2 STAN. L. REV. 613 (1950); 36 VA. L. REV. 110 (1950).

separate ideas.[4] One argument for the privilege of judges to comment on the evidence is that they thereby impart to the jury the benefit of valuable experience gained from numerous trials,[5] thus lighting the way to the "proper" verdict. Many writers feel that the issues and evidence in present-day trials, especially civil cases, are sufficiently complicated that a jury unguided by judicial remarks can hardly frame the issues or properly ascertain the facts. Since by this argument a limited discussion of the evidence from the bench is the guiding force, that thesis does not support a judge's right to urge agreement which, in the absence of comment, is as "unguided" as if the judge had said nothing. And certainly in the instruction under consideration the remarks were not comment, that is, did not summarize, clarify, or favor certain evidence.[6]

There is no doubt that threats to keep the jury impaneled until a verdict ensues or instructions[7] disparaging the jurors are coercive.[8] Nicer problems occur when instructions refer to the duty of the jurors to reach a decision, to the importance of ending a case, to the expense and inconvenience of litigation, or to the manner of deliberation.[9] (Consideration of the latter has

4. Even should the coercion problem be considered as one phase of the comment problem, the outcome of the cases would not be different; for even under the liberal federal rules regarding comment on the evidence, the trial judge may not comment to a jury returning without a verdict. Foster v. United States, 188 Fed. 305 (4th Cir. 1911).

5. Mitchell v. Harmony, 13 How. 115 (U. S. 1851); M'Lanahan v. The Universal Insurance Co., 1 Pet. 170 (U. S. 1828); Kolman v. People, 89 Colo. 8, 300 Pac. 575 (1931) (The majority, concurring, and dissenting opinions present a heated discussion of arguments for and against comment.); 9 WIGMORE, EVIDENCE, §§2251, 2251a (3rd ed. 1940); Deane, *Civil Jury Should be Abolished,* 12 J. AM. JUD. SOC'Y 137 (1929); Sunderland, *The Inefficiency of the American Jury,* 13 MICH. L. REV. 302 (1915).

6. As is apparent from the majority opinion in the *Voeckell* case, the split in authority regarding the propriety of "verdict urging" instructions does not coincide with the split regarding the judge's right to comment on the evidence.

7. In relation to requirements that additional instructions of law be given only in the presence of counsel, admonitions regarding the jury's duty to reach a verdict and suggested methods of deliberation are not considered instructions. Ashford v. McKee, 183 Ala. 620, 62 So. 879 (1913); Burton v. Neill, 140 Iowa 141, 118 N.W. 302 (1908). *But cf.* Jones v. Johnson, 61 Ind. 257 (1878). An Indiana statute enacted since the decision in the *Jones* case would seem to give Indiana the rule that such admonitions are not instructions. IND. STAT. ANN. (Burns Repl. 1946) §2-2017.

Also, court rules regarding time for excepting to instructions do not apply to these admonitions. See Medows v. State, 182 Ala. 51, 62 So. 737 (1913). This court validly reasoned that coercive admonitions were not instructions but those regarding the deliberative process were.

These admonitions are for other purposes called instructions in the cases and are so termed in this note.

8. An exception seems to exist in some jurisdictions if the coercion merely results in the only verdict that could properly have been given on the merits of the case. Grimes v. Malcolm, 164 U. S. 483 (1896); Wilson v. State, 109 Tenn. 167, 70 S. W. 57 (1902).

9. See Pfeiffer v. State, 35 Ariz. 321, 278 Pac. 63 (1929); Holmes v. State, 153 Ark. 339, 240 S.W. 425 (1922) (threats to keep the jury impaneled until a verdict is reached); Kesley v. United States, 47 F.2d 453 (5th Cir. 1931) (disparagement of jurors); Peterson v. United States, 213 Fed. 920 (9th Cir. 1914) (duty of jurors to reach a verdict); Peavy v. Clemons, 10 Ga. App. 507, 73 S.E. 756 (1912) (importance of ending the case);

often been inaccurately and carelessly made as though this were a problem indistinguishable from coercion.)

Various tests have been devised to determine the coerciveness of the more doubtful instructions. One standard requires examination of the evidence. If it favors the prevailing party and is not conflicting, the instruction will be declared either not coercive[10] or not prejudicial.[11] Conversely, if the evidence is in conflict, the instruction will be deemed prejudicial.[12] Those appellate courts which apply this test usurp the function of the jury by weighing the evidence[13] and by granting a new trial for misinstruction only if they are in doubt about what the verdict should have been.[14] The use of this precept is necessarily inconsistent with the proposition that *any* coercion is prejudicial regardless of the verdict: the very fact that the jury was undecided[15] when the instruction was given shows probability that the proper triers of fact thought the evidence was conflicting. Had this test been applied in the present case, reversal would have followed since the evidence on the question of insanity was inconclusive.

Quite popular because of its simplicity, the time-element test requires a holding of coercion only if the instruction is followed by a short period of

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Knapp v. State, 168 Ind. 153, 79 N.E. 1076 (1906); Nicken v. Miller, 59 Ind. App. 115, 108 N.E. 968 (1915); People v. DeMeaux, 194 Mich. 18, 160 N.W. 634 (1916) (deliberative processes).

10. Wilson v. State, 109 Tenn. 167, 70 S.W. 57 (1902).

11. Grimes v. Malcolm, 164 U. S. 483 (1896).

12. Peterson v. United States, 213 Fed. 920 (9th Cir. 1914); Peavy v. Clemons, 10 Ga. App. 507, 73 S.E. 756 (1912).

13. Though appellate courts in reviewing rulings on motions for new trials consider the evidence in the light most favorable to the prevailing party, such procedure necessarily presupposes previous fair consideration of the case by the jury. It could hardly be argued that the reviewing court should even look at the evidence if the defendant had been improperly denied a jury trial. Although parties should be given no more than one opportunity to win before a jury, they should not be denied that opportunity as a result of coercion of the jury. See note 33 *infra.*

14. IND. CONST. ART. I, § 19, providing that the jury shall be the judge of the law in criminal cases, seems to put Indiana in no different position on the coercion problem from that of jurisdictions not having such provisions. Instructions urging agreement are clearly not instructions as to the law. See note 4 *supra.* Instructions as to the deliberative process do not deny the jury the right to determine the law but possibly state illegal methods for the exercise of that right. Thus, the situation in Indiana coincides with that in other jurisdictions except that in the latter, juries, when following an improper deliberative instruction, determine only the facts improperly.

15. With rare exceptions only instructions given after the jury has returned, or has been called in, without reaching a verdict are challenged as coercive. As to deliberative processes, there has been litigation on instructions given both before and after the jury begins deliberation. See Holmes v. State, 153 Ark. 339, 240 S.W. 425 (1922) (coercive instruction after deliberation); State v. Saunders, 14 Ore. 300, 12 Pac. 441 (1886) (coercive instruction before deliberation); State v. Ivanhoe, 35 Ore. 150, 57 Pac. 317 (1899) (deliberative instruction after jury has been called back); Knapp v. State, 168 Ind. 153, 79 N.E. 1076 (1906) (deliberative instruction before the jury retired).

deliberation.[16] Although strongly advocated by the *Voeckell* dissent, the rule has an obvious defect: if the jury is split eleven to one, agreement might come soon after any additional instruction; if the division is seven to five, agreement may take longer. Thus the instruction would be held bad in the first situation, and good in the second, though coercion could have been effected in both instances. Despite this fault the test is not entirely without merit where the later deliberation is long. Attempted coercion would usually be unsuccessful against five minority jurors. At least one of them would probably remain adamant until convinced on the merits. However, when only one or two jurors are conscientiously holding out, the time required for agreement might depend less on the merits of the jury-room arguments and more on the stamina of a single person. On the other hand, since strength of character varies so greatly, a very pointed instruction may coerce no one while a mild one might coerce several jurors. A court applying this arbitrary standard would not know whether its holding on coercion was determined by the split at the time of the instruction or by what effect those directions actually had on the jurors. In either event the merits of the instruction would not be passed upon.

An objective test which neither avoids the merits of the instruction nor circumvents the jury is that requiring examination only of the instruction itself. One form of this rule requires reversal if any reasonable interpretation of the judge's statements would cause an unwilling change of vote.[17] Another form calls for reversal if the instruction has a "tendency to interfere with the free and unbiased judgment of the jurors."[18] The admonition in the present case was held good because it had no "tendency to make any juror yield his conscientious convictions."[19] The court could hardly have meant that the instruction had no tendency to make *any* juror yield, since ordinarily the judges would know none of the jurors. Consequently, *any reasonable* juror

16. The theory is that a short period of deliberation eliminates the possibility that the jury was directed into new channels of reasoning. DeJarnette v. Cox, 128 Ala. 522, 29 So. 618 (1900) (Deliberation had lasted "all day" and agreement was reached "very soon" after the additional instruction. The instructions were, therefore, held bad.); McCarthy v. Odell, 202 App. Div. 784, 195 N.Y. Supp. 80 (1922) (The time intervals: four hours, and ten minutes. The instruction was held bad.) State v. Rogers, 56 Kan. 362, 43 Pac. 256 (1896) (Since the jury deliberated for twenty-four hours but did not reach agreement until the "next day" after the instruction, it was upheld).

17. The "true test" is "that wherever the language of the trial judge reasonably permits any interpretation or construction that could influence one of the jurors to yield his conscientious conviction of the truth for the mere sake of agreement and accept the views of the majority, or wherever the judge suggests that the jurors might arbitrarily compromise, divide, or yield their individual views in order that a verdict might be found, it constitutes reversible error, since it in some degree detracts from that absolute fairness intended to be secured by jury trials." Peavy v. Clemons, 10 Ga. App. 507, 73 S.E. 756, 759 (1912).

18. State v. Nelson, 181 Mo. 340, 347, 80 S.W. 947, 948 (1904).

19. State v. Voeckell, 210 P.2d at 975 (Ariz. 1949).

probably was meant. Similarly, the substitution of "apt to cause" for "tendency to make" would state a more practicable measure because very slight coercion would create such a tendency while a more appreciable degree of duress is apt to cause a change of vote.

Adherence to this objective test will partly answer the arguments of the writers' discontent with the jury system because they believe that a few jurors in each panel impede justice by lacking the ability or disposition to decide complicated cases.[20] Since the test is predicated on a reasonable-man standard rather than on one catering to the weakness, stubbornness, or inability of the most unworthy jurors, it disregards the cause of a vote change by the type person who stimulates the fears of these writers. This standard does not involve considerations such as the evidence, time-element, or surrounding circumstances which are of almost undeterminable relevance to the issue of coerciveness.[21] Nor is there the danger, inherent in the evidence-examination test, of substituting the court's judgment for that of the jury. Finally, this is the only test requiring a holding on the merits of the instruction. Therefore it appears to be preferable.

Courts and counsel have frequently failed to distinguish between coercive instructions and those stating improper deliberative methods.[22] A determination that an instruction is not coercive should not automatically make it good: it might contain incorrect law regarding the manner of jury deliberations. For instance, an instruction requesting jurors to compromise would not coerce

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20. See note 3 *supra.*

21. In Peterson v. United States, 213 Fed. 920 (9th Cir. 1914), the court took into consideration the personalities and standings in the community of the defendants, that convictions for the particular crime (cattle theft) were not hard to secure, and that the prosecution faced no popular prejudice. The dissent in the *Voeckell* case considered the nature of the crime and the fact that the attack was unprovoked, the publicity given the case, defendant's failure to deny the physical acts he was accused of, the fact that insanity was the sole defense, and the lateness of the hour at which the instruction was given.

Even in cases of threats to keep the jury impaneled for a long time, it is impossible to determine coercion considered as a force actually causing a change of vote by a minority juror of temperament unknown to the appellate court. Barring the possibility of questioning the jurors themselves—an obviously unworkable solution—there is left for the court the task of determining not actual coercion but coerciveness: the *probability* of coercion having been the cause of vote changing. Therefore, considerations such as those mentioned in the *Peterson* case and in the dissenting opinion of the *Voeckell* case are either susceptible of such doubtful and even divergent interpretations or of such slight bearing on coerciveness that they may serve only to confuse that question.

22. The dissenting judge in State v. Voeckell, 210 P. 2d at 979 (Ariz. 1949), relied on cases involving both types of instructions: Olguin v. People, 115 Colo. 147, 170 P.2d 285 (1946); State v. Moon, 20 Idaho 202, 117 Pac. 757 (1911) (deliberative instructions) and Medows v. State, 182 Ala. 51, 62 So. 737 (1913) (coercion alone). *See also* Picken v. Miller, 59 Ind. App. 115, 120, 108 N.E. 968, 970 (1915).

Of course some instructions contain both possible coerciveness and supposed aids on deliberation. The suggested test should be applied to these mixed instructions as well as to those instructions which possibly involve but one of the two elements. And a mixed instruction should not be approved merely because it contains *some* correct deliberative instructions. See People v. DeMeaux, 194 Mich. 18, 160 N.W. 634 (1916).

the minority but might cause willing changes of votes in disregard of the facts of the case.[23] Likewise, instructions inviting though not demanding a majority verdict could produce a vote change not based on determined facts.[24] There should be a new trial if the instruction states procedure by which jurors would render a verdict to which they *even willingly* agree without unanimous belief in its correctness.[25]

The court in the principle case based its holding on the wording of the instruction. It was validly determined that there was neither comment on the evidence nor inherent coerciveness.[26] However, the opinion failed to recognize that the trial judge's direction—that doubts as to Voeckell's guilt be considered possibly unreasonable unless subscribed to by a majority of the jurors—stated an incorrect deliberative process. "If one juror is to yield his judgment to that of another, there must be some mode of determining [other than by count of the jurors] which of them may adhere to his judgment and which must yield."[27] A juror should determine the reasonableness of a doubt from the evidence and logic of the arguments. But the court favored the instruction because "It counsels the jurors . . . to question the tenability of preconceived opinions, prejudices, and fetiches that are not actuating the majority. . . ."[28] Included in this position lies an unfounded assumption that the majority had submerged these evils by the "application of reason" while only the minority acted arbitrarily.

The error of the deliberative method suggested to the *Voeckell* jury was not cured by the statement that jurors should not give up conscientious convictions, for the judge directed his advice to the minority. Though much of what the trial judge said might be proper, for example, in a board of directors

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23. Clem v. State, 42 Ind. 420 (1873); State v. Bybee, 17 Kan. 462 (1877); People v. Engle, 118 Mich. 287, 76 N.W. 502 (1898); State v. Ivanhoe, 35 Ore. 150, 57 Pac. 317 (1899).

That jurors apparently do follow illegal deliberative-process instructions is shown by the many cases in which the trial judges have suggested compromise. In the *Clem* case, *supra,* the evidence was that the defendant was either guilty of first degree murder or was completely innocent. The jury gave a verdict of guilt of second degree murder. Similar compromises occurred in the *Bybee* and *Ivanhoe* cases, *supra.* In Peterson v. United States, 213 Fed. 920 (9th Cir. 1914), the jurors compromised by finding one defendant guilty and another innocent.

24. Mt. Hamill State Savings Bank v. Hughes, 196 Iowa 861, 195 N.W. 589 (1923).

25. Clem v. State, 42 Ind. 420 (1873); Peavy v. Clemons, 10 Ga. App. 507, 73 S.E. 756 (1912); State v. Ivanhoe, 35 Ore. 150, 57 Pac. 317 (1899).

26. The only part of the *Vockell* instruction, see note 1 *supra,* not relating to a suggested deliberative process was the statement that the case would probably not be submitted to a more intelligent jury and that clearer evidence would probably not be produced in a new trial. Though such a statement may have a slight tendency to cause a change of vote, it is doubtful that it would be apt to coerce a reasonable man.

27. Picken v. Miller, 59 Ind. App. 115, 123, 108 N.E. 968, 971 (1915); Clem v. State, 42 Ind. 420 (1873).

28. State v. Voeckell, 210 P. 2d at 975 (Ariz. 1949).

decision, the deliberations of a jury must be more careful,[29] especially in criminal cases. Advice to "listen with a disposition to be convinced" and not to give up "conscientious convictions" can convey various ideas to reasonable men. Jurors should give up views and even conscientious convictions when they discover them to be unreasonable, but they should not try to convince themselves that they are wrong.[30] The instruction here was confusing, too long, and partially contradictory, but its major defect was in directing one part of the jury, the minority, to deliberate in a manner different from that required of the other jurors.[31]

Instructions of the *Voeckell* type have been ruled on only once by a higher Indiana court.[32] The Appellate Court in that case properly looked only at the instruction. Since there are no Indiana Supreme Court precedents squarely in point, that tribunal is in an excellent position to select the best test for determining coerciveness.[33] An instruction should be reviewed in its

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29. Instructions likening jury deliberation to business transactions have been held erroneous in Burroughs v. Southern Colonization Co., 96 Ind. App. 93, 173 N.E. 716 (1930); Churchill v. Woodruff, 66 Ind.. App. 241, 118 N.E. 136 (1917); Richardson v. Coleman, 131 Ind. 210, 29 N.E. 909 (1892).

30. An instruction that "each juror must try to be persuaded" has a "tendency to make the jurors feel that they must give way to their honest convictions upon the merits, and agree with the majority." People v. Engle, 118 Mich. 287, 291, 76 N.W. 502, 503 (1898). To tell the minority that "if they do not agree with the majority, they should 'doubt the correctness of their own judgment' and 'should therefore scrutinize the evidence more closely . . .' has a tendency to cause the minority to surrender conscientious convictions rather than to proceed with the laborious and uncertain task of convincing themselves that they [are] wrong." Held: Error. Clemens v. Chicago, R. I. & P. R. Co., 163 Iowa 499, 509, 144 N.W. 354, 357 (1913). *But cf.* Allen v. United States, 164 U.S. 492 (1896); Suslak v. United States, 213 Fed. 913 (9th Cir. 1914).

31. The following is suggested as an effective instruction to hung juries: "Agreement should not be impossible. To achieve it, each juror—whether undecided or in favor of one side or the other—must listen fairly to the arguments of the others. Each fact upon which it is necessary for you to base your vote should be considered in the light of these arguments. If there are certain facts on which you are in agreement, you may be able to go forward from there in reconsidering the facts upon which you have disagreed. If another juror points out what he considers a weakness in your argument, consider his view fairly to determine if, after all, your position is not incorrect. If you see after careful consideration that your view is incorrect, discard it. By this process you should be able to determine each fact step by step until you have reconstructed the case as you can conscientiously believe it to be true. When you have done this, apply the law to the facts. You may be able to reach a verdict in this manner."

32. Picken v. Miller, 59 Ind. App. 115, 108 N.E. 968 (1931). Indiana has also had one case of threats to keep the jury impaneled until they should reach a verdict. The threats were held to be reversible error. Terre Haute & Indianapolis R. Co. v. Jackson, 81 Ind. 19 (1881).

33. As to the deliberative process, one test other than that used by the Appellate Court in Picken v. Miller, 59 Ind. App. 115, 108 N.E. 968 (1931), has been used by the Indiana Supreme Court: "If the language used is capable of different constructions, the construction is to be preferred which will lead to an affirmance unless it can reasonably be said that the instruction was calculated to mislead the jury. . . . The test question in every case is: Was the jury misled?" Knapp v. State, 168 Ind. 153, 159, 79 N.E. 1076, 1078 (1906). The court assumes, in the use of this test, that the jurors are men of common sense. The test is of doubtful validity and should not be followed, because calcula-

entirety to decide whether it would be apt to cause a reasonable man to surrender unwillingly his opinion. If the determination is that no coercion was inherent, a further ruling is called for on the deliberative processes suggested by the trial judge. Either coerciveness or wrong directions as to deliberative methods should warrant a new trial.[34]

CONFLICT OF LAWS

CONSTITUTIONALITY OF SUBSTITUTED SERVICE ON FOREIGN EXECUTORS AND ADMINISTRATORS UNDER NON-RESIDENT MOTOR STATUTES

With the advent of interstate travel by automobile, legislative action regulating the use of the highways by non-resident motorists became necessary.[1] Due to the transitory presence of the out-of-state motorist following an accident, a resident plaintiff, in order to bring suit, was forced to transport witnesses and evidence into the domiciliary state of the non-resident. In many cases this either precluded recovery or, where the claim was small, made such action impractical. Early attempts to alleviate this situation culminated in the passage of the first modern non-resident motorist statute by Massachusetts in 1923.[2] Proceeding on the theory that by using the highways a non-resident impliedly consents to the appointment of a state official as his agent for service of process, the Act permitted an injured party to obtain jurisdiction over an out-of-state motorist in the courts of Massachusetts. The United States Supreme Court, recognizing the state interest in the enforcement of regulations reasonably calculated to promote care on the part of those who use its highways, upheld the constitutionality of this statute in *Hess v. Pawloski*.[3] Within a few years all of the states enacted similar legislation.[4]

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tions to mislead are immaterial and the error is prejudicial no matter how good the judge's intentions. State v. Nelson, 181 Mo. 346, 80 S.W. 947 (1904).

34. An Indiana statute, though it has apparently not been used in the problem of coercion, might be of some aid in solving the problem in criminal cases. "The court shall grant a new trial to the defendant for the following causes, or any of them: . . . Fifth: When the verdict has been found by means other than a fair expression of opinion on the part of all the jurors." IND. STAT. ANN. (Burns Repl. 1942) § 9-1903. This statute would certainly seem to outlaw coercive instructions and possibly ones stating erroneous methods of deliberation.

1. For example, in 1915, the state's power to require that non-resident motorists have a driver's license was upheld. Hendrick v. Maryland, 235 U.S. 610 (1915). Then, in 1916, a New Jersey law requiring that non-residents *appoint* a state officer as agent for service of process, prior to use of the state highways, was upheld as a valid exercise of the power of the state to regulate the use of its highways. Kane v. New Jersey, 242 U.S. 160 (1916).

2. GEN. LAWS OF MASS., c. 90 (1921), as amended by c. 431, § 2 (1923) (MASS. ANN. LAWS, c. 90, §§ 3-3B (1933)).

3. 274 U.S. 352 (1927).

4. The Indiana non-resident motorist statute, IND. STAT. ANN. § 47-1043 (Burns Supp. 1949) is typical and provides as follows: "The operation by a non-resident, or by his duly authorized agent, of a motor vehicle upon a public street or highway of this state