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to *State v. Hargett* in which the prosecution's evidence tends to show that Hargett co-operated in the crime. In most states, one involved in the joint commission of a crime is as guilty as the perpetrator of the act.[29] Since Hargett knew the identity of the actual perpetrator, the burden would shift to him to show that he was not the perpetrator. If he could not do this, it can be inferred that he was the one who pushed Weingardner into the ditch. This rule would not alter the state's burden of proof as to the accused's guilt, but would merely place upon Hargett the burden of producing evidence as to his part in the event.

In essence, once the prosecution produces evidence showing that the two persons co-operated in the crime, thereby making one as guilty as the other, it should not be required to convince the jury beyond a reasonable doubt of their respective functions in the act.

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ATTACHMENT FOR A FOREIGN TORT

The Supreme Court of Pennsylvania is authorized by statute[1] to prescribe forms of action, writs and other rules of civil procedure for the courts of Pennsylvania. In order to carry out this function, the statute authorizes the court to suspend Acts of Assembly, provided neither the substantive laws nor the jurisdiction of the court is abridged, enlarged or modified. Under this authority, the Supreme

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this rule, Justice Holmes said: "It is consistent with all the constitutional protections of accused men to throw on them the burden of proving facts peculiarly within their knowledge and hidden from discovery by the government." Casey v. United States, 276 U.S. 413, 418 (1928).

[29]The reasoning behind such a rule is expressed in Benge v. Commonwealth, 92 Ky. 1, 17 S.W 146 (1891): "This is for the reason that each is the agent and instrument of the other, and his act is the act of the other, and the act of each constitutes but one crime, and each is guilty of the act actually committed by the other. Such act is, in law, the act of each. Hence each is principal as to each act, although he did not actually perpetrate each act; but the act that the other perpetrated was his act, and he is principal as to it."

[1]Pa. Stat. Ann. tit. 17 § 61 (Supp. 1960) provides in part that: "the Supreme Court of Pennsylvania shall have the power to prescribe by general rule the forms of actions, process, writs, pleadings, and motions, and the practice and procedure in civil actions at law and in equity Provided, That such rules shall be consistent with the Constitution of this Commonwealth and shall neither abridge, enlarge nor modify the substantive rights of any litigant nor the jurisdiction of any of the said courts nor affect any statute of limitations."

Court adopted Rule 1252 which provides in part that a writ of foreign attachment may issue to attach property of a defendant upon *any* cause of action at law or in equity in which the relief sought includes a judgment or decree for the payment of money.[2]

Prior to the promulgation of Rule 1252, a 1937 Pennsylvania Act of Assembly[3] limited writs of foreign attachment to torts committed within the Commonwealth.[4] So the question arises as to whether the court has the power to suspend the Act of 1937 and thereby extend the availability of the writ to *any ex delicto* action irrespective of where the tort occurred. The problem turns upon whether or not such a change affects either the substantive rights of the parties or the jurisdiction of the court.

The question was squarely presented in the recent case of *Alpers v. New Jersey Bell Telephone Co.*[5] The plaintiff, a resident of Pennsylvania, was injured in an auto collision involving a vehicle owned by the defendant, a New Jersey corporation. The plaintiff attached property of the defendant in the possession of the Pennsylvania Bell Telephone Co.[6] The lower court dismissed the action and this was affirmed by the state supreme court. The majority held that foreign actions *ex delicto* were not within the scope of Rule 1252. The majority concluded that in view of the clear restriction of the writ of foreign attachment in actions *ex delicto* to torts committed within the Commonwealth, both by statutory and case law prior to the promulgation of Rule 1252, it was certainly not intended that Rule 1252 should change or alter in any manner a role so firmly established and so salutary in its effect. A dissenting judge took the view that Rule 1252 should be interpreted so as to permit the attachment subject to the application of the doctrine of *forum non conveniens.*[7]

Rule 1252 does not affect any fundamental change in the basic requirements for a proceeding by attachment.[8] Prior to obtaining a

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[2]Pa. Rules of Court 1252 (1960).

[3]Pa. Stat. Ann. tit. 12 P.S. § 2891 (1951).

[4]Originally the writ was limited to ex contractu actions; however, the writ was gradually extended to ex delicto actions. Numerous amendments were passed which eventually extended the writ of attachment to property within the Commonwealth owned by nonresidents for torts committed within the Commonwealth. A complete statutory history is provided in the opinion and footnotes of Alpers v. Jersey Bell Tel. Co., 403 Pa. 626, 170 A.2d 360 (1961).

[5]403 Pa. 626, 170 A.2d 360 (1961).

[6]In doing so the plaintiff relied upon Pa. Rules of Court 1252 (1960).

[7]See note 24 infra.

[8]The foreign attachment proceeding is firmly established in Pennsylvania. Fairchild Engine & Airplane Corp. v. Bellanca Corp., 391 Pa. 177, 137 A.2d 248 (1958); Falk & Co. v. South Texas Cotton Oil Co., 368 Pa. 199, 82 A.2d 27, 31

writ of foreign attachment, the plaintiff must show: (1) that the defendant is a nonresident (or foreign corporation) on whom personal service cannot be obtained, and (2) that tangible or intangible property belonging to the defendant is within the forum when the attachment is served upon the garnishee.[9] Upon meeting these requirements, the writ of foreign attachment will issue and a suit *quasi-in-rem*[10] will be formally instituted whereby the plaintiff may proceed against the property of the defendant, rather than against the defendant's person.

The question arises as to why the firmly established *quasi-in-rem* action, as commenced by writ of foreign attachment, should serve to change the substantive rights of parties[11] who seek recovery for a transitory cause of action.[12] Permitting the writ to issue for a transitory tort, irrespective of its origin, does not affect a change of substance, for the substantive law of the state wherein the cause of action arose will still control the liability imposed.[13]

It is equally difficult to understand what jurisdictional change would be made by Rule 1252. The word jurisdiction is undoubtedly difficult to define, since the term is used in two different general contexts: (1) jurisdiction over the person, and (2) jurisdiction over the subject matter. Jurisdiction over the subject matter is involved here since the action is one *quasi-in-rem*. Jurisdiction over the subject matter refers to the nature of the cause of action and the relief sought.

(1951); David E. Kennedy Co. v. Schleindl, 290 Pa. 38, 137 Atl. 815 (1227); Raymond v. Leishman, 243 Pa. 64, 89 Atl. 791, 793 (1914).

[9]Pa. Rules of Court 1252 (1960).

[10]A judgment in rem affects the interests of all persons in designated property. A judgment quasi-in-rem affects the interests of particular persons in designated property and is of two types: (1) where the plaintiff seeks to secure a pre-existing claim in the subject property and exclude all other claims by third persons, and (2) where the plaintiff seeks to apply what he concedes to be the property of the defendant to the satisfaction of a claim against him. Hanson v. Denckla, 357 U.S. 225, 246 (1958); Pennoyer v. Neff, 95 U.S. 714, 723 (1877); Fairchild Engine & Airplane Corp. v. Bellanca Corp., 391 Pa. 177, 137 A.2d 248, 250 (1958). Restatement, Judgments §§ 73, 74, 75, 76 (1942).

[11]For a similar case relating to the Federal Rules of Civil Procedure and effect of a federal rule on the substantive rights of parties see Sibbach v. Wilson & Co., 312 U.S. 1 (1940).

[12]Transitory actions are such personal actions as seek only the recovery of money or chattels whether the action is in tort or contract. The underlying theory is founded on the supposed violation of rights which in contemplation of law have no locality. Livingston v. Jefferson, 15 Fed. Cas. 660 (No. 8411) (C.C.D. Va. 1811); Solomon v. Atlantic Coast Line R.R., 187 Va. 240, 46 S.E.2d 369 (1948).

[13]Western Union v. Brown, 234 U.S. 542, 547 (1914); Smith v. Pennsylvania R.R., 304 Pa. 294, 156 Atl. 89 (1931); Loucks v. Standard Oil Co., 224 N.Y. 99, 120 N.E. 198 (1918); Restatement, Conflict of Laws § 378 (1934).

This is conferred by sovereign authority which organizes the court, and is found in the general nature of the court's powers.[14] Certainly, it is within the nature of the court's power to render a judgment on a transitory cause of action for a personal injury.[15] As to the property itself, the tribunals of a state may subject property within its jurisdiction, although owned by nonresidents, to the payment of the demands of its own citizens without infringing upon the sovereignty of the state wherein the defendant resides.[16]

If permitted, the extension would not constitute a novel change. Other jurisdictions provide for writs of foreign attachment in actions *ex delicto* irrespective of where the cause of action arose;[17] however, the writ varies in its application depending upon the jurisdiction. New York courts are reluctant to entertain suits commenced by writ of foreign attachment when both parties are nonresidents of the state, but if the plaintiff is a resident[18] of New York then the suit will be entertained.[19] Illinois is more liberal in that a nonresident plaintiff may attach property of a nonresident defendant when such property is within the state.[20] Indiana also provides for a writ of foreign attachment for actions *ex delicto* irrespective of the parties' residence.[21]

Even though the court concluded that the rule authorized foreign attachments, the writ would not necessarily issue as a matter of right. In the recent case of *Plum v. Tampax Co.*,[22] the Pennsylvania Supreme Court adopted the discretionary doctrine of *forum non conveniens*.[23] Simply stated, the doctrine is that a court may refuse to accept a case even when the jurisdictional requirements are met, provided there is a more convenient forum. By applying this doctrine,[24] the courts

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[14]Cooper v. Reynolds, 77 U.S. 308, 316 (1870).

[15]See note 12 supra.

[16]Pennoyer v. Neff, 95 U.S. 714, 723 (1877); Weiner v. American Ins. Co., 224 Pa. 292, 73 Atl. 443 (1909); Restatement, Conflict of Laws § 106 (1934).

[17]N.Y. Civ. Prac. Act § 902 (1960); Ill. Ann. Stat. c. 11 § 11 (1951); Ind. Ann. Stat. § 3-501 (1946).

[18]Reese & Green, That Elusive Word, "Residence," 6 Vand. L. Rev. 561 (1953).

[19]Palmer v. The Gillette Co., 285 App. Div. 1156, 140 N.Y.S.2d 201 (2d Dep't 1955); Hoolahan v. United States Lines Co., 189 Misc. 168, 70 N.Y.S.2d 356 (Sup. Ct. 1947); see also Annot., 14 A.L.R.2d 405 (1948).

[20]Missouri Pac. R.R. v. Flannigan, 47 Ill. App. 322 (1893).

[21]Shedd v. Calumet Constr. Co., 270 Fed. 942 (7th Cir. 1921).

[22]339 Pa. 533, 160 A.2d 549 (1960).

[23]The applicability of the doctrine within the states was formally recognized by the Supreme Court in Broderick v. Rosner, 294 U.S. 629, 643 (1935). The doctrine was later recognized in the federal courts in Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947).

[24]Pennsylvania has expressly approved the doctrine as stated in the Restatement, Conflict of Laws § 117(e) (Tent. Draft No. 4, 1957). See Plum v. Tampax Corp.,