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Conflict of Laws - Jurisdiction of State Courts - Forum Non Conveniens

William J. Doran Jr.

NOTES

CONFLICT OF LAWS — JURISDICTION OF STATE COURTS — FORUM NON CONVENIENS

Plaintiff, a Nebraska citizen, brought an action in Minnesota district court under the Federal Employers' Liability Act[1] to recover damages for injuries alleged to have been sustained in Nebraska. Defendant, an Illinois corporation doing business in Nebraska, Minnesota, and other states, moved to dismiss the action under the doctrine of *forum non conveniens*. The motion was sustained in the trial court. On appeal, *held*, affirmed. The courts of Minnesota may now decline jurisdiction over transitory causes of action under the doctrine of *forum non conveniens*,[2] and a former decision[3] rejecting application of the doctrine in Minnesota is expressly overruled. *Johnson v. Chicago, Burlington & Quincy R.R.*, 66 N.W.2d 763 (Minn. 1954).

"The rule of forum non conveniens is an equitable rule based on the proposition that a court in its discretion may decline to exercise jurisdiction over a transitory cause of action when it appears that the action may more equitably be tried in some other available and competent court."[4] The power of a court to decline jurisdiction under the rule is one that is necessary to the effective performance of the judicial function.[5] By its nature this power is largely discretionary and each case must be decided upon its particular facts.[6] The doctrine of *forum non conveniens* has long been recognized in many state courts,[7] although where

1. 35 STAT. 65 (1908), *as amended*, 45 U.S.C. §§ 51-60 (1952).

2. A transitory action is one founded upon a cause of action not necessarily referring to any particular locality. The characteristic feature is that the right of action follows the person of the defendant. Brown v. Brown, 155 Tenn. 530, 296 S.W. 356 (1927).

3. Boright v. Chicago, R.I. & P. Ry., 180 Minn. 52, 230 N.W. 457 (1930).

4. Johnson v. Chicago, Burlington & Quincy R.R., 66 N.W.2d 763, 767 (Minn. 1954). See also Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947).

5. In Baltimore & Ohio R.R. v. Kepner, 314 U.S. 44, 55 (1941), Mr. Justice Frankfurter stated in his dissenting opinion with reference to *forum non conveniens*: "These manifestations of a civilized judicial system are firmly imbedded in our law." See Canada Malting Co. v. Paterson Steamships Ltd., 285 U.S. 413, 423 (1932); Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law*, 29 COLUM. L. REV. 1 (1929).

6. Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947); Williams v. Green Bay & Western R.R., 326 U.S. 549 (1946); B. Heller & Co. v. Perry, 201 F.2d 525 (7th Cir. 1953); Nicol v. Koscinski, 188 F.2d 537 (6th Cir. 1951); United States v. Scott & Williams, 88 F. Supp. 531 (S.D.N.Y. 1950).

7. See discussion at note 27 *infra*.

it is the exercise of the court's discretion is limited by the privilege and immunities clause of the Federal Constitution[8] requiring that no distinction be made between litigants on the basis of state citizenships.[9] Within the federal system one of the first acknowledgments of the doctrine came in 1923 when the Supreme Court recognized the right of a district court to dismiss an action where the trial in that district would impose an unreasonable burden on interstate commerce.[10] A later case recognized the right of a district court to decline jurisdiction where the internal affairs of a foreign corporation were involved.[11] But the power of a district court to decline jurisdiction on the grounds of *forum non conveniens* was not firmly established until 1947 in the case of *Gulf Oil Corp. v. Gilbert.*[12] The case is doubly significant because in addition to recognizing the doctrine, the federal courts set out the two major interests which should be considered by any court in determining whether or not to decline jurisdiction in a given case. These are the private interest of the litigants[13] and the public interest.[14] Under the head of private interests of the litigants are such factors as access to sources of proof, availability of compulsory process for the attendance of witnesses, possibility of a view of the premises, enforceability of the judgment obtained, and any other practical matters that expedite the trial of a case.[15] Unless the balance of these factors is strongly in favor of the defendant, the forum of plaintiff's choice should retain jurisdiction.[16] Considered as factors in the public interest are the administrative

8. U.S. CONST. art. IV, § 2, provides: "The citizens of each state shall be entitled to all Privileges and Immunities of Citizens in the several States."

9. Douglas v. New York, N.H. & H. Ry., 279 U.S. 377 (1929).

10. Davis v. Farmers' Co-operative Equity Co., 262 U.S. 312 (1923); Dainow, *The Inappropriate Forum*, 29 ILL. L. REV. 867 (1935).

11. Rogers v. Guaranty Trust Co., 288 U.S. 123 (1933).

12. 330 U.S. 501 (1947); Braucher, *The Inconvenient Federal Forum*, 60 HARV. L. REV. 908 (1947).

13. Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947); Richer v. Chicago, R.I. & P.R.R., 80 F. Supp. 971 (E.D. Mo. 1948).

14. Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947); Nicol v. Koscinski, 188 F.2d 537 (6th Cir. 1951); Kest v. New York Cent. R.R., 116 F. Supp. 615 (W.D.N.Y. 1953).

15. Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947); Chicago, R.I. & P.R.R. v. Igoe, 212 F.2d 378 (7th Cir. 1954); B. Heller & Co. v. Perry, 201 F.2d 525 (7th Cir. 1953); Maloney v. New York, N.H. & H.R.R., 88 F. Supp. 568 (S.D.N.Y. 1949).

16. Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947); Markantonatos v. Maryland Drydock Co., 110 F. Supp. 862 (S.D.N.Y. 1953); Belair v. New York, N.H. & H.R.R., 88 F. Supp. 572 (S.D.N.Y. 1950); United States v. Scott & Williams, 88 F. Supp. 531 (S.D.N.Y. 1950); Naughton v. Pennsylvania R.R., 85 F Supp. 761 (E.D. Pa. 1949); Cullinan v. New York Cent. R.R., 83 F. Supp. 870 (S.D. N.Y. 1948); Cox v. Penn. R.R., 72 F. Supp. 278 (S.D.N.Y. 1947).

difficulties arising from the additional burden of transitory litigation, the imposition of jury duty upon local citizens in actions that have arisen elsewhere, and the difficulties resulting from the necessity of the forum's application of foreign law.[17] Both of these interests have their foundation in the desire to do justice to all concerned.[18]

The *Gulf Oil Corp.* case, however, did not extend the application of the doctrine of *forum non conveniens* to cases arising under the Federal Employers' Liability Act.[19] Because of the broad venue provisions of the FELA,[20] this area has been a particularly troublesome one.[21] As early as 1929, the Supreme Court held[22] that a state court, acting under a state jurisdictional statute, could decline jurisdiction in cases arising under the FELA as long as there was no discrimination on the basis of state citizenship. In two later cases it was held that a state court may not enjoin a citizen or resident of that state from prosecuting an action under the FELA in another state.[23] The Court subsequently construed these cases as denying the application of the doctrine to suits under the FELA.[24] However, in *Missouri* ex rel. *Southern Ry. v. Mayfield*,[25] the Supreme Court held that these cases did not limit the power of a state to refuse access to its courts in FELA cases if it had no discriminatory rule against FELA cases, and if the privileges and immunities clause of the Constitution was not offended.[26]

17. Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947).

18. In Rogers v. Guaranty Trust Co., 288 U.S. 123 (1933), Mr. Justice Cardozo, in his dissenting opinion, notes: "The doctrine of *forum non conveniens* is an instrument of justice. Courts must be slow to apply it at the instance of directors charged as personal wrongdoers, when justice will be delayed, even though not thwarted altogether, if jurisdiction is refused." *Id.* at 151.

19. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 505 (1947): "It is true that in cases under the Federal Employers' Liability Act we have held that plaintiff's choice of a forum cannot be defeated on the basis of *forum non conveniens*. But this was because the special venue act under which those cases are brought was believed to require it."

20. 36 STAT. 291 (1910), *as amended*, 45 U.S.C. § 56 (1952): "Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States."

21. Barrett, *The Doctrine of Forum Non Conveniens*, 35 CALIF. L. REV. 380, 399 (1947).

22. Douglas v. New York, N.H. & H. Ry., 279 U.S. 377 (1929).

23. Miles v. Illinois Cent. R.R., 315 U.S. 698 (1942); Baltimore & Ohio R.R. v. Kepner, 314 U.S. 44 (1941).

24. See note 19 *supra*.

25. 340 U.S. 1 (1950).

26. In the case of Missouri *ex rel.* Southern Ry. v. Mayfield, 340 U.S. 1, 4 (1950), the court stated: "But neither of these cases limited the power of a State

The major significance of the instant case is the addition of Minnesota to the growing list of states that have adopted *forum non conveniens*.[27] Previously, the Minnesota courts had refused application of the doctrine.[28] In the instant case the court pointed out that at the time of the rejection of the doctrine in 1930, a plaintiff could sue in either the state or federal courts in Minnesota without the danger of his case being dismissed under the doctrine of *forum non conveniens*. Since 1948, however, a plaintiff who brings an action in a federal district court is subject to having his case transferred to another district.[29] Therefore, plaintiffs who do not wish to risk having their cases transferred often sue in state courts rather than in the federal courts. The result is that instead of sharing the burden of transitory actions with the federal courts, the state courts now carry a greater part of that burden. The nature of the burden and the need for the relief afforded by the *forum non conveniens* doctrine is well illustrated by the instant case. There the action arose outside of the state and the plaintiff and defendant were both nonresidents. The only connection of either party with the forum was the fact that the defendant had been served with process within the jurisdiction of the court. Had trial been permitted in Minnesota, it would have necessitated the transportation of witnesses from Nebraska and resulted in additional ex-

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to deny access to its courts to persons seeking recovery under the Federal Employers' Liability Act if in similar cases the State for reasons of local policy denies resort to its courts and enforces its policy impartially, . . . so as not to involve a discrimination against Federal Employers' Liability Act suits and not to offend against the Privileges-and-Immunities Clause of the Constitution."

27. In addition to Minnesota, other states have adopted the doctrine of *forum non conveniens*. The cases cited are illustrative of the application of the doctrine in these other states: California — Price v. Atchison, Topeka & S.F. Ry., 42 Cal.2d 577, 268 P.2d 457 (1954); Illinois — Whitney v. Madden, 400 Ill. 185, 79 N.E.2d 593 (1948); Massachusetts — Universal Adjustment Corp. v. Midland Bank, 281 Mass. 303, 184 N.E. 152 (1933); New Hampshire — Thistle v. Halstead, 95 N.H. 87, 58 A.2d 503 (1948); New Jersey — Kantakevich v. Delaware, L. & W.R.R., 18 N.J. Misc. 77, 10 A.2d 651 (1940); New York — Bata v. Bata, 304 N.Y. 51, 105 N.E.2d 623 (1952); Oklahoma — St. Louis-San Francisco Ry. v. Superior Court, Creek County, 276 P.2d 773 (1954).

It does not appear that Louisiana courts have expressly adopted the doctrine of *forum non conveniens*. *But see* Stewart v. Litchenberg, 148 La. 195, 86 So. 734 (1920) (recognized the power to decline jurisdiction over a foreign cause of action between nonresidents, but accepted jurisdiction as a matter of comity); Union City Transfer v. Fields, 199 So. 206 (La. App. 1940) (jurisdiction over a foreign cause of action between nonresidents declined where the amount involved was small and there was a possible difference in the law of the place of the action, in regard to attorney fees and interest, and Louisiana law).

28. Boright v. Chicago, R.I. & P. Ry., 180 Minn. 52, 230 N.W. 457 (1930).

29. 28 U.S.C. § 1404 (1952): "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

pense and unnecessary loss of time to all concerned. On the other hand, trial of the case could have been held much more expeditiously in the state or federal courts in Nebraska.

In a system of open courts such as ours, it would seem that there is a need for some device by which jurisdiction over transitory causes of action can be controlled.[30] The application of the doctrine of *forum non conveniens* seems to be a desirable answer. Due to the multi-state interests of many modern business enterprises, many defendants can easily be served with process in a number of states. If the plaintiff's right to choose a forum is restricted only by the requirement that process be served upon the defendant, it is inevitable that abuses will result. Plaintiffs will bring their actions in a jurisdiction that is noted for higher verdicts regardless of whether there is any real connection between the cause of action and that jurisdiction.[31] There is also the danger that the plaintiff may seek "justice blended with some harassment."[32] The plaintiff is also protected under the doctrine, for unless the balance of the factors is strongly in favor of the defendant, the forum of plaintiff's choice will hear the case.[33] The trial judge is in the best position to determine whether or not an action can be tried more equitably in his court or elsewhere. He can properly weigh the facts and the evidence and determine how the interests of justice may best be served.[34] A proper application of the doctrine of *forum non conveniens* undoubtedly will improve the administration of justice by relieving courts of burdensome transitory litigation, to say nothing of being a valuable tool for the courts to use to prevent undue hardship in individual cases.

William J. Doran, Jr.

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30. Dainow, *The Inappropriate Forum*, 29 ILL. L. REV. 867, 886 (1935); *cf.* GOODRICH, CONFLICT OF LAWS 22, 23 (3d ed. 1949).

31. See, *e.g.*, Gore v. United States Steel Corp., 15 N.J. 301, 104 A.2d 670, 676 (1954).

32. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 507 (1947).

33. See note 16 *supra*.

34. Wiliams v. Green Bay & Western R.R., 326 U.S. 549 (1946) (abuse of this discretion by the trial judge is subject to reversal).