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# CONFLICT OF LAWS-SUIT BY FOREIGN ADMINISTRATOR UNDER WRONGFUL DEATH ACT OF HIS STATE

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# RECENT DECISIONS

CONFLICT OF LAWS—SUIT BY FOREIGN ADMINISTRATOR UNDER WRONGFUL DEATH ACT OF HIS STATE—Plaintiff, an administrator appointed by a Michigan court, brought action in New York to recover for the wrongful death in Michigan of his infant daughter. Defendant moved to dismiss on the ground that a foreign administrator had no standing to sue in New York without first obtaining ancillary letters. *Held,* motion denied. A foreign administrator, suing as a statutory trustee, is entitled to maintain action in New York on the strength of his original letters. *Wiener v. Specific Pharmaceuticals, Inc.,* 298 N.Y. 346, 83 N.E. (2d) 673 (1949).

In the early days of wrongful death statutes, courts were hesitant to give relief for a foreign wrongful death.[1] Today, however, recovery under a foreign statute is generally permitted.[2] It is also well settled that the proper party plaintiff is the person named in the statute at the place of the wrong.[3] When that statute provides that the action shall be brought by specified beneficiaries or by the heirs of the decedent, there is no difficulty. When the action is to be brought by his personal representative,[4] however, complications arise. In the absence of a statute permitting suit, the general rule is that a foreign administrator has no power to sue without first obtaining ancillary letters.[5] Protection of local creditors is the sole reason given for the rule.[6] There would seem to be some justification for requiring local qualification if the estate is the beneficiary; but under most wrongful death statutes, the proceeds go to designated beneficiaries free from debts of the estate. In these circumstances, there is no reason for denying the foreign administrator the right to sue.[7] In view of the short period of the statute of limitations in wrongful death actions[8] and of the possible difficulties attendant upon obtaining ancillary appointment,[9] a refusal to permit suit by the foreign administrator may effectively prevent recovery. While a few courts require local

[1] See Rose, "Foreign Enforcement of Actions for Wrongful Death," 33 MICH. L. REV. 545 (1935); 38 COL. L. REV. 946 (1938).

[2] Loucks v. Standard Oil Co., 224 N.Y. 99, 120 N.E. 198 (1918); GOODRICH, CONFLICT OF LAWS, 3d ed., §297 (1949).

[3] CONFLICT OF LAWS RESTATEMENT §394 (1934).

[4] The Michigan statute so provided. Mich. Comp. Laws Supp. (1940) §14062; Mich. Comp. Laws (1948) §691.582.

[5] Johnson v. Powers, 139 U.S. 156, 11 S.Ct. 525 (1891); Helme v. Buckelew, 229 N.Y. 363, 128 N.E. 216 (1920).

[6] Ghilain v. Couture, 84 N.H. 48, 146 A. 395 (1929); Boulden v. Pennsylvania R. Co., 205 Pa. 264, 54 A. 906 (1903).

[7] See Pearson v. Norfolk & W. Ry., (D.C. Va. 1923) 286 F. 429.

[8] Casey v. Hoover, 197 Mo. 62, 94 S.W. 982 (1906); Lower v. Segal, 59 N.J.L. 66, 34 A. 945 (1896); Hall v. Southern R.R., 149 N.C. 79, 62 S.E. 899 (1908); Thorpe v. Union Pac. Coal Co., 24 Utah 475, 68 P. 145 (1902).

[9] Young's Adm'r. v. Louisville & N. R.R., 121 Ky. 483, 89 S.W. 475 (1905); In re Cooper's Estate, 50 N.Y.S. (2d) 905 (1944).

qualification in all cases,[10] most courts have permitted the foreign representative to sue when he can be classed as a statutory trustee suing for the benefit of statutory beneficiaries.[11] Although the question was an open one in New York prior to the decision in the principal case, a federal court had decided[12] that the New York court would certainly permit suit by a foreign administrator under these circumstances. Both courts reached the proper result.

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[10] The Princess Sophia, (D.C. Wash. 1929) 35 F. (2d) 736. Brown v. Boston & M. R. Co., 283 Mass. 192, 186 N.E. 59 (1933). Accord, CONFLICT OF LAWS RESTATEMENT §396 (1934).

[11] Wallan v. Rankin, (9th Cir. 1949) 173 F. (2d) 488; Knight v. Moline, E. M. & W. Ry. Co., 160 Iowa 160, 140 N.W. 839 (1913); Ghilain v. Couture, supra note 6.

[12] Cooper v. American Airlines, Inc., (C.C.A. 2d, 1945) 149 F. (2d) 355.