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Conflict of Law: Limitation on Forum State in Barring Foreign Statutory Cause of Action

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CASE COMMENTS

CONFLICT OF LAWS: LIMITATION ON FORUM STATE IN BARRING FOREIGN STATUTORY CAUSE OF ACTION

Hughes v. Fetter, 341 U.S. 609 (1951)

The Wisconsin administrator of a decedent killed in an automobile accident in Illinois sought to recover in the Wisconsin state court from the individual defendant and his insurer for wrongful death under an Illinois statute.[1] The administrator, the decedent, and the individual defendant were citizens of Wisconsin, and the insurer was incorporated in Wisconsin. On motion of the defendants the trial court entered summary judgment dismissing the complaint on the merits on the ground that a Wisconsin statute[2] authorizing an action for deaths caused in that state alone established a Wisconsin policy against entertaining actions under the wrongful death acts of other states. The Wisconsin Supreme Court affirmed,[3] notwithstanding the contention that the local statute so construed violated the full faith and credit clause of the United States Constitution.[4] On appeal, HELD, the Wisconsin policy of barring all actions for wrongful death occurring elsewhere while allowing similar actions for death occasioned in Wisconsin is forbidden by the national policy of the full faith and credit clause looking toward maximum enforcement in each state of the obligations or rights created or recognized by the statutes of sister states. Reversed and remanded, Justices Frankfurter, Reed, Jackson, and Minton dissenting.

That the United States Constitution requires each state to give full faith and credit to a valid judgment of a sister state has long been settled. This mandate comes into play even though the forum is not required to entertain an action of the type giving rise to the foreign judgment. Examples can be found in many fields, including taxation,[5] wrongful death,[6] gambling debts,[7] and workmen's compen-

[1]ILL. ANN. STAT. c. 70, §§1, 2 (Smith-Hurd Supp. 1951).

[2]WIS. STAT. §331.03 (1951). The exact wording of the objectionable portion is: ". . . provided, that such action shall be brought for a death caused in this state."

[3]Hughes v. Fetter, 257 Wis. 35, 42 N.W.2d 452 (1950).

[4]U.S. CONST. Art. IV, §1.

[5]Milwaukee County v. M. E. White Co., 296 U.S. 268 (1935).

[6]Kenney v. Supreme Lodge, 252 U.S. 411 (1920). At this time it was thought that such a statute was not entitled to full faith and credit.

[7]Fauntleroy v. Lum, 210 U.S. 230 (1907), followed in Morris v. Jones, 329 U.S.

sation.[8] One major exception is that full faith and credit need not be accorded the penal laws of another jurisdiction;[9] but courts have differed widely as to what constitutes a penalty[10] and the Supreme Court has quite logically given the term a restricted meaning.[11]

In 1868 a question arose as to whether New York had to give full faith and credit to an attachment of iron safes in Illinois, the resultant judgment for debt, and the sale of the safes in satisfaction, when all parties involved were citizens of New York;[12] and the Supreme Court compelled New York to accept the Illinois proceeding as valid. While this decision may on its face seem to involve full faith and credit with respect to judgments, it is properly classified as full faith and credit to statutes, inasmuch as statutory attachment proceedings are involved. The Supreme Court has held that statutes of the state of incorporation of fraternal benefit insurance societies must be accorded full faith and credit,[13] although it has not extended this doctrine to other types of insurance companies.[14] Similarly, full faith

551 (1947); Roche v. McDonald, 275 U.S. 449 (1928).

[8]Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943).

[9]Wisconsin v. Pelican Ins. Co., 127 U.S. 265 (1888); *cf.* The Antelope, 10 Wheat. 66 (U.S. 1825); *contrast* Huntington v. Attrill, 146 U.S. 657 (1892) (penal liability for company debts upheld though based on knowingly issuing false certificate as director); Loucks v. Standard Oil Co., 224 N.Y. 99, 120 N.E. 198 (1918) (penal damages for negligently killing another allowed).

[10]Dale v. Atchison, T. & S.F.R.R., 57 Kan. 601, 47 Pac. 521 (1897); Derrickson v. Smith, 27 N.J.L. (3 Dutch.) 166 (Sup. Ct. 1858); Mohr v. Sands, 44 Okla. 330, 133 Pac. 238 (1913); *aff'd on rehearing,* 144 Pac. 381 (1914); Bettys v. Milwaukee, St. P. & P.R.R., 37 Wis. 323 (1875).

[11]Huntington v. Attrill, 146 U.S. 657, 673 (1892): "The question whether a statute of one State, which in some aspects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another state, depends upon the question whether its purpose is to punish an offense against the public justice of the State, or to afford a private remedy to a person injured by the wrongful act."

[12]Green v. Van Buskirk, 7 Wall. 139 (U.S. 1868) (attachment on safes levied in Illinois prior to notice or recordation of issuance of chattel mortgage thereon in New York or delivery of safes to mortgagee; Illinois judgment pleaded in bar to mortgagee's action in New York against judgment creditor for value of safes sold).

[13]Order of United Commercial Travelers v. Wolfe, 331 U.S. 586 (1947) (full faith and credit required to be given to charter provisions of the Society putting limitation of 6 months on bringing claim for death benefits); Modern Woodmen of America v. Mixer, 267 U.S. 544 (1925); Supreme Council of the Royal Arcanum v. Green, 237 U.S. 531 (1915).

[14]Hoopeston Canning Co. v. Cullen, 318 U.S. 313 (1942); Pink v. A.A.A. High-

and credit must be given to the laws of the state of incorporation in instances of stockholders' liability assessments.[15]

American courts have for some time been operating primarily on the basis of the usual doctrine in conflict of laws that rights acquired in a foreign jurisdiction are entitled to protection unless clearly contrary to both the law and public policy of the forum. Furthermore, the interpretations of the full faith and credit clause in recent years have tended to restrict the freedom of the states in issues involving choice of law. The main question today is the extent of this restriction. In 1932 the Workmen's Compensation Act of Vermont, where the relationship of employer and employee had been established in the circumstances at bar, was held paramount to the conflicting statute of New Hampshire, where the injury occurred and the suit was brought.[16] A few years later the Supreme Court forced New Jersey to give full faith and credit to the liability of New Jersey stockholders of a New York banking corporation to assessment under a New York statute despite contrary provisions of New Jersey law, the assessment being held an incident of incorporation.[17]

Now *Hughes v. Fetter* has extended this application of the full faith and credit clause to wrongful death statutes. That a statute is a public act within the meaning of the full faith and credit clause is settled.[18] Although a state court may, under the doctrine of forum non conveniens in appropriate cases, refuse to entertain a cause of action arising in a sister state,[19] the *Hughes* case does not come within this doctrine;[20] the appellant, the decedent and both defendants

way Express, 314 U.S. 201 (1941); *cf.* Griffin v. McCoach, 313 U.S. 498 (1941).

[15]Broderick v. Rosner, 294 U.S. 629 (1935); Converse v. Hamilton, 224 U.S. 243 (1912).

[16]Bradford Elec. Light & Power Co. v. Clapper, 286 U.S. 145 (1932). The Vermont statutory action was in lieu of a tort action and was not obnoxious to New Hampshire law; it was expressly made an exclusive remedy and was expressly made applicable to injuries sustained outside Vermont.

[17]Broderick v. Rosner, 294 U.S. 629 (1935).

[18]*E.g.*, Bradford Elec. Light & Power Co. v. Clapper, 286 U.S. 145 (1932); Modern Woodmen of America v. Mixer, 267 U.S. 544 (1925); Aetna Life Ins. Co. v. Dunken, 266 U.S. 389 (1924).

[19]*E.g.*, Rogers v. Guaranty Trust Co., 288 U.S. 123 (1933). Needless to say, this doctrine does not mean that a court with a crowded docket can refuse to hear cases merely because they are "not convenient" from the standpoint of the court.

[20]At p. 612: "The Wisconsin policy, moreover, cannot be considered as an application of the *forum non conveniens doctrine,* whatever effect that doctrine

were Wisconsin citizens, and proceedings there were definitely not inappropriate. The Court also made clear its reluctance to be arbitrary and deliberately left room for the continued existence of competing public policies among the states; but the five majority justices were impressed by the obvious fact that Wisconsin had no antipathy to wrongful death actions as a matter of substantive law and state policy.

The dissent, basing its argument primarily on the lack of any pre-existing relationship between the parties, in contrast to the earlier groups of cases, argued that, whereas fixed rules may be needed in order to enable parties to predict the consequences of a transaction at the time of entry into it, the same necessity for imposing a "state of vassalage" on the forum in tort actions does not exist.[21] The majority, on the other hand, seemed mainly concerned with insuring to the injured party in every instance a forum for enforcing his acquired substantive rights granted by the situs of the injury, provided the forum has no contrary public policy as to these substantive rights. Indeed, uniformity of this nature was the main purpose of the full faith and credit clause.[22]

Hughes v. Fetter was recently cited as controlling before a federal court of appeals in a case involving the death by airplane crash in Utah of an Illinois citizen.[23] Utah had at the time a wrongful death statute,[24] and the Delaware corporate defendant had agents available in Utah for service of process there. The Illinois act forbids actions in Illinois to recover damages for death occasioned elsewhere provided a right of action exists there and the defendant can be served there.[25] Considered in the light of these provisos, the Illinois statute was upheld as a bar against an action instituted in a federal district court in Illinois. The court of appeals distinguished *Hughes v. Fetter*

might be given if its use resulted in denying enforcement to public acts of other states."

[21]At p. 617.

[22]Pink v. A.A.A. Highway Express, 314 U.S. 201, 210 (1941): "It was the purpose of that provision to preserve rights acquired or confirmed under the public acts and judicial proceedings of one state by requiring recognition of their validity in others."

[23]First Nat. Bank of Chicago v. United Airlines, Inc., 190 F.2d 493 (7th Cir.), *cert. denied,* 341 U.S. 903 (1951).

[24]UTAH REV. STAT. §104-3-11 (1933).

[25]ILL. ANN. STAT. c. 70, §2 (Smith-Hurd Supp. 1951): "Provided, further, that no action shall be brought or prosecuted in this State to recover damages for a death occurring outside of this State where a right of action for such death exists

on the ground that the Illinois wrongful death act does not exclude all foreign wrongful death actions, as does the Wisconsin act, and that the uniformity prescribed by the full faith and credit clause does not compel a state to provide an additional forum when the state in which the cause of action originated already offers one. The Supreme Court denied certiorari,[26] although any four of the five majority justices of the *Hughes* case could have granted the request for review. The denial is not inconsistent, however. The dissenters in the *Hughes* case stressed the fact that the administrator could in these circumstances have brought an action effectively in Illinois. Justice Black, for the majority, construed the statute at its worst, and pointed out that under some circumstances it might leave a plaintiff with an unenforceable claim, thereby in effect destroying his right. This crusade against sweeping draftsmanship is not new, particularly to Justices Black and Douglas,[27] but the Illinois statute meets the objection to the Wisconsin statute on this score.

The instant case, in its narrowest sense, accordingly forbids a state to refuse unqualifiedly to enforce all causes of action based on the wrongful death acts of sister states. The fact that the decision was five to four indicates that further expansion of the doctrine is not likely at present. The instant case was definitely not a choice of law problem, since the accident and wrongful death both occurred in one state. Rather, the problem was whether the forum could refuse to enforce the applicable statutes of all sister states under all possible circumstances in an effort to reduce its litigation burdens.

The next step may be inclusion of the common law of sister states within the "public acts" of the full faith and credit clause. If this is done the clause will then have reached its maximum extension. It is submitted that the instant decision, as limited by *First National Bank of Chicago v. United Airlines, Inc.*,[28] and as qualified in the instant opinion from the standpoints of substantive policy of the forum and of the forum non conveniens doctrine, is a practical step forward without trampling upon the broad governmental areas reserved to the states by the Constitution.

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under the laws of the place where such death occurred and service of process in such suit may be had upon the defendant in such place."

[26]341 U.S. 903 (1951).

[27]See, *e.g.*, Saia v. People of New York, 334 U.S. 558 (1948), Note, 2 U. OF FLA. L. REV. 103 (1949); *cf.* the able analysis by Freund, *The Supreme Court and Civil Liberties*, 4 VAND. L. REV. 533, 553-554 (1951).

[28]See note 23 *supra*.