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Conflict of Laws - Enforcement of Wrongful Death Cause of Action Arising in Another State

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RECENT DECISIONS

Conflict of Laws — Enforcement of Wrongful Death Cause of Action Arising in Another State—Although the death resulted from an automobile collision in Illinois, plaintiff, as administrator, brought this action in Wisconsin against the allegedly negligent driver and an insurance company basing his complaint upon the Illinois wrongful death statute.[1] The decedent, the administrator of his estate appointed in Wisconsin, and the individual defendant were Wisconsin residents, and the defendant insurance company was incorporated in Wisconsin. The Wisconsin wrongful death statute[2] is typical of the wrongful death acts but concludes as follows: "provided, that such action shall be brought for a death caused in this state." On the defendant's motion, the Circuit Court of Milwaukee entered summary judgment "dismissing the complaint on the merits," and held that the Wisconsin statute established a local public policy against Wisconsin's entertaining suits brought under the wrongful death acts of other states. The Wisconsin Supreme Court[3] affirmed this decision and the plaintiff appealed to the United States Supreme Court. *Held:* Reversed. Since the Illinois statute has been established as a "public act," Wisconsin's expressed statutory policy is contrary to the national policy embodied in the full faith and credit clause of the constitution. Wisconsin, under the full faith and credit clause, cannot avoid the constitutional obligation to enforce the rights and duties validly created under the laws of other states by the simple devise of removing jurisdiction from courts otherwise competent. *Hughes v. Fetter et al., 341 U.S. 609, 71 S.Ct. 980 (1951).*

The real issue and problem is how far the full faith and credit clause governs the conduct of the state's domestic affairs. When must the forum deny its own law and policy and follow that of another state? The broad principle, stated in an earlier case,[4] that a state may refuse to open its courts for the enforcement of actions arising under the laws of other states, has been qualified in subsequent cases.[5] It is basic that the power of a state to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard therein is subject to the limitations imposed by the Federal Constitution.[6] The contract clause, the privileges and immunities clause,

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[1] SMITH-HURD'S ILL. ANN. STAT. (1951) c. 70, §§1, 2.
[2] WIS. STAT. (1949) Sec. 331.03.
[3] Hughes v. Fetter et al., 257 Wis. 35, 42 N.W.(2d) 452 (1950).
[4] Anglo-American Prov. Co. v. Davis Prov. Co., 191 U.S. 373, 24 S.Ct. 92, 48 L.Ed. 225 (1903).
[5] Alaska Packer's Ass'n. v. Industrial Accident Commission, 294 U.S. 532, 55 S.Ct. 518, 79 L.Ed. 1044 (1935); Pacific Employers Ins. Co. v. Ind. Acc. Commission, 306 U.S. 493, 59 S.Ct. 629, 83 L.Ed. 940 (1939).
[6] Broderick v. Rosner, 294 U.S. 629, 55 S.Ct. 589, 79 L.Ed. 1100 (1935);

the full faith and credit clause, all fetter the freedom of a state to deny access to its courts howsoever much it may regard such withdrawal of jurisdiction the adjective law of the state, or the exercise of its right to regulate the practice and procedure of its courts. The dissenting opinion, which cannot be overlooked in this five to four decision, limits the extent to which a state must recognize and enforce the rights of action created by other states to where the liability imposed rests on a pre-existing relationship and where certainty of result is of high importance. But such a concise rule cannot be formulated upon a review of this case and other United States Supreme Court decisions.

The Supreme Court, in the present case, reaffirmed the principle "that the full faith and credit clause does not automatically compel a forum state to subordinate its own statutory policy to a conflicting public act of another state; rather, the United States Supreme Court will choose in each case between the competing public policies involved." As a result this case does not obligate the forum to open its courts to all foreign causes of action or even those lying in the field of torts. The state may, in appropriate cases, apply the doctrine of *forum non conveniens*.[7] However, the Wisconsin policy cannot be considered as an application of this doctrine because its use results in a denial to enforce the public acts of other states. The state may also, without violating the Federal Constitution, refuse to enforce a cause of action, except one arising from a valid judgment of a sister state, where the forum's local policy denies such a cause if the same facts had occurred within the state.[8] But Wisconsin has no real feeling of antagonism against wrongful death suits in general,[9] since it provided a forum for cases of this nature, precluding only actions for deaths not caused locally. In fact, the Wisconsin Supreme Court entertained an action of almost the exact nature and facts as the present case, holding that "citizens of other states have the same right to sue in the courts of Wisconsin that citizens of Wisconsin have."[10] The comment on this case by the Wisconsin court is that the full content of the Wisconsin wrongful death statute was not given full consideration.[11] However, the case is sig-

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McKnett v. St. Louis & S.F.R. Co., 292 U.S. 230, 54 S.Ct. 640, 78 L.Ed. 1227 (1934).

[7] *Supra*, note 4.

[8] "The present case is not one where Wisconsin, having entertained appellant's lawsuit, chose to apply its own instead of Illinois' statute to measure the substantive rights involved. This distinguishes the present case from the rule that prima facie every state is entitled to enforce in its own courts its own statutes, lawfully enacted." Note 10 of principal case.

[9] "The differences between wrongful death acts, notably as to matters of maximum recovery and disposition of the proceeds of suit, are generally considered unimportant. Cases collected in 77 A.L.R. 1311, 1317-1324." Note 11 of principal case.

[10] Sheehan v. Lewis et al., 218 Wis. 588, 260 N.W. 633 (1935).

[11] *Supra*, note 3.

nificant in that it does indicate the Wisconsin court's desire to allow the survival of wrongful death suits when unaware of any limitations.

At the common law, no civil action would lie for wrongfully causing the death of a human, although the wrongful act might, under some circumstances, give a right of action to others arising out of some relation existing between the deceased and the plaintiff.[12] The unjustness of this law was recognized and changed in England and Wisconsin in the latter's infancy. The Wisconsin Supreme Court[13] quickly recognized that the statute was a remedial one, and should be construed, not strictly, but so as to advance the remedy, and suppress the wrong and injustice existing under the former condition of the law.[13] However, Wisconsin did not show the same alacrity in rooting out all of the injustice. The primary or underlying reason for the Wisconsin legislature to limit survival actions to those deaths caused in Wisconsin, and the Wisconsin court's obedience to its command, appears to be to avoid imposing on the forum a "state of vasalage" and to reduce the case load. To thus lessen the burdens of the Wisconsin courts is unquestionably a desirable situation. However, where Wisconsin would be the only jurisdiction where service could be had on the defendant, survivors would be left with unenforceable wrongful death claims.

A solution to this problem, and the incondite statute of Wisconsin, is a comparatively recent Illinois statute[14] which was found to be constitutional by the United States Court of Appeals.[15] The Illinois statute provides that no action shall be brought in Illinois to recover damages for death occurring outside Illinois where a right of action for such death exists under the laws of the place where the death occurred and service of process in such suit may be had on the defendant in such place. In light of the United States Supreme Court's repeated declaration that "the full faith and credit clause is not an inexorable and unqualified command" and that, consistently with its proper application, "there are limits to the extent to which the laws and policy of one state may be subordinated to those of another," this is a permissible limitation on the full faith and credit clause. This statute recognizes the validity and enforcibility of the wrongful death statutes of sister states, and provides for their enforcement in the courts of Illinois in the event they cannot be enforced in the courts of the state which enacted them. The added burden on the courts is slight. In fact, the dissenting opinion in the principal case maintained it would be an exceptional case "where the defendant could not be served in the state where the accident occurred."

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[12] COOLEY ON TORTS, Sec. 210 (4th ed., 1932).
[13] Rudiger v. Chicago, St. Paul, Minneapolis & Omaha R. Co., 94 Wis. 191, 68 N.W. 661 (1896).
[14] SMITH-HURD'S ILL. ANN. STAT. (1951) c. 70, §2.
[15] First Nat. Bank of Chicago v. United Air Lines, 190 F.2d 493 (7th cir., 1951).

A change of the Wisconsin statute is overdue, and, in effect, now ordered by the Supreme Court. The state is not completely free to determine to what extent its courts shall entertain transitory actions, where the causes of action arise in other jurisdictions. Under the consitutional limitation imposed by the full faith and credit clause, the Supreme Court has limited the area in which local policy is permitted to dominate. The room left for the play of conflicting policies of sister states narrows.

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Labor Law — The Right to Membership in a Union Holding a Closed Shop Contract — Plaintiff was a lifelong resident of Toledo and a motion picture operator by trade, but was unable to obtain employment since all employers in the area were under closed shop contracts with the defendant union, which refused to accept plaintiff as a member. Plaintiff brought suit against defendant to restrain it from interfering with him in securing a position as an operator and, further, that defendant be required to accord plaintiff all right of membership in the union. *Held:* The union was restrained from interfering with plaintiff in securing a position; the court holding that a union cannot arbitrarily restrict its membership so as to deprive men of the right to earn a livelihood. *Seligman v. Toledo Moving Picture Union, Local 228, et al., 98 N.E. (2d) 54, (Ohio, 1947).**

Early decisions on the right of trade unions to restrict their membership resulted in the "country club" theory that the admission of new members was entirely within the discretion of the union, and that the courts could not force another man's company on the group.[1] Refusal of an injunction was also based on the theory that there was no property right that equity could enforce, for such membership involved only a personal right.[2] An allegation that he could not otherwise obtain work did not aid one plaintiff, but there no closed shop contracts were alleged.[3] Under closed shop fact situations the courts were more willing to grant relief, finding a property right which could be enforced to protect the right to earn a livelihood. The principal case made reference to the United States and Ohio constitutions in finding a property right to pursue a lawful calling, which right the court placed ahead of the right to union security.[5] But a recent Massachusetts case held that

* Although this case was decided in 1947, it was not published until 1951.
[1] Baird v. Wells, 44 Ch. Div. 661, 59 L.J. Ch. 673 (1890).
[2] Frank v. National Alliance of Bill Posters, 89 N.J.L. 380, 99 A. 134 (1916).
[3] Feinne v. Monahan, 196 Misc. 407, 92 N.Y.S. (2d) 112 (1949).
[4] Seligman v. Toledo Moving Pictures Operators Union, Local 228, et. al., 98 N.E. (2d) 54, (Ohio, 1947).
[5] "It seems to me necessarily to follow that the union must either surrender its monopoly or else admit to membership all qualified persons who desire