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Conflict of Laws - Characterization of Statutes of Limitation - Full Faith and Credit for Statutes

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Notes

CONFLICT OF LAWS—CHARACTERIZATION OF STATUTES OF LIMITATION—FULL FAITH AND CREDIT FOR STATUTES

Suit was instituted in a federal district court of Pennsylvania, based upon diversity of citizenship, on a cause of action resulting from a death in Alabama. The section of the Alabama Code[1] on which this cause of action was predicated allowed a two-year period for instituting suit, while the general Pennsylvania statute of limitations allowed only one year. The action was brought more than one year after the cause arose, but within the two-year period allowed by the Alabama statute. The district court[2] and the court of appeals[3] dismissed the suit, applying the Pennsylvania statute of limitations, and the Supreme Court granted certiorari. *Held*, the Pennsylvania conflicts rule which dictated the application of the Pennsylvania statute of limitations did not violate the Full Faith and Credit Clause of the Constitution.[4] *Wells v. Simonds Abrasive Co.*, 345 U.S. 514 (1953).

It is a familiar rule of conflicts that in a foreign tort cause of action the forum may apply its own procedural law, but it must look to the *lex delicti* for substantive law.[5] This characterization as substantive or procedural is usually decided in accordance with the forum's conflicts rule.[6] However, if, as was unsuccessfully contended in the instant case, a substantive right is embodied in a foreign statute, the Supreme Court has the authority to intervene if the forum wrongfully characterized this right as procedural.[7]

Statutes of limitations have been generally characterized as procedural.[8] However, in a majority of the states an exception is recognized where a statute creates a right unknown to common

1. ALA. CODE tit. 7, § 123 (1940).
2. 102 F. Supp. 519 (E.D. Pa. 1951).
3. 195 F.2d 814 (3d Cir. 1952).
4. U.S. CONST. Art. IV, § 1.
5. GOODRICH, CONFLICT OF LAWS § 80 (3d ed. 1949); RESTATEMENT, CONFLICT OF LAWS § 585 (1934).
6. Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487 (1941). For an excellent treatment of the general topic, see Pascal, *Characterization as an Approach to the Conflict of Laws*, 2 LOUISIANA LAW REVIEW 715 (1940).
7. John Hancock Mut. Life Ins. Co. v. Yates, 299 U.S. 178 (1936).
8. McElmoyle v. Cohen, 13 Pet. 312 (U.S. 1839).

law and provides the time in which suit must be brought.[9] The theory is that the remedy is inseparable from the right, and a limitation of the remedy is a limitation of the right. This particular situation was involved in the instant case, but the majority concluded that this exception resulted from voluntary recognition by the states and was not required by the Full Faith and Credit Clause. It therefore predicated its ruling on the broad principle set forth in *McElmoyle v. Cohen*[10] and upheld the constitutionality of Pennsylvania's conflicts rule.

In arriving at this conclusion the majority found it necessary to distinguish several Supreme Court cases which did require the application of the foreign statutory limitation.[11] In those cases, however, the limitation fixed by the foreign statute, but not the forum limitation, had expired. It was held that the suit could not be entertained by any forum, but in so holding, the court did not classify the statutory limitation as a substantive right. It is merely a condition of the right, the running of which destroys the right. These cases, therefore, only require the application of the foreign statutory limitation by the forum *after* its expiration.[12] Clearly, this would not govern the instant case, since the general statute of limitations of the forum state, but not the foreign statutory limitation, had run. Also, under the doctrine of the instant case a substantive right to a cause of action is not divested. It is merely barred from a particular locality, and the right to enforce it in other forums in which jurisdiction may be obtained is maintained intact.

It would appear, therefore, that the court was correct in up-

9. Brunswick Terminal Co. v. National Bank of Baltimore, 99 Fed. 635, 48 L.R.A. 625 (4th Cir. 1900); Louisville & N.R.R. v. Bruckhart, 154 Ky. 92, 157 S.W. 18, 46 L.R.A.(N.S.) 687 (1913); Negaubauer v. Great Northern Ry., 92 Minn. 184, 99 N.W. 620, 104 Am. St. Rep. 674, 2 Ann. Cas. 150 (1904).

10. 13 Pet. 312 (U.S. 1839).

11. Atlantic Coast Line R.R. v. Burnette, 239 U.S. 199 (1915); Davis v. Mills, 194 U.S. 451 (1904) (acceptance of a directorate); The Harrisburg, 119 U.S. 199 (1886) (tort action); Ford, Bacon & Davis v. Volentine, 64 F.2d 800 (5th Cir. 1933). The Alabama statute in question provides: "A personal representative may maintain an action, and recover such damages as the jury may assess in a court of competent jurisdiction *within the State of Alabama, and not elsewhere. . . .*" (Italics supplied.) ALA. CODE tit. 7, § 123 (1940). This provision limiting the application of the statute to cases brought within the State of Alabama was not mentioned in the decision.

12. In Engle v. Davenport, 271 U.S. 33 (1926), the Supreme Court did provide that in a diversity suit the federal court must allow the time stipulated in the statute creating the cause of action, even though the general statute of limitations of the state in which the court is sitting has expired. However, the statute there applied was of federal origin, and the Court's apparent rationale was the intent of Congress to have its designated period of limitation applied in *all* cases.

holding the constitutionality of Pennsylvania's conflicts rule. However, other factors must be considered.

The *Wells* case involved the application by the forum of a foreign statutory cause of action. The status of statutes under the Full Faith and Credit Clause has never been clear. As one writer points out, "At the present time the Court seems to move cautiously from case to case and from field to field, and seems to refrain from laying down any broad rule." [13] Under the present interpretation of this clause of the Constitution, practically all foreign *judgments* must be enforced by sister states.[14] A literal reading of the clause in the Constitution would put statutes in the same category as judgments, but except for one early dictum,[15] it was not until 1912 that a state was required to give full faith and credit to a statute of another state.[16] Since this time states have been required to enforce the domiciliary charters of fraternal benefit insurance companies,[17] and in some instances foreign workmen's compensation statutes.[18] *Hughes v. Fetter*[19] and *First National Bank v. United Air Lines*[20] further enlarged this field by requiring forums to apply the death benefit statutes of the state in which the death occurred. In the light of these decisions, coupled with a 1948 amendment to the Judicial Code,[21] it would appear that statutes are gradually being elevated to the position held by judgments under full faith and credit. The *Wells* case

13. Cheatham, *Federal Control of Conflict of Law*, 6 VAND. L. REV. 581, 587 (1952).

14. The two real grounds for refusing enforcement are lack of jurisdiction by the rendering state and the fact that the judgment was based on a penal law. This latter defense has been weakened somewhat by Milwaukee County v. M. E. White Co., 296 U.S. 268 (1935).

15. "Without doubt the constitutional requirement . . . implies that the public acts of every state shall be given the same effect by the courts of another state that they have by law and usage at home." Waite, C.J., in Chicago & Alton R.R. v. Wiggins Ferry Co., 119 U.S. 615, 622 (1887).

16. In Converse v. Hamilton, 224 U.S. 243 (1912), Wisconsin was required to allow a suit under a Minnesota statute imposing certain liabilities upon the stockholders of bankrupt Minnesota corporations.

17. Order of United Commercial Travelers v. Wolfe, 331 U.S. 586 (1947); Sovereign Camp of the Woodmen of the World v. Bolin, 305 U.S. 66 (1938); Modern Woodmen of America v. Mixer, 267 U.S. 544 (1925).

18. In Bradford Electric Light Co. v. Clapper, 286 U.S. 145 (1932), Vermont was required to give full faith and credit to a New Hampshire workmen's compensation law on the grounds that the law was self executing. Pacific Employers Insurance Co. v. Industrial Accident Comm'n, 306 U.S. 493 (1939) and Packers Ass'n v. Industrial Accident Comm., 294 U.S. 532 (1935), have all but limited the *Bradford* case to its facts. However, see Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943) and Industrial Comm. of Wisconsin v. McCartin, 330 U.S. 622 (1947) which would apparently advocate a return to the law under the *Bradford* case.

19. 341 U.S. 609 (1951).

20. 342 U.S. 396 (1952).

21. 28 U.S.C. § 1738 (Supp. 1950).

could, however, represent a change of position by the Supreme Court.

The basic conflict in the *Hughes* and *First National Bank* cases was the clash between the strong unifying force of the Full Faith and Credit Clause and the public policy of the forum state.[22] Applying this test to the instant case the conflict would again be present. On the one hand would be the public policy of Pennsylvania allowing only one year for such a suit, while on the other would be the unifying force of full faith and credit, requiring that the whole of the Alabama statute be applied in the courts by Pennsylvania. Balancing the equities it would appear that Pennsylvania's policy should prevail, since full faith and credit would require double the normal one-year period allowed for the institution of such suits. However, the Supreme Court chose to distinguish the *Hughes* and *First National Bank* cases from the *Wells* case by stating that their crucial factor was the uneven hand laid by the forum on causes of action arising within and without the forum state. The *Wells* case therefore limits the *Hughes* and *First National Bank* cases, and creates further doubt as to the enforcement of statutes under full faith and credit.

Under *Swift v. Tyson*,[23] where jurisdiction existed because of diversity of citizenship, the federal courts were only bound by state court decisions on questions of a local or extra-territorial nature. On all matters of "general" law, the federal courts were free to substitute their judgment for that of the state courts. The policy behind this decision was uniformity, but it failed because the state courts tenaciously held to their rights, and the rather anomalous situation developed in which the state courts would reach one result, and a federal court sitting in the same area would reach an exact opposite result. A plaintiff could, therefore, in many instances control the result of litigation by selecting either a federal or state court.[24] The Supreme Court sought to destroy this highly inequitable situation by expressly overruling

22. "The more basic conflict involved in this particular appeal, however, is as follows: On the one hand is the strong unifying principle embodied in 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; on the other hand is the policy of Wisconsin, as interpreted by its highest court, against permitting Wisconsin to entertain this wrongful death action. We hold that Wisconsin's policy must give way." Hughes v. Fetter, 341 U.S. 609, 612 (1951).

23. 16 Pet. 1 (U.S. 1842).

24. See Black and White Taxicab and Transfer Co. v. Brown and Yellow Taxicab and Transfer Co., 276 U.S. 518 (1928).

Swift v. Tyson[25] in *Erie R.R. v. Tompkins*,[26] which held that federal courts are at all times bound by the state substantive law. *Guaranty Trust Co. v. York*[27] and *Angel v. Bullington*[28] further extended the *Erie* doctrine by declaring that neither equity nor a procedural characterization should be used by the federal courts in order to reach a result different from that which would be reached by the state courts.[29] Applying this principle to the *Wells* case, a federal court sitting in Pennsylvania would be bound by the Pennyslvania statute of limitations, and in *Rosenzweig v. Heller*[30] the Pennsylvania Supreme Court announced that in such a situation as this the Pennsylvania statute of limitations would control. A federal court would reach a result different from that of the state if it entertained the suit and gave judgment for the plaintiff. The *Wells* case, therefore, appears to be consistent with the *Erie* doctrine as announced by the *Guaranty Trust Co.* and *Angel* decisions.

The *Wells* case reaches a sound result by clarifying confusing and technical questions concerning the substantive and procedural aspects of statutes of limitations and also accords with the rule of *Erie R.R. v. Tompkins* as extended by subsequent cases.

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25. 16 Pet. 1 (U.S. 1842).
26. 304 U.S. 64 (1938).
27. 326 U.S. 99 (1945).
28. 330 U.S. 183 (1947).
29. In Guaranty Trust Co. v. York, 326 U.S. 99, 109 (1945), the Court said: "It is therefore immaterial whether statutes of limitation are characterized either as 'substantive' or 'procedural' in State court opinions in any use of those terms unrelated to the specific issue before us. *Erie R.R.* v. *Tompkins* was not an endeavor to formulate scientific legal terminology. . . . In essence, the intent of that decision was to insure that, in all cases where a federal court is exercising jurisdiction solely because of the diversity of citizenship of the parties, the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of a litigation, as it would be if tried in a state court."
30. 302 Pa. 279, 153 Atl. 346 (1931). There, the factual situation was the same as that present in the *Wells* case. It involved a wrongful death action, and the prescriptive period allowed in the foreign statute was longer than the general Pennsylvania statute of limitations. The court held that the Pennsylvania limitation was controlling. This decision also represents the Pennsylvania conflict of laws rule. Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487 (1941), extends the *Erie* doctrine by requiring the federal courts to follow the conflicts rule of the forum. The purpose is again to prevent state and federal courts from reaching different results. Under this doctrine the conflicts rule of Pennsylvania should be applied in the *Wells* case, and this will require the application of the Pennsylvania statute of limitations.