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ACTION IN MARYLAND FOR WRONGFUL DEATH
CAUSED AND OCCURRING ELSEWHERE—
*DAVIS V. RUZICKA*¹

An action was brought in Maryland by an administratrix for the wrongful death of her intestate caused and occurring in the District of Columbia. The Death Statute of the District² enables the personal representative of the deceased to sue for the benefit of the next of kin and limits recovery to \$10,000. The Maryland Death Statute authorizes a suit in the name of the State for the benefit of certain relatives in proportions to be determined by the jury and with no limit as to the amount of recovery.³ This is the Maryland statute of the Lord Campbell's Act type which provides compensation to near relatives for the loss of the benefits calculated to result to them from the continued living of the deceased. Another Maryland statute⁴ enables the personal representative of the deceased to sue for the benefit of the estate for such injuries and suffering as were sustained by the deceased in his life time, viz., suffering between the time of the fatal injury and death. This latter type of action is not involved in the instant case. The Court of Appeals affirmed a judgment for the defendant, stating that suit may be brought in Maryland for a wrongful death elsewhere only where the statute of the jurisdiction where the injury and death occurred is similar in its design and purpose to that of Maryland.

¹To bolster the conclusion reached it is interesting to notice the language in the case of *Heironimus v. Sweeney*, 83 Md. 146, 159, 34 Atl. 823 (1896). There the Court, in discussing various views, had this to say, "Other Courts have held that although the money obtained under *ultra vires* contracts must be returned to the party to whom it rightfully belongs; yet an action cannot be maintained on the contract itself." The Court then cites several Supreme Court cases in support of this doctrine, and then continues, "But whether an action is brought on the contract or the equitable grounds which show that the plaintiff ought *ex aequo et bono* to recover, the object which the law seeks to accomplish is the same."

¹— Md. —, 183 Atl. 569 (1936).

²District of Columbia Code, Title 21, Secs. 1-3.

³Md. Code and Code Supp., Art. 67, Secs. 1, 2.

⁴Md. Code Supp., Art. 93, Sec. 106. See also Md. Code Supp., Art. 75, Sec. 29.

The Court felt bound by its similar decisions in *Ash v. B. & O. R. R. Co.*,⁵ and *London Guarantee and Accident Co. v. Balgowan Steamship Co.*,⁶

The Maryland doctrine is in accord with a group of early cases decided when there was a tendency to restrict the enforcement of so-called foreign-created rights, including *Texas & P. R. Co. v. Richards*.⁷ It is opposed, however, by more modern cases, *Dennick v. Central R. R. of New Jersey*,⁸ and *Loucks v. Standard Oil Co. of New York*.⁹ It is likewise opposed by the Restatement of Conflict of Laws,¹⁰ and the uniform views of the commentators in the field.¹¹ These take the stand that the claim for wrongful death, like other tort claims, is to be governed by the law of the place of wrong without regard to the similarity of the statutes (subject of course, to applicable general exceptions such as are found in the Restatement of Conflict of Laws).¹² Nor does the Maryland Court's strict application of the similarity doctrine accord with the majority of those cases stating the rule in the same terms. The general tendency is to follow the fundamental Conflict of Laws policy of recognition and to look to the similarity of the *purpose* of the statutes involved and overlook procedural and non-substantial differences such as have been taken as sufficient to bar recovery in Maryland.¹³

It should be observed that the United States Supreme Court, while adhering to the doctrine of similarity of statutes, has followed the liberal view of overlooking technical dissimilarities. In *Stewart v. B. & O. R. R. Co.*,¹⁴ among other cases, it has sustained a suit in the District of Columbia for a wrongful death occurring in Maryland. Likewise, the United States District Court for Maryland, in treating

⁵ 72 Md. 144, 19 Atl. 643 (1890).

⁶ 161 Md. 145, 155 Atl. 334, 77 A. L. R. 1302 (1931) (noted in (1931) 80 U. of Pa. L. Rev. 128). Cf. *Dronenburg v. Harris*, 108 Md. 597, 608, 71 Atl. 81 (1908).

⁷ 68 Tex. 375, 4 S. W. 627 (1887) and collection of cases 56 L. R. A. 202, 203, note.

⁸ 103 U. S. 11, 26 L. Ed. 439 (1880).

⁹ 224 N. Y. 99, 120 N. E. 198 (1918).

¹⁰ Sec. 392 (a).

¹¹ Goodrich, *Conflict of Laws*, secs. 99-102; Beale, *Conflict of Laws*, secs. 391-392; Rose, *Foreign Enforcement of Actions for Wrongful Death* (1935) 33 Mich. L. Rev. 545; Note, *Conflict of Laws, Enforcement of Death by Wrongful Act Statutes in Courts of Another State* (1933) 13 B. U. L. Rev. 521.

¹² Secs. 607-620.

¹³ *Hanna v. Grand Trunk R. Co.*, 41 Ill. App. 116 (1891); *Stewart v. Baltimore & O. R. Co.*, 168 U. S. 445, 42 L. Ed. 537, 18 S. Ct. 105 (1897); Annotation, 77 A. L. R. 1311.

¹⁴ *Supra* note 13.

the matter as one of general law which the Federal courts must determine for themselves, has allowed recovery¹⁵ for a wrongful death in West Virginia under the same statutes which had been held too dissimilar by the Maryland Court in *Ash v. Baltimore & Ohio R. Co.*¹⁶

This note has confined its statements to the general broad principle of recognition or non-recognition of foreign death claims and the doctrine of similarity of statutes called for by the Maryland cases, without attempting to indicate other difficulties in securing recognition of the foreign death claims, such as the penal character of the law of the place of injury, right of action given to a party who could not sue in the forum, etc. Discussion of such phases appears in the various secondary sources referred to above, a close reading of which will reveal an ever increasing tendency on the part of courts to liberalize along the lines of a broader recognition of foreign claims, even to the extent of reversing directly or indirectly former holdings. Instances of the latter are seen in several cases.¹⁷

The Maryland Court's adherence to the similarity doctrine results in it being possible for tortfeasors from other states to escape liability for wrongful deaths caused by them by simply removing their property and persons to the safe haven of Maryland. One basic peculiarity of our wrongful death statute (nominal action in the name of the State as plaintiff) may cause our statute to be held dissimilar to the statutes of almost all other states. Thus it may be that Maryland provides a haven of refuge for the persons and property of those who come here after killing people elsewhere. For, assuming lack of requisite "similarity" of statute, the only hope that the next of kin of the victim can have is to sue the tortfeasor in a state (if any) where personal judgment may be rendered against him, and then to sue him in Maryland upon that judgment in order to have access to his property located in Maryland.

One writer on the general subject,¹⁸ writing at a time when the *London Guarantee* case was the latest Maryland case on the subject, had this to say about the similarity doc-

¹⁵ *Weissengoff v. Davis*, 260 F. 16 (1919).

¹⁶ *Supra* note 5.

¹⁷ *Loucks v. Standard Oil Co.*, *supra*, note 9; *Richardson v. New York Central R. R.*, 98 Mass. 851 (1867); *Walsh v. N. Y. & N. E. R. R. Co.*, 160 Mass. 571, 573, 36 N. E. 584, 39 Am. St. Rep. 514 (1893); *Hanlon v. Leyland & Co. Ltd.*, 223 Mass. 438, 111 N. E. 907, L. R. A. 1917 A., 34 (1916); *Daury v. Ferraro*, 108 Conn. 386, 143 Atl. 630 (1928); *Wellman v. Mead*, 93 Vt. 322, 107 Atl. 396 (1919).

¹⁸ *Rose, Foreign Enforcement of Actions for Wrongful Death* (1935) 33 Mich. L. Rev. 545, 560-1.

trine: “. . . the rule persists merely as one of the law’s anachronisms which should be consigned to the limbo of time-worn dogma.” For a footnote to this statement, this writer remarked about the doctrine and about the *London Guarantee* case: “But, alas, even so moribund a doctrine is not thus easily relegated. In a recent Maryland case (the *London Guarantee* case) it appears as serenely as though the light of modern legal reasoning had not disowned it.”

It would seem that the situation is ripe for statutory reform. Why should not there be a statute passed permitting suits to be brought in Maryland to collect damages for the wrongful death of persons occurring elsewhere? Such a statute could well provide rules for resolving problems of dissimilarity, so long as the law applicable to the tort should afford a substantial right of action for the death.¹⁸ In the event of statutory reform to repeal the rule of *Davis v. Ruzicka* and its precedent cases, thought might well be given also to reforming the internal details of our own wrongful death laws. Is there any real argument for preserving the distinction between the separate actions for the death itself and for the suffering endured by the victim between the time of the fatal accident and the ensuing death? For that matter, what justification is there for the present rule requiring the action of the former type to be brought in the name of the state as nominal plaintiff?