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Comment and Casenotes

RECENT MARYLAND STATUTORY CHANGE IN RECOGNITION OF RIGHTS ARISING UNDER FOREIGN WRONGFUL DEATH STATUTES

The 1947 session of the General Assembly of Maryland completed another stage in the development of the Maryland attitude toward the enforcement of foreign wrongful death statutes. The new section provides that

“Any person who is entitled to bring suit under the laws of the jurisdiction wherein the wrongful death occurred may bring suit in Maryland upon proof of his qualifications and authority.”¹

This attitude of comity, based on sound principles of preserving “privileges and immunities” for citizens of other states, is a far cry from the position of the law of Maryland on the subject not much more than a decade ago. In the case of *Davis v. Ruzicka*,² the administrator of a decedent’s estate in the District of Columbia sought to recover in a Maryland court upon a wrongful death occurring in the District of Columbia. In accordance with the District statute, the suit was brought in the name of the personal representative for the benefit of the estate of the decedent. The Court pointed out, that in Maryland, suit for wrongful death is instituted in the name of the State for the benefit of certain dependents. These, among other dissimilarities, the Court held, were so great, that the Maryland Court would not entertain the suit.³

This attitude, it has been observed,⁴ did not reflect the growing tendency elsewhere of recognition of the rights of a citizen of one state to enter another jurisdiction and sue under a foreign wrongful death statute on the principle that the action was essentially a “common law” action and should not be barred because of the particular form in which it was brought. As if in answer to the plea of the

¹ Md. Laws, 1947, Ch. 740, creating Sec. 2 A of Art. 67.

² 170 Md. 112, 183 A. 569 (1936); *cert. denied*, 298 U. S. 671 (1936).

³ See also *London, Etc. Co. v. Steamship Co.*, 161 Md. 145, 155 A. 334 (1931).

⁴ Note, *Action in Maryland for Wrongful Death Caused and Occurring Elsewhere* (1937) 1 Md. L. Rev. 162.

writer of the casenote⁵ that a statute be passed "permitting suits to be brought in Maryland to collect damages for the wrongful death of persons occurring elsewhere", the legislature acted upon the subject in 1937.⁶ Basically, the effect of the 1937 statute was to provide, that, in an action in courts of this State for wrongful death occurring outside the State, the substantive law of the place of the wrongful death should apply in Maryland; though, for very expedient reasons, our procedural rules were to obtain.

The Federal District Court for the District of Maryland seemingly anticipated the effect of this statute; for, in a case decided after the passage of the act, but before its effective date,⁷ it held that the wrongful death statute of Virginia, which was similar to that of the District of Columbia, even to the extent of several of the features which had been the basis of the decision in the *Davis* case,⁸ was not so dissimilar to the Maryland statute as to preclude suit in a federal court in Maryland under the Virginia statute for a death which had occurred in Virginia.⁹ This decision was reached, it should be noted, before the pronouncement of the *Erie Railroad v. Tompkins*¹⁰ rule, but, despite the citation of earlier federal precedent,¹¹ knowledge of the passage of the 1937 act may have been a considered factor in the conclusion reached.

Thus, once the "dissimilarity of statute" problem had been dissipated, way was made for the consideration of the problem of "who may sue". The 1937 statute¹² was silent on this subject. In the *Rose* case,¹³ it was pointed out, that, while the plaintiff would have been allowed to maintain suit in Maryland even had she not taken out ancillary letters of administration because effectively she sued as trustee for dependents or a preferred class of relatives, the general rule was that a foreign administrator is restricted by the nature of his office to action within the borders of his own jurisdiction.¹⁴

⁵ *Ibid.*

⁶ Md. Laws, 1937, Ch. 495, creating Sec. 1 A, the present Sec. 2 of Art. 67.

⁷ June 1, 1937.

⁸ *Supra*, n. 2.

⁹ *Rose v. Phillips Packing Co., Inc.*, 21 F. Sup. 485 (D. Md., 1937).

¹⁰ 304 U. S. 64 (1938), noted (1938) 2 Md. L. Rev. 263.

¹¹ Note *Weissengoff v. Davis*, 260 F. 16 (C. C. A. 4th, 1919), *cert. denied*, 250 U. S. 674.

¹² *Supra*, n. 6.

¹³ *Supra*, n. 9.

¹⁴ See Note, *Who May Sue for Wrongful Death Caused and Occurring Outside the State of the Forum* (1938) 2 Md. L. Rev. 168.

The 1947 statute provided not only (as hereinabove indicated) that, generally, any person who could sue under the laws of the jurisdiction where the wrongful death occurred could sue in Maryland, but also that:

“If the laws of the State wherein the wrongful death occurred provide for suit to be brought in the name of the State, District or Territory, as the case may be, then suit may be brought in Maryland in the name of this State on behalf of the beneficiaries protected under the foreign statute.”¹⁵

In this respect, the legislature had made great strides in resolving the problem of “who may sue”, and in providing a method of suit not only desirable from the standpoint of comity, but necessary in certain cases for providing remedial justice where it might otherwise be denied. Perhaps more with a view to “remedial justice” than to comity, the legislature added the following restriction:

“The provisions of this statute shall not in any way be construed to apply to actions in which service of process can be obtained in the jurisdiction where the cause of action arose or where the Plaintiff resides.”¹⁶

It has been suggested that this limitation has no effect upon those who might have sued under the statute as it stood prior to 1947. Primarily, then, this limitation acts as a bar, in the provisional instances mentioned, to suit by foreign administrators for the benefit of the decedent's estate (at least to those who, in effect, do not sue as trustees) for wrongful death occurring outside the State of Maryland. To those who hope to resolve many of the problems of the conflict of laws by increased tolerance on the part of the courts of one state for the laws of another, this limitation constitutes a “joker”, an extra feature that dissipates somewhat the effect of the purpose of the act. It is true that the inclusion of this restrictive provision presents a new problem in the form of interpretation to a subject that was gradually becoming less problematical, but it may be viewed as an effort to restrain the overburdening of our courts in cases where adequate remedy is available elsewhere.

To what extent is this limitation constitutional?

Courts have generally been reluctant to apply the statutory law of another state. While the maxim that *lex loci*

¹⁵ *Supra*, n. 1.

¹⁶ *Ibid.*

delicti governs is usually followed as to the "common law" of another state,¹⁷ foreign statutes are seldom followed.¹⁸ While the Supreme Court has said that the law of the state in which the wrong occurs governs,¹⁹ it has not stated that a refusal to recognize such law would constitute a denial of due process.²⁰ Moreover, the question of whether or not one state *must* apply the *statute* of a foreign state is as yet undetermined.²¹ Cook states that "it is well settled that under the present Act of Congress in regard to full faith and credit, no state is required to recognize as constituting causes of action groups of fact so recognized by the law of other states, even though the operative facts . . . occurred in these other states."²²

Attention has been called to the fact that, while the Constitution of the United States provides that "full faith and credit shall be given in each state to *the public acts, records and judicial proceedings of every other state*",²³ the enabling act of Congress provided only that "the records and judicial proceedings" of any state or territory "shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken".²⁴ The significance of the Congressional omission of "the public acts" has been speculated upon by the writers.²⁵ Indeed, it is thought that the intention of the Constitutional Convention *was* to give Congress power to prescribe in some measure the effect to be given the public acts of another state.²⁶ It is pointed out, however, that the Constitutional provision was probably not meant to be self-executing.²⁷

Generally, it has been held that the statute of one state is not law in another, even though that statute created a

¹⁷ 11 Am. Jur., Conflict of Laws, Sec. 10, n. 3, cases cited.

¹⁸ It is to be noted carefully that this paper does not consider the subject of the faith and credit to be given to judgments based on foreign law.

¹⁹ *Ormsby v. Chase*, 290 U. S. 387 (1933).

²⁰ *Dodd, The Power of the Supreme Court to Review State Decisions in the Field of Conflict of Laws* (1926) 39 Harv. L. Rev. 533.

²¹ *Cook, The Powers of Congress Under the Full Faith and Credit Clause* (1919) 28 Yale L. J. 421, 432; *Langmaid, The Full Faith and Credit Required for Public Acts* (1930) 24 Ill. L. Rev. 383, 421. See also subject comment, L. R. A. 1915 F. 955 and *Crippen v. Loughton*, 69 N. H. 540, 44 A. 538 (1899).

²² *Cook, supra*, n. 21, 432.

²³ U. S. CONST., Art. 4, Sec. 1 (underscoring added).

²⁴ 28 U. S. C. A. 687.

²⁵ *Ross, Full Faith and Credit in a Federal System* (1936) 20 Minn. L. Rev. 140; *Cook, supra*, n. 21.

²⁶ *Cook, supra*, n. 21, 433.

²⁷ *Field, Judicial Notice of Public Acts Under the Full Faith and Credit Clause* (1928) 12 Minn. L. Rev. 439, 442; *Langmaid, supra*, n. 21, 389.

right or obligation, which, if transitory, would theoretically be enforceable wherever the person of the wrongdoer could be found.²⁸ As it is sometimes stated, "a statute, *ex proprio vigore*, can have no extraterritorial force or effect",²⁹ and a state legislature does not intend its acts to have effect beyond the territorial limits of its own jurisdiction.³⁰

It should be pointed out, however, that where a state statute creates a transitory action which is but a codified version of pre-existent "general common law", such state cannot restrict suit on the right so codified to courts of its own jurisdiction.³¹

On the other hand, there have been cases in which it has been held that the Constitution *requires* that full faith and credit be given 'to the public acts of other states.'³² Examination of these cases would indicate that they are primarily cases involving the particular problems of insurance and fraternal benefits, workmen's compensation and stockholders' liability; and the law, even as to these subjects, has varied.

However, the restriction contained in the Maryland statute under discussion does not deal specifically with these particular subjects, and would probably be upheld if a proper test of its constitutionality ever arose.

In the words of the late Justice Brandeis, the Constitutional obligation of full faith and credit "does not require enforcement of every right conferred by a statute of another state. There is room for some play of conflicting policies. Thus, a plaintiff suing in New Hampshire on a statutory cause of action arising in Vermont might be denied relief because the forum fails to provide a court with jurisdiction of the controversy; . . . or . . . fails to provide procedure appropriate to its determination, . . . or because . . . enforcement . . . would be obnoxious to the

²⁸ *Cohen v. Penn. Casualty Co.*, 183 Md. 340, 38 A. (2d) 86 (1944); See also *Reisig v. Associated Jewish Charities of Baltimore*, 182 Md. 432, 34 A. (2d) 842 (1943), involving the statute not of another "state", but of Palestine.

²⁹ 11 Am. Jur., Conflict of Laws, Sec. 10, n. 5, citing many cases.

³⁰ *Walbridge v. Robinson*, 22 Idaho 236, 125 P. 812, 43 L. R. A., N. S. 240 (1912); *State v. Scott*, 182 N. C. 865, 109 S. E. 789 (1921).

³¹ *Tennessee Coal, Iron and Rr. Co. v. George*, 233 U. S. 354 (1914), L. R. A. 1916 D 685.

³² *Roller v. Murray*, 71 W. Va. 161, 76 S. E. 172, (1912), L. R. A. 1915 F 984, Ann. Cas. 1914 B 1139; writ of err. dismiss., 234 U. S. 738; *Chicago & Alton R'd. v. Wiggins Ferry Co.*, 119 U. S. 615, (1877) (railroad charter case); *Converse v. Hamilton*, 224 U. S. 243 (1912) (stockholders' liability statute); *Royal Arcanum v. Green*, 237 U. S. 531 (1915); *Modern Woodmen v. Mixer*, 267 U. S. 544 (1925); *Order of United Commercial Travelers of America v. Wolfe*, 326 U. S. 712 (1946); *Aetna Life Insurance Co. v. Dunken*, 266 U. S. 389 (1924); *John Hancock Ins. Co. v. Yates*, 299 U. S. 178 (1936); *Broderick v. Rosner*, 294 U. S. 629 (1935).

public policy of the forum; . . . or because the liability imposed is deemed a penal one."³³

Thus, laws giving rise to a right of action for death by the wrongful act of another probably have no force and effect beyond the jurisdiction of the state which enacts them, except by comity of the other states—a comity which may be denied in whole or in part, as evidenced by the panorama herein presented of the law of Maryland on the subject in the past decade.

³³ *Bradford Elec. Co. v. Clapper*, 286 U. S. 145, 160 (1932), cited in *Fuller, Trustee v. Rock*, 125 Ohio St. 36, 180 N. E. 367 (1932); See also *Ross, supra*, n. 25.

On the subject of penal statutes, it might be pointed out that *Robinson v. Norato*, 71 R. I. 256, 43 A. (2d) 467 (1945) (overruled on other grounds by *Testa v. Katt*, 330 U. S. 386 (1947)), held that a statute allowing triple damages to the complainant for overceiling charges by a vendor of goods was a penal statute in the international sense. It is submitted that this is a departure from the accepted concept of what constitutes a penal statute in that sense. The *Testa* case specifically refused to rule on the point.

Since the limitation in that statute under consideration is procedural, it effectively bars application of the effect of a substantive right under a foreign statute that might otherwise be recognized by Maryland.