Maryland Law Review

Volume 14 | Issue 2 Article 8

State Law v. Full Faith and Credit - Hughes v. Fetter First National Bank v. United Air Lines Wells v. Simonds Abrasive Company

STATE LAW v. FULL FAITH AND CREDIT

Hughes v. Fetter[1]

First National Bank v. United Air Lines[2]

Wells v. Simonds Abrasive Company[3]

When a State adopts a rule of conflict of laws, the rule is necessarily subject to the restrictions of the Federal Constitution. One such restriction, the Full Faith and Credit Clause,[4] is broad in scope and has required frequent clarification by the United States Supreme Court. Full faith and credit isn't necessarily an inflexible blade for shearing the sovereignty of a State in diversity situations. Under some circumstances it contemplates room for the reasonable play of public policy. According to the facts of each case, the Supreme Court must decide whether or not the forum has met the minimum Constitutional requirements in applying a particular conflict of laws rule. Two aspects of the prob-

[1] 341 U. S. 609 (1951). A 5 to 4 decision.
[2] 342 U. S. 396 (1952).
[3] 345 U. S. 514 (1953).
[4] "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial proceedings of every other State."
U. S. Const., Art. IV, Sec. 1, Cl. 1.

lem are presented in the cases that follow. The first two cases pertain to the attempts of States to limit jurisdiction as to certain causes of action arising outside the State. The third case concerns the application of statutes of limitation as to causes of action arising outside the forum State.

HUGHES v. FETTER[5]

Harold Hughes was fatally injured in an automobile accident in Illinois. The administrator brought an action against the allegedly negligent driver and an insurance company in a state court in Wisconsin, basing the complaint on the Illinois wrongful death statute.[6] The trial court dismissed the complaint, holding that the Wisconsin death statute[7] which created a right of action only for deaths caused in Wisconsin established a public policy against entertaining actions brought under the wrongful death statutes of other states. The Wisconsin Supreme Court affirmed the action of the trial court despite the contention that such a construction of the Wisconsin statute was a violation of the Federal Constitution under the Full Faith and Credit Clause. The Supreme Court of the United States granted certiorari to hear the Constitutional question involved.

In describing the conflict the Court said:

> "... 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 courts to entertain this wrongful death action."[8]

In examining the facts in order to determine what weight to give the Wisconsin public policy, the Court stated that Wisconsin:

> "... has no real feeling of antagonism against wrongful death suits in general. To the contrary, a forum is regularly provided for cases of this nature, the exclusionary rule extending only so far as to bar actions for

[5] *Supra*, n. 1.

[6] Smith-Hurd's Ill. Ann. Stat. (1936), Ch. 70, Secs. 1, 2, now Ill. Rev. Stat. (1953), Ch. 70, Secs. 1, 2.

[7] Wis. Stat. (1949), Sec. 331.03, now Wis. Stat. (1951), Sec. 331.03, contains language generally used in wrongful death acts, but concludes, ". . . provided, that such action shall be brought for a death caused in this state."

[8] *Supra*, n. 1, 612.

> death not caused locally. The Wisconsin policy, moreover, cannot be considered as an application of the *forum non conveniens* doctrine, whatever effect that doctrine might be given if its use resulted in denying enforcement to public acts of other states. Even if we assume that Wisconsin could refuse, by reason of particular circumstances, to hear foreign controversies to which nonresidents were parties, the present case is not one lacking a close relationship with the state. For not only were appellant, the decedent and the individual defendant all residents of Wisconsin, but also appellant was appointed administrator and the corporate defendant was created under Wisconsin laws."[9]

The court did not permit Wisconsin to exercise its public policy in such a way as to escape its Constitutional obligation to enforce rights created under the laws of other States by the device of removing jurisdiction from its courts. In remanding the cause to the Supreme Court of Wisconsin, the Court concluded that ". . . Under these circumstances . . ." the Full Faith and Credit Clause forbade the Wisconsin statutory policy ". . . which excludes *this* Illinois cause of action . . ."[10] The wording could be construed to imply that under other circumstances the construction placed upon the Wisconsin wrongful death statute by the Wisconsin courts might not be in contravention of the Full Faith and Credit Clause.

A strong dissent objected to the imposition of a "state of vassalage" on the forum. In distinguishing the extent to which the courts of a State are required to respect *judgments* entered by courts of other States[11] from the extent to which a State may give play to its own public policy in refusing to enforce the *rights of action* created by other States,[12] the dissent conceded that in the field of commercial law "where certainty is of high importance" the Court had "imposed a rather rigid rule" that the forum defer to the law of "the State of incorporation, or to the law of the place of contract".[13] But in a tort situation such as the present case,

[9] *Ibid.*

[10] *Ibid*, 613. Italics supplied.

[11] Fauntleroy v. Lum, 210 U. S. 230 (1908); Kenney v. Supreme Lodge, 252 U. S. 411 (1920); Milwaukee County v. White Co., 296 U. S. 268 (1935).

[12] Alaska Packers Assn. v. Commission, 294 U. S. 532 (1935); Pacific Insurance Co. v. Commission, 306 U. S. 493 (1939); and, *cf.* Bradford Electric Co. v. Clapper, 286 U. S. 145 (1932).

[13] *Supra*, n. 1, dis. op. 614, 615, citing Converse v. Hamilton, 224 U. S. 243 (1912); Broderick v. Rosner, 294 U. S. 629 (1935); John Hancock Insurance Co. v. Yates, 299 U. S. 178 (1936). *Cf.* GOODRICH, CONFLICT OF LAWS (3rd Ed., 1949), p. 609, n. 22.

where ability of parties to predict consequences in advance plays no part (as it would in commercial transactions) the dissent considered the action of the Court as an unwarranted interference in the domestic affairs of the States, and stated:

> "This vital interest of the States should not be sacrificed in the interest of a merely literal reading of the Full Faith and Credit Clause. . . ."[14]

FIRST NATIONAL BANK V. UNITED AIR LINES[15]

In a subsequent case, *First National Bank v. United Air Lines,* the facts were similar to those in *Hughes v. Fetter*[16] with two exceptions: 1. The statute of the forum state permitted an action under the wrongful death statute (if any) of the State in which the death occurred, provided service of process could not be had on defendant in that State. 2. The action was brought initially in a federal court of the forum state rather than in a state court. The Court stated that it was not crucial that the forum excluded only cases that could be tried in other states, and basing its decision squarely on *Hughes v. Fetter* held the death statute of the forum (Illinois) invalid under the Full Faith and Credit Clause and reversed the dismissal of the case by the District Court. In so doing the Court necessarily followed the pattern criticized by Mr. Justice Jackson in his concurring opinion,[17] in which he said :

> "The Court's detour follows this itinerary: the federal court is bound by the law of Illinois; Illinois law is wrong; we will remake the law of Illinois to provide the exact opposite to that which the state has provided; then the federal court can apply the law we have remade and pretend it is applying Illinois law."[18]

Having unlocked the door with a very carefully worded opinion in *Hughes v. Fetter,*[19] the Court threw it wide open with the *First National Bank v. United Air Lines.*[20] The latter case contained none of the cautious language of its predecessor. Whereas the opinion in the earlier case was worded so as to imply that the holding was limited to the

[14] *Supra,* n. 1, dis. op. 614, 620.
[15] *Supra,* n. 2.
[16] *Supra,* n. 1.
[17] *Supra,* n. 2, 342 U. S. 396, conc. op. 398 (1952).
[18] *Ibid,* 401.
[19] *Supra,* ns. 1, 5.
[20] *Supra,* ns. 2, 15.

particular circumstances involved, the Court in the later case apparently chose to interpret it as a green light for the invalidation of all such exclusionary devices in wrongful death statutes.

Under the combined effect of *Hughes v. Fetter* and *First National Bank v. United Air Lines*, Sec. 3(c), Art. 67 of the Maryland Code might well be held invalid as contravening the Full Faith and Credit Clause. Sec. 3 of Art. 67 provides:

> "In all actions instituted in the courts of this State under Section 2 of this Article, the proper person to bring the action shall be determined by applying the following rules:
>
> (a) Any person who is entitled to bring suit under the laws of the jurisdiction wherein the wrongful death occurred may bring suit in Maryland, under proof of his qualifications and authority.
>
> (b) 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.
>
> (c) The provisions of this section 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."

Whether this provision of said Section 3(c) applies back to Section 2 so as to defeat foreign death claims thought to be fully protected in Maryland by Code Article 67, Sec. 2,[21] or is restricted only to the problem of who may bring the suit, it is an exclusionary device which is necessarily suspect under these recent cases, particularly the *First National Bank* case.[22] The possibility of its being upheld, would seem to rest only in a change of position by the Supreme Court, which cannot be left out of consideration in view of the sharp division of views expressed in *Hughes v. Fetter*. As stated, that case was a 5-4 decision, argued principally upon the question of the State's right to exercise its public policy under Full Faith and Credit. The dis-

---

[21] Rose v. Phillips Packing Co., 21 F. Supp. 485 (D. C. Md., 1937), noted, 2 Md. L. Rev. 168 (1938), particularly at p. 172, *circa*, n. 18. See Comment 9 Md. L. Rev. 263 (1948).

[22] *Supra*, ns. 2, 15; *Ibid*, 9 Md. L. Rev. 265.

sent had a persuasive argument for permitting the State greater flexibility in the exercise of its state policies. The background of the new Chief Justice might indicate a viewpoint in line with the dissenting opinion, making the overruling of *Hughes v. Fetter* a reasonable possibility. If *Hughes v. Fetter* is ever overruled, it is likely that the *First National Bank* case would fall with it. In a situation such as the *First National Bank* case with a federal rather than a state setting, the majority of the Justices would be bound by *Klaxon Co. v. Stentor Co.*,[23] to follow the State conflicts rule. With *Hughes v. Fetter* overruled, the federal courts would follow what would then be a valid exclusionary clause in the Maryland wrongful death statute.

However, if *Hughes v. Fetter* remains the law, the public policy of the State must give way to full faith and credit when the question arises as to whether a State will entertain an action for a wrongful death occurring in a sister State.[24]

WELLS V. SIMONDS ABRASIVE COMPANY[25]

This case raised the question of whether in an action arising under the statutes of another State, the Full Faith and Credit Clause requires the forum to apply a specific period of limitation written into the statute of the State of injury? It has long been settled that the application of the general statute of limitations of the forum to a *common law cause of action* arising in a foreign jurisdiction is not a denial of full faith and credit.[26] But, the decisions of the courts of the various States show little uniformity as to whether the special limitation period provided in connection with a statutory-created right is to be considered as part of the right and to be applied as substantive law, or whether the built-in limitation should be treated as procedural and the forum permitted to apply its own limitation period in the same way as a general limitation is applied.[27] Many states have passed borrowing statutes, the general effect of which is to give to one sued the benefit of a bar completed elsewhere. Even without borrowing statutes

[23] 313 U. S. 487 (1941); noted in 6 Md. L. Rev. 160 (1942).

[24] This situation is distinguished from the situation in which the forum entertains the action, but incorrectly applies its own law rather than the law of its sister State. The Court in Hughes v. Fetter recognizes the distinction, but gives no opinion.

[25] *Supra*, n. 3.

[26] McElmoyle v. Cohen, 13 Pet. 312 (U. S. 1839); Townsend v. Jemison, 9 How. 407 (U. S. 1850); Wright v. New York Underwriters' Ins. Co., 1 F. Supp. 663 (D. C. Mo. 1932).

[27] See GOODRICH, CONFLICT OF LAWS (3rd Ed., 1949), Sec. 86.

some courts have applied the limitations of a sister State where to do so would cut down the time for bringing the action considering the foreign limitation as an additional bar to the limitations of the forum.[28] Courts have been more reluctant to apply the foreign limitation when to do so would extend the forum's usual limitation.[29]

In the *Wells* case, Wells was killed in Alabama when a grinding wheel with which he was working burst. The wheel had been manufactured by the Simonds Abrasive Company, a corporation with its principal place of business in Pennsylvania. Roberta Wells, widow and administratrix of decedent, brought an action for damages in the federal court for the Eastern District of Pennsylvania against the Simonds Abrasive Company, having predicated her action upon the section of the Alabama Code[30] which permits the personal representative to bring an action for injuries causing the death of the decedent ". . . within two years from and after the death. . . ." The Pennsylvania wrongful death statute required suit to be commenced within one year.[31] The plaintiff brought the action after one year, but within two years, after the death. The District Court ordered summary judgment for the defendant, stating:[32]

> ". . . the action being a diversity suit, this Court is bound to apply the conflict of laws rule of the State of Pennsylvania and by that rule the limitation of the Alabama statute has no controlling effect. . . ."

The Court of Appeals for the Third Circuit affirmed the judgment of the District Court.[33] The Supreme Court of the United States granted certiorari to determine whether or not the Pennsylvania conflicts rule violated the Full Faith and Credit Clause of the Federal Constitution.

The Supreme Court assumed, as did the District Court, that the federal court sitting in Pennsylvania would follow the Pennsylvania conflicts rule, evidently considering as settled a rule laid down in *Klaxon Co. v. Stentor Co.*,[34] namely, that in diversity suits the federal court sitting in the forum state would apply the conflict of laws rules of

---

[28] The Harrisburg, 119 U. S. 199 (1886); Davis v. Mills, 194 U. S. 451 (1904); Dunn Const. Co. v. Bourne, 172 Miss. 620, 159 So. 841 (1935).

[29] Rosenzweig v. Heller, 302 Pa. 279, 153 A. 346 (1931); Platt v. Wilmot, 193 U. S. 602 (1904).

[30] Ala. Code (1940), Tit. 7, Sec. 123.

[31] Purdon's Pa. Stat. Ann. (1931), Tit. 12, Sec. 1603; now 1936 edition.

[32] Wells v. Simonds Abrasive Co., 102 F. Supp. 519, 520 (E. D. Pa., 1951).

[33] Wells v. Simonds Abrasive Co., 195 F. 2d 814 (3rd Cir., 1952).

[34] *Supra*, n. 23.

the forum state. The Court's only concern was the Constitutionality of the Pennsylvania conflicts rule.

In its opinion the Supreme Court said:

> "The states are free to adopt such rules of conflict of laws as they choose, *Kryger v. Wilson,* 242 U. S. 171 (1916), subject to the Full Faith and Credit Clause and other constitutional restrictions. The Full Faith and Credit Clause does not compel a state to adopt any particular set of rules of conflict of laws; it merely sets certain minimum requirements which each state must observe when asked to apply the law of a sister state."[35]

Having stated that full faith and credit required only that the States meet certain minimum requirements, the Court said that the application of the statute of limitations of the forum to a foreign substantive right was not a denial of full faith and credit.[36] The Court recognized that there were divergent views when the limitation involved was included in the section of a statute creating a right unknown to the common law.[37] Such a built-in limitation in some jurisdictions is held to be so intimately connected with the right that it must be enforced in the forum state along with the substantive right. A similar built-in limitation was included in the Alabama wrongful death statute under which this action was brought.[38] The Supreme Court said:

> "We are not concerned with the reasons which have led some states for their own purposes to adopt the foreign limitation, instead of their own, in such a situation. The question here is whether the Full Faith and Credit Clause compels them to do so. Our prevailing rule is that the Full Faith and Credit Clause does not compel the forum state to use the period of limitation of a foreign state. We see no reason in the present situation to graft an exception onto it. Differences based upon whether the foreign right was known to the common law or upon the arrangement of the code of the foreign state are too unsubstantial to form the basis for constitutional distinctions under the Full Faith and Credit Clause."[39]

---

[35] 345 U. S. 514, 516 (1953).

[36] McElmoyle v. Cohen, *supra,* n. 26; Townsend v. Jemison, *supra,* n. 26; Bacon v. Howard, 20 How. 22 (U. S. 1857).

[37] *Supra,* n. 27.

[38] *Supra,* n. 30.

[39] *Supra,* n. 35, 517.

The Court distinguishes this decision from the decisions in *Hughes v. Fetter*[40] and *First National Bank v. United Air Lines*,[41] reasoning that in the latter cases the forum laid an uneven hand on causes of action that arose within and without the forum state, but that in this case the forum applies the one-year limitation to all wrongful death actions wherever they may arise.

Having thus upheld the constitutionality of the Pennsylvania conflicts rule, the Supreme Court affirmed the judgment of the District Court that had followed the rule.

Three members of the Court, in an opinion written by Justice Jackson, dissented from the result reached in the majority opinion. Whereas the majority of the Justices felt that the difference between general limitations and built-in limitations was too unsubstantial to form the basis of a constitutional distinction under the Full Faith and Credit Clause, the dissenting Justices felt that such a distinction could and should be made by the federal courts. The dissent pointed out that where the foreign limitation operated as a bar to an action in the forum, it was readily enough applied. In *The Harrisburg*,[42] an early case cited in the dissenting opinion, Chief Justice Waite had written for a unanimous court:

> "The time within which the suit must be brought operates as a limitation of the liability itself as created, and not of the remedy alone. . . . The liability and the remedy are created by the same statutes, and the limitations of the remedy are, therefore, to be treated as limitations of the right."

Two subsequent cases, *Davis v. Mills*[43] and *Atlantic Coast Line Railroad Co. v. Burnette*[44] are cited to the same effect. Having established authority for the doctrine that the remedy is inseparable from the right, the dissent stated that ". . . the validity of a doctrine does not depend on whose ox it gores . . .", and reasoned that since the Supreme Court of Alabama had held[45] the time limit " '. . . not a statute of limitations, but of the essence of the cause of action . . .' ",[46] full faith and credit should require the federal courts to apply the built-in limitation the same way.

---

[40] *Supra*, ns. 1, 5.
[41] *Supra*, ns. 2, 15.
[42] *Supra*, n. 28, 214.
[43] *Supra*, n. 28, 454.
[44] 239 U. S. 199, 201 (1915).
[45] Parker v. Fies & Sons, 243 Ala. 348, 10 So. 2d 13, 15 (1942).
[46] 345 U. S. 514, dis. op. 519, 525, 526.

In its comments the dissent aimed not so much at whether full faith and credit required *state* courts to apply the built-in limitation of the *lex loci delicti,* but more at whether or not the *federal* courts should be so required. This stand necessitated an assault on the *Klaxon v. Stentor*[47] rule that is interpreted as requiring the federal courts to follow the conflict of laws rules of the states in which they are sitting. The *Klaxon* case, decided by a unanimous court and not seriously challenged until this time, was attacked as a misapplication of the *Erie Railroad Co. v. Tompkins*[48] principles, and further isolated by the dissent as being *dicta* in its application to cases other than those involving contracts.[49] Both the majority and the dissent were apparently in agreement as to the desirability of permitting the *states* a reasonable exercise of public policy with respect to the application of foreign limitations.

Despite the historical development of statutes of limitation which has shown a broad tendency in recent years to consider limitations as substantive, *Wells v. Simonds Abrasive Co.* indicates that a majority of the Supreme Court law at present is otherwise. The Court stated that the application of the statute of limitations of the forum to a foreign substantive right was not a denial of full faith and credit, regardless of whether the right was known to the common law or created by a statute which purported to include a substantive period of limitation.

With the Supreme Court thus holding that the forum may apply its own limitation to *shorten* the period prescribed by the *lex loci delicti,* question may be raised as to whether the Court could similarly justify permitting the forum to *extend* the period of a foreign built-in limitation (in effect permitting an action on a right that no longer exists).

---

[47] *Supra,* n. 23.

[48] 304 U. S. 64 (1938).

[49] For a good discussion of whether or not Erie Railroad v. Tompkins principles should be extended to conflict of laws cases, read COOK, THE LOGICAL AND LEGAL BASES OF THE CONFLICT OF LAWS, (1942), Ch. V.