CHAPTER V

Additional Limitations on the Application of the Law of Place of Wrong

SECTION 18

PUBLIC POLICY OF THE FORUM

In Sections 11 and 12 we have tried to set out some of the objectives which courts seek to attain by applying the law of the place of wrong in tort litigation. Notwithstanding the compelling significance of these objectives, few courts would care to undertake the blindfold adoption of every foreign rule which this choice-of-law principle might lay upon their doorstep. Suppose the law of the place of wrong appeared to be extremely harsh or unfair. The court of the forum would naturally be loath to lend the force of its authority to a decision which was entirely contrary to local ideals of justice. To meet such situations, the vague but generally accepted theory of "public policy" has been developed.1 Foreign laws which conflict with the public policy of the forum will not be accepted. This doctrine obviously leaves a good deal of discretion to reject foreign law in the hands of the judges. It is difficult to see how it could be more explicitly framed unless all foreign rules differing from those of the forum were excluded. This would completely wipe out choice-of-law principles.

In practice the public policy theory may have one of two effects, depending upon the tenour of the foreign law which the court refuses to follow. Let us consider first the situation

where the foreign law favours the plaintiff. The court, believing that law to be unjust, dismisses the plaintiff's suit. Such a decision is opposed to the purposes of choice-of-law principles. But the plaintiff, although deprived of one forum, may be able to enforce his claim elsewhere. The court merely washes its hands of the case and leaves the parties as they were.

In section 6 we endeavoured to trace historically the progress of American legal opinion regarding this problem. It apparently passed through three cycles. The problem became acute in the 1860's with the advent of death statutes, which varied a good deal from state to state. At first the courts and text writers harbourcd grave doubts as to whether foreign death statutes ought to be enforced at all. Then the courts began to enforce them in some cases, with the cautious qualification that the foreign death act must be "similar" to that of the forum. Finally they dropped the similarity requirement but continued to insist, as they do today, that a cause of action created by the law of another state must not conflict with the "public policy" of the forum. Today the verbal formula is the same for death cases, for other tort cases, for all departments of conflict of laws. In both judicial opinions and extra-judicial writings the view has been often and emphatically expressed that as between sister states, only the strongest grounds should induce one state to refuse its aid in enforcing the civil laws of another.

* This is the most common result. By disregarding a single rule of the foreign law for reasons of policy a court might also (a) make it more difficult for the plaintiff to succeed or (b) reduce the amount of his recovery.


Let us turn now to a discussion of the second effect which the public policy theory may produce. Here the foreign law favours the defendant. The court feels that it cannot reconcile that law with its own ideas of justice. So it gives an affirmative judgment for the plaintiff. This application of the public policy theory is much more drastic than the first one which we have considered. The defendant is forced to pay damages in a situation where the proper law would not have exacted them, merely because he is vulnerable at a particular forum. Such a result is especially undesirable in the conflict of laws. It is quite unusual for a court to deny a defendant the protection of the proper law upon the express ground that that law runs counter to the public policy of the forum. But in a few instances this has been done.\footnote{Johnson v. Carolina, etc., R. Co., (1926) 191 N. C. 75, 131 S. E. 390; Galef v. United States, (D. C. S. C. 1928) 25 F. (2d) 134; Fox v. Postal-Telegraph Cable Co., (1909) 138 Wis. 648, 120 N. W. 399. See also the cases discussed at p. 200, below.}

SECTION 19

THE FIRST RULE IN PHILLIPS V. EYRE AND THE CONCEPT OF PUBLIC POLICY

In section 3 above we discussed the peculiar doctrine, laid down by the Privy Council in \textit{The Halley}\footnote{The Halley, (1868) L. R. 2 P. C. 193.} and epitomized by Willes J., as the first rule in \textit{Phillips v. Eyre},\footnote{Phillips v. Eyre, (1870) L. R. 6 Q. B. 1, 28. On the subject of this section, see Hancock, "Torts in the Conflict of Laws: The First Rule in Phillips v. Eyre," (1940) 3 Univ. of Toronto L. J. 400; Lorenzen, "Tort Liability and the Conflict of Laws," (1931) 47 L. Q. Rev. 483, 497; Falconbridge, Comment, (1940) 18 Can. Bar Rev. 308.} which prevents English courts from allowing a recovery under foreign law unless "the wrong is of such a character that it would have been actionable if committed in England." While the meaning of this sentence is not transparently clear, it seems to require every plaintiff in an English court to show that the
acts of which he complains, though committed abroad, would give rise to a liability under English internal law.

If we consider this rule historically, in relation to the time and place of its enunciation, it does not appear so very absurd. In the 1860's, the idea of enforcing foreign law was still a novelty. Many judges, both in England and in America, seem to have thought that to give a judgment awarding damages, which was not based upon statutes or decisions of the jurisdiction in which they sat, would be a daring innovation. Text writers such as Wharton and Rorer had the same idea. Some judges like Sir Robert Phillimore and Mr. Justice Miller did not share this attitude. But they seem to have been exceptional. When the first rule in Phillips v. Eyre was enunciated, American courts were toying with similar theories which they did not entirely abandon for another forty years.

But in the cooperative atmosphere of modern conflict of laws, the first rule in Phillips v. Eyre is like a breath from a bygone age. As a restriction upon the normal application of choice-of-law principles and the realization of choice-of-law policies it is objectionable in its generality. Conceivably there might be cases in which an English court would not want to enforce a liability in tort created by some foreign state because that liability was utterly repugnant to English ideas of justice. But it could scarcely be contended that every tort liability unknown to English law is, from the standpoint of English law, something so immoral that it ought not to be recognized. The first rule in Phillips v. Eyre compels the court of the forum to disregard foreign laws and fundamental choice-of-law policies whether there is any special reason for doing so or not.

Cheshire, who emphatically deplores the English Court of Appeal decision in Machado v. Fontes and seeks to prove

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4 For Sir Robert Phillimore's views see The Halley, (1867) 2 Adm. & Ecc. 3.
For Mr. Justice Miller's views, see Dennick v. Cent. R. R. Co., (1880) 103 U. S. 11.
5 Machado v. Fontes, [1897] 2 Q. B. 231.
that it has been overruled, accepts the first rule in *Phillips v. Eyre* with something approaching equanimity. He argues that the rule, though severe in its generality, has the merit of simplicity. It can easily be applied and it enables the parties to know where they stand so far as English courts are concerned. Now there are undoubtedly some legal problems for which a simple, workable criterion is very desirable. In a situation where two social interests, each deserving serious consideration, conflict with one another in almost every case which comes before the courts, we may save time and trouble in the long run by adopting a rigid formula and sticking to it, instead of deciding each case upon its own merits by a nice balancing of the conflicting interests. But the instant problem is surely not one of this category. Here is no frequent conflict of delicately balanced interests. In every case where an English court is asked to enforce the law of the place of wrong, choice-of-law policies require that it should do so. On the other hand, the cases in which the foreign law is so unfair or oppressive that choice-of-law policies are opposed to English ideas of justice will probably be very few and far between. And when a case of this type does occur, the courts could easily deal with it under their general discretionary power to reject any foreign law which clashes with the “public policy” of the forum.

The first rule in *Phillips v. Eyre* was formulated at a time when the need for a rational system of conflict of laws was very dimly perceived in common-law jurisdictions and when many judges felt that there was something rather strange and perhaps a little dangerous about enforcing the law of another jurisdiction. Today that notion is obsolete. Every jurisdiction has different laws and these laws are continually changing.

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*Cheshire, Private International Law, Ed. 2 (1938) 302.*
What difference if a court in one jurisdiction enforces the laws of another? "We are not so provincial," said Judge Cardozo, "as to say that every solution of a problem is wrong because we deal with it otherwise at home." It is rather amusing to note that the liability of a shipowner for the negligence of a compulsory pilot which Lord Justice Selwyn refused to enforce in *The Halley* and upon which he expended so many high-sounding phrases, was later introduced by an act of Parliament into English internal law.

In keeping with the centripetal tendency of Anglo-Dominion jurisprudence, the first rule in *Phillips v. Eyre* has been transplanted to some of the federal Dominions where it is indeed an exotic plant. Between the territorial units of a federal state there should be friendship and cooperation. It seems incredible that because in 1868 the Privy Council refused to enforce a particular rule of Belgian law, the courts of Canadian provinces should refuse to enforce any law of a sister province which happens to differ slightly from their own. Yet this appears to be the prevailing doctrine in Canada today. One would look far to find a more striking example of "mechanical jurisprudence," blind adherence to a verbal formula without any regard for policies or consequences.

Notwithstanding Cheshire's suggestion, the application of the first rule of *Phillips v. Eyre* in practice has raised some difficult questions. In *Potter v. Broken Hill Proprietary*...
the action was brought in Victoria by the owner of a New South Wales patent for the unlawful use of his invention in New South Wales. The invention was not patented in Victoria. How should the first rule in Phillips v. Eyre be applied in a case like this? The defendant argued that if he had used the invention in Victoria where it was not patented he would have incurred no liability. Therefore "the wrong" was not actionable in Victoria so the plaintiff could not succeed. To this the plaintiff retorted that if the defendant had used an invention in Victoria which was patented in Victoria he would have been liable. This, he claimed, showed that Victoria law recognized "the wrong" of patent infringement and so "the wrong" was actionable in Victoria. "What," asked Mr. Justice A'Beckett, "are we to take to be the meaning of the words—'the wrong must be of such a character'? Do they mean that we are to regard merely the act of the defendant and consider whether, if that act were done in the state of the forum, it would give any right of action to the plaintiff or are we to import into the state of the forum the circumstances which surrounded the act in the foreign state, including the existence of a privilege conferred under the statute law of that state?" Taking the latter, more liberal view of the matter, his lordship concluded: "In the case before us the defendant was bound to observe the obligation imposed by the New South Wales patent in New South Wales. It was under no similar obligation in Victoria, but that would not prevent the Victorian court from affording redress for the wrong committed in New South Wales if our court would afford, as it undoubtedly would, redress for a wrong of the same character committed in Victoria." But the Supreme Court of Victoria was divided in opinion and the case went off upon another point.

If the first rule in *Phillips v. Eyre* is applied in a purely mechanical fashion, without regard to its underlying purpose, a little scholastic puzzle may be produced. Suppose B injures A in state X whose law gives A a cause of action. A brings suit in state Y, which subscribes to the first rule in *Phillips v. Eyre*. A must show that "the wrong was of such a character that it would have been actionable if committed in state Y." Assuming the injury to have occurred in state X, we find that the common law of state Y would have given A no right of action. But a statute has been enacted in state Y (prior to A's injury) which would permit him to recover. A argues that this statute enables him to comply with the first rule in *Phillips v. Eyre*. But B argues that since the statute was not meant to have extraterritorial effect, A's rights cannot be any greater than they were before it was passed. The simple answer to B's argument would seem to be that there is no question of giving the statute extraterritorial operation. The statute is referred to only for the purpose of determining whether or not a recovery by A would be contrary to the policy of state X. But Canadian courts have reached divergent results. 12

By its own terms the first rule in *Phillips v. Eyre* only affects foreign "wrongs," foreign causes of action which belong to the category of "torts." Other departments of the conflict of laws are exempt from its severity. An action for breach of a contractual obligation imposed by foreign law may be brought in an English court even though English internal law would not impose liability in the same circumstances. 13 Borderline questions may thus arise as to whether a particular obligation created by foreign law falls within the tort category. If it does, it must be strained through the more finely meshed


For an ingeniously mechanical explanation of the first rule in *Phillips v. Eyre*, see Note, (1937) 6 FORTNIGHTLY L. J. 297.

13 In Re Bonacina, [1912] 2 Ch. D. 394.
sieve appropriate to such obligations, instead of the general sieve of "public policy." This state of affairs produces a problem of classification. The foreign law must be classified as tort or non-tort for the purpose of this rule of English conflict of laws.

_Batthyany v. Walford_\(^\text{14}\) presented one of these borderline problems. The plaintiff was the tenant in possession of certain large estates in Austria under a _fidei commiss_. He brought action in England against the personal representative of a previous tenant claiming that the personal representative was liable, under Austrian law, for the deterioration and dilapidation of the Austrian estates during the lifetime of the previous tenant. The defendant argued that this claim based upon Austrian law was a claim sounding in tort; that therefore it must be tested by the first rule in _Phillips v. Eyre_; that upon that test it must be rejected since, under English internal law, a tenant's liability for waste could not be enforced against his estate after death. The court experienced difficulty, as one might expect, in classifying the Austrian _fidei commiss_ as tort or non-tort, even for conflict of laws purposes. At one point an Austrian lawyer was asked point-blank whether the action by the possessor against the heirs of the preceding possessor was an action founded on contract or tort. He replied: "It is not an action founded upon contract. There is no contract existing upon which it could be founded. It is an action founded upon tort, if you understand by tort what the Romans understood by the word _delictum_." But after an intensive study of the Austrian law the court decided that the liability thereby established was not a liability in tort and so it need not be tested by the first rule in _Phillips v. Eyre_. "As I understand the evidence," said Lord Justice Cotton, "the claim according to the law of Austria is not in the nature of damages for default,

\(^{14}\)_Batthyany v. Walford, (1887) 36 Ch. D. 269.
but a claim under an obligation to keep the property in as good condition as the late possessor found it, with liberty to excuse himself from making good the deficiency if he can shew that it was not caused by any default of his own. That, in my opinion, is not a claim simply depending on tort and does not come within the rule of *actio personalis moritur cum persona*.

The opinion in this case does not contain any suggestion of a functional basis for the classification ultimately adopted. This is not surprising in view of the difficulty which we have experienced in finding a functional basis for the first rule in *Phillips v. Eyre* itself.

**SECTION 20**

**PENAL LAWS**

In most states the courts and officials do not attempt to punish anyone for crimes committed against the laws of other states. A number of cases have raised the question whether or not the courts should also refuse to entertain civil actions based upon foreign laws which appear to have a punitive purpose. As examples of such foreign laws, we might cite statutes authorizing the recovery of exemplary damages or double damages.

It is difficult to see why a general rule excluding civil suits of a punitive character should be either necessary or desirable. A foreign law of this type which was regarded as harsh or unfair at the forum could always be excluded on grounds of public policy. A general rule excluding all such laws might deprive a deserving injured person of any remedy at the forum although there was no reason for doing so. The sweeping rule which forbids criminal prosecution under foreign laws is well-established in practice. But the reasons for it are mainly historical. The failure of the courts to make some desirable ex-
ceptions to it has not gone scathless. Its extension to include civil suits would be unfortunate.

In *Huntington v. Attrill* both the Supreme Court of the United States and the English Privy Council took the view that a civil action, brought by an injured party to enforce a foreign law, should not be dismissed on the ground that it was penal in its nature. Both courts were called upon to decide whether a certain New York judgment ought to be enforced in outside jurisdictions. This judgment made an officer of a corporation liable to pay certain of its debts because he had signed a false certificate regarding its affairs. It was argued that the judgment ought not to be enforced outside New York because it imposed a penalty. Both courts held that the judgment was not a penal judgment. In the Supreme Court, the majority discussed the meaning of the words “penal” and “penalty” as follows:

“Strictly and primarily they denote punishment, whether corporal or pecuniary, imposed and enforced by the State, for a crime or offence against its laws. But they are also commonly used as including any extraordinary liability to which the law subjects a wrongdoer in favour of the person wronged, not limited to the damages suffered. . . . Penal laws, strictly and properly, are those imposing punishment for an offence committed against the State and which, by the English and American constitutions, the executive of the State has the power to pardon. Statutes giving a private action against the wrongdoer are sometimes spoken of as penal in their nature, but in such cases it has been pointed out that neither the liability imposed nor the remedy given is strictly penal.”

Both courts admitted that a *qui tam* action by a common informer would fall within the penal category, but this was

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1 See STIMSON, CONFLICT OF CRIMINAL LAWS (1936) 25.
explained by the Privy Council to be unexceptional since such actions are brought on behalf of the community. So far as suits by private individuals are concerned, the punitive purpose of the recovery would seem to be immaterial. They are not penal actions in the conflict of laws. As between actions brought by a state, the distinction apparently turns upon the nature and purpose of the recovery sought. A claim for money exacted because of an offence against the laws of the plaintiff state would no doubt be rejected as quintessentially penal. But there is nothing in the reasoning of either court to preclude one state from collecting compensation for an injury or breach of contract in the courts of another.

Although the decisions in Huntington v. Attrill were based upon a factual situation involving a foreign cause of action already crystallized in a judgment, their rationale plainly extends, and was meant to extend to the treatment of foreign legal doctrines in original actions. The Supreme Court's definition of an action penal for conflict of laws purposes has been adopted in a number of cases where foreign doctrines, not judgments, were involved. In other cases courts have unfortunately taken a broader view of the penal concept. These cases are discussed in section 26, below.

SECTION 21

INJURIES TO FOREIGN LAND

In many common-law jurisdictions the courts will not entertain an action to recover damages for an injury to land

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situated in another jurisdiction.\(^1\) These courts say that such a suit is beyond their competence. Without even considering the terms of the foreign law they turn the plaintiff away. Every court which takes this view deprives the plaintiff of an available forum. The enquiring student of the law will naturally ask what is the reason for this restrictive doctrine.

It is submitted that there is no adequate reason. The point is sometimes taken in support of the doctrine that it may be necessary for the court of the forum to decide a question of title to the foreign land. That is true. But is such a question any more difficult for the court of the forum than any other question of foreign law? The application of any choice-of-law principle may require the court of the forum to investigate questions of foreign law. Why cavil at a question of title to land? There are other species of actions, regularly entertained by the courts, which sometimes involve the determination of title to land outside the jurisdiction. An action for breach of contract relating to foreign land may raise such a question. An action for conversion of timber or minerals on foreign land may turn upon the issue of ownership of the land itself. On the other hand, the question of title may never be raised. In an action brought in state X for damage to land in state Y the defendant may not dispute the plaintiff's title to the land at all. But, by virtue of the doctrine under discussion, such a suit cannot proceed.

A second point sometimes made in favour of this doctrine is based upon the court's lack of control over the subject mat-


The rule forbidding suits for trespass to foreign land does not seem to be part of the law of Louisiana or Quebec.

ter. It is, of course, generally recognized that, while a court might decide that one person had a valid title, a legal right to the enjoyment of a piece of foreign land, it could not effectively put that person in possession of such land or protect his possession. If A dispossesses B of his land in state X, the court of state Y cannot send its officers into state X to put B back into possession. The government of state X would not tolerate such action. Suppose, however, the court of state X were to award damages to B equal to the value of the land. It is argued that this would be a mere substitution of remedies and most unfair to A, because B might then return to state X, recover possession of the land, and keep both the land and the damages. Given its fullest possible significance, this argument merely proves that the court in state X ought not to award damages equal to the value of the land but should only attempt to compensate B for the actual injury to the land resulting from A's acts. B could then recover his land without injustice to A. However, even if the court in state Y did award full damages, the court in state X could easily avoid any injustice by requiring B to repay part of these damages to A before allowing him to resume possession.

The doctrine that no action will lie for an injury to foreign land is a very old one. In *Skinner v. East India Co.*³ (1665) it was laid down by all the judges, reporting to the House of Lords. It is a lingering vestige of the ancient rule that the venue of every fact must be truly stated in the plaintiff's pleading so that a jury can be summoned from that place. In the sixteenth century the courts relaxed this rule so far as to allow a plaintiff whose cause of action arose outside England to say in some cases, that it arose in Cheapside. But this in-

³ See British South Africa Co. v. Companhia de Moçambique, [1893] A. C. 602, per Lord Herschell at p. 625.

³ Skinner v. East India Co., (1665) 6 How. St. Tr. 710.
dulgence was never extended to plaintiffs seeking recovery upon a local cause of action. And the category of local causes of action included suits for the recovery of land or damages for trespass to land.\(^4\)

Lord Mansfield allowed several suits based upon injuries to land outside England to be tried before him, but after his death the old rule was re-established.\(^5\) In *Livingston v. Jefferson*\(^6\) the problem arose before a United States Circuit Court composed of Chief Justice Marshall and District Judge Tucker. Chief Justice Marshall said he could see no good reason for the rule but he adopted it for the sake of consistency and continuity. His half-hearted decision to uphold the doctrine became a leading case which has been followed by many American courts.

In *Little v. Chicago, etc., R. Co.*\(^7\) the Supreme Court of Minnesota refused to follow *Livingston v. Jefferson*. The plaintiff alleged that one of the defendant railway company's engines had started a fire which injured his land in Wisconsin. The court allowed the suit to proceed, saying:

"We recognize the respect due to judicial precedents and the authority of the doctrine of stare decisis; but, inasmuch as this rule is in no sense a rule of property, and as it is purely technical, wrong in principle, and in practice often results in a total denial of justice, and has been so generally criticized by eminent jurists, we do not feel bound to adhere to it notwithstanding the great array of judicial decisions in its favour. If the courts of England, generations ago, were at liberty to invent a fiction in order to change the ancient rule that all actions were local and then fix their own limitations to the application of the fiction, we cannot see why the courts of the present day should deem themselves slavishly bound by those limitations."

\(^4\) See p. 2, above.
\(^7\) *Little v. Chicago, etc., R. Co.*, (1896) 65 Minn. 48, 67 N. W. 846.
In *British South Africa Co. v. Companhia de Moçambique*\(^8\) the House of Lords gave exhaustive consideration to the problem of suits for trespass to foreign lands and decided that they should not be entertained in England. Unlike American courts, their lordships did not disparage the doctrine but appear to have approved it. Lord Chancellor Herschell, who delivered the lengthiest opinion (there were no dissents), put forward in support of the doctrine the various arguments which we have considered. He also took the position that the doctrine depended, in some measure, upon general principles of international law. This argument appears to have been based solely upon a quotation from Story. His lordship concluded that the grounds for the doctrine were "substantial and not technical."

The refusal of the courts to try actions for trespass to foreign land has naturally raised a number of border-line issues regarding objects which are sometimes treated as part of the land, such as fences, timber, growing crops, minerals, etc. The general trend of decision here appears to limit the scope of the term "land" as much as possible. Considering the unsatisfactory nature of the general rule, this is only to be expected. In *Brown v. Hedges* (1708),\(^9\) the court of King's Bench upheld the transitory character of a suit in trover for cutting timber in Ireland. No significance was attached to the objection that it might be necessary to pass upon the plaintiff's title to the land. Subsequent decisions fully support this view.\(^10\) Suits to recover the value of minerals taken from land outside the jurisdiction have also been assigned to the category of transitory actions.\(^11\)

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\(^8\) *British South Africa Co. v. Companhia de Moçambique*, [1893] A. C. 602.


In *Boslund v. Abbotsford Lumber Co.* a fire spread from the defendant's land and burned over the plaintiff's land in the state of Washington. The action was brought in British Columbia. The court refused to allow compensation for injuries to the soil, fences or barns but awarded damages for the burning of timber, growing crops, and grass in the pastures.

Another problem which we must consider is that of applying the doctrine of this section to multiple contact cases. Suppose A, in state X, does some act which causes injury to B's land situated in state Y. It does not seem to have been doubted that B can bring suit in state Y where the damage was suffered. A number of courts have also taken the view that the court of state X has jurisdiction because the allegedly wrongful act of the defendant was done there. But there are some decisions to the contrary, holding that the action may only be brought in the state where the injury occurred.

**SECTION 22**

**LIMITATIONS CREATED BY THE LAW OF THE PLACE OF WRONG**

In some states statutes have been enacted which establish a tort cause of action with the proviso that suits to enforce this cause of action must be brought in the courts of that state and not elsewhere. A person who has been injured in a state where

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13 See also *Ducktown Sulphur, etc., Co. v. Barnes,* (1900 Tenn.) 60 S. W. 593 (claim for injuries to grass, crops, trees by noxious vapours held to be transitory.)


ADDITIONAL LIMITATIONS

such a statute has been passed may attempt to bring an action upon it in another jurisdiction. Should the court of the forum accept the restriction in the law of the place of wrong and dismiss the suit or should it attempt to give a transitory remedy in defiance of this particular rule of the law of the place of wrong?

A rigid compliance with the obligation and vested rights theories would seem to require that the action at the forum be dismissed. The law which created the right or obligation has limited it so that it can only be enforced in one court. But there is still a way out; we can distinguish between the right or obligation and the mode of its enforcement. The law of the place of wrong creates the obligation, the law of the forum determines the mode of its enforcement. Thus we might allow a recovery at the forum and still profess our adherence to the obligation theory. This solution apparently did not satisfy Mr. Justice Holmes.¹

Let us consider the actual social interests at stake. To prevent the parties from litigating their controversy outside the state of wrong may put them to some inconvenience. It may deprive the plaintiff of all recourse against the defendant if the latter keeps himself and his assets out of the state of wrong. On the other hand, by refusing to let the plaintiff collect his claim at the forum we show proper respect, "comity," for the government of the state of wrong. Actual decisions upon the point are in conflict. Some courts have refused to recognize jurisdictional restrictions in the law of the place of wrong ² but others have shown a disposition to give effect to them.³

In *Tennessee Coal, Iron & Railroad Co. v. George* an attempt was made to use the full faith and credit clause to prevent an outside court from disregarding a restriction contained in the law of the place of wrong. A workman who had been injured in Alabama brought an action against his employer in Georgia. Alabama law purported to give the courts of that state exclusive jurisdiction over such claims. The Georgia court refused to follow this rule of Alabama law, and allowed the action to proceed to judgment. The Supreme Court of the United States held that the full faith and credit clause did not oblige the Georgia court to comply with the Alabama rule.

So far in the discussion we have assumed that the cause of action created by the law of the place of wrong is one which could be justly administered by the court of the forum. The cause of action in question might, of course, be of a peculiar character so that it could not be administered by the court of the forum without subjecting the defendant to the risk of a recovery more onerous than that which the law of the place of wrong would allow. For instance, the law of the place of wrong might, as in *Slater v. Mexican National R. Co.*, contemplate a judgment for a long series of contingent payments, which the court of the forum could not conveniently enforce. In such a situation there is authority for the view that the court of the forum should take no action at all but should dismiss the plaintiff’s claim without prejudice to his existing rights. But the reasons for adopting this course are quite independent of any express provision in the law of the state of wrong.

There is another situation which must be distinguished from the problem which forms the theme of this section.

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6 See section 17, above.
Sometimes a state creates a cause of action and then purports to prevent other states, not only from enforcing this cause of action, but from allowing persons entitled to it any recovery whatsoever with respect to facts which might form the basis for the cause of action in question. Workmen's compensation laws often purport to have this effect. The question may then arise whether or not an outside court ought to abstain from applying its own local law in such a case. The further question may also be raised: does the full faith and credit clause compel it to do so? This problem is discussed in detail in section 47.