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CONFLICT OF LAWS - FEDERAL EMPLOYERS LIABILITY ACT - JURISDICTION OF STATE COURTS OVER FOREIGN CAUSES OF ACTION BETWEEN NONRESIDENT PARTIES

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COMMENTS

CONFLICT OF LAWS — FEDERAL EMPLOYERS LIABILITY ACT — JURISDICTION OF STATE COURTS OVER FOREIGN CAUSES OF ACTION BETWEEN NONRESIDENT PARTIES — The historical classification of actions for personal injuries as transitory imposes no limitation upon the prosecution of foreign suits, either by reference to the residence of the parties or the place in which the action arises. Whenever jurisdiction of the person of the defendant is obtained, the power to hear and determine this type of tort action inheres in every court having jurisdiction of the subject matter.[1] An extreme application of the doctrine of the transitory character of personal actions is not infrequently permitted under the statutes as to venue, wherever suits between parties, all of whom are nonresidents of the forum, are brought upon foreign causes of action.

[1] Atchison, Topeka, & Santa Fe R. R. v. Weeks, (C. C. A. 5th, 1918) 254 Fed. 513, reversing 248 Fed. 970 (1918), cert. denied 249 U. S. 602, 39 Sup. Ct. 259 (1919); Metcufskie v. Philadelphia & Reading Ry., 97 N. J. Law 100, 116 Atl. 170 (1922); Howard v. Nashville, C. & St. L. R. R., 133 Tenn. 19, 179 S. W. 380 (1915), and cases cited; Loranger v. Nadeau, 215 Cal. 362, 10 Pac. (2d) 63 (1932); Keane Wonder Mining Co. v. Cunningham, (C. C. A. 9th, 1915) 222 Fed. 821, and cases cited.

The duty of the court to decide the cause before it, in such situations, is counterbalanced by various considerations of practical convenience. Already-crowded dockets are necessarily further burdened by foreign litigation; as the cost of justice is by no means covered by the fees, local taxpayers are as a result subjected to additional and perhaps unnecessary taxes. In addition, the choice of the foreign court by the plaintiff is, it would seem, not infrequently motivated by purposes which do not deserve to be encouraged: namely, to secure procedural advantages offered by the foreign court or a more favorable jury or even to harass the defendant with a view to swelling the value of the claim or securing a better settlement. In such situations, courts have at times shown a tendency to exclude undesirable litigation by nonresidents.[2]

By legislation and judicial decision, various devices have been introduced to restrict litigation by nonresidents upon foreign causes of action. In the first place, venue statutes have been employed by state legislatures to impose limitations on the exercise of power by the court.[3] Since the judicial power is derived from the legislature, the propriety of legislative regulation of the type of suit to be entertained by the forum is unquestioned.[4] Where litigation upon a domestic cause of action involves resident parties, the effect of such statutes is to confine the enforcement of any transitory action to a particular locality by designating the place of trial. The determination of the venue of dif-

[2] Blair, "The Doctrine of Forum Non Conveniens in Anglo-American Law," 29 COL. L. REV. 1 at 20 (1929); 41 HARV. L. REV. 387 (1928); 32 A. L. R. 6 at 43 (1924). See particularly 34 COL. L. REV. 1116 (1934).

[3] Jurisdiction and venue must be distinguished. The former is the power to hear and determine a cause; the latter directs the geographical subdivision in which the action must be tried, and has no relation to the jurisdiction of the court. Paige v. Sinclair, 237 Mass. 482, 130 N. E. 177 (1921); Southern Sand & Gravel Co. v. Massaponax Sand & Gravel Corp., 145 Va. 317, 133 S. E. 812 (1926); Hartford Life Ins. Co. v. Johnson, (C. C. A. 8th, 1920) 268 Fed. 30.

The power to render a valid judgment is completed by jurisdiction of the subject matter and the person. Ex parte Craig, (C. C. A. 2d, 1922) 282 Fed. 138, cert. denied 258 U. S. 604, 42 Sup. Ct. 272 (1921), cert. granted 260 U. S. 714, 43 Sup. Ct. 90 (1922), and aff'd 263 U. S. 255, 44 Sup. Ct. 103 (1923).

The venue of an action for damages for trespass to land is sometimes regarded as a limitation on the power of the court. *Cf.* 11 MINN. L. REV. 260 (1913); SCOTT, FUNDAMENTALS OF PROCEDURE IN ACTIONS AT LAW (1922).

[4] Missouri Pacific R. R. v. Clarendon Boat Oar Co., 257 U. S. 533, 42 Sup. Ct. 210 (1922); Chambers v. Baltimore & Ohio R. R., 207 U. S. 142, 28 Sup. Ct. 34 (1907); Canadian Northern R. R. v. Eggen, 252 U. S. 553, 40 Sup. Ct. 402 (1920); Walton v. Pryor, 276 Ill. 563, 115 N. E. 2, L. R. A. 1918E 914 (1916), writ of error denied, 245 U. S. 675, 38 Sup. Ct. 10 (1917); Loftus v. Pennsylvania R. R., 107 Ohio St. 352, 140 N. E. 94 (1923); 74 A. L. R. 710 at 719 (1931). *Cf.* Daniel v. Daniel, 116 Wash. 82, 198 Pac. 728 (1921).

ferent actions being entirely within legislative discretion,[5] uniformity among states as to the place of trial is not maintained, but generally the defendant is privileged to limit the prosecution of a transitory action to the county of the situs of the cause [6] or of the residency of either of the parties.[7] These limitations on the prosecution of the action are maintainable only so long as the defendant insists upon his privilege. Failure to object to the impropriety of the venue enables the transitory action to be enforced without regard to the place of trial provided under the venue statutes.[8] The result of waiver of the privilege as to venue in such instances is not undesirable, for no reasons of convenience require a court to refuse jurisdiction. However, when the litigation concerns a foreign cause of action between nonresidents, the expediency of entertaining the suit is more questionable. The restrictions applying to domestic litigation between residents do not ordinarily exclude such litigation,[9] but by various other statutes the forum

[5] Interstate Cooperage Co. v. Eureka Lumber Co., 151 N. C. 455, 66 S. E. 434 (1909); Allen v. Smith, 84 Ohio St. 283, 95 N. E. 829, Ann. Cases 1912C 611 (1911).

[6] Daniels v. Yarhola Pipe Line Co., (Mo. App. 1918) 206 S. W. 600; Dryer v. Director-General of Railroads, 66 Mont. 298, 213 Pac. 210 (1923); Shugart v. Cruise, (C. C. A. 4th, 1919) 260 Fed. 36.

[7] Price v. Lucky Four Gold Mining Co., 56 Colo. 163, 136 Pac. 1021 (1913); Producers' Livestock Marketing Ass'n v. Livingston, 216 Iowa 1257, 250 N. W. 602 (1933); State ex rel. Francis v. Waller, (Tex. Civ. App. 1919) 211 S. W. 322; Smith v. Provident Savings Life Assur. Soc., 159 Mich. 167, 123 N. W. 588 (1909).

[8] Interior Construction Co. v. Gibney, 160 U. S. 217, 16 Sup. Ct. 272 (1895); Moore v. Norfolk & W. Ry., 124 Va. 628, 98 S. E. 635 (1919); Romero v. Hopewell, 28 N. M. 259, 210 Pac. 231 (1922); Sanders v. Atlantic Coast Line Ry., 114 S. C. 164, 103 S. E. 564 (1920). See also Haynes v. Woods, 151 Tenn. 163, 268 S. W. 632 (1925); Pittsburg, C. C. & St. Louis Ry. v. Daniels & Pickering Co., 71 Ind. App. 518, 125 N. E. 426 (1919).

Another aspect of the relation between jurisdiction and venue presents itself in the case of state statutes that seek to limit the jurisdiction over transitory actions to the courts of the enacting state. It is well settled that a court of one state is not bound under the full faith and credit clause of the federal Constitution to refuse jurisdiction of a cause arising in another state because of a provision of the statute of the latter purporting to restrict jurisdiction to its own courts. Atchison, Topeka, & Santa Fe R. R. v. Sowers, 213 U. S. 55, 29 Sup. Ct. 397 (1909); Tennessee Coal, Iron & R. Co. v. George, 233 U. S. 354, 34 Sup. Ct. 587, L. R. A. 1916D 685 (1914). The situations must be distinguished, for in these cases the inquiry is made as to whether under the full faith and credit clause one state must give full faith and credit to a law of venue of a sister state, which question is not strictly analogous to the point that the rules of venue of a state have no effect upon the jurisdiction of its own courts over transitory actions.

[9] Wolfe v. Baltimore & Philadelphia Steamboat Co., 29 Del. 352, 99 Atl. 304 (1916); Dodgem Corp. v. D. D. Murphy Shows, Inc., 96 Ind. App. 325, 183 N. E. 699 (1932); Allen v. Bass., (Tex. Civ. App. 1932) 47 S. W. (2d) 426. *Cf.* Jefferson Co. Savings Bank v. Carland, 195 Ala. 279, 71 So. 126 (1916); Shaffer v. Harbaugh, 105 Kan. 681, 185 Pac. 1049 (1919).

may be relieved of the duty to assume jurisdiction in certain situations. These additional restrictions have taken various forms. Plaintiff's access to the forum may be conditioned upon his residency therein,[10] the domestic origin of his action,[11] or the citizenship of the deceased if the plaintiff's claim is for wrongful death.[12] Other statutes delegate the question of the expediency of entertaining the suit to the discretion of the trial court, to be exercised with regard to the factors peculiar to the case and to general considerations of policy.[13] But it is to be observed that no restrictions, whether imposed by the legislature or the judiciary, have undertaken to exclude litigation when it possesses some nexus with the forum, either by virtue of the residency of either party therein, or the domestic origin of the action.[14]

A second device employed to restrict litigation upon foreign causes of action between nonresidents is the doctrine of *forum non conveniens*, which admits an element of judicial discretion to supplement the inadequacies of general rules as to venue. Judicial discretion as to the

[10] Loftus v. Pennsylvania R. R., 107 Ohio St. 352, 140 N. E. 94 (1923). The requirement of residency is limited to cases involving the prosecution of a foreign tort against a nonresident defendant. *Cf.* Baltimore & Ohio R. R. v. Baillie, 112 Ohio St. 567, 148 N. E. 233 (1925).

[11] Walton v. Pryor, 276 Ill. 563, 115 N. E. 2, L. R. A. 1918E 914 (1916), writ of error denied 245 U. S. 675, 38 Sup. Ct. 10 (1917); Missouri Pacific R. R. v. Clarendon Boat Oar Co., 257 U. S. 533, 42 Sup. Ct. 210 (1922); Dougherty v. American McKenna Process Co., 255 Ill. 369, 99 N. E. 619, L. R. A. 1915F 955, Ann. Cases 1913D 568 (1912); State ex rel. Bossung v. District Court, 140 Minn. 494, 168 N. W. 589, 1 A. L. R. 145 (1918).

[12] Chambers v. Baltimore & Ohio R. R., 207 U. S. 142, 28 Sup. Ct. 34 (1907). A shorter statute of limitations in the forum than the place of the accrual of the action effectively restricts the exercise of power by the court. Canadian Northern R. R. v. Eggen, 252 U. S. 553, 40 Sup. Ct. 402 (1920).

[13] The New York statute is illustrative. Douglas v. New York, New Haven, & Hartford R. R., 279 U. S. 377, 49 Sup. Ct. 355 (1929); Murnan v. Wabash R. R., 246 N. Y. 244, 158 N. E. 508, 54 A. L. R. 1522 (1927); Richter v. Chicago, R. I. & P. Ry., 123 Misc. 234, 205 N. Y. S. 128 (1924). Prior to 1913, the statute of New York refused the forum as the place of enforcement of a foreign cause between nonresidents. Robinson v. Oceanic Steam Nav. Co., 112 N. Y. 315, 19 N. E. 625, 2 L. R. A. 636 (1889).

[14] Cooper v. Lake Wood Co., 199 Ala. 633, 75 So. 307 (1917); Palmer v. Lowe, 194 N. C. 703, 140 S. E. 718 (1927); Yockey v. St. Louis-San Francisco Ry., 183 Ark. 601, 37 S. W. (2d) 694 (1931); Herrmann v. Franklin Ice Cream Co., 114 Neb. 468, 208 N. W. 141 (1926); Daniels v. Detroit, G. H. & M. Ry., 163 Mich. 468, 128 N. W. 797 (1910). For cases involving the exercise of judicial discretion in New York when the litigation had some connection with the forum, see Gregonis v. Philadelphia & Reading Coal & Iron Co., 235 N. Y. 152, 139 N. E. 223, 32 A. L. R. 1 (1923); Hunter v. Hosmer, 142 Misc. 382, 254 N. Y. S. 635 (1931); Jacobsen v. United States Shipping Board Emergency Fleet Corp., 128 Misc. 138, 217 N. Y. S. 856 (1926); Jacobs v. Central Vermont Ry., 132 Misc. 144, 228 N. Y. S. 705 (1928).

inconvenience of the forum as the place of trial is of course dependent on the facts peculiar to the particular case presented, but the factors which may justify a refusal of jurisdiction can be roughly classified into three general heads: considerations affecting the administration of justice within the forum, matters affecting the relations of the parties, and difficulties arising from the nature of the subject matter. Factors included in the first class are the primary right of the citizen to access to the courts of his own state, congestion of court calendars, and the taxpayers' interest in the economical administration of justice. Within the second class fall those situations where the forum is employed by the alien plaintiff for the purpose of harassing the alien defendant, or where the plaintiff has equal opportunity to sue the defendant at the place where the cause of action accrued. Illustrative of the third classification is the inexpediency of providing a forum for purely personal torts, such as libel, slander, or injuries to the person, due to the difficulty, for example, of determining with exactness the status and rights of the parties as contemplated by the foreign law.[15]

A third method of limiting foreign litigation has been more recently developed under the interstate commerce clause [16] as a result of the decision in *Davis v. Farmer's Co-operative Co.*[17] In this case the application of a Minnesota statute to a foreign corporation, an interstate carrier whose only activity within the state was the maintenance of a soliciting agent, so as to require it to submit to the jurisdiction of the forum, was held unconstitutional. In the case presented, suit in the forum, which necessitated the production of nonresident witnesses and involved a serious interruption of business, was held to constitute an unreasonable burden on interstate commerce. What facts are necessary to constitute an unreasonable burden is questionable, but at least the exclusive interstate activity of a carrier not operating a line

[15] See Blair, "The Doctrine of Forum Non Conveniens," 29 COL. L. REV. 1 (1929); 30 MICH. L. REV. 610 (1932); 32 A. L. R. 6 at 43 (1924). For cases recognizing the doctrine, see Bethlehem Fabricators, Inc. v. H. D. Watts & Co., (Mass. 1934) 190 N. E. 828; Universal Adjustment Corp. v. Midland Bank, Ltd., of London, 281 Mass. 303, 184 N. E. 152 (1933); Stewart v. Litchenberg, 148 La. 195, 86 So. 734 (1920); Sielcken v. Sorensen, 111 N. J. Eq. 44, 161 Atl. 47 (1932); Waisikoski v. Philadelphia & Reading Coal & Iron Co., 173 App. Div. 538, 159 N. Y. S. 906 (1916), aff'd 178 App. Div. 932, 165 N. Y. S. 1117 (1917), aff'd 228 N. Y. 581, 127 N. E. 923 (1920), and New York cases cited in notes 13 and 14, supra; Gober v. Federal Life Ins. Co., 255 Mich. 20, 237 N. W. 32 (1931).

[16] United States Constitution, Art. 1, sec. 8, cl. 3: "The Congress shall have power . . . to regulate Commerce . . . among the several States. . . ."

[17] 262 U. S. 312, 43 Sup. Ct. 556 (1923). See Blair, "The Doctrine of Forum Non Conveniens," 29 COL. L. REV. 1 (1929); Foster, "Place of Trial in Civil Actions," 43 HARV. L. REV. 1217 (1930); 13 MINN. L. REV. 485 (1929).

within the state will require dismissal of a foreign suit on the principle of this decision.[18]

The only limitations on the employment of these legislative and judicial devices to restrain the liberty to litigate foreign causes in any jurisdiction derive from the Constitution.[19] Thus, the privileges and immunities clause [20] operates to restrict discriminations against important types of foreign litigation, since it guarantees to the citizens of the different states substantially the rights enjoyed by the citizens of the forum. Yet this limitation does not entirely exclude the exercise of legislative and judicial discretion as to the admission of foreign suits.[21] Certain discriminations are reasonable. Thus, by certain decisions of the Supreme Court of the United States, discriminations against foreign litigation based on the residency of the plaintiff [22] or the situs of the transaction have been admitted.[23] On the other hand, numerous state decisions proceed upon the theory that the privileges and immunities clause excludes a discretionary power to exclude foreign litigation.[24]

[18] Atchison, Topeka, & Santa Fe R. R. v. Wells, 265 U. S. 101, 44 Sup. Ct. 469 (1924); Michigan Central R. R. v. Mix, 278 U. S. 492, 49 Sup. Ct. 207 (1929); Denver & Rio Grande Western R. R. v. Terte, 284 U. S. 284, 52 Sup. Ct. 152 (1932).

Cases in which dismissal was denied: Hoffman v. State ex rel. Foraker, 274 U. S. 21, 47 Sup. Ct. 485 (1926); St. Louis, Brownsville, & Mexico R. R. v. Taylor, 266 U. S. 200, 45 Sup. Ct. 47 (1924); Bright v. Wheelock, 323 Mo. 840, 20 S. W. (2d) 684 (1929); Boright v. Chicago, Rock Island, & P. R. R., 180 Minn. 52, 230 N. W. 457 (1930); Taylor v. Southern Ry., 259 Ill. App. 271 (1930). *Cf.* International Milling Co. v. Columbia Transp. Co., 292 U. S. 511, 54 Sup. Ct. 797 (1934), noted in 34 COL. L. REV. 1135 (1934).

Plaintiff's residency within the forum prevents dismissal. Maverick Mills v. Davis, Director General, (D. C. Mass. 1923) 294 Fed. 404; Griffin v. Seaboard Air Line Ry., (D. C. W. D. Mo. 1928) 28 F. (2d) 998. But see Thurman v. Chicago, Milwaukee, & St. Paul R. R., 254 Mass. 569, 151 N. E. 63 (1926).

[19] St. Louis, Iron Mountain, & Southern R. R. v. Taylor, 210 U. S. 281, 28 Sup. Ct. 616 (1908), and cases cited in note 4, supra.

[20] United States Constitution, Art. 4, sec. 2, cl. 1, provides that "The citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

[21] See 17 HARV. L. REV. 54 (1903); 18 CAL. L. REV. 159 (1930); 41 HARV. L. REV. 387 (1928).

[22] Douglas v. New York, New Haven, & Hartford R. R., 279 U. S. 377, 49 Sup. Ct. 355 (1929); Barrow Steamship Co. v. Kane, 170 U. S. 100, 18 Sup. Ct. 526 (1897). The decision of the Douglas case apparently settles any doubt that residency and citizenship are synonymous. In Blake v. McClung, 172 U. S. 239, 19 Sup. Ct. 165 (1898), any distinction between the two terms was denied. However, later cases maintained the distinction adopted by the Douglas case. La Tourette v. McMaster, 248 U. S. 465, 39 Sup. Ct. 160 (1918); Maxwell v. Bugbee, 250 U. S. 525, 40 Sup. Ct. 2 (1919). But see Travis v. Yale & Towne Mfg. Co., 252 U. S. 60, 40 Sup. Ct. 228 (1919). See generally, 24 ILL. L. REV. 826 (1930).

[23] Missouri Pacific R. R. v. Clarendon Boat Oar Co., 257 U. S. 533, 42 Sup. Ct. 210 (1922).

[24] State ex rel. Pacific Mut. Life Ins. Co. v. Grimm, 239 Mo. 135, 143 S. W.

The decision in *Douglas v. New York, New Haven, & Hartford R. R.*, upholding a refusal of the New York court to entertain a suit upon a foreign cause of action instituted by a nonresident against a foreign corporation, however, does not substantiate this position since its effect is to recognize the constitutional propriety, in a suitable case, of the doctrine of *forum non conveniens*.

The recent case of *McKnett v. St. Louis and San Francisco R. R.*[25] focuses attention upon the constitutional limitations affecting the power of state courts in the application of venue statutes and the exercise of discretion in actions in which federal statutes are sought to be enforced. The case arose under the Federal Employers Liability Act,[26] section 56 of which expressly provides that the jurisdiction of the federal courts shall be concurrent with that of the state courts in those cases involving the prosecution of the rights created by the act. The plaintiff, a resident of Tennessee, sued an interstate carrier in Alabama, the action arising in Tennessee. The Alabama court refused to entertain the case [27] on the ground that the Alabama statute prescribing the venue of foreign causes of action arising under the common law or statutes of another state did not confer jurisdiction of an action arising under federal statutes.[27] The Supreme Court of the United States reversed the decision, holding that, the Alabama court having otherwise general jurisdiction over suits for personal injuries occurring without the state,[28] a construction of the Alabama statute which discriminated against rights of action under the federal statutes as such involved a violation of the privileges and immunities clause.

483 (1912); Herrmann v. Franklin Ice Cream Co., 114 Neb. 468, 208 N. W. 141 (1926); State ex rel. Smith v. Belden, 205 Wis. 158, 236 N. W. 542 (1931); Morgan v. Pennsylvania R. R., 148 Va. 272, 138 S. E. 566 (1927); McDonald v. McArthur Bros. Co., 154 N. C. 122, 69 S. E. 832 (1910); 32 A. L. R. 6 at 12 (1924); 74 A. L. R. 719 (1931).

The courts of Minnesota are also committed to this view, as a result of which their dockets are flooded with litigation of foreign suits between nonresidents. For an excellent discussion of the situation in that state, see 31 MICH. L. REV. 963 (1933); Boright v. Chicago, Rock Island & P. R. R., 180 Minn. 52, 230 N. W. 457 (1930). *Cf.* Doyle v. Northern Pacific Ry., (D. C. Minn. 1932) 55 F. (2d) 708, noted in 46 HARV. L. REV. 521 (1933).

[25] 292 U. S. 230, 54 Sup. Ct. 690 (1934), noted in 48 HARV. L. REV. 125 (1934).

[26] U. S. C. tit. 45, secs. 51, 59. A right to damages for personal injuries caused by the negligence of the interstate carrier was created in the employee engaged in interstate commerce.

[27] 227 Ala. 349, 149 So. 822 (1933), noted in 34 COL. L. REV. 558 (1934).

[28] The venue statute involved in the McKnett case (section 5681, Code 1928) did not limit the power of the Alabama court to entertain a foreign suit between nonresidents when the action arose under the statutes of another state. Jefferson Island Salt Co. v. E. J. Longyear Co., 210 Ala. 352, 98 So. 119 (1923).

In analyzing the question of enforcement of federal rights in state courts, it is essential to appreciate the relation of the state and federal governments in regard to concurrent enforcement of rights created by Congress. Clearly, Congress cannot confer jurisdiction directly upon the state courts, for the latter derive their power immediately from the state legislature. Yet indirectly this result may be accomplished by federal legislation conferring upon the employee a right to damages for personal injuries. The nature of the relation between the two governments gives rise to the constitutional power of the state courts to enforce the federal rights, because the laws of the United States, being those of a paramount sovereignty, become the laws of the state. Hence, a state court of general jurisdiction, charged with the enforcement of all laws in effect within the state, is obliged to enforce the right created by Congress, and a court which has been created by the state legislature with jurisdiction to entertain the class of actions in question is, by virtue thereof, invested with power to entertain the action under the federal statute.[29] Refusal to do so on the ground that the action originated in federal legislation amounts to a violation of the duties imposed upon the state judiciary by the Constitution.[30] On the other hand, it is true that the Federal Employers Liability Act does not require a state to furnish a court for the enforcement of rights thereby created. Where the limitation on the exercise of jurisdiction is based on the residency of the plaintiff or the situs of the injury, the act does not impose an obligation to entertain the claim.[31] But, except for such

[29] Second Employers' Liability Cases, 223 U. S. 1, 32 Sup. Ct. 169, 38 L. R. A. (N. S.) 44 (1912), reversing 82 Conn. 373, 73 Atl. 762 (1909); Claflin v. Houseman, 93 U. S. 130, 23 L. ed. 833 (1876); White v. Missouri Pacific R. R., (Mo. 1915) 178 S. W. 83; Taylor v. Southern Ry., 350 Ill. 139, 182 N. E. 805 (1932); St. Louis-San Francisco R. R. v. Pearson, 170 Ark. 842, 281 S. W. 910 (1926); St. Louis, Iron Mountain, & Southern Ry. v. Conley, (C. C. A. 8th, 1911) 187 Fed. 949; Benson, "Enforcement of Right under Federal Law in State Court," 1 Va. L. Reg. (N. S.) 721 (1916); THORNTON, A TREATISE ON THE FEDERAL EMPLOYERS' LIABILITY AND SAFETY APPLIANCE ACTS, 2d ed., 210 (1912); 41 HARV. L. REV. 387 (1928); 39 YALE L. J. 388 (1930); 15 C. J. 1155.

[30] United States Constitution, Art. 6, cl. 2: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

[31] Ex parte Crandall, (C. C. A. 7th, 1931) 53 F. (2d) 969, cert. denied Crandall v. Habbe, 285 U. S. 540, 52 Sup. Ct. 312 (1932); Douglas v. New York, New Haven, & Hartford R. R., 279 U. S. 377, 49 Sup. Ct. 355 (1929); Loftus v. Pennsylvania R. R., 107 Ohio St. 352, 140 N. E. 94 (1923); Walton v. Pryor, 276 Ill. 563, 115 N. E. 2, L. R. A. 1918E 914 (1916); Murnan v. Wabash R. R., 246 N. Y. 244, 158 N. E. 508, 54 A. L. R. 1522 (1927). However, federal courts may not refuse jurisdiction. Southern Ry. v. Cochran, (C. C. A. 6th, 1932) 56 F. (2d) 1019.

limitations as these arising from the general doctrines as to venue, it is not open to the state, under the decisions of the Supreme Court, to refuse litigation of a federal right.[32]

Federal regulation of the exercise of jurisdiction by state courts in federal cases raises the larger question of policy as to how far the federal courts, under the authority of the Constitution, may go in requiring state courts to assume jurisdiction over federal litigation in the face of limitations imposed thereon by the state legislature. To allow a state court to refuse to enforce rights of action under federal statutes solely because of their source would permit the effect of such statutes largely to be nullified.[33] The policy of the forum cannot be an objection to the enforcement of rights created by federal legislation; due to the paramount position of the federal law within the state, federal policy becomes that of the state.[34] In order to provide effective remedies for the enforcement of rights created by Congress, state courts, in the absence of a general limitation on their power to entertain foreign suits between nonresidents, should not be allowed to refuse jurisdiction of actions arising under federal statutes merely because the benefits of the federal law are sought.

This conclusion is supported by various analogies as to the power of a state to limit the jurisdiction of its courts. Peculiarly illustrative is the effect of the operation of the full faith and credit clause[35] in certain situations. This constitutional provision and the Act of 1790,[36]

[32] Rights created by the Interstate Commerce Act (24 Stat. 379, c. 104), and the Carmack Amendment (34 Stat. 584, c. 3591, sec. 7, par's. 11, 12) must be enforced by the state courts if they possess otherwise general jurisdiction. Galveston, Harrisburg, & San Antonio R. R. v. Wallace, 223 U. S. 481, 32 Sup. Ct. 205 (1912); State ex rel. St. Louis, Brownsville, & Mexico R. R. v. Taylor, 266 U. S. 200, 45 Sup. Ct. 47 (1924).

[33] See 24 ILL. L. REV. 826 (1930).

[34] This was emphatically asserted by Mr. Justice Van Devanter in the Second Employers' Liability Cases, 223 U. S. 1, 32 Sup. Ct. 169, 38 L. R. A. (N. S.) 44 (1912).

[35] United States Constitution, Art. 4, sec. 1: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

[36] Act of Congress of 1790, U. S. Rev. Stat., sec. 905 (U. S. C. tit. 28, sec. 687): "The records and judicial proceedings of the courts of any State or Territory, or of any such country [subject to the jurisdiction of the United States], shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, 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."

according to Mr. Justice Marshall in *Hampton v. McConnell*,[37] required "that the judgment of a sister state be entitled to the same credit, validity, and effect in every other state which it had where pronounced." Normally these provisions are regarded as establishing a rule of evidence;[38] yet, under certain circumstances, their effect is to impose jurisdiction upon a state court. Under the doctrine of *Fauntleroy v. Lum*,[39] for example, a state court cannot refuse to enforce the judgment of a sister state because of defects in the original cause of action which would have rendered it as such unenforceable in the second forum, irrespective of whether the law applicable to the claim was properly applied in rendering such judgment.[40] Hence, by requiring the same effect to be given to the judgment upon which the action is brought as it had where pronounced, the jurisdiction of the forum in such cases extends to the enforcement of claims which, were it not for the full faith and credit clause, would not be actionable in the forum. While the full faith and credit clause does not require the forum to enforce the judgment of a sister state when its general jurisdiction fails to include a procedure by which this may be effected,[41] a state legislature cannot impose special restrictions on the courts which it establishes, the primary intent of which is to render inoperative the full faith and

[37] 3 Wheat. (16 U. S.) 234 (1818).

[38] See Wisconsin v. Pelican Ins. Co., 127 U. S. 265, 8 Sup. Ct. 1370 (1888); dictum in Anglo-American Provision Co. v. Davis Provision Co., 191 U. S. 373, 24 Sup. Ct. 92 (1903); Douglass v. Gyulai, 144 La. 213, 80 So. 258 (1918); Langmaid, "The Full Faith and Credit Required for Public Acts," 24 ILL. L. REV. 383 (1929).

[39] 210 U. S. 230, 28 Sup. Ct. 641 (1908). In that case the plaintiff sued in Missouri on a contract for cotton futures made in Mississippi. The Missouri court failed to apply the law of Mississippi which would have rendered the contract void. In an action on the judgment in Mississippi, it was held that the refusal of the forum to entertain the suit was a violation of the full faith and credit clause.

[40] Marin v. Augedahl, 247 U. S. 142, 38 Sup. Ct. 452 (1917), noted in 17 MICH. L. REV. 90 (1918); Loughran v. Loughran, 292 U. S. 216, 54 Sup. Ct. 684 (1934); Armstrong v. Minkus, 93 Miss. 621, 47 So. 467 (1908). *Cf.* Carpenter v. Beal, (C. C. A. 8th, 1916) 235 Fed. 273; Heiston v. Nat. City Bank of Chicago, (App. D. C. 1922) 280 Fed. 525. See generally 4 A. L. R. 964 (1918); Cook, "The Powers of Congress under the Full Faith and Credit Clause," 28 YALE L. J. 421 (1919).

[41] Anglo-American Provision Co. v. Davis Provision Co. No. 1, 191 U. S. 373, 24 Sup. Ct. 92 (1903), in which case it was held that the full faith and credit clause did not require the New York court to enforce a foreign judgment between nonresidents in violation of the New York venue statute prohibiting suit in the forum upon a foreign claim by a nonresident plaintiff against a foreign corporation. *Cf.* 28 YALE L. J. 264 (1918).

See Weidman v. Weidman, 274 Mass. 118, 174 N. E. 206, 76 A. L. R. 1359 (1931), in which case the court did not feel required to give full faith and credit to a New York alimony decree since the forum did not recognize suits by one spouse against the other for this purpose. See particularly 76 A. L. R. 1364 (1931).

credit clause. Illustrative of such special limitations are the wrongful death statutes prohibiting suit in the forum unless the act causing death occurred within the state.[42] These, as well as statutes of limitations in the forum which would bar the original action if prosecuted there,[43] are ineffective to exclude the enforcement of the judgment based on the prohibited action. In the principal case, had plaintiff's claim been reduced to judgment and had the Alabama court adopted the same construction of the statute in question with regard to the enforcement of the original action in Alabama, entertainment of the action on the judgment would probably have been required.

Prosecutions in the state courts of violations of the Eighteenth Amendment [44] and the Volstead Act [45] furnish somewhat more doubtful support for the proposition that a state court may not refuse to exercise its otherwise general jurisdiction merely because the right to be enforced is created by a federal statute. The Volstead Act, by defining the place of manufacture of intoxicating liquors as a nuisance and providing for the injunctive abatement thereof at the instance of the district attorney,[46] presented the question as to whether the civil remedies of this federal statute were maintainable in the state courts. Since both the act and the Eighteenth Amendment failed to designate a court for the enforcement of the prohibitions other than courts of general equity jurisdiction, and since the federal statutes became part of the operative laws of a state, the power to prosecute the civil actions created by the Volstead Act existed in the state courts possessing the power to abate a nuisance. However, only one court regarded the entertainment of actions authorized by the act as a duty imposed upon the state judiciary; [47] other state courts, in exercising their general equity jurisdiction to enforce these federal rights, proceeded on the theory that the

[42] Kenney v. Supreme Lodge of the World, Loyal Order of Moose, 252 U. S. 411, 40 Sup. Ct. 371, 10 A. L. R. 716 (1920).

[43] Christmas v. Russell, 72 U. S. 290 (1866); Roche v. McDonald, 275 U. S. 449, 48 Sup. Ct. 142, 53 A. L. R. 1141 (1927).

[44] Section 1:

"After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited."

Section 2:

"The Congress and the several states shall have the concurrent power to enforce this amendment by appropriate legislation."

[45] 41 Stat. 305, c. 85.

[46] 41 Stat. 314-315, c. 85, tit. II, sec's. 21, 22, 24.

[47] United States v. Sumner, 125 Misc. 658, 211 N. Y. S. 705 (1925), noted in 10 MINN. L. REV. 342 (1926). But see United States v. Sirianni, 140 Misc. 124, 250 N. Y. S. 77 (1931).

assumption of jurisdiction is entirely permissive."[48] In view of the fact that the suit in the state court was entertained in every case, the question as to whether the refusal to prosecute the actions arising under the federal prohibition law would have constituted a violation of the duties imposed upon the state judiciary by the Constitution remains speculative, but by analogy to the duty of the state courts to enforce the rights created by the Federal Employers Liability Act, a state court presumably could not properly refuse to enjoin the nuisance.[49]

The above principles are strictly limited to rights of a private and civil nature. The Judiciary Code[50] vests exclusive jurisdiction over crimes against the United States in the federal courts, which of course precludes any argument for criminal prosecution in a state court for the violation of the Eighteenth Amendment.[51] On the other hand, where penal liabilities imposed by a sister state are sought to be enforced in the forum, a theoretical power to prosecute the criminal penalty may exist, but, as a matter of policy, entertainment of such litigation is refused.[52] This distinction as to the nature of the right sought to be enforced is recognized in the application of the full faith and credit clause, a judgment based on the penal laws of another state not being entitled to the same full faith and credit accorded to a civil judgment.[53] This restriction on the application of this constitutional provision originates in the idea that the intended purpose of the full faith and credit clause is limited to private, as distinguished from public, rights evidenced by the judgment of a sister state.

[48] Ex parte Gounis, 304 Mo. 428, 263 S. W. 988 (1924), and cases cited; United States v. Stevens, 103 Conn. 7, 130 Atl. 249 (1925); United States of America v. Richards, 201 Wis. 130, 229 N. W. 657 (1930); Carse v. Marsh, 189 Cal. 743, 210 Pac. 257 (1922). *Cf.* In re Brambini, 192 Cal. 19, 218 Pac. 569 (1923).

[49] Compare the language of Judge Ragland in Ex parte Gounis, 304 Mo. 428, 263 S. W. 988 (1924). With reference to the decision of the Second Employers' Liability Cases, he says at p. 444:

"The right of civil recovery it [the court] had in mind was a private right as distinguished from one pertaining to the general public. Where an act of Congress, such as the National Prohibition Act, is designed to suppress a public evil, it is clearly the duty of Congress to provide efficient national instrumentalities, including courts, for its enforcement. It cannot impose that burden or any part of it upon the state courts; nor is there in any case an implication of duty on the part of a state court to lend its jurisdiction to the enforcement of the laws of the United States *in behalf of the United States.*"

[50] 36 Stat. 1160-1161, sec. 256, subd. 1.

[51] People v. Conti, 127 Misc. 244, 216 N. Y. S. 442 (1926); People v. Wade, 127 Misc. 593, 217 N. Y. S. 486, reversing 126 Misc. 574, 214 N. Y. S. 187 (1926); People v. Cook, 220 App. Div. 110, 221 N. Y. S. 96 (1927).

[52] Nesbitt v. Clark, 272 Pa. 161, 116 Atl. 404, 25 A. L. R. 1406 (1922), cert. denied, 258 U. S. 621, 42 Sup. Ct. 273 (1922); E. S. Parks Shellac Co. v. Harris, 237 Mass. 312, 129 N. E. 617 (1921).

[53] See cases collected in 4 A. L. R. 968 (1919).

The extent to which a state court is required to enforce civil rights arising under a federal statute may well become important in view of certain aspects of the so-called "New Deal" legislation. Section 703 (a) of the National Industrial Recovery Act [54] authorizes the President to approve codes of fair competition between members of a trade, and section 703 (c) vests jurisdiction in the federal courts to enforce the codes by the injunctive remedy at the instance of the district attorney. In providing for the necessary litigation under the act, it may be deemed desirable to lighten the burden of the federal courts. Delegation of such actions to the state courts by Congress or by judicial pronouncement that the jurisdiction of the state and federal courts is concurrent would accomplish this result. Under the principles advanced, unless the statute be construed as vesting exclusive jurisdiction in the federal courts, a state court could not properly refuse to entertain litigation under the statute.[55]

H. F. B.

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[54] National Industrial Recovery Act, secs. 1, 10 [U. S. C. tit. 15, secs. 701, 710 (1934 Supp.)].

[55] The writer is unable to find any case answering this question. Dictum in Purvis v. Bazemore, (S. D. Fla. 1933) 5 F. Supp. 230, indicates exclusive jurisdiction in the federal courts. Where state courts have entertained the prosecutions, jurisdiction has been conferred by state legislation. *Cf.* Sherman v. Abeles, 150 Misc. 497, 269 N. Y. S. 849 (1934), aff'd 241 App. Div. 676, 269 N. Y. S. 864 (1934); Cleaners & Dyers' Board of Trade v. Spotless Dollar Cleaners, 150 Misc. 699, 270 N. Y. S. 153 (1934). In Fryns v. Fair Law Fur Dressing Co., 114 N. J. Eq. 462, 168 Atl. 862 (1933), the argument was made that section 703 (c) conferred exclusive jurisdiction in the federal courts so that the New Jersey statute providing for state court jurisdiction was ineffective to vest the power in the state court to entertain the action. The court avoided the question, since violations of the collective bargaining section and the President's Re-Employment Agreement, rather than the code, were involved.