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CONFLICT OF LAWS—CLAIM UNDER COMPENSATION ACT—SUIT IN STATE OTHER THAN THAT OF INJURY.—Plaintiffs brought suit in the federal court for the southern district of Texas on grounds of diversity of citizenship under the Louisiana Employers Liability Act¹ to recover for the death of their father who had been killed by falling from defendant's dredge upon which he was employed. The contract of employment was made, and the death occurred in Louisiana. The Act is of the "optional" type. It provides that the employer shall, upon the accidental death of an employee in the course of his employment, pay compensation to the employee's dependents. Payment is to be made at periodical intervals for a specified length of time of certain percentages of decedent's average wage to each dependent. Payment is, however, made contingent upon the continuation of their dependency; for example, a widow who remarries is not thereafter entitled to compensation. Compensation may be commuted to a lump sum settlement by an agreement of the parties if approved by the court as solely and clearly in the interest of the dependents. If the parties are in dispute about the compensation, the statute provides a simple and expedited procedure whereby their rights shall be determined and judgment given by the court which would have jurisdiction in a civil suit. *Held*, that the plaintiffs were entitled to a decree. The decree, not reported,² provided that the plaintiffs recover eighteen hundred and some odd dollars, being a certain per centage of decedent's average wage for each minor son for a certain number of weeks. It further decrees, "that the plaintiffs are not rightly due a lump sum settlement at this time."³

Under this statute the dependents of employees in certain types of employment have a right not to have their supporter killed by accident in the course of his employment. Using Professor Beale's terminology we would call this their primary right.⁴ When an employee is so killed the law of Louisiana gives the dependent's a secondary right—the right to compensation in periodical payments contingent upon their continued dependency. For the enforcement of this right, the Louisiana statute provides a remedy in the

¹Act No. 20, 1914 as amended.

²A copy of the decree was made available by the courtesy of Lockhart, Hughes & Lockhart, Galveston, Texas, attorneys for the plaintiffs.

³Lindberg v. The Southern Casualty Co., 15 F. (2d) 54.

⁴BEALE, CONFLICT OF LAWS, sec. 140; Goodrich, "Damages for a Foreign Wrong," 3 IOWA L. BULL. 1.

form of a simple and expedited determination of rights and judgment thereon by its courts.

When the plaintiff comes into the court of another state he asks that that court give him the remedy which the law of that state provides for the enforcement of his secondary right. As has often been pointed out, this does not mean that the law of Louisiana has extra-territorial effect but that the plaintiff, having that secondary right in Louisiana, has by the conflict of laws rules of the state into which he comes the same secondary right. Mr. Justice Holmes has said, "The theory of the foreign suit is that although the act complained of was subject to no law having force in the forum, it gave rise to an obligation, an *obligatio*, which like other obligations follows the person and may be enforced wherever the person is found.⁵ But as the only source of this obligation is the law of the place of the act it follows that that law determines not merely the existence of the obligation⁶ but equally determines its extent."⁷ The state where suit is attempted to be brought may refuse to recognize the plaintiff's secondary right. As Judge Cardozo has put it,⁸ "The plaintiff owns something and we help him get it. We do this unless some sound reason of public policy makes it unwise for us to lend our aid. 'The law of the forum is material only as setting a limit of policy beyond which such obligations will not be enforced there.'"⁹

The principal case raises two questions among others. First, is the plaintiff's secondary right of such a nature that the judicial machinery of another state can enforce it? Second, does the provision by the Louisiana statute of a peculiar procedure for the enforcement in Louisiana of the secondary right prevent another state from enforcing that right by its judicial machinery?

To the first question the principal case gives no satisfactory answer. The decree for a certain sum of money but not to be paid in a lump sum is neither of the alternatives provided by the Louisiana act. It is allowing plaintiff to come into court under the Louisiana act, and abandoning it to give him a judgment according to some other law. It is neither contingent periodical payments nor a lump sum settlement upon agreement of the parties. The contingent periodical payment is just the kind of right which was given by the law of Mexico and declared impossible of enforcement in a common law court in *Slater v. Mexican National R. Co.*¹⁰ Nor, in most cases can a judgment be founded upon the alternative provision for a lump sum settlement upon agreement of the parties, for the defendant is not likely to agree to a lump sum settlement when, by not agreeing, he can escape liability. In *Slater v. Mexican National R. Co.*, Mr. Justice Holmes concludes his opinion with

⁵Citing *Stout v. Wood*, 1 Blackf. (Ind.) 71; *Dennick v. Central R. Co.*, 103 U. S. 11, 18, 26 L. Ed. 439, 442.

⁶Citing *Smith v. Condry*, 1 How. 28, 11 L. Ed. 35.

⁷Holmes, J., *Slater v. Mexican National R. Co.*, 194 U. S. 120, 24 Sup. Ct. 581, 48 L. Ed. 900.

⁸Cardozo, J., in *Loucks v. Standard Oil Co. of New York*, 224 N. Y. 99, 120 N. E. 198. See Beach, "Uniform Interstate Enforcement of Vested Rights," 27 YALE L. J. 656.

⁹Citing *Cuba R. Co., v. Crosby*, 222 U. S. 473, 32 Sup. Ct. 132, 56 L. Ed. 274, 38 L. R. A. (N. S.) 40.

¹⁰*Supra*.

the remark that the plaintiff can probably get his right enforced in Mexico; but in the principal case, while litigation in Texas has been pending, the statute of limitations has expired and plaintiffs claim is barred. Perhaps the plaintiff might succeed by getting his cause transferred to the equity side of the court.

The question whether provision of a special remedy by the state of origin prevents recovery being had in a foreign state is one which is more commonly raised and about which the courts are in dispute. New York has held that the New Jersey Workmens Compensation Act which provides a simple and expedited procedure for the determination of rights and the giving of judgment thereon by its own courts "does not give an independent cause of action enforceable anywhere." They construe the statute strictly and do not separate the right given from the method of enforcement (in New Jersey) which is provided.¹¹ Other New York cases often cited in this connection really decide only that an employee employed and injured in New Jersey, under the terms of that act loses his common law right of action and cannot sue for negligence in New York.¹² Arkansas seems to have reached the same conclusion as New York on the question.¹³ But the federal circuit court of appeals in Arkansas has reached the opposite result, allowing a plaintiff to recover for personal injury in Louisiana, under the Louisiana act.¹⁴ The decision distinguishes the Arkansas case on the grounds that the act sued under there provided an administrative tribunal to pass upon the claims in the first instance, while by the Louisiana act, a court was designated.

Upon principle it would seem that the provision of a special procedure, whether in the regular judicial courts or in new administrative tribunals, by the state which is the source of the right should not prevent the enforcement of the right by a foreign state if the right is susceptible of enforcement by the judicial machinery of the foreign state. Some states have attempted to provide that suit under certain of its statutes shall be brought only in that state, but actions in other states have nevertheless been sustained.¹⁵ If we interpret these decisions as standing for the doctrine that a state cannot limit a right to enforcement in its own courts, it would seem to follow that a state cannot indirectly, by providing special modes of enforcement so limit the right. But if we interpret these decisions as standing only for the proposition that a state cannot prohibit another state from enforcing rights arising under its laws and if a state can take away rights once vested¹⁶ it may be argued

¹¹*Verdicchio v. McNab & Harlin Mfg. Co.*, 178 Misc. 48, 164 N. Y. Supp. 290; *Lehmann v. Ramo Films Co.*, 92 Misc. 418, 155 N. Y. Supp. 1032. *McCarthy v. McAllister Steamboat Co.*, 94 Misc. 692, 158 N. Y. Supp. 563.

¹²*Albanese v. Stewart*, 78 Misc. 581, 138 N. Y. Supp. 942; *Schweitzer v. Hamburg Amerikanische P. A. G.*, 78 Misc. 448, 138 N. Y. Supp. 944; *Barnhart v. American Concrete Steel Co.*, 227 N. Y. 531, 125 N. E. 675; *Prdich v. New York Central R. Co.*, 111 Misc. 430, 183 N. Y. Supp. 77.

¹³*Logan v. Missouri Valley Bridge and Iron Co.*, 157 Ark. 528, 249 S. W. 21.

¹⁴*Texas Pipeline Co. v. Ware*, 15 F. (2d) 171.

¹⁵*Tenn. Coal and Iron Co. v. George*, 233 U. S. 354, 34 Sup. Ct. 587, 58 L. Ed. 997, L. R. A. 1916 D. 685; *Atchison, T. & S. F. R. Co. v. Sowers*, 213 U. S. 55, 29 Sup. Ct. 397, 53 L. Ed. 695.

¹⁶*Phillips v. Eyre*, (1870) L. R. 6 Q. B. 1.

that it can give rights limited or conditioned that they shall not be enforceable in any but its own courts. This seems to be the nature of the Alaska act upon which recovery was denied in a suit brought in Washington.¹⁷

The courts have been slow to apply the usual conflict of laws rules to recovery under these workmens compensation acts, just as they were slow to apply them to the death by wrongful act statutes, but it is submitted that the same considerations which were applicable there and argued for the foreign enforcement of the right, are applicable here.¹⁸

H. E. W.

¹⁷Martin v. Kennecott Copper Corp., 252 Fed. 207. Laws of Alaska, 1915, Ch. 71. Sec. 22 provides, "Any attempt to bring such action in any court outside of the Territory of Alaska shall work a forfeiture of the right of the plaintiff in such action to any compensation under this act."

¹⁸Loucks v. Standard Oil Co. of New York, *supra*.