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## Civil Procedure - Forum Non Conveniens - Judicial Adoption of Doctrine When Statue of Limitations Has Run Elsewhere

Jerome S. Traum  
*University of Michigan Law School*

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CIVIL PROCEDURE—FORUM NON CONVENIENS—JUDICIAL ADOPTION OF DOCTRINE WHEN STATUTE OF LIMITATIONS HAS RUN ELSEWHERE—Plaintiff, a Missouri resident, brought suit in Arkansas against defendant, a Missouri corporation authorized to do business in Arkansas, for injuries received in an accident in Illinois. Plaintiff had filed and dismissed an action in Missouri, and the statute of limitations had run in Illinois. Defendant's motion for dismissal on grounds of forum non conveniens was granted by the trial court. On appeal, *held*, reversed and remanded, one justice dissenting. Although the trial court could in its discretion refuse jurisdiction on the grounds of forum non conveniens, there was insufficient evidence in this case upon which a dismissal could be based.<sup>1</sup> A concurring justice, joining in the decision to remand on the grounds that the trial court had no power

<sup>1</sup> The case was remanded with directions to proceed further on defendant's motion to dismiss.

to refuse jurisdiction, argued that a legislative enactment would be required to establish the doctrine in Arkansas. *Clifton Running v. Southwest Freight Lines, Inc.*, (Ark. 1957) 303 S.W. (2d) 578.

This case marks the official entry of Arkansas into the group of states recognizing the doctrine of forum non conveniens.<sup>2</sup> Acceptance of the doctrine in the federal courts in 1947<sup>3</sup> has seemingly added impetus to its adoption by the states, six<sup>4</sup> having embraced it since that time. Although approved by what still remains a decided minority of the states, the fact that some of those most strongly opposed to the doctrine in the past have now sanctioned it<sup>5</sup> would indicate that it is destined to receive more widespread application. The line of reasoning expressed by the concurring judge is significant, however, for it reflects a view that is widely held. With the Supreme Court's removal of the privileges and immunities clause of Article IV of the United States Constitution<sup>6</sup> as an obstacle to general acceptance of the doctrine of forum non conveniens,<sup>7</sup> perhaps no more persistent argument against its acceptance has been presented than that of a court's lack of discretionary power to refuse jurisdiction in the face of a statute specifically conferring it.<sup>8</sup> That legislative action is required in order to adopt the doctrine would not seem to be generally true,<sup>9</sup> however, for its origins in Scotland and England were entirely judicial.<sup>10</sup> Moreover,

<sup>2</sup> Acceptance of the doctrine by Arkansas has been expected. See *Grove v. Washington Nat. Ins. Co.*, 196 Ark. 697, 119 S.W. (2d) 503 (1938). The other states accepting the doctrine are *California*, *Price v. Atchison, Topeka and Santa Fe Ry. Co.*, 42 Cal. (2d) 577, 268 P. (2d) 457 (1954); *Delaware*, *Eastern Union Co. of Delaware v. Moffet Tunnel Improvement District*, 6 W. W. Harr. (36 Del.) 488, 178 A. 864 (1934); *Florida*, *Hagen v. Viney*, 124 Fla. 747, 169 S. 391 (1936); *Illinois*, *Whitney v. Madden*, 400 Ill. 185, 79 N.E. (2d) 593 (1948); *Louisiana*, *Stewart v. Litchenberg*, 148 La. 195, 86 S. 734 (1920); *Maine*, *Foss v. Richards*, 126 Me. 419, 139 A. 313 (1927); *Massachusetts*, *Universal Adjustment Corp. v. Midland Bank*, 281 Mass. 303, 184 N.E. 152 (1933); *Minnesota*, *Johnson v. Chicago, Burlington and Quincy R. Co.*, 243 Minn. 58, 66 N.W. (2d) 763 (1954); *New Hampshire*, *Jackson & Sons v. Lumbermen's Mutual Casualty Co.*, 86 N.H. 341, 168 A. 895 (1933); *New Jersey*, *Kantakevich v. Delaware, Lackawanna & Western R. Co.*, 18 N.J. Misc. 77, 10 A. (2d) 651 (1940); *New York*, *Gregonis v. Philadelphia & Reading Coal & Iron Co.*, 235 N.Y. 152, 139 N.E. 223 (1923); *Oklahoma*, *St. Louis-San Francisco Ry. Co v. Superior Court*, (Okla. 1955) 290 P. (2d) 118; and *Utah*, *Mooney v. Denver & Rio Grande Western R. Co.*, 118 Utah 307, 221 P. (2d) 628 (1950).

<sup>3</sup> *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947).

<sup>4</sup> Arkansas, California, Illinois, Minnesota, Oklahoma and Utah.

<sup>5</sup> Compare *Boright v. Chicago, R. I. & P. Ry. Co.*, 180 Minn. 52, 230 N.W. 457 (1930), with *Johnson v. Chicago, Burlington & Quincy R. Co.*, note 2 supra; *Leet v. Union Pacific R. Co.*, 25 Cal. (2d) 605, 155 P. (2d) 42 (1944), with *Price v. Atchison, Topeka and Santa Fe Ry.*, note 2 supra.

<sup>6</sup> U.S. CONST., art. IV, §2.

<sup>7</sup> *Douglas v. New Haven R. Co.*, 279 U.S. 377 (1929).

<sup>8</sup> See *Bright v. Wheelock*, 323 Mo. 840, 20 S.W. (2d) 684 (1929); *Mattone v. Argentina*, 123 Ohio St. 393, 175 N.E. 603 (1931); *Rouw Co. v. Railway Express Agency*, (Tex. Civ. App. 1941) 154 S.W. (2d) 143.

<sup>9</sup> At least one statute seems to preclude judicial adoption of the doctrine, however. Ala. Code (1940) tit. 7, §97.

<sup>10</sup> See generally, 34 VA. L. REV. 811 (1948).

most of the states which have adopted the doctrine have done so without statutory authorization.<sup>11</sup> The reasoning of these courts varies with the relative emphasis they place on one or the other of the two main purposes of the doctrine; protection of the parties against the hardships of trial in an inconvenient forum, and protection of the courts from the burden of imported litigation. Those emphasizing protection of the litigants state that courts of general jurisdiction have inherent power to do whatever is possible under the general principles of jurisdiction to insure a fair trial.<sup>12</sup> Those aiming more at resisting imposition on the courts tend to justify dismissal by resort to the legislative policy underlying the statutes controlling jurisdiction and venue. A statute stating that nonresidents of the state may be sued where found may be said by the court to have been enacted solely for the benefit of citizens of the state, and not for nonresidents seeking to import causes of action arising elsewhere.<sup>13</sup> If the state has a change of venue statute authorizing change of the place of trial when the ends of justice would be promoted, the court may find this to lend authority for dismissing the case in order that a more convenient forum outside the state may be utilized.<sup>14</sup>

Although some of those arguing that adoption of *forum non conveniens* must be by the legislature do so because acceptance by judicial pronouncement violates their conception of the relative roles of the legislature and the judiciary in the area of jurisdiction of the courts,<sup>15</sup> others go beyond this, stating that the vagueness and lack of clearly defined criteria for application of the doctrine require safeguards of a type that can best be provided by the legislature.<sup>16</sup> This latter argument, based upon absence of adequate safeguards, draws much of its vitality from the difficulty courts have had in evaluating the role which the running of the statute of limitations in the other state of possible jurisdiction should play in the decision to dismiss under *forum non conveniens*. Commentators on the doctrine<sup>17</sup> and the majority of the courts applying it<sup>18</sup> feel that since *forum non conveniens* presupposes more than one court of jurisdiction, the running of the statute of limitations in the other state should preclude refusal to accept jurisdiction under the doctrine. This view seems clearly correct in the

<sup>11</sup> See *Johnson v. Chicago, Burlington and Quincy R. Co.*, note 2 *supra*, at 78: "Courts sometimes are more conversant with changes in laws of other jurisdictions that make adherence to our former decisions impracticable than is the legislature, and in such cases we must not shun the responsibility of making necessary changes in local law. . . ."

<sup>12</sup> *Universal Adjustment Corp. v. Midland Bank*, note 2 *supra*.

<sup>13</sup> *Stewart v. Litchenberg*, note 2 *supra*.

<sup>14</sup> *St. Louis-San Francisco Ry. Co. v. Superior Court*, note 2 *supra*.

<sup>15</sup> See *Mattone v. Argentina*, note 8 *supra*.

<sup>16</sup> See dissent by Carter, J., in *Price v. Atchison, Topeka and Santa Fe Ry. Co.*, note 2 *supra*.

<sup>17</sup> Barrett, "The Doctrine of *Forum Non Conveniens*," 35 CALIF. L. REV. 380 (1947).

<sup>18</sup> See *Giles v. Western Air Lines, Inc.*, (D.C. Minn. 1947) 73 F. Supp. 616; *Gore v. United States Steel Corp.*, 15 N.J. 301, 104 A. (2d) 670 (1954); *Yesuvida v. Pennsylvania R. Co.*, 200 Misc. 815, 111 N.Y.S. (2d) 417 (1951).

case where the plaintiff's choice of forum has been seemingly approved by the trial court's refusal to dismiss and the statute of limitations in the other state has run during the process of appeal. Where a plaintiff has allowed the statute of limitations to run elsewhere before instituting suit in the "inconvenient forum," however, another rule might seem more correctly to apply. In the principal case, Arkansas, faced with the second situation, adopted the view that the running of the statute of limitations had no bearing upon the decision to dismiss. This position seems sound—a compromise between the desire to leave plaintiff with some forum in which to litigate his dispute, and the undesirability of allowing him, by his own laches in failing to bring timely suit elsewhere, to utilize an otherwise inconvenient forum.

*Jerome S. Traum*