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Venue—Forum Non Conveniens—Transfer of Venue in Federal Employers' Liability Cases Under the New Judicial Code—Plaintiff, a resident of Texas, brought action in a United States district court in Minnesota to recover damages under the Federal Employers' Liability Act for injuries received in an accident in Texas. Defendant, in accordance with section 1404(a) of the United States Judicial Code, moved for a change of venue to Texas for the convenience of parties and witnesses and in the interest of justice. Plaintiff resisted the transfer solely on the ground that the section did not apply where venue was granted under the F.E.L.A.


The venue provisions of the F.E.L.A. give the injured employee seeking relief under the act a wide choice of forum. Plaintiffs have often gone shopping for a judge or jury thought to be more favorable. State courts may refuse to entertain a suit under the act on the doctrine of forum non conveniens, but they must be careful not to violate the privileges and immunities clause of the Constitution. In the past, state courts enjoined litigants, over whom they had jurisdiction, from prosecuting actions under the act at a point far distant from the scene of the

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2 28 U.S.C. (Supp. 1948) § 1404(a) reads: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." The act became effective September 1, 1948. The principal case, decided September 25, 1948, is the first interpreting this enactment as applied to F.E.L.A. cases.
3 Because of the common question involved, motions to transfer venue in seven other actions brought against defendant under the F.E.L.A. were consolidated for hearing.
5 36 Stat. L. 291, § 6 (1910), 45 U.S.C. (1946) § 56 provides that an action may be brought "in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action."
7 U.S. Const., Art. IV, § 2. "To deny citizens from other states, suitors under the F.E.L.A., access to its courts would, if it permitted access to its own citizens, violate the Privileges and Immunities Clause." Miles v. Illinois Central R. Co., 315 U.S. 698 at
accident, on the ground that the prosecution would be inequitable, vexatious, and harassing to the carrier; but the Supreme Court later denied the right of the state courts to enjoin such prosecution in either a federal court or the courts of another state. The federal courts have refrained from enjoining actions in another federal court, and have held that they may not refuse to hear a case brought under the act on the grounds of inconvenience. In a recent statement of the principle of forum non conveniens in the federal courts, the Supreme Court said that the doctrine was not applicable to cases under the F.E.L.A., because venue is specially granted by a provision of that act. Plaintiff's contention in the principal case is that Section 1404(a) of the Judicial Code is merely a statutory enactment of the doctrine of forum non conveniens, as previously enunciated by the Supreme Court, and therefore not applicable to F.E.L.A. cases. In rejecting this contention and holding that the words "any civil action" as used in the code include a suit brought under the act, the court seems to be correct. Under the judicial doctrine of forum non conveniens the courts could only dismiss the action, while the legislative enactment provides for a transfer of venue. Furthermore, the reviser's notes, which were called to the attention of Congress, cite a case brought under the F.E.L.A. as an example of the need for such a provision. Moreover, the Supreme Court had indicated that the problem was one for the legislature. Now that Congress has acted, it would seem that the holding in the principal case is justified.

Donald D. Davis

704, 62 S.Ct. 827 (1942). It was pointed out that in the Douglas case, note 4, supra, the refusal to entertain suit was on the basis of nonresidence and not noncitizenship. See Blair, "The Doctrine of Forum Non Conveniens in Anglo-American Law," 29 Col. L. Rev. 1 (1929).

7 Reed's Administratrix v. Illinois Central R. Co., 182 Ky. 455, 206 S.W. 794 (1918); Kern v. The Cleveland, C. C. & St. L. R. Co., 204 Ind. 595, 185 N.E. 446 (1933). Many cases are cited in annotations in 85 A.L.R. 1351 (1933) and 113 A.L.R. 1444 (1938).


13 Justice Black, dissenting in the Gulf Oil case (id. at 516), criticized the judicial doctrine because a plaintiff might well discover that his claim had been barred by the statute of limitations in the proper forum while the courts were deciding that he had chosen an inconvenient forum. The legislative provision for transfer of venue of course meets this objection.


16 Speaking for the court in Baltimore & Ohio Railroad Co. v. Kepner, id. at 54, Justice Reed said, "A privilege of venue granted by the legislative body which created this