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CONFLICT OF LAWS-LIMITATION OF ACTIONS-STATUTE OF FORUM SHORTER THAN LIMITATION IN FOREIGN STATUTE CREATING CAUSE OF ACTION

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RECENT DECISIONS

CONFLICT OF LAWS—LIMITATION OF ACTIONS—STATUTE OF FORUM SHORTER THAN LIMITATION IN FOREIGN STATUTE CREATING CAUSE OF ACTION—Action was brought in a United States district court of Pennsylvania to recover for a death by wrongful act which occurred in Minnesota. The action was brought within the time limit of two years allowed by the Minnesota statute, but after the period of one year designated by the Pennsylvania statute for commencement of such action. The district court gave judgment for the defendant. On appeal, *held*, affirmed. Federal courts in diversity cases are bound by state rules of conflict of laws,[1] and consequently the Pennsylvania rule[2] that no action for wrongful death can be brought in Pennsylvania after the one year period of its statute controls, irrespective of the duration of the right under the statute creating it. *Hughes v. Lucker*, (3d Cir. 1949) 174 F. (2d) 285.

The general doctrine of common law countries is that the period of limitations of the forum will control, as a matter of procedure, in determining whether the plaintiff's cause of action is barred by lapse of time.[3] The principal case, although the decision was controlled by the Pennsylvania conflict of laws rule, presents an opportunity to re-examine this doctrine as it is applied in cases where a new right is created by the law of the state of the wrong, which law includes a provision that the right shall expire after a certain period of limitation. Where the limitation of the creating statute has expired, it is agreed that although the limitation of the forum is longer, the right ceases to exist, and consequently no suit thereon is maintainable.[4] But in the converse situation, where the right has not terminated under the terms of the creating statute, but is sought to be enforced in a forum where such action would be barred by the forum's applicable statute of limitation, conflict exists as to whether the duration of the foreign statutory right is in fact so inseparable from the existence of the right that it must be considered for all purposes a matter of substance, and therefore controlling in spite of the forum's limitation.[5] Conceding that the limitation of the creating statute extinguishes the right completely, and therefore is more than what under traditional notions would be considered merely procedural, is this sufficient reason that it must be a matter of substance for all purposes?[6] Disregarding disputes as to the effect of the

[1] Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487, 61 S.Ct. 1020 (1941).

[2] Rosenzweig v. Heller, 302 Pa. 279, 153 A. 346 (1931).

[3] Ailes, "Limitation of Actions and the Conflict of Laws," 31 MICH. L. REV. 474 (1933); McElmoyle v. Cohen, 13 Pet. (38 U.S.) 311 (1839).

[4] The Harrisburg, 119 U.S. 199, 7 S.Ct. 140 (1886); Davis v. Mills, 194 U.S. 451, 24 S.Ct. 692 (1904). At common law, where the lex loci barred the action, suit could still be maintained in a foreign state with a longer limitation. LeRoy v. Crowninshield, (Cir. Ct. 1st, 1820) 2 Mason 151; Williams v. Jones, 13 East 439, 104 Eng. Rep. 441 (1811).

[5] Holding the limitation of the lex loci must control: Theroux v. Northern Pac. R.R. Co., (C.C.A. 8th, 1894) 64 F. 84; Negaubauer v. Great Northern Ry. Co., 92 Minn. 184, 99 N.W. 620 (1904). That the limitation of the forum should apply: Tieffenbrun v. Flannery, 198 N.C. 397, 151 S.E. 857 (1930); White v. Govatos, 40 Del. 349, 10 A. (2d) 524 (1939). See cases collected in 68 A.L.R. 210 (1930) and 146 A.L.R. 1356 (1943).

[6] See, 2 WHARTON, CONFLICT OF LAWS, 3d ed., §540b (1905); GOODRICH, CONFLICT OF LAWS, 3d ed., §86 (1949).

language of the respective limitations, and where it is found, i.e., in the creating statute or elsewhere,[7] and whether it is meant to apply solely to local actions,[8] the major logical difficulty is presented by the distinction between rights arising under such statutes and those under the common law—a distinction that is necessary in accepting the limitation of the creating statute as a part of the right. Is there an appreciable difference between two admittedly existing causes of action, one of which, by common law, has a theoretically eternal existence, and the other of which will automatically cease at some future time? Is the policy of the forum against litigation of stale claims any less applicable to one than to the other? Proponents of the substantive interpretation argue that since suit can be brought only where the plaintiff can find the defendant, to bar the action is to negate the right.[9] But why, again, is this more valid in the case of a statutory right than one arising at common law? The reply is that the duration of the right created by statute is such an integral part of it that it cannot be separated without impairing the quantum of the right.[10] But is the perpetual duration of a right any less a part of the common law concept, though it may be implied rather than express? Is not this later objection then, in effect, one not confined to statutory rights alone, but an expression of dissatisfaction with the rigid characterization of all statutes of limitations as procedural? At least one writer suggests that since limitations deal with the legal effect of a fact (the lapse of time) upon a right which the plaintiff claims, they are matters of substance, as opposed to procedure which concerns the method of presenting the facts to the court.[11] Is it not possible that those courts holding the limitation substantive in the case of statute-created rights are grasping, consciously or not, at an opportunity to substitute a concept which appeals to them as more just where the precedents declaring all limitations procedural are not as formidably binding, while attributing this interpretation to a supposed inherent distinction between rights created by a special type statute and those created at common law. On a basis of precedent, logic, and symmetry of the law, it would seem that the limitation of the forum should apply even to cases of statute-created rights. But in light of modern ideas as to the need for an elastic concept of what is procedural and what is substantive,[12] and with due regard to the plaintiff's prospects of recovering against a resident of the forum, there would seem to be great merit in the approach of those courts holding the limitation in the creating statute an inherent part of the right. But it should be recognized that a limitation affects any cause of action equally, and to solve the problem of selection of the applicable limitation by

[7] Davis v. Mills, supra, note 4.

[8] Negaubauer v. Northern Pac. Ry. Co., supra, note 5.

[9] 79 UNIV. PA. L. REV. 1112 (1931).

[10] Theroux v. Northern Pac. Ry. Co., supra, note 5; Cristilly v. Warner, 87 Conn. 461, 88 A. 711 (1913).

[11] STUMBERG, CONFLICT OF LAWS 141 (1937). A comment in 28 YALE L.J. 492 (1919), suggests as an original proposition that limitations might well be considered substantive.

[12] Cook, "'Substance' and 'Procedure' in the Conflict of Laws," 42 YALE L.J. 333 (1933).

resort to definition of the rights involved would seem to be avoiding the pertinent issue.

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