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CIVIL PROCEDURE—VENUE—FORUM NON CONVENIENS—APPLICATION OF DOCTRINE BY STATE COURT IN CASE ARISING UNDER FEDERAL EMPLOYERS' LIABILITY ACT—Two suits based on the Federal Employers' Liability Act¹ were brought in the Circuit Court of the City of St. Louis, Missouri. In both cases, plaintiff was not a Missouri resident, the defendant carrier was a foreign corporation, and the cause of action arose outside the state of Missouri. A motion to dismiss on the ground of forum non conveniens was denied as beyond the jurisdiction of the court, and mandamus proceedings were begun in the Supreme Court of Missouri to compel the trial court to exercise its discretion in disposing of the motions.² The writs were quashed by the Missouri Supreme Court and the consolidated causes brought to the United States Supreme Court on certiorari. *Held*, judgment vacated, because of the possibility that the Missouri court considered itself bound to reject the doctrine of forum non conveniens in cases arising under the Federal Employers' Liability Act, by force of previous Supreme Court decisions³ which did not, in fact, limit the power of the state court in this respect. *Missouri v. Mayfield*, (U.S. 1950) 71 S. Ct. 1.

The doctrine of forum non conveniens deals with the discretionary power of a court to decline exercise of its jurisdiction when it appears that the forum is not the appropriate place for trial of the action.⁴ Legislation is not necessarily involved since this is one of the inherent powers possessed by every court.⁵ But,

¹ 35 U.S. Stat. 65 (1908), as amended, 45 U.S.C. (1943) §51-60.

² *Missouri v. Mayfield*, 359 Mo. 827, 224 S.W. (2d) 105 (1949).

³ *Baltimore & Ohio R. Co. v. Kepner*, 314 U.S. 44, 62 S.Ct. 6 (1941); *Miles v. Illinois Central R. Co.*, 315 U.S. 698, 62 S.Ct. 827 (1942).

⁴ GOODRICH, *HANDBOOK OF THE CONFLICT OF LAWS* §11 (1949); Dainow, "The Inappropriate Forum," 29 *ILL. L. REV.* 867 (1934); Barrett, "The Doctrine of Forum Non Conveniens," 35 *CALIF. L. REV.* 380 (1947). It has been pointed out that "convenience" is the only rational basis for choosing a place of trial. Blume, "Place of Trial of Civil Cases," 48 *MICH. L. REV.* 1 (1949).

⁵ Blair, "The Doctrine of Forum Non Conveniens in Anglo-American Law," 29 *COL. L. REV.* 1 (1929).

few state courts have actually accepted this doctrine,⁶ and it has been, in fact, rejected by others, including Missouri.⁷ The majority opinion in the principal case recognizes this factor as a possible ground for the Missouri court's decision, conceding that whether or not a state will accept the doctrine raises no federal question. The leading constitutional impediment to application of the doctrine by state courts is the privileges and immunities clause of Article IV of the United States Constitution,⁸ under which the right of access to state courts is protected.⁹ However, in *Douglas v. New Haven R. Co.*¹⁰ the Supreme Court upheld a New York statute which gave courts discretion to decline jurisdiction where suit was brought by a nonresident against a foreign corporation. The constitutional provision was held not to be violated, on the ground that the discrimination was not based on citizenship, but on residence. In no case should this constitutional provision bar the application of the nonstatutory doctrine of *forum non conveniens*, since the rule is aimed at finding the appropriate forum and depends on many factors other than residence or citizenship.¹¹ The dissenting opinion in the principal case sought to uphold the Missouri court decision, believing it was an effort to comply with this constitutional provision which prohibits discrimination based solely on citizenship; the majority, while recognizing the constitutional prohibition, did not seem to think this precise problem was involved in the case. The specific ground for vacation of the Missouri judgment was a possible misconstruction of federal law by the state court. After the decision in *Douglas v. New Haven R. Co.*¹² it was thought that the doctrine of *forum non conveniens* could be applied by state and federal courts in cases arising under the F.E.L.A. However, two later cases, *Baltimore & Ohio R. Co. v. Kepner*¹³ and *Miles v. Illinois*

⁶ GOODRICH, HANDBOOK OF THE CONFLICT OF LAWS §11 (1949); *Universal Adjustment Corp. v. Midland Bank*, 281 Mass. 303, 184 N.E. 152 (1933); *Murnan v. Wabash Railway Co.*, 246 N.Y. 244, 158 N.E. 508 (1927).

⁷ *Bright v. Wheelock*, 323 Mo. 840, 20 S.W. (2d) 684 (1929); *Wintersteen v. National Cooperage Co.*, 361 Ill. 95, 197 N.E. 578 (1935); *Bourestom v. Bourestom*, 231 Wis. 666, 285 N.W. 426 (1939).

For a complete list of the varying attitudes of the states toward the problem see Barrett, "The Doctrine of *Forum Non Conveniens*," 35 CALIF. L. REV. 380 (1947).

⁸ U.S. CONST., Art. IV, §2, cl. 1. "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Blair discusses other constitutional provisions bearing on the question in "The Doctrine of *Forum Non Conveniens* in Anglo-American Law," 29 COL. L. REV. 1 (1929).

⁹ *Corfield v. Coryell*, (E.D. Pa. 1823) 4 Wash. C.C. 371, Fed. Cas. No. 3230; *Chambers v. Baltimore & Ohio R. Co.*, 207 U.S. 142, 28 S.Ct. 34 (1907).

¹⁰ 279 U.S. 377, 49 S.Ct. 355 (1927).

¹¹ Justice Jackson lists some of these factors which must be considered in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 at 508, 67 S.Ct. 839 (1947).

It has been suggested that perhaps the enforcement of a foreign right is not a "privilege" under this constitutional provision. Blair, "The Doctrine of *Forum Non Conveniens* in Anglo-American Law," 29 COL. L. REV. 1 (1929).

¹² 279 U.S. 377, 49 S.Ct. 355 (1927). The case arose under a New York statute, but it was held that the F.E.L.A. did not compel a state court to take jurisdiction in all cases arising thereunder.

¹³ 314 U.S. 44, 62 S.Ct. 6 (1941).

Central R. Co.,¹⁴ raised doubts as to the power of state courts to apply the doctrine in this type of case. In both cases an injunction against the prosecution of an action under the F.E.L.A. in another state was sought on the grounds of inconvenience, and in both cases the Supreme Court of the United States denied the power of the state court to grant such an injunction. It was held that the specific venue provisions of the act conferred upon the injured employee the privilege of bringing suit in certain places and that no state court could interfere with this privilege on the grounds of inconvenience or harassment. These decisions seemed to be affirmed in *Gulf Oil Corp. v. Gilbert*,¹⁵ which expressly recognized the power of federal courts to apply the doctrine in cases governed by general venue statutes, but not in cases arising under a special venue act, as F.E.L.A. cases. Addition by Congress in 1948 of a new section to the United States Code¹⁶ was construed as a change of congressional intent, allowing application of the doctrine or its statutory equivalent to all cases, including those arising under the F.E.L.A.¹⁷ It is obvious that this new section refers only to practice in federal courts, leaving untouched the rule relating to such suits in state courts. The problem remained as to the actual meaning of the *Kepler* and *Miles* cases in reference to actions brought in state courts under the F.E.L.A. The decision in the principal case gives the answer, referring specifically to the *Douglas* case. "There was nothing in that Act even prior to §1404(a) of the 1948 revision of the Judicial Code . . . which purported to 'force a duty' upon the State courts to entertain or retain Federal Employers Liability litigation 'against an otherwise valid excuse.'"¹⁸ The *Kepler* and *Miles* cases can be distinguished from the present case in that they did not decide whether the doctrine of forum non conveniens would be available at the forum itself, but the language of these cases indicated a result contrary to the present holding, and one state court relying on these previous decisions had held that the doctrine could not be used to defeat the venue privileges of the F.E.L.A.¹⁹ The holding in this case is justifiable on policy grounds in that it will alleviate the hardship of inconvenient trials by allowing to state courts the same discretionary power as is exercised by federal courts, but it would appear that the Supreme Court has changed its attitude toward the problem of forum non conveniens and the F.E.L.A.

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¹⁴ 315 U.S. 698, 62 S.Ct. 827 (1942).

¹⁵ 330 U.S. 501, 67 S.Ct. 839 (1947).

¹⁶ 62 Stat. L. 937 (1948), 28 U.S.C. (1950) §1404(a). "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."

¹⁷ Ex parte Collett, 337 U.S. 55, 69 S.Ct. 944 (1949).

¹⁸ *Missouri v. Mayfield*, (U.S. 1950) 71 S.Ct. 1 at 3.

¹⁹ *Leet v. Union Pac. R. Co.*, 25 Cal. (2d) 605, 155 P. (2d) 42 (1944). Adverse comment on this case in 18 So. CAL. L. REV. 281 (1945).