

1947

CONFLICT OF LAWS-LIMITATION OF ACTIONS-DETERMINATION OF PLACE OF ACCRUAL OF ACTION TO ENFORCE LIABILITY OF STOCKHOLDERS IN INSOLVENT NATIONAL BANKS

Edwin F. Uhl S.Ed.
University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Conflict of Laws Commons](#), and the [Jurisdiction Commons](#)

Recommended Citation

Edwin F. Uhl S.Ed., *CONFLICT OF LAWS-LIMITATION OF ACTIONS-DETERMINATION OF PLACE OF ACCRUAL OF ACTION TO ENFORCE LIABILITY OF STOCKHOLDERS IN INSOLVENT NATIONAL BANKS*, 46 MICH. L. REV. 260 (1947).

Available at: <https://repository.law.umich.edu/mlr/vol46/iss2/10>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

CONFLICT OF LAWS—LIMITATION OF ACTIONS—DETERMINATION OF PLACE OF ACCRUAL OF ACTION TO ENFORCE LIABILITY OF STOCKHOLDERS IN INSOLVENT NATIONAL BANKS—Suits in equity were brought in the federal district courts of Ohio and Pennsylvania against resident shareholders of Banco Kentucky Company, a bank-stock holding corporation. The purpose of the litigation was to enforce an assessment under the National Bank Act¹ on the shares of an insolvent national bank which Banco owned.² Ohio and Pennsylvania have six year statutes of limitations on such an action.³ They also have borrowing statutes, barring suit on a cause of action no longer enforceable in the jurisdiction in which it arose.⁴ The bank had been authorized to conduct its activities in Louisville, Kentucky, had engaged in business in no other place, and its receivership had been administered there. The Kentucky limitation was five years.⁵ Suit in each case had been commenced about five and a half years after the cause arose. The Sixth Circuit Court of Appeals held that the cause of action arose in Kentucky and that suit was barred,⁶ while the Third Circuit Court disagreed.⁷ On certiorari to the Supreme Court, *held* the judgment in the sixth circuit affirmed and that in the third reversed. *Anderson v. Helmers*, (U.S. 1947) 67 S. Ct. 1340.

In an action at law to enforce a liability created by federal statute providing no period of limitation, a federal court follows the applicable limitation statute of the jurisdiction in which it sits.⁸ Similarly the state statute applies to an action in equity where a primarily legal obligation is to be enforced and the equitable jurisdiction is merely concurrent.⁹ The cause of action in the instant

¹ Rev. Stat. (1878) § 5151, 12 U.S.C. (1940) § 63, and 38 Stat. L. 273 (1913) § 23, 12 U.S.C. (1940) § 64.

² In *Anderson v. Abbott*, 321 U.S. 349, 64 S. Ct. 531 (1944), it was decided that since the receiver had been unable to recover on a judgment against Banco, its individual stockholders might be held liable.

³ Ohio Gen. Code Ann. (Page, 1937) § 11222; 12 Pa. Ann. Stat. (Purdon, 1931) § 31.

⁴ Ohio Gen. Code Ann. (Page, 1938) § 11234; 12 Pa. Ann. Stat. (Purdon, 1931) § 39.

⁵ Ky. Rev. Stat. (1946) § 413.120.

⁶ *Helmers v. Anderson*, (C.C.A. 6th, 1946) 156 F. (2d) 47.

⁷ *Anderson v. Andrews*, (C.C.A. 3d, 1946) 156 F. (2d) 972. Both cases are noted in 60 HARV. L. REV. 303 (1946) and 32 CORN. L. Q. 276 (1946).

⁸ *Campbell v. City of Haverhill*, 155 U.S. 610, 15 S. Ct. 217 (1895); *McClaine v. Rankin*, 197 U.S. 154, 25 S. Ct. 410 (1905).

⁹ *Wilson v. Koontz*, 7 Cranch (11 U.S.) 202 (1812); *McDonald v. Thompson*, 184 U.S. 71, 22 S. Ct. 297 (1902). In purely equitable proceedings, the state limitation applies where federal jurisdiction is based solely on diversity grounds, *Guaranty Trust Co. v. York*, 326 U.S. 99, 65 S. Ct. 1464 (1945), but where that

case arose when payment of the assessment became due under the order of the Comptroller of the Currency.¹⁰ But the narrow issue, namely, where that cause of action arose, has not been previously litigated. The present action being transitory, in the absence of a borrowing statute the issue would not have been material. The usual conflict's rule that an action once accruing is to be governed by the limitation statute of the forum would then have applied.¹¹ The finding of the Third Circuit Court of Appeals was that the action did not arise in Kentucky "any more than it did in any other one of the states of the United States."¹² This determination was based on a concept of a liability created by federal statute, enforceable against the shareholders regardless of territorial considerations and not to be affected, limited or restricted by ordinary state rules of law. This premise in effect refutes the initial one, that where the federal law is silent state limitations apply. Further, if the cause of action arose under the laws of, and within, the United States, it must have arisen within the territorial limits of a particular state or the District of Columbia, and in view of the borrowing statute, the limitation of that territorial jurisdiction should apply to the present Pennsylvania proceedings. In the present case the assessments were to be paid at the receiver's office in Louisville. The Sixth Circuit Court stressed the shareholders' failure to perform this obligation as the operative fact giving rise to the cause of action and this omission, occurring in Kentucky, determined that the action also arose there. The Supreme Court did not base its affirmance on this ground alone, and, in fact, refused to decide whether direction "to pay at a particular place could alter the conclusive situation as to where a cause of action might be said to 'arise' under other circumstances."¹³ The court justified its finding on the occurrence of a number of potentially operative facts within Kentucky, primarily the bank's engaging in business exclusively within that state, and the administration of the receivership there. This cumulative analysis and the result here reached seem entirely rational. Ordinarily, a cause of action is localized for purposes of venue or to determine what substantive law applies. In the present case, assuming that the cause had not been made actionable by federal law, the only jurisdiction whose substantive law might control and

jurisdiction arises from the enforcement of a federally created liability, state limitations may be ignored, the only bar being laches. *Holmberg v. Armbrrecht*, 327 U.S. 392, 66 S. Ct. 582 (1946). This gives rise to an anomalous situation in recovering assessments against bank stockholders. The liability for assessments under 39 Stat. L. 374, § 16 (1916), 12 U.S.C. (1940) § 64, on stock of federal land banks can be enforced only in a representative suit in equity, there being no provision for determination of the amount of the assessment by the receiver. *Christopher v. Brusselback*, 302 U.S. 500, 58 S. Ct. 350 (1937). It is submitted that the obligation is just as fundamentally a legal one as the liability in the instant case and that the procedural difficulties which necessitate exclusive equity jurisdiction should not require the totally different result reached in *Holmberg v. Armbrrecht*. See also the dissenting opinion of Judge Clark in *Todd v. Russell*, (C.C.A. 2d, 1939) 104 F. (2d) 169 at 175.

¹⁰ *Rawlings v. Ray*, 312 U.S. 96, 61 S. Ct. 473 (1941); *Fisher v. Whiton*, 317 U.S. 217, 63 S. Ct. 175 (1942).

¹¹ 3 BEALE, CONFLICT OF LAWS, § 604.1 (1935).

¹² *Anderson v. Andrews*, (C.C.A. 3d, 1946) 156 F. (2d) 972 at 975.

¹³ Principal case at 1343.

possibly afford a cause of action would have been Kentucky. If, for substantive purposes, the action could have arisen only in Kentucky, similarly, for the purposes of a borrowing statute, it must also have arisen there. The necessity of the present litigation accentuates some rather glaring inconsistencies resulting from our dual system of jurisprudence. It would seem that one area where uniformity is most to be desired would be in the operation of federal statutes creating substantive rights. Yet, while Banco's stockholders are immune from suit in Kentucky, Ohio, and Pennsylvania, they may well be amenable in jurisdictions having no borrowing statutes, if the ordinary limitation period has not expired. This will also hold true in other situations, as federal statutes typically fail to provide limitation periods on their enforcement.¹⁴ The simple expedient of a general federal limitation statute applying to the enforcement of substantive rights created by federal statute and not otherwise barred, would provide the desired uniformity and prevent much protracted litigation.

Edwin F. Uhl, S.Ed.

¹⁴ I MOORE, FEDERAL PRACTICE 240 (1938). For a discussion of the problem, the various suits in which it arises, the disparities in the applicable limitations, and possible solutions both by judicial decision and legislative action, see 49 YALE L. J. 738 (1940).