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State Statutes and the Full Faith and Credit Clause -- Hughes v. Fetter

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NOTES

STATE STATUTES AND THE FULL FAITH AND CREDIT CLAUSE—HUGHES v. FETTER

The full faith and credit clause of the Constitution[1] has commonly been regarded as concerned only with the enforcement of foreign judgments between the states of the Union.[2] The numerous cases which have come before the Supreme Court have dealt almost exclusively with the "judicial Proceedings" phrase of the clause,[3] while the words "public Acts" and

1. The clause provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. CONST. Art. IV, § 1. Congress is then given the power to "prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof." Prior to 1948 the statutes provided a means of authentication and that the "records and judicial proceedings" should be given the same faith and credit in other jurisdicitions as they have where enacted. See REV. STAT. § 905 (1875), 28 U.S.C. § 687 (1946) and REV. STAT. § 906 (1875), 28 U.S.C. § 688 (1946). In 1948, however, the word "acts" was included. See 62 STAT. § 947 (1948), 28 U.S.C. § 1738 (Supp. 1948). This statutory change may have the effect of greatly broadening the Court's control over the effect to be given in the forum to a foreign statute. See Cheatham, *A Federal Nation and Conflict of Laws,* 22 ROCKY MT. L. REV. 109, 114 (1950); Goodrich, *Yielding Place to New: Rest Versus Motion in the Conflict of Laws,* 50 COL. L. REV. 881, 891 (1950). But in its most recent case the Court "found it unnecessary" to place any reliance on the amended statute in reaching its decision although it had a direct bearing on the issue. *See* Hughes v. Fetter, 341 U.S. 609, 613 n.16, 71 Sup. Ct. 980, 95 L. Ed. 822 (1951). Several writers have felt that a more explicit legislative program by Congress would alleviate many of the problems raised by the full faith and credit clause. See COOK, LOGICAL AND LEGAL BASES OF THE CONFLICT OF LAWS 91 (1949); Field, *Judicial Notice of Public Acts Under the Full Faith and Credit Clause,* 12 MINN. L. REV. 439 (1928); Moore and Oglebay, *The Supreme Court and Full Faith and Credit,* 29 VA. L. REV. 557 (1943); Note, *Full Faith and Credit to Statutes,* 45 YALE L.J. 339 (1935).

2. See Corwin, *The "Full Faith and Credit" Clause,* 81 U. OF PA. L. REV. 371 (1933); Field, *supra* note 1, at 439; Langmaid, *The Full Faith and Credit Required for Public Acts,* 24 ILL. L. REV. 383 (1929); Note, 45 YALE L.J. 339 (1935).

3. The requirement that a money judgment must first be obtained in the sister state and then sued on in an action of debt in the forum state has been criticised as a wasteful procedure. It is contended that this problem can be solved by allowing the foreign judgment to be *executed* directly in the forum. See Cook, *The Powers of Congress Under the Full Faith and Credit Clause,* 28 YALE L.J. 421 (1919); Jackson, *Full Faith and Credit—The Lawyer's Clause of the Constitution,* 45 COL. L. REV. 1 (1945).

The forum must enforce the judgment even though it is based upon a cause of action that is not permitted in that state and is against its public policy. Fauntleroy v. Lum, 210 U.S. 230, 28 Sup. Ct. 641, 52 L. Ed. 1039 (1908), is the leading case; Mississippi was required to give full faith and credit to a judgmen rendered in Missouri upon a gambling debt made in Mississippi where it was illegal. See 2 BEALE, CONFLICT OF LAWS § 446.1 (1935).

The two main grounds of attack allowed the defendant in the forum are: (1) whether or not the rendering state had jurisdiction, and (2) whether or not the judgment is based on a penal law. STUMBERG, CONFLICT OF LAWS c. 5 (2d ed. 1951); Jackson, *supra* note 3, at 8. The argument against enforcing judgments based on penal laws has been weakened somewhat by the case of Milwaukee County v. M.E. White Co., 296 U.S. 268, 56 Sup. Ct. 229, 80 L. Ed. 220 (1935), where full faith and credit was required for a judgment based on a revenue law of a sister state. *Cf.* Huntington v. Attrall, 146 U.S. 657, 13 Sup. Ct. 224, 36 L. Ed. 1123 (1892). See Hazelwood, *Full*

"Records" have been, for the most part, left untapped as a source of decisional law. It has only been in recent years that the Supreme Court has broadened its approach by applying the full faith and credit clause to the legislative acts of the states as well as to judgments.[4]

Historically the statutes of sister states have not been conclusively shown to have been intended for inclusion in the words "public Acts," but there is general agreement today that they were so included.[5] However, except for one early dictum,[6] there was no Supreme Court holding supporting this proposition until the turn of the century. Since that time until June of 1951 the Supreme Court had held that the clause applied to legislative acts in only three groups of cases.

The first group dealt with the foreign enforcement of rights acquired under stockholder's liability statutes. The first case of this type was *Converse v. Hamilton,*[7] which required Wisconsin to allow a suit in its courts under a Minnesota statute imposing certain liabilities upon the stockholders of bankrupt Minnesota corporations.[8] In this case the Court applied the same general rule and exceptions to the statute as it does with the enforcement of judgments.[9] Because the basis of the decision was obscure,[10] it has never been regarded as a positive holding that the full faith and credit clause applies to statutes as such. The *Converse* case has remained in the background and was thought of as applying the clause, if at all, to only the one type of statute involved in the case. The application was believed necessary here because of the peculiar commercial relationship with which the case was concerned.

Faith and Credit Clause as Applied to Enforcement of Tax Judgments, 19 MARQ. L. REV. 905 (1934).

As to other defenses and requirements see Sistare v. Sistare, 218 U.S. 1, 30 Sup. Ct. 682, 54 L. Ed. 905 (1909) (finality of judgment or decree); Christmas v. Russell, 5 Wall. 290, 18 L. Ed. 475 (U.S. 1866) (judgment procured by fraud); Levin v. Gladstein, 142 N.C. 482, 55 S.E. 371 (1906) (same).

4. ". . . It is only comparatively recently that it has been definitely held that Article IV also requires state courts to give full faith and credit to statutes of other states." STUMBERG, CONFLICT OF LAWS 62-63 (2d ed. 1951).

5. See COOK, *supra* note 3, at 421; Dodd, *The Power of the Supreme Court to Review State Decisions in the Field of Conflict of Laws,* 39 HARV. L. REV. 533 (1926); Jackson, *supra* note 3, at 3; Ross, *"Full Faith and Credit" in a Federal System,* 20 MINN. L. REV. 140 (1936).

6. ". . . Without doubt the constitutional requirement, . . . implies that the public acts of every state shall be given the same effect by the courts of another state that they have by law and usage at home." Waite, C. J., in Chicago & Alton R.R. v. Wiggins Ferry Co., 119 U.S. 615, 622, 7 Sup. Ct. 398, 30 L. Ed. 519 (1887). See also Green v. Van Buskirk, 5 Wall. 307, 18 L. Ed. 599 (U.S. 1867), which has sometimes been interpreted as applying the clause to statutes.

7. 224 U.S. 243, 32 Sup. Ct. 415, 56 L. Ed. 749 (1912).

8. See also Broderick v. Rosner, 294 U.S. 629, 55 Sup. Ct. 589, 79 L. Ed. 1100 (1935), 10 ST. JOHN'S L. REV. 117; Jackson, *supra* note 3, at 13; Note, 45 YALE L. J. 339 (1935).

9. Converse v. Hamilton, 224 U.S. 243, 260, 32 Sup. Ct. 415, 56 L. Ed. 749 (1912).

10. *Compare* Hilpert and Cooley, *The Federal Constitution and Choice of Law,* 25 WASH. L. Q. 27, 37 (1939) and Langmaid, *supra* note 2, at 398 with CARNAHAN, CONFLICT OF LAWS AND LIFE INSURANCE CONTRACTS 47 (1942).

The next group of cases has been concerned with the problems arising in connection with fraternal benefit insurance companies.[11] Though these holdings have likewise not been as forthright as they might have been, it is apparent that the Court intended to make the same use of the clause here as was done in the first group. In point of time these decisions were the earliest involving anything approaching a wide application of the clause to statutes, and at one time they stood almost alone in the field. Here the Court has held that the forum must give full faith and credit to the domiciliary charter of the company as embodied in the foreign state's statutes and the decisions of that state construing the charter.[12] In these holdings the Supreme Court seems motivated by a desire to secure uniform enforcement of the rights created under such contracts[13] and by a recognition of the obvious need of a commercial world that the parties be able to appraise their rights before entering into business relations.[14] These decisions have taken on a unique position in the law concerning the full faith and credit clause and have given little cause for belief that any new future application of the clause to statutes would be made. This may in part be attributed to the somewhat unusual nature of the business organization involved.

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11. *E.g.*, Order of United Commercial Travelers v. Wolfe, 331 U.S. 586, 67 Sup. Ct. 1355, 91 L. Ed. 1687 (1947); Sovereign Camp of the Woodmen of the World v. Bolin, 305 U.S. 66, 59 Sup. Ct. 35, 83 L. Ed. 45 (1938); John Hancock Mutual Life Insurance Co., v. Yates, 299 U.S. 178, 57 Sup Ct. 129, 81 L. Ed. 106 (1936); Modern Woodmen of America v. Mixer, 267 U.S. 544, 45 Sup. Ct. 389, 69 L. Ed. 783 (1925); Supreme Council of the Royal Arcanum v. Green, 237 U.S. 531, 35 Sup. Ct. 724, 59 L. Ed. 1089 (1915). There is some room for leeway, however. See Pink v. A.A.A. Highway Express, Inc., 314 U.S. 201, 62 Sup. Ct. 241, 86 L. Ed. 152 (1941), 42 COL. L. REV. 689 (1942).

Though the two cases of Hartford Life Ins. Co. v. Barber, 245 U.S. 146, 38 Sup. Ct. 54, 62 L. Ed. 208 (1917) and Hartford Life Ins. Co. v. Ibs, 237 U.S. 662, 35 Sup. Ct. 692, 59 L. Ed. 1165 (1915) are sometimes cited as belonging in the above group of decisions, it seems more likely that these cases stressed the res judicata aspect as applied to class actions rather than the full faith and credit that must be given to the charters and by-laws of these companies as embodied in the statutes of the state of incorporation and as construed by that state's courts.

In contrast to the fraternal benefit type of insurance company, the conflict of laws situations arising in regard to the usual type of insurance company have been regulated by the Supreme Court by the use of the due process clause of the Fourteenth Amendment. See, *e.g.*, Hartford Accident & Indemnity Co. v. Delta Pine & Land Co., 292 U.S. 143, 54 Sup. Ct. 634, 78 L. Ed. 1178 (1934); Home Insurance Co. v. Dick, 281 U.S. 397, 50 Sup. Ct. 338, 74 L. Ed. 926 (1930); New York Life Ins. Co. v. Dodge, 246 U.S. 357, 38 Sup. Ct. 337, 62 L. Ed. 772 (1918); New York Life Ins. Co. v. Head, 234 U.S. 149, 34 Sup. Ct. 879, 58 L. Ed. 1259 (1914). For a complete discussion of these eases and problems see Overton, *State Decisions in Conflict of Laws and Review by the U. S. Supreme Court under the Due Process Clause*, 22 ORE. L. REV. 109 (1943).

12. It has been claimed that this amounts to giving full faith and credit to the common law of a foreign state. See O'Meara, *Constitutional Aspects of the Conflict of Laws: Recent Developments*. 27 MINN. L. REV. 500 (1943). *Cf.* Field, *supra* note 1, at 441. See also Ross, *Has the Conflict of Laws Become a Branch of Constitutional Law?* 15 MINN L. REV. 161, 170 (1931).

13. Supreme Council of the Royal Arcanum v. Green, 237 U.S. 531, 542, 35 Sup. Ct. 724, 59 L. Ed. 1089 (1915).

14. See Hughes v. Fetter, 341 U.S. 609, 615-17, 71 Sup. Ct. 980, 95 L. Ed. 822 (1951) (dissenting opinion).

The third line of cases deals with workman's compensation statutes. The first decision was *Bradford Electric Light Co. v. Clapper,*[15] which arose when a Vermont resident who was employed in that state was killed in the course of his employment while temporarily working in New Hampshire. In a suit in the New Hampshire Federal District Court for the negligent killing of the deseased, the company pleaded the Vermont statute by way of defense. The Supreme Court upheld that contention on the ground that New Hampshire must give full faith and credit to the Vermont act. It was declared that this result was not giving extraterritorial effect to the statute since these types of acts "are treated, almost universally, as creating a statutory relation between the parties . . ."[16]

This decision, at first, appeared to be of great importance since this was the first time that the Court had expressly held that a statute was a public act within the meaning of the constitutional provision.[17] However, by the later holdings of the Court, the *Bradford* case has been in practical effect limited to its own facts and is even doubtful as to these. The Supreme Court in later similar cases has not required a state to use a foreign workman's compensation statute in preference to its own as it did in the *Bradford* case.[18] Consequently, the authority of this case has now been considerably weakened, and the case itself has not been a stepping-stone to the general enforcement of statutory rights in other states.

These three groups of cases were the only ones where this question was decided until just recently.[19] In *Hughes v. Fetter,*[20] decided last June, the Supreme Court has extended the application of the clause to still a fourth

15. 286 U.S. 145, 52 Sup. Ct. 571, 76 L. Ed. 1026 (1932), 46 HARV. L. REV. 291, 42 YALE L.J. 115.

16. *Id.* at 157-58.

17. *Id.* at 154-55. See also Beale, *Social Justice and Business Costs—A Study in the Legal History of Today,* 49 HARV. L. REV. 593 (1936). The fact that Congress has not legislated directly with respect to this has led to conjecture as to whether or not the full faith and credit clause is self-executing as to statutes. See CARNAHAN, *op. cit. supra* note 10, at 43; Jackson, *supra* note 3, at 11; Langmaid, *supra* note 2, at 388.

18. All subsequent cases decided by the Supreme Court have allowed the forum to apply its own law in dealing with workman's compensation cases regardless of the place of making of the employment contract, the place of injury or the location of the injured party's regular place of employment. It seems that the forum may apply local law even though the forum's interest in the controversy is relatively slight. See Cardillo v. Liberty Mutual Insurance Co., 330 U.S. 469, 67 Sup. Ct. 801, 91 L. Ed. 1028 (1947); Pacific Employers Insurance Co. v. Industrial Accident Commission, 306 U.S. 493, 59 Sup. Ct. 629, 83 L. Ed. 940 (1939); Alaska Packers Ass'n v. Industrial Accident Commission, 294 U.S. 532, 55 Sup. Ct. 518, 79 L. Ed. 1044 (1935); *cf.* Ohio v. Chattanooga Boiler & Tank Co., 289 U.S. 439, 53 Sup. Ct. 663, 77 L. Ed. 1307 (1933). See STUMBERG, *op. cit. supra* note 3, at 62; note 35 COL. L. REV. 751 (1935).

19. See Smithsonian Institution v. St. John, 214 U.S. 19, 29 Sup. Ct. 601, 53 L. Ed. 892 (1909) in regard to the application of the clause to state constitutions.

20. 341 U.S. 609, 71 Sup. Ct. 980, 95 L. Ed. 822 (1951). The opinion of the state court which was reversed by the Supreme Court may be found in 257 Wis. 35, 42 N.W.2d 452 (1950), 64 HARV. L. REV. 327, 49 MICH. L. REV. 756 (1951).

type of statutes—those creating a cause of action for wrongful death.[21] Though this had been suggested a number of years ago as a means of securing uniformity of enforcement,[22] and the Court had required that full faith and credit be given a judgment based on a wrongful death statute,[23] it was not until this case that full faith and credit was required for such a foreign statutory cause of action.[24] The states, following the early federal decisions,[25] have not considered themselves bound by the Constitution to allow these suits, but have been content to decide these cases under the common law principles of the conflict of laws.[26] The modern tendency has been to permit the action under the foreign wrongful death act,[27] but some states have denied recognition to such a cause of action, giving more weight to their public policy[28] or requiring substantial similarity between their wrongful death statute and that of the foreign state.[29] The *Hughes* case has now affected these rulings, and has placed some constitutional limitations on the states in this regard.

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21. For a historical account of the origin of this type of statute in the United States see TIFFANY, DEATH BY WRONGFUL ACT c. 2 (2d ed. 1913); Rose, *Foreign Enforcement of Actions for Wrongful Death,* 33 MICH. L. REV. 545 (1935).

22. Schofield, *The Claim of a Federal Right to Enforce in One State the Death Statute of Another,* 3 ILL. L. REV. 65 (1908). The writer also suggested that some use might be made of the due process clause in this regard.

23. Kenney v. Supreme Lodge of the World, 252 U.S. 411, 40 Sup. Ct. 371, 64 L. Ed. 638 (1920).

24. In the past when these cases were before the Supreme Court they were decided purely on principles of the conflict of laws with no mention being made of the full faith and credit clause. See Stewart v. Baltimore & Ohio Railroad Co., 168 U.S. 445, 18 Sup. Ct. 105, 42 L. Ed. 537 (1897); Northern Pacific Railroad Co. v. Babcock, 154 U.S. 190, 14 Sup. Ct. 978, 38 L. Ed. 958 (1894); Dennick v. Railroad Co., 103 U.S. 11, 26 L. Ed. 439, (1880). Notice, however, that these cases were decided before Erie R.R. v. Tompkins, 304 U.S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188 (1938), when the Court was deciding cases under its own common law. See Jackson, *supra* note 3, at 13.

25. See note 24 *supra.*

26. Since suits for wrongful death are in tort the *lex loci delicti* applies, and the ordinary tort right is enforced unless some strong public policy of the frum forbids it. In connection with wrongful death actions this policy has been confined mainly to the type of damages allowed under the foreign statute as compared with that of the forum. See RESTATEMENT, CONFLICT OF LAWS § 392 (1934).

27. This modern veiw is exemplified by Judge Cardozo's opinion in Loucks v. Standard Oil Co. of New York, 224 N.Y. 99, 120 N.E. 198 (1918), which allowed a suit for wrongful death to be brought in New York under the Massachusetts statute which provided for damages based on defendant's culpability. Other cases showing substantically the same attitude include Rodwell v. Camel City Coach Co., 205 N.C. 292, 171 S.E. 100 (1933); Bagley v. Small, 92 N.H. 107, 26 A.2d 23 (1942); Baldwin v. Powell, 294 N.Y. 130, 61 N.E.2d 412 (1945); Parsons v. American Trust & Banking Co., 168 Tenn. 49, 73 S.W.2d 698 (1934); Richardson v. Pacific Power & Light Co., 11 Wash. 2d 288, 118 P.2d 985 (1941). See also GOODRICH, CONFLICT OF LAW 297 (3d ed. 1949; TIFFANY, *op. cit. supra note* 21, § 196; STUMBERG, *op. cit. supra* note 3, at 192.

28. *E.g.,* McLay v. Slade, 48 R.I. 357, 138 A. 212 (1927). See Note, 62 A.L.R. 1330 (1929) for a careful review of the cases dealing with the penal and public policy aspects of foreign wrongful death actions.

29. See TIFFANY, *op. cit. supra* note 21, §§ 197-98; Rose, *supra* note 21, at 559; Note, 77 A.L.R. 1311 (1932) for a collection of cases invoking the similarity rule. For a fact situation involving a foreign country instead of a state see Slater v. Mexican Nat. R.R. Co., 194 U.S. 120, 24 Sup. Ct. 581, 48 L. Ed. 900 (1904).

In the *Hughes* case, an administrator brought suit in Wisconsin under the Illinois wrongful death act to recover damages for the death of his decedent, who was killed in Illinois in an automobile accident. The Wisconsin Supreme Court upheld the trial court's dismissal of the suit. The decision was placed upon the ground that the Wisconsin wrongful death act gave rise to a public policy which forbade the enforcement of all foreign wrongful death claims.[30] The Supreme Court of the United States reversed this decision, holding that the full faith and credit clause requires that this Wisconsin policy must give way. The Court made it clear that this was not meant to be an arbitrary holding, since it recognized that there was room for "conflicting public policies" among the states in this regard. The Court also pointed out that there was no "real feeling of antagonism" in Wisconsin concerning wrongful death statutes in general.[31]

The argument of the dissent was based primarily on the circumstance that there was no pre-existing relationship between the parties as there had been in the earlier groups of cases. Because of this, it was argued that there was no need for any fixed rule which would inform the parties of their rights in advance of any transaction they might enter into.[32] However, the majority opinion does not seem concerned with enabling the parties to determine their rights and obligations at the time they enter into a contractual relationship; but, on the contrary, appears to be more interested in the aiding of parties to secure uniform treatment regardless of where they happen to bring suit.[33] Furthermore, it was urged by the dissenting opinion that since this was a cause of action and not a defense, enforcement might be declined in the forum state as no rights would be impaired; the plaintiff must simply bring his suit elsewhere.[34] This disregards the fact that the plaintiff may not always be able to get service of process on the defendant in another jurisdiction or that the defendant may have assets in only one jurisdiction. This result might very well work a severe hardship on the plaintiff in many instances.

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30. Hughes v. Fetter, 257 Wis. 35, 42 N.W.2d 452 (1950).

31. The majority opinion was written by Mr. Justice Black, and the dissenting opinion by Mr. Justice Frankfurter who was joined by Justices Reed, Jackson and Minton.

32. Hughes v. Fetter, 341 U.S. 609, 617-18, 71 Sup. Ct. 980, 95 L. Ed. 822 (1951).

33. This was the main purpose of the full faith and credit clause. "It was the purpose of that provision to preserve rights acquired or confirmed under the public acts and judicial proceedings of one state by requiring recognition of their validity in others." Pink v. A.A.A. Highway Express, Inc., 314 U.S. 201, 210, 62 Sup. Ct. 241, 86 L. Ed. 152 (1941). See Beach, *Uniform Interstate Enforcement of Vested Rights*, 27 YALE L.J. 656 (1918), where the cases denying a right of action on a foreign wrongful death act are criticised and said to be against the policy of the full faith and credit clause.

34. Hughes v. Fetter, 341 U.S. 609, 618, 71 Sup. Ct. 980, 95 L. Ed. 822 (1951), quoting from Bradford Electric Light Co. v. Clapper, 286 U.S. 145, 160, 52 Sup. Ct. 571, 76 L. Ed. 1026 (1932), where it was said by Mr. Justice Brandeis that "A State may, on occasion, decline to enforce a foreign cause of action. In so doing, it merely denies a remedy, leaving unimpaired the plaintiff's substantive right, so that he is free

It is not clear from the opinion how broad is the principle on which the *Hughes* case is based. In its narrowest form the decision stands for the proposition that a state may not categorically refuse to enforce all causes of action based on the wrongful death acts of sister states. Whether the same holding will be reached in cases of a limited or restricted refusal to enforce only certain wrongful death claims remains to be seen.

The problem was raised, however, in the later case of *First National Bank of Chicago v. United Airlines*,[35] decided by a United States court of appeals last July. Under facts similar to those in *Hughes*, an executor of a deceased Illinois resident brought suit in a federal district court in Illinois under the Utah wrongful death act for the deceased's death in Utah while aboard one of defendant's airliners. The defendant was doing business in Illinois and also had an agent for the service of process in Utah. The court of appeals affirmed the trial court's dismissal of the suit, citing *Hughes v. Fetter* in the opinion. The decision was based on the fact that the Illinois wrongful death act, unlike the Wisconsin act, does not "exclude all foreign wrongful death actions but only those as to which 'a right of action . . . exists under the laws of the place where such death occurred and service of process . . . may be had upon the defendant in such place.' "[36] Since the plaintiff executor was capable of reducing his claim to judgment in Utah, Illinois forbade the suit in its courts.[37]

The court of appeals felt that by requiring the plaintiff to bring his suit in Utah a more orderly administration of justice in Illinois could be had.[38] It has been forcefully argued that this is a wasteful and expensive procedure, contrary to the purposes of the full faith and credit clause.[39] Furthermore, Illinois may still have to entertain a suit based on the judgment in Utah since the defendant's assets may not be sufficient in the latter state to satisfy the judgment obtained. The *United Airlines* case definitely does

to enforce it elsewhere." See also Home Insurance Co. v. Dick, 281 U.S. 497, 50 Sup. Ct. 338, 74 L. Ed. 926 (1930) (defendant's defense required to be permitted under the due process clause of the Fourteenth Amendment). Compare the language of Mr. Justice Stone in Alaska Packers Ass'n v. Industrial Accident Commission, 294 U.S. 532, 547, 55 Sup. Ct. 518, 79 L. Ed. 1044 (1935): "The necessity is not any the less whether the statute and policy of the forum is set up as a defense to a suit brought under the foreign statute or the foreign statute is set up as a defense to a suit or proceedings under the local statute." See also Field, *supra* note 1, at 447.

35. 190 F.2d 493 (7th Cir. 1951), *cert. denied*, 341 U.S. 903 (1951).

36. *Id.* at 494-95.

37. If the plaintiff recovers a judgment in Utah, he can, of course, sue on it in Illinois. Presumably Illinois could not have any objection to this procedure. See Kenney v. Supreme Lodge of the World, 252 U.S. 411, 40 Sup. Ct. 371, 65 L.Ed. 638 (1920).

38. First National Bank of Chicago v. United Airlines, 190 F.2d 493, 495 (7th Cir. 1951).

39. Mr. Justice Jackson, one of the dissenters in the *Hughes* case, had this to say in 1945: "But the full faith and credit clause is the foundation of any hope we may have for a truly national system of justice, based on the preservation but better integration of the local jurisdictions we have." Jackson, *supra* note 3, at 34. See also note 33 *supra*.

not follow the "uniform enforcement of vested rights"[40] approach which seems to be the underlying basis of the *Hughes* decision. An answer from the Supreme Court may soon be forthcoming since it has decided to review the case.[41] This may be taken as an indication that the Court will clarify its position. It most certainly shows that the Court regards this as an important problem regardless of the result it may reach in its decision. It is not unlikely that the Court will reverse the decision of the court of appeals as being inconsistent with the principles announced in *Hughes v. Fetter.*

Suppose the forum state declines to enforce a foreign wrongful death act because it differs in some material aspect from its own statute? In the past this has been the main ground on which the state courts have based their rulings refusing to enforce these statutes. The states using this basis of refusal have generally held that some substantial similarity must be found between the two acts before enforcement would be permitted.[42] It is likely that the Court will give more consideration to this ground of refusal because of these previous state decisions. Since there are no decisions of the Court on this question, the final answer is as yet very much in doubt.

No certain answer is available, also, when the forum characterizes the foreign statute as penal and refuses to enforce it on this ground. Questions concerning the penal nature of wrongful death acts generally arise in connection with the manner in which damages are assessed—*e.g.,* where they are limited or where they are based upon the degree of culpability of the defendant rather than the injuries to the deceased or his family. Since the Supreme Court has often said that the full faith and credit clause does not require enforcement of judgments based on penal laws,[43] it may well be that the same application will be made in the case of statutes. If such is the case, it seems likely that the Court will determine for itself when the foreign statute is penal.

Can a forum refuse to enforce a foreign wrongful death act under the principle of *forum non conveniens?* In the *Hughes* ease the Supreme Court did not say what effect its decision would have upon that doctrine where its application would deny enforcement to a public act of another state.[44] The

40. This phrase is borrowed from Professor Beach, *supra* note 33.

41. First Nat. Bank of Chicago v. United Airlines, 20 U.S.L. WEEK 3123 (U.S. Nov. 13, 1951) (certiorari granted).

42. See note 29 *supra.*

43. See Huntington v. Attrill, 146 U.S. 657, 673, 13 Sup. Ct. 224, 36 L. Ed. 1123 (1892); Wisconsin v. Pelican Insurance Co., 127 U.S. 265, 290, 8 Sup. Ct. 1370, 32 L. Ed. 239 (1888); TIFFANY, *op. cit. supra* note 21; STUMBERG, *op. cit. supra* note 3, at 118. But compare Milwaukee County v. M.E. White Co., 296 U.S. 268, 56 Sup. Ct. 229, 80 L. Ed. 220 (1935), which required enforcement of a judgment based on a revenue law, thus weakening the rule forbidding enforcement of judgments based on penal laws.

44. "The Wisconsin policy, moreover, cannot be considered as an application of the *forum non conveniens* doctrine, whatever effect that doctrine might be given if its use resulted in denying enforcement to public acts of another state." Hughes v. Fetter, 341 U.S. 609, 612-13, 71 Sup. Ct. 980, 95 L. Ed. 822 (1951).

impression is given, however, that a valid application will in most cases cause no disturbance with the normal procedure. The doctrine will presumably have some limiting effect on the full faith and credit clause.[45]

Will the holding in the *Hughes* case be extended to include problems of choice of law—problems wherein the forum must choose between two or more states for the source of the law which will be applied to the facts and control the legal relations of the parties? Actually neither the *Hughes* nor the *United Airlines* cases involved a choice of law problem. The wrongful act, injury and death all occurred in one state so that the question was whether the proper law could be enforced in the forum rather than what was the proper law to apply. There is no indication in the *Hughes* opinion that the Court is interested in the connection of the full faith and credit clause with this situation. It is not unlikely that the Court will concern itself with this question in the future, since in previous cases it has used the due process clause of the Fourteenth Amendment as a means of securing proper choice of law.[46] Furthermore, the *Bradford* case presented a choice of law problem which the Court necessarily decided when it held that New Hampshire was required to give full faith and credit to the Vermont statute.

Will the doctrine of the *Hughes* case be expanded to include other types of statutes besides wrongful death statutes? The majority of the Court did not limit its holding to wrongful death acts, and the decision was reached in spite of the limiting argument of the dissent. On the other hand, some of the justices may have felt that this case was the limit to which an application of the clause could be carried. If the "uniform enforcement of vested rights" is the goal of the Court and the Constitution, it can most easily be accomplished by including other types of statutes within the scope of the clause.[47]

Another means of securing uniformity of enforcement is by a further extension of the *Hughes* case and the earlier decisions to include the common law of the sister states within the "public Acts" phrase of the clause. The Court seemed to be reaching this result with the fraternal insurance cases when it held that full faith and credit must be given to the decisions of the

45. It is possible that the *United Airlines* case may be treated as an applieation of the doctrine of *forum non conveniens.* It may be more convenient to try the suit in Utah, the place of the wrongful act, since all the witnesses will presumably be found there. Furthermore, defendant may be served with process in Utah.

46. *E.g.,* Hartford Accident & Indemnity Co. v. Delta Pine & Land Co., 292 U.S. 143, 54 Sup. Ct. 634, 78 L. Ed. 1178 (1934); Home Insurance Co. v. Dick, 281 U.S. 397, 50 Sup. Ct. 338, 74 L. Ed. 926 (1930). Hilpert and Cooley, *supra* note 10, at 46.

47. Some of the suggested statutes which might be included within the scope of the full faith and credit clause are those relating to marriage and divorce, those imposing liability upon nonresident car owners where the car is driven in the state by the nonresident's bailee and fiscal laws of sister states. See Jackson, *supra* note 3, at 13; Note, 45 YALE L.J. 339 (1935).