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Conflict of Laws--Right of Action Under New Jersey Statute Enforceable in New York (Wikoff v. Hirschel, 258 N.Y. 28 (1932))

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RECENT DECISIONS

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CONFLICT OF LAWS—RIGHT OF ACTION UNDER NEW JERSEY STATUTE ENFORCEABLE IN NEW YORK.—A New Jersey statute, enacted in 1848, established a cause of action for death caused by the negligence of another person. The statute provided that such a suit must be brought in the name of the personal representatives, for the exclusive benefit of widow, husband and next of kin. A supplemental statute, enacted in 1917, provides that every such action shall be brought in the name of an administrator *ad prosequendum,* who shall have no authority to receive payment of the judgment, but that payment shall be made only to a general administrator who has given a bond as required by law and has complied with other procedural prerequisites. The plaintiff was appointed administratrix *ad prosequendum* and also general administratrix by the surrogate in New Jersey. The defendant argued that the plaintiff could not recover in New York since there can be no collection of the judgment until the general administratrix shall have filed a supplemental bond in New Jersey, and since a judgment not susceptible of collection at the hands of the plaintiff who recovers it is unknown to our law. *Held,* the cause of action existing under the statute of New Jersey can be maintained in New York. *Wikoff* v. *Hirschel,* 258 N. Y. 28, 179 N. E. 249 (1932).

This decision is in accord with the well settled rule that a cause of action for wrongful death arising by virtue of a statute of another state may be enforced in New York. Thus, in *Loucks* v. *Standard Oil Co.*,[1] Cardozo, *J.*, said: "A right of action is property. If a foreign statute gives the right, the mere fact that we do not give a like right is no reason for refusing to help the plaintiff in getting what belongs to him. We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home." [2] In that case the plaintiff was permitted to recover even though the Massachusetts statute, on which he based his cause of action, was in some respects penal in its nature. The courts have declared that the right to sue under a foreign death statute rests on the transitory obligation arising out of a personal injury which follows the person, and for sound reasons of public policy may be

[1] Loucks v. Standard Oil Co. of N. Y., 224 N. Y. 99, 110, 111, 120 N. E. 198, 201 (1918).

[2] To the same effect, see Stallknecht v. Pennsylvania R. R. Co., 53 How. Prac. 305, *aff'd,* 13 Hun 451 (N. Y. 1878); Leonard v. Columbia Steam Navigation Co., 84 N. Y. 48 (1881); Wooden v. Western N. Y. & P. R. Co., 126 N. Y. 10, 26 N. E. 1050 (1891); Johnson v. Phoenix Bridge Co., 197 N. Y. 316, 90 N. E. 953 (1910).

enforced wherever the person is found.[3] However, jurisdiction is discretionary in such cases. Thus, where the right of recovery given by the foreign state is so dissimilar to that given by the law of the state in which the action is brought as to be incapable of enforcement in such state, the action cannot be maintained. The latter proposition was applied in *Slater* v. *Mexican Nat. R. R. Co.*[4] In that case the district court refused to entertain jurisdiction because the foreign statute sued on contemplated decree for periodical payments analogous to alimony, subject to modification from time to time as the circumstances change. The main problem is to determine when the right of action arising in the foreign state is so dissimilar to that given by the state wherein the action is brought as to be against its declared public policy. In the principal case, there was a mere procedural difficulty which could be overcome by staying enforcement of judgment until plaintiff became qualified to collect it in accordance with the New Jersey law. Since our Surrogate's Court Act[5] permits such practice the motion to dismiss the complaint on the ground that the facts stated in the complaint did not constitute a cause of action was properly denied.

A. S.

CONSTITUTIONAL LAW—RAILROAD REGULATION—APPLICATION FOR REHEARING BECAUSE OF CHANGED ECONOMIC LEVEL SHOULD BE GRANTED—JUDICIAL NOTICE WILL BE TAKEN OF DEPRESSION.—Plaintiff railroad company sues to restrain enforcement of an order of the Interstate Commerce Commission made as a result of a general investigation of rates, charges, regulations and practices as authorized by the Hoch-Smith resolution. The record of the hearing before the Commission was closed in September, 1928. An order of the Commission was reported on July 1, 1930. In February, 1931, before the order was made effective, the plaintiff petitioned for a rehearing, which was denied. This suit is brought to restrain the enforcement of the order on the ground that the denial of the petition for rehearing was an abuse of administrative discretion and, consequently, a denial of due process in violation of the Fifth Amendment of the United States Constitution. On appeal to the United States Supreme Court, *held,* injunction should be granted. *Atchison, Topeka and Santa Fe Railroad Company* v. *United States,* 284 U. S. 248, 52 Sup. Ct. 146 (1932).

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[3] State of Colorado v. Harbeck, 232 N. Y. 71, 133 N. E. 357 (1921); Zeikus v. Florida East Coast Ry. Co., 153 App. Div. 345, 138 N. Y. Supp. 478 (2d Dept. 1912).

[4] Slater v. Mexican Nat. R. R. Co., 194 U. S. 120, 24 Sup. Ct. 581 (1904).

[5] N. Y. SURR. CT. ACT §§89, 122.