

FULL FAITH AND CREDIT TO PUBLIC ACTS: THE  
SIGNIFICANCE OF *HUGHES v. FETTER*

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When a practicing attorney in handling a common tort case finds litigation necessary, he generally focuses his attention on the court where the suit is to be tried, and thus upon the law of the state where the court is situated. In most situations, a localized attitude such as this is entirely proper, as the case will be decided entirely under local state law. But, if some of the facts in the case took place in another state, the lawyer must beware, as a conflict of laws problem may be involved. If he seeks to apply the local law of the forum<sup>1</sup> in the case, to the exclusion of the law of the locus,<sup>2</sup> he may find himself face to face with a question involving the Full Faith and Credit Clause of the Federal Constitution.<sup>3</sup>

Counsel must then consider and decide two questions: (1) Should the action be entertained at all? (2) If the action is allowed, where are the applicable rules of decision to be found—in the law of the forum, or in the law of the locus?

Focusing on the exact point under discussion, and remembering that the forum has a choice to make, to what extent, if any, is the state court subject to control by the United States Supreme Court under the Full Faith and Credit Clause?

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<sup>1</sup> The state in which the suit is brought.

<sup>2</sup> The state where the particular facts, upon which the suit is based, occurred.

<sup>3</sup> "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.

Where a state court by applying the law of the forum attempts to impose on the defendant a duty not existing under the law of the locus, the Due Process Clause may also be invoked. But where the state court simply refuses to enforce a right existing under the law of the locus, leaving the plaintiff free to sue elsewhere, only the Full Faith and Credit Clause can with reason be appealed to.

No answer is certain. Sometimes the Supreme Court interferes, but at other times it does not, taking the position that the question is one of local policy for the state courts to decide.

A judgment of a court in the locus state is pretty clearly entitled to full faith and credit in a forum, except as to certain equitable decrees.<sup>4</sup> But in the case of rights not reduced to judgment, just when Full Faith and Credit is required, and just when the Supreme Court will interfere, has been the subject of much speculation, invariably ending by a confession from competent authorities that the answer is not yet in sight. Mr. Justice Jackson clearly sums up the situation:

"I cannot say with any assurance where the line is drawn today between what the Supreme Court will decide as constitutional law, and what it will leave to the states as common law."<sup>5</sup>

In the spring of this year (1951), a decision was handed down by the U. S. Supreme Court which seems to be a new development in the Full Faith and Credit-Conflict of laws field. The case is *Hughes v. Fetter*.<sup>6</sup> Appellant administrator brought an action in a Wisconsin state court to recover damages for the death of the decedent who was fatally injured in an automobile accident in Illinois. The complaint was based on the Illinois wrongful death statute, and named as defendants the allegedly negligent driver and an insurance company. Wisconsin has an unusual rule of procedure which allows a defendant's insurance company to be named directly as a co-defendant in a tort action.<sup>7</sup> Appellant, the decedent, and the individual defendant were residents of Wisconsin; appellant had been appointed as administrator under Wisconsin laws; and the insurance company was a

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<sup>4</sup> Equitable decrees that are temporary, and not final adjudications, are subject to later modification in the courts of the locus to the same extent that such could be modified in the forum, without violating the Full Faith and Credit Clause. *Fall v. Eastin*, 215 U.S. 1 (1909).

<sup>5</sup> Jackson, *Full Faith and Credit—The Lawyers Clause of the Constitution*, 45 COL. L. REV. 1 (1945).

<sup>6</sup> 341 U.S. 609 (1951).

<sup>7</sup> WIS. STATS. 1947, § 260.11(1).

Wisconsin Corporation. The trial court dismissed the complaint, pursuant to a Wisconsin statute which creates a right of action only for wrongful deaths caused in that state, and which was construed as establishing a local public policy against Wisconsin courts entertaining suits brought under the wrongful death statutes of other states. The Wisconsin Supreme Court affirmed. The U.S. Supreme Court held that the statutory policy of Wisconsin which excludes the Illinois cause of action from its courts, is in contravention of the Full Faith and Credit Clause of the Federal Constitution.

Mr. Justice Black wrote the majority opinion concurred in by Vinson, C.J., Clark, J., Burton, J., and Douglas, J. Prior decisions were cited to show that the Illinois statute was a "public act" within the Full Faith and Credit Clause, and it was further said that Wisconsin could not escape its constitutional obligation to enforce the rights and duties created under the laws of other states, by the simple device of removing jurisdiction from courts otherwise competent. The court then referred to the two conflicting policies, namely the "national policy" of the Full Faith and Credit Clause, and the "local policy" of Wisconsin against entertaining the suit, and said that it is the job of the U.S. Supreme Court to choose between them. The Court chose the "national policy", saying that the "local policy" must give way to the stronger unifying principle of the Full Faith and Credit Clause.

The majority opinion gave no reason for the decision other than the Full Faith and Credit Clause. Several ostensible reasons are stated in the opinion, but upon closer examination they appear not to be reasons at all, but rather mere rebuttals posed a priori to combat the expected criticism of the decision stated in the dissent, written by Frankfurter, J., and concurred in by Jackson, J., Reed, J., and Minton, J. A close look at these supposed reasons is pertinent at this point: (a) Black, J. wrote that:

"The state [Wisconsin] has no real feeling of antagonism against wrongful death suits in general. To the contrary, a forum is regularly provided for

cases of this nature, the exclusion rule extending only so far as to bar actions for death not caused locally."

It is agreed that Wisconsin is not antagonistic to wrongful death actions in general. The policy of Wisconsin is clearly and specifically stated to be otherwise, i.e., only against the local enforcement of foreign created rights of action on wrongful death statutes. Surely Wisconsin is not required to enforce an action based on the Illinois statute, for the sole reason that it also has in existence a wrongful death statute. No reason is suggested or apparent for an all-or-nothing approach, i.e., for holding that a state must either accept all wrongful death statutes, or reject them all.

The Wisconsin court in interpreting the statute, clearly stated the legislature's notion of public policy, and while the provision may not satisfy everyone's notion of public policy, such choice is not novel, and is not without reason.<sup>8</sup> Logical reasons could be suggested for the decision: (a) In some cases there might be inconvenience in obtaining out of state witnesses for an action brought in Wisconsin; (b) Wisconsin may feel that the Illinois courts can better apply their own wrongful death statute; (c) Wisconsin may feel that foreign wrongful death statutes, having unfamiliar provisions, would be difficult for a local court to apply; (d) The measure of damages, not easy to explain to a jury even under a familiar statute, might be different in a foreign statute; (e) Wisconsin may fear that its unusual rule of procedure allowing insurance companies to be joined as defendants in tort actions, may make Wisconsin a more desirable forum than other states, and that as a result, plaintiffs would bring their suits to Wisconsin and thereby crowd the courts. These possible factors, and others that can easily be imagined, suggest that the local policy of Wisconsin is at least not arbitrary and without reason. It could be suggested that with so many valid reasons being shown for the local policy, the legal profession was entitled to know why the national

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<sup>8</sup> The Illinois wrongful death statute contains virtually the same provision. SMITH-HURDS ILL. ANN. STAT. 1936, c. 70, § 2.

policy of the Full Faith and Credit Clause was held to be stronger. *Hughes v. Fetter* offered no explanation.

(b) Justice Black stated that:

“The Wisconsin policy, moreover, cannot be considered as an application of the doctrine of forum non-conveniens, whatever effect that doctrine might be given if its use resulted in denying enforcement to public acts of other states.”

It is granted that the doctrine of forum non-conveniens is not applicable here, but other factors make this point not crucial.

(c) Justice Black states that:

“We also think it *relevant*, although not crucial here that Wisconsin may well be the only jurisdiction in which service could be had as an original matter on the insurance company defendant. And while in the present case jurisdiction over the individual defendant apparently could be had in Illinois by substituted service, in other cases Wisconsin's exclusionary statute might amount to a deprivation of all opportunity to enforce valid death claims created by another state.” (emphasis added)

Rather than being a factor in favor of the suit being entertained, the fact that Wisconsin is the only place, in the situation here, where an insurance company can be joined as defendant, as has been previously suggested, is a good reason for a refusal to entertain the suit. Otherwise, out-of-state plaintiffs may rush to Wisconsin courts, to take advantage of the favorable procedure.<sup>9</sup>

While in the *Hughes* case no hardship would result to the plaintiff if the suit were dismissed by the Wisconsin court,<sup>10</sup> it was suggested that in other conceivable circumstances, entirely foreign to the present cause of action, a hardship

<sup>9</sup> It is generally conceded that juries allow a greater recovery in cases where an insurance company is seen to be involved.

<sup>10</sup> The plaintiff could sue in Illinois, obtaining jurisdiction over the individual defendant by substituted service. SMITH-HURD'S ILL. ANN. STAT., 1936, c. 95½, § 23.

might be worked on plaintiffs if a suit was not enforceable in Wisconsin.<sup>11</sup> This is deemed a "relevant consideration." What has happened to the general rule that facts and circumstances other than those in a particular case under consideration, are entirely irrelevant, and cannot in any way alter the decision?

With this the majority opinion ends. Let us now draw back and survey the situation in the law of conflicts generally. Three natural questions appear to present themselves as to the effect of the *Hughes* case. (1) Where are we? (2) Why are we there? (3) Where are we going?

### (1) Where are we?

Despite the apparent confusion prior to 1951, it still could be said that the U.S. Supreme Court did not interfere with a state court's decisions on local policy in conflict of laws situations, except in certain limited situations. The Court began to recognize early that some legal relations were so complex that the law under which they were formed ought always to govern them as long as they persist. In the field of commercial law, with rigidity and uniformity being of high importance, a forum was required to yield in many situations to the law of the state of incorporation or to the law of the place of contract. Examples are cases involving a stockholder's relation to his corporation, or the relation of an insured person to his insurance company. If a question arises as to the liability of a stockholder of a corporation, generally the courts of the forum, under the Full Faith and Credit Clause, cannot apply their own rule to the exclusion of the statutory law of the locus.<sup>12</sup> Also, in actions based on policies or certificates of insurance, the Supreme Court has on occasion intervened to prevent a forum state from enforcing a right of its own creation, to the exclusion

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<sup>11</sup> Conceivably, the locus could be a state which had no provision for substituted service. Here, as a plaintiff could not obtain jurisdiction over a defendant in the locus, suit would have to be brought in the Wisconsin courts if recovery was to be had at all.

<sup>12</sup> *Modern Woodmen of America v. Mixer*, 267 U.S. 544 (1925); *Broderrick v. Rosner*, 294 U.S. 629 (1935).

of the law of the state under which the company was chartered, or in which it was conceived that the contract was made.<sup>13</sup> In both of the above situations it is generally conceded that the peculiar relationship between the stockholder and the corporation, or the insured and the insurer, was responsible for the result.<sup>14</sup>

Another class of cases in which the Full Faith and Credit Clause has been invoked, involves overlapping workmen's compensation statutes. These cases need be given only passing mention, because they were decided chiefly on "jurisdictional" grounds and the narrow concept of the pioneer decision<sup>15</sup> has given way to a view that any state with a substantial interest to be protected may apply and administer its own compensation scheme.<sup>16</sup> Even here, however, it is apparent that the peculiar employer-employee relationship furnished the primary justification for the exercise of control by the Supreme Court.

Thus, generally before *Hughes v. Fetter*, it appears that the Full Faith and Credit Clause had been invoked to control state court decisions only in earlier workmen's compensation cases, and in certain commercial law situations. Further, in every case, except one,<sup>17</sup> it was merely decided by the U.S. Supreme Court that the forum could not apply a right created under its own law to the exclusion of the applicable law of the locus which negated such right. It had not been held that the forum *must* both exercise its jurisdiction, and also apply the right created by the law of the locus.

The one exception mentioned above is the case of *Broderick v. Rosner*.<sup>18</sup> A plaintiff brought suit in New Jersey under a New York statute which provided that stockholders

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<sup>13</sup> Supreme Council of the Royal Arcanum v. Green, 237 U.S. 531 (1915); Aetna Life Insurance Co. v. Dunken, 266 U.S. 389 (1924); Modern Woodmen of America v. Mixer, *supra*, note 12; John Hancock Life Insurance Co. v. Yates, 299 U.S. 178 (1936).

<sup>14</sup> Mr. Justice Frankfurter dissenting in *Hughes v. Fetter*, 341 U.S. 615-6 (1951).

<sup>15</sup> Bradford Electric Light Co. v. Clapper, 286 U.S. 145 (1932).

<sup>16</sup> Pacific Employers Insurance Co. v. Industrial Accident Commission, 306 U.S. 493 (1939).

<sup>17</sup> *Broderick v. Rosner*, *supra*, note 12.

<sup>18</sup> *Broderick v. Rosner*, *supra*, note 12.

were individually liable to the extent of their stockholdings, and could be sued at law. The New Jersey court dismissed the suit, applying the applicable New Jersey statute which provided that the stockholders could only be sued by an equitable accounting, to which *all* of the corporation's stockholders and creditors would be necessary parties. The United States Supreme Court held that under the Full Faith and Credit Clause, the New Jersey court *must* entertain the suit, and must accord a remedy based on the New York statute. At first glance, the case seems to be analogous to *Hughes v. Fetter*. However, great stress was laid on the fact that only a few of the many stockholders of the New York corporation were residents of New Jersey, and that even if substituted service over them all was legally possible (which is doubtful), the cost would be extremely prohibitive. It should also be noted that the case involved the relation between stockholders and a corporation, i.e., a commercial law situation.

In *Hughes v. Fetter*, the relation between the plaintiff and the defendant was not employer-employee, corporation-stockholder, or insurer-insured, but consisted of nothing more than a simple tort liability upon which the executor of the deceased was suing. The liability of the defendant to the plaintiff did not rest on a pre-existing relationship between themselves, nor was any need shown for the parties to know with certainty, the result of the transaction when they entered into it.<sup>19</sup> None of the typical factors are present here that have been seen in other situations requiring interference by the Supreme Court in the state court's decision.

The *Hughes* case seems to have entered the conflicts-Full Faith and Credit field in at least two directions. (1) This is the first case clearly outside of the field of commercial law, where a state has been required to both entertain a suit,

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<sup>19</sup> It cannot sensibly be said that the parties contemplated the Illinois wrongful death statute immediately before the accident. There is no close analogy to a commercial situation, where it is desirable for the parties to know what law will always govern when a legal relation is created.

and to apply the law of another state in contravention of the expressed public policy of the forum. The case obviously stands for the proposition that no commercial situation is necessary. Where is the line to be drawn? Must all statutes of a locus state be given Full Faith and Credit in a forum? It is doubtful that the cases will ultimately go that far, but no convenient stopping point is to be seen in view of the extremely general language in the *Hughes* opinion. The future is left to speculation. (2) The Supreme Court here held that Wisconsin being the forum, *must* enforce the action based on the Illinois wrongful death statute, when the only effect of a refusal to entertain the suit, would have been to force the plaintiff to sue in the locus state which created the right.<sup>20</sup> *Broderick v Rosner* is not analogous, as there the application of the law of the forum would virtually deprive the plaintiff of his opportunity to sue anywhere.

### (2) Why are we there?

No reasons being given, what did Mr. Justice Black have in mind in writing the *Hughes* opinion? One possible thought is that the case is a *sub silentio* application of the conflicts theory of "territoriality" that has been discarded in recent years by most legal writers, in favor of the so-called "local law" theory.<sup>21</sup> Perhaps the Supreme Court is of the opinion that uniformity of decision under the Full Faith and Credit Clause will be fostered by the application of the older doctrine.

(a) Under the "territoriality" or "vested rights" theory, it is the rights created by foreign law which are enforced, the question of what law created the particular right being in general, determined by the "territoriality" theory that the law of a state exists throughout its territory and not elsewhere.<sup>22</sup>

<sup>20</sup> It has been seen that suit is possible in Illinois, as the plaintiff could get jurisdiction over the individual defendant by substituted service. See note 10, *supra*.

<sup>21</sup> Judge Learned Hand is a great exponent of the "local law" theory.

<sup>22</sup> Dodd, *The Power of the Supreme Court to Review State Decisions in the Field of Conflict of Laws*, 39 HARV. L. REV. 533 (1926).

(b) Under the "local law" theory, in all cases where the court gives relief, both the right and the remedy are created by the forum, although the forum may, and often does, in order to do justice, create a right as nearly as possible identical with the right created in the state in which they acted. According to this view, there would seem to be no conflicts rules which can be said to be in any sense binding on any court which chooses to adopt other rules.<sup>23</sup>

The "local law" theory is very difficult to square with the *Hughes* case. The fundamental basis of the theory is that the forum is left relatively free to decide any particular case as it sees fit. The law that a forum state applies, is its own law, and it follows necessarily that if a state court is to have any independent legal significance at all, it cannot be told by the Supreme Court what its own "local law" is to be. Thus, in the *Hughes* case, under this theory, the Supreme Court has dictated to Wisconsin what her own law is, as it was held that Wisconsin "must" entertain the action based on a foreign statute. The Supreme Court can clearly overrule a state court's decision of what its own law is, when such violates the Federal Constitution, but it does not follow, as would result under the "local law" theory, that the Supreme Court can dictate what the law of each state must be.

On the other hand, the reasoning of the *Hughes* case can be perfectly justified under the "vested rights" or "territoriality" theory. There is no stress on the independence of the forum here, as it is the right created by the law of the locus that is enforced. In the *Hughes* case, the Wisconsin court was told that it must enforce the right created by the law of Illinois, under the Full Faith and Credit Clause. Thus the effect of the Supreme Court requiring Wisconsin to entertain the suit, is not that Wisconsin is told what her law is to be, but merely that Wisconsin must recognize the right created under another state's law. This seems to be entirely consistent with both the "vested rights" theory, and the concept of the freedom of a state to determine what its own law is to be.

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<sup>23</sup> See note 22, *supra*.

One other possible reason for the *Hughes* decision—a reason of policy—has already been suggested and questioned.<sup>24</sup> The opinion calls attention to the fact that in some situations, if Wisconsin were allowed to refuse to entertain the suit, the plaintiff would be deprived of all opportunity to sue. Thus, in a case similar to the *Hughes* case, if the locus state had no provision for substituted service, and the defendant resided in Wisconsin, the suit might have to be brought in Wisconsin, or not at all. The Supreme Court might have felt that an absolute rule requiring a forum to entertain suit in every case, would both protect future plaintiffs, and be easier to apply, than a rule making the question of whether the forum must entertain the suit, turn on the determination in each individual case of whether recovery in the locus was possible or not.

### (3) Where are we going?

Questions arise as to the future application of the *Hughes* case: (1) Is the decision precedent for requiring a forum state to enforce statutes of other states, in pure tort situations, where the question is only as to what law is to be chosen to govern the decision, or is the case limited to the situation where a state court refuses to entertain a case at all based on foreign law?

Mr. Justice Black emphasized in a footnote to the opinion that the case only involved the question of Wisconsin's entertaining the suit.<sup>25</sup> He distinguished former cases where it had been held that "prima facie" every state is entitled to enforce in its own courts, rights based on its own statutes,<sup>26</sup> saying:

"The present case is not one where Wisconsin, having entertained appellant's lawsuit, chose to apply its own instead of Illinois' statute to measure the substantive rights involved."

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<sup>24</sup> See pages 44 and 45, *supra*.

<sup>25</sup> *Hughes v. Fetter*, *supra*, Note 6, at 611, N.10.

<sup>26</sup> *Alaska Packers Association v. Industrial Accident Comm.*, 294 U.S. 532 (1935); *Williams v. North Carolina*, 317 U.S. 287 (1942).

The language seems to indicate that the *Hughes* case was not intended to extend to choice of law questions. However, the decision did, indirectly if not directly, determine a choice of law question, as Wisconsin attempted to apply its own statute, barring suit, to the exclusion of the Illinois statute. Did not the Supreme Court thus interfere with a choice of law question, by requiring full faith and credit to be given to the Illinois statute?

While the distinction may be somewhat hazy here, a future limitation on the otherwise general language of the *Hughes* opinion may have been indicated.

(2) Is the decision precedent for requiring a forum to enforce rights based on statutes of the locus other than the locus wrongful death statutes? If other statutes are to be included within the rule, which ones?

There seems to be no language in the case attempting to limit the decision to wrongful death statutes alone. It is very likely, in view of the general language of the opinion, that Full Faith and Credit will be required of other types of statutes of a locus, but exactly which type is not foreseeable at this time.

(3) Is the decision precedent for requiring a forum to apply a statute of a locus, even when the forum has no similar statute, and has a decided policy against such statutes? Mr. Justice Black in the opinion said that:

“The state [Wisconsin] has no real feeling of antagonism against wrongful death suits in general. To the contrary, a forum is regularly provided for cases of this nature . . .”<sup>27</sup>

Is it not at least arguable that implicit in this language is the thought that in the present case, perhaps Wisconsin was being “hypocritical” in dismissing the suit based on the Illinois statute, when actually Wisconsin also had a similar statute in effect; but that in a case where a forum has a real, honest to goodness dislike of and contrary policy to a statute of the locus, no full faith and credit will be required. The

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<sup>27</sup> *Hughes v. Fetter*, *supra*, Note 6, at 611.

distinction is perhaps narrow, but at least not inconceivable.

(4) Is the decision precedent for compelling a state court to enforce an action based on the common law of another state, or is the decision limited to rights created by statute?

Full Faith and Credit is required of "public acts, records, and judicial proceedings" of every other state. While statutes have been held to be embraced within the term "public acts", the common law of a state is certainly not a "public act" or a "record". It is also extremely doubtful that the common law can be held to be embraced within the term "judicial proceedings", as in typical cases, this has been held to refer merely to the applicability of a decision of a state court, and in other states as affecting the relations between the parties to the original suit only. While conceivably, an opposite result could be reached, it seems likely that the line of applicability of the *Hughes* case will be drawn so as to limit the decision to statutes, and will not be extended to the common law of sister states.

(5) Is the *Hughes v. Fetter* precedent applicable only in situations where *all* of the facts upon which the cause of action is based occurred outside of the forum state, or is it still applicable where part of the actionable facts occurred in the forum? In other words, the Federal Constitution clearly requires *full* faith and credit, but does it also require "partial" faith and credit? Assuming the latter, what part of the applicable facts must have happened in the locus, and what part must have happened in the forum? What facts are crucial in this situation?

No attempt at finally answering these questions has been made. A safe prediction cannot be made until some of the future ramifications of the *Hughes* case are observed.

Just what the legal profession is to expect in the future is uncertain. Conceivably the decision is precedent for making a forum state recognize all the statutes and possibly all of the common law, of the locus state, but logically this will lead to an impractical result. But then again, at what point do we stop and allow the policy of the forum to prevail? The decision certainly gives no hint of any kind on the subject.

Perhaps the end result foreseen by Professor Corwin at the time of the workmen's compensation cases is not too remote as a possibility. He said:

“. . . But can the court stop at this point? . . . The day may come when the Court will approach the question of the relation of the Full Faith and Credit Clause to the extra-state operation of laws from the same angle as it today views the broader question of the scope of state legislative power. When and if *that* day arrives, state statutes and judicial decisions will be given such extra-territorial operation as seems reasonable to the Court to give them. In short, the rule of the dominance of local policy of the forum state will be superseded by that of judicial review.”<sup>28</sup>

It could be suggested that the decision in the *Hughes* case would be desirable, no matter what the basis, if the end sought to be accomplished was compelling state courts to render more consistent and sound opinions. If the decision means that a forum state must give effect to some of the so-called “procedural” law of the locus, a very desirable result would be accomplished. Examples of such “procedural” law are: statutes of limitation, presumptions, burdens of proof, and statutes of frauds.<sup>29</sup>

For state courts to blindly repeat in every situation that these rules of law are procedural, seems to completely ignore

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<sup>28</sup> Corwin, *The Full Faith and Credit Clause*, 81 U. PA. L. REV. 371, 385 (1933).

<sup>29</sup> As an example, take the statute of limitations. Generally, a forum applies its own procedural law, looking, if at all, only to the substantive law of the locus. The reasoning is that as procedural law should not affect the outcome of a case, but merely the manner of recovery, the forum might as well apply its own familiar law.

Statutes of limitation have generally been called “procedural”, as used in the non-conflicts case, as the statute merely bans the manner of recovery, but does not disturb the substantive right. But then, the courts carried this notion of the statute being procedural, over into the conflicts field, and the general rule became that a forum always applied its own statute of limitations, to the exclusion of the statute of the locus. Thus, if the statute of limitations of the forum had run out, the action was held to be barred, even if the statute of the locus would still allow recovery. The plaintiff found himself possessing a substantive right, enforceable in the locus, but unenforceable in the forum due to a procedural disability.

the realities of the situation. If the application of the forum's statute, though denominated procedural, deprives the plaintiff of his cause of action, such effect is certainly as substantive as any other rule of law can be. A basic truism of law is that procedure in any case should not affect its outcome, and in a conflicts case, the outcome should be the same whether the procedural law of the forum or the locus is applied. But where only the law of the forum and not the locus constitutes a bar to recovery, a different result will be reached depending on which rule is applied. If it could be assumed that *Hughes v. Fetter* means that a forum must apply all of the law of the locus, substantive and procedural, allowing recovery, where to refuse and apply local procedural law would bar the plaintiff from proceeding, then a great blow would be struck for the advocates of sound and consistent decisions in conflict of laws situations.

But at least until now, the decisions of the Supreme Court have not indicated a definite guiding standard. Mr. Justice Robert H. Jackson summed up the situation:

"Nowhere has the Court attempted, although faith and credit opinions have been written by some of its boldest-thinking and clearest-speaking Justices, to define standards by which the 'superior state interests' in the subject matter of conflicting statutes are to be weighed. Nor can I discern any consistent pattern or design into which the cases fit.

Indeed, I think it difficult to point to any field in which the Court has more completely demonstrated or more candidly confessed the lack of guiding standards of legal character than in trying to determine what choice of law is required by the Constitution."<sup>30</sup>

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<sup>30</sup> Jackson, *Full Faith and Credit—The Lawyers Clause of the Constitution*, 45 COL.L.REV. 1 (1945).