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# Case Comments

Dicta Editorial Board

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CONFLICT OF LAWS — TO WHAT EXTENT WILL OR SHOULD THE PUBLIC POLICY OF THE FORUM BE APPLIED IN A CAUSE OF ACTION ARISING IN ANOTHER JURISDICTION?—Basing his complaint on the Illinois wrongful death statute, the plaintiff brought an action in the Wisconsin state court to recover from the defendants for wrongful death resulting from injuries sustained in an automobile accident in Illinois. The trial court dismissed the complaint on the merits, holding that the Wisconsin wrongful death act which provides that "such action be brought for a death caused in this case," establishes a *local public policy* against Wisconsin entertaining suits brought under the wrongful death statutes of other states. The Wisconsin Supreme Court affirmed. *Held:* Reversed, with four Justices dissenting. The Wisconsin statutory policy which would exclude the Illinois cause of action involved was forbidden by the full faith and credit clause of the Federal Constitution. *Hughes v. Fetter*, 71 S. Ct. 980 (1951).

From cases in which the public policy of the forum was declared predominate where in conflict with applicable foreign statutes without discussing the constitutional issue raised by the full faith and credit clause,[1] the Supreme Court has, by a rather spasmodic process, gradually narrowed the power of the states to refuse, on grounds of public policy, to enforce rights arising under statutes of a sister state. Prior to the decision in the instant case, the rights given by a foreign statute were declared superior to local policy where the forum's interest was "insufficient".[2] This seems to stem from the idea that local policy becomes important only when the transaction is domestic,[3] or where the interest of the forum is superior when weighed with that of the foreign jurisdiction.[4] While *Hughes v. Fetter* has not made particularly definite the extent to which the forum must give recognition to the extra-territorial statutes conflicting with local policy, it does appear that use has been made of a more comprehensive test than previously employed; not only was there a "balancing of interests," but also, a critical inquiry was made as to the *value of* the local policy.[5] The result that will be reached when other local policies of exclusion

[1] *E.g.*, Union Trust Co. v. Grosman, 245 U.S. 412, 62 L. ed. 368 (1918).

[2] Broderick v. Rosner, 294 U.S. 629, 79 L. ed. 1100, 55 S. Ct. 589 (1935); Converse v. Hamilton, 224 U.S. 243, 56 L. ed. 749, 32 S. Ct. 415 (1912).

[3] Pink v. A.A.A. Highway Express Co., 314 U.S. 201 (1941).

[4] Alaska Packers' Ass'n v. Industrial Acc. Commission, 294 U.S. 532 (1935).

[5] Justice Cardozo seems to have indicated that such an inquiry should be made when he said, "[the courts] are not free to refuse to enforce a foreign right . . . unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal." Loucks v. Standard Oil of N. Y., 224 N. Y. 99, 120 N. E. 198 (1918).

are tested is uncertain. Only a few types of statutes are entitled to full faith and credit under existing decisions.[6] In spite of the general language used, it would be a mistake to assume that *Hughes v. Fetter* has done any more than indicate that the Supreme Court will carefully consider the validity of a local policy excluding rights arising under a foreign law.[7]

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JACK HULL.

## DEEDS—GRANTEES TAKE AS TENANTS BY THE ENTIRETIES.

Land was deeded to "Francis Lucas, a single man, and Joseph Lucas and Matilda Lucas, his wife." Francis Lucas was the son of the other two grantees. The Supreme Court of Pennsylvania held that the husband and wife took their moiety as tenants by the entireties, and that the son had a one-half interest in the property.[1]

The court used the following language:

> . . . [A] conveyance to three parties two of whom are husband and wife but neither designated as such, shall, in the absence of any language in the conveyance disclosing a contrary intention, be deemed a conveyance of one third shares. . . . *But the intention is the cardinal and controlling element,*[2] and if intention that the husband and wife shall take as such [i.e. by entireties] sufficiently appears, it will be given effect.

From the above mentioned words of conveyance, the court found sufficient intention that a tenancy by the entireties be created, saying that the phrase "his wife" in the deed indicated that the parties attached significance to the marital status.

The question arises, then, as to how the Colorado court would interpret language in a deed similar to that involved in the *Heatter* case; but there appear to be no Colorado cases passing on the precise point.

In *Whyman v. Johnston et al.*[3] the holding that, in the ab-

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[6] (a) Stockholder's liability suits: Order of United Commercial Travelers of the World v. Wolfe, 331 U.S. 586, 67 S. Ct. 1355 (1947); Broderick v. Rosner, Supra. (b) Charters and by-laws of beneficial fraternal organizations: Modern Woodmen of America v. Mixer, 267 U.S. 544 (1925). (c) Employers liability statutes: Tennessee Coal & R. Co. v. George, 233 U.S. 354 (1914). (d) Workmen's compensation acts: Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943), Bradford Electric Light Co. v. Clapper, 286 U.S. 145 (1932). (e) Statutes governing insurance contracts: John Hancock Mutual L. Ins. Co. v. Yates, 299 U.S. 178 (1936); Hartford Acc. & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143 (1934). (f) And, after Hughes v. Fetters, wrongful death statutes.

[7] Compare Broderick v. Rosner, *Supra*, and Clark v. Willard, 294 U.S. 211 (1935), cases decided in the same year and yet almost incapable of being reconciled if the language of Broderick v. Rosner be taken literally.

[1] Heatter v. Lucas et al., 367 Pa. 296, 80 A. 2d 749 (1951).

[2] Italics by the court.

[3] 62 Colo. 461, 163 P. 76 (1917).

sence of a showing in the conveyance of intention by the grantor, no estate by the entireties is created when land is conveyed to spouses. In that case, land was deeded to husband and wife by their names only, with no indication of what type tenancy was intended. Whether the parties were referred to as husband and wife does not appear from the court's opinion. There would seem to be no reason why the result would be different, insofar as it relates to the question of tenancy by the entireties, if a third grantee were involved.

Whether the Colorado court would hold that an estate by the entireties was created where the intention to create such an estate is shown is a point on which there has been no decision, although many attorneys feel that the question has been resolved by the *Whyman* case. This belief on the part of lawyers is based upon the dictum in the case to the effect that, after the passage of the Married Women's Act, the reason for the common law rule creating estates by the entireties ceased to exist, and upon the head-note to the case which makes the statement that the Married Women's Act abolished estates by the entireties. This interpretation of the case may, however, be too broad in view of the fact that the deed there involved expressed no intention as to what type of tenancy was meant to result.

Perhaps some indication that tenancies by the entireties still exist is to be found in the Inheritance Tax Act of 1933,[4] where reference is made to property held in tenancy by the entireties; but any such implication would appear to be nullified by the 1947 amendment[5] to the portion of the tax statute referred to, which omitted the reference to the type estate in question.

The writers of this comment conclude that an estate by the entireties definitely cannot be created in Colorado where no intention to create such appears; whether such estates continue to exist and may be created by a showing of intention that such be created remains, in Colorado, an open question.

JAMES NELSON
RALPH TAYLOR
ROBERT VAUGHN

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## PERSONALS

Richard H. Shaw and Clayton D. Knowles announce the removal of their offices from the Denver National Building to Suite 301 Equitable Building in Denver.

[4] COLO. LAWS, c. 106, p. 558 (1933).
[5] COLO. LAWS, c. 212, p. 537 (1947).