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## Conflict of Laws -- Penal or Remedial Statutes

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Another exception to the rule<sup>15</sup> is that states can refuse to give effect to foreign laws wherever they are considered contrary to legislative acts violating international law<sup>16</sup> or legislation enacted ultra vires of the internationally recognized jurisdiction of sovereign states.<sup>17</sup> States may refuse, also, to give effect to acts of unrecognized governments;<sup>18</sup> however, effect can be given to acts of unrecognized governments if public policy so requires.<sup>19</sup> It was not necessary for the court to consider this exception.

The doctrine, that private rights acquired under the laws of foreign states will be respected and enforced in our courts, enunciated in *Hilton v. Guyot*<sup>20</sup> has been universally accepted.<sup>21</sup> Thus it is seen that not only foreign acts, but also foreign judgments are respected in our courts with a few exceptions as previously noted.

It appears as though the courts here have stopped, looked and listened, and have taken the old reliable road of sacrosanctity rather than forging ahead.<sup>22</sup> Therefore as the law stands to date, our courts will not sit in judgment on the validity of acts done by a sovereign government within its legislative, judicial or administrative jurisdiction.

Robert G. Greenberg

## CONFLICT OF LAWS—PENAL OR REMEDIAL STATUTES

An action was brought against stockholders of a bankrupt Arkansas corporation in a Tennessee court. Recovery was sought under the Arkansas law<sup>1</sup> which imposed individual liability upon defendants as partners, when articles of incorporation had not been filed with the county clerk.<sup>2</sup> Held, the Arkansas statute being penal in nature, the Tennessee court need not afford it full faith and credit. *Paper Products Co. v. Doggrell*, 263 S.W.2d 127 (Tenn. 1953).

15. *Republic of Peru v. Peruvian Guano Co.*, 36 Ch. D. 489 (1887). British courts refused to give effect to Peruvian laws annulling acts of the preceding Peruvian government because by the international law of government successions, plaintiff government, was bound by the acts of the preceding Peruvian government.

16. *Anglo-Iranian Oil Co. v. Società Unione Petrolifera Orientale*, 47 AM. J. INT'L. L. 509 (1953).

17. *Salimoff v. Standard Oil*, 237 App. Div. 686, 262 N.Y. Supp. 693 (1st Dep't.), *aff'd*, 262 N.Y. 220, 186 N.E. 679 (1933).

18. *Luther v. Sagor*, 3 K.B. 532 (1921).

19. See note 17 *supra*.

20. 159 U.S. 113 (1895).

21. *Id.* at 233.

22. Comment, 7 MIAMI L.Q. 400 (1953).

1. ARK. STAT. § 64-103 (1947).

2. Under the decisions of the Arkansas court of last resort, as required by the Arkansas statute, stockholders of a corporation are liable as partners when the charter is not filed in the county where the principal office of the corporation is to be maintained. *Whitaker v. Mitchell Mfg. Co.*, 219 Ark. 779, 244 S.W.2d 965 (1953); *Gazette Publishing Co. v. Brady*, 204 Ark. 396, 162 S.W.2d 494 (1942).

It is generally recognized that a penal statute of one state need not be enforced by the courts of other states.<sup>3</sup> It is likewise generally recognized that a statute is penal if its purpose is to punish an offense against the public justice of the state in which it was enacted.<sup>4</sup> If the statute in question is designed merely to afford a remedy to an individual, and not primarily to punish an offense against the state, it is not penal.<sup>5</sup> Normally, the penalty is expressly set out in the statute.<sup>6</sup> The Arkansas statute involved in the instant case *expresses* no penalty; its penal nature, if any, is derived from judicial decisions.<sup>7</sup>

In deciding a case embracing the identical statute and question involved in the instant case, the United States Court of Appeals for the 6th Circuit reached a conclusion directly opposed to that of the Tennessee court.<sup>8</sup>

The issue presented by the conflicting decisions in the state and federal courts is whether the state in which the action is brought is bound by the construction placed upon the statute by the court of the state in which it was enacted. The question is not one of local law but of conflict of laws or international law. Hence, whether or not a statute is penal and unenforceable extraterritorially is to be determined by the court wherein the suit is brought.<sup>10</sup> It follows, then, that the court of the forum is not absolutely bound by the construction placed on the statute by the courts of the state which enacted it.<sup>11</sup> There is some authority that the construction given to a statute by the courts of the state of its enactment conclusively establishes the character of such statute.<sup>12</sup> The cases which stand for this proposition, however, are concerned with situations where the *enacting* state's court held the statute to be penal. Therefore, the statute when so interpreted would nevertheless be unenforceable outside its own jurisdiction.<sup>13</sup>

The federal court, in deciding its case,<sup>14</sup> based its decision upon *Huntington v. Attrill*,<sup>15</sup> wherein it was held that the full faith and credit

3. *People v. Crucible Steel Co. of America*, 151 Mich. 618, 115 N.W. 705 (1908); *Gulledge Bros. Lumber Co. v. Wenatchee Land Co.*, 122 Minn. 266, 142 N.W. 305 (1913); *Cary v. Schmeltz*, 141 Mo. App. 570, 125 S.W. 532 (1910); *Wellman v. Mead*, 93 Vt. 322, 107 Atl. 396 (1919).

4. *Ibid.*

5. *Whitlow v. Nashville, Chattanooga & St. Louis R.R.*, 114 Tenn. 304, 84 S.W. 618 (1904).

6. N.Y. UNCONSOLIDATED LAWS c. 611, §§ 21, 37 (1875).

7. See note 2 *supra*.

8. *Doggrell v. Great Southern Box Co.*, 206 F.2d 671 (6th Cir. 1953). This case was decided eight days prior to the instant case, coming to the Court of Appeals on appeal from the Federal District Court for the Western District of Tennessee.

9. *Great Western Machinery Co. v. Smith*, 87 Kan. 331, 124 Pac. 414 (1912).

10. *Huntington v. Attrill*, 146 U.S. 657 (1892).

11. *Gardner v. Rumsey*, 81 Okla. 20, 196 Pac. 941 (1921).

12. *Commercial Nat. Bank v. Kirk*, 222 Pa. 567, 71 Atl. 1085 (1909).

13. See note 3 *supra*.

14. See note 8 *supra*.

15. 146 U.S. 657 (1892).

clause of the Constitution required the Maryland court to give effect to a New York statute<sup>16</sup> said to be penal in nature. In that case, however, the plaintiff sought to *enforce* a judgment based upon a foreign statute. The purpose of the proceedings in the instant case was to *procure* a judgment, the attempted basis for recovery being a foreign statute.<sup>17</sup> Even considering the distinction between enforcing and procuring judgments, the question of whether foreign judgments under penal statutes are entitled to full faith and credit is itself still an open one.<sup>18</sup>

It is apparent, considering the great weight of authority supporting the decision of the Tennessee court, that the federal court reached an erroneous decision. That the court realized its inadvertence is evident, for subsequent to the decision of the Tennessee court in the instant case, the federal court granted a rehearing and reversed itself.<sup>19</sup> Oddly enough the *Huntington* case, upon which the court's original opinion was based, contained dictum which virtually compelled the reversal.

Jerry Mosca

### CONFLICT OF LAWS—WAIVER OF VENUE— STATE NON-RESIDENT VEHICLE STATUTE

An Illinois corporation brought suit in a federal district court of Kentucky against an Indiana resident for damages arising from an automobile accident occurring in the State of Kentucky. With jurisdiction in federal court based on diversity of citizenship, service of process upon defendant was made in accordance with the Kentucky Non-Resident Motorist Statute.<sup>1</sup> Defendant challenged venue as being improperly laid in a district not the residence of either party.<sup>2</sup> A motion to dismiss on this ground was overruled and the jury trial resulted in a verdict for the plaintiff. The Sixth Circuit Court of Appeals affirmed the judgment of the district court.<sup>3</sup> *Held*, on appeal, reversed. Defendant did not waive his federal venue privilege by virtue of the state non-resident motorist statute. *Olberding v. Illinois Central R.R.*, 74 Sup. Ct. 83 (1953).

16. See note 6 *supra*.

17. See notes 1 and 2 *supra*.

18. Compare *Fautleroy v. Lum*, 210 U.S. 230 (1908), with *Milwaukee County v. M.E. White Co.*, 296 U.S. 268 (1935).

19. *Doggrell v. Southern Box Co.*, 208 F.2d 310 (6th Cir. 1953).

20. *Huntington v. Attrill*, 146 U.S. 657, 683 (1892). "The test is not by what name the statute is called by the Legislature or the courts of the state in which it was passed, but whether it appears, to the tribunal which is called upon to enforce it, to be . . . , a punishment of an offense against the public, or a grant of a civil right to a private person." (Italics supplied.)

1. KY. REV. STAT. §§ 188.020-030 (1953).

2. 28 U.S.C. § 1391(a) (Supp. 1950): "A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all plaintiffs or all defendants reside."

3. *Olberding v. Illinois Central R.R.*, 201 F.2d 582 (6th Cir. 1953).