IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 16, Original

STATE OF ARIZONA, *Plaintiff*,

v.

STATE OF CALIFORNIA

and

CHARLES L. HARNEY, INC., a California Corporation, *Defendants.*

REPLY OF PLAINTIFF

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Article III of the Constitution extends the judicial power of the United States to "Controversies between two or more States," and invests this Court with original jurisdiction of cases "in which a State shall be a Party." The Judicial Code, 28 U.S.C. § 1251(a)(1) (1958) provides:

> "(a) The Supreme Court shall have original and *exclusive* jurisdiction of:
>
> "(1) *All* controversies between two or more States . . . ." [Emphasis supplied.]

Nothing said by either Defendant shows that the present controversy is without that grant of original exclusive jurisdiction.

California argues that there is open to Arizona a procedure alternative to this original action: that procedure would require that the injured employee sue the present Defendants* and that Arizona enforce a lien upon the employee's recovery. To require Arizona to resort to that procedure, however, would defeat the purpose of the constitutional grant of original jurisdiction, which was to assure that one sovereign state would not be required to have its claims against a sister state adjudicated by the courts of that sister state. And that would be the result of California's suggestion. Any action brought against California by the injured employee would be decided under California law, including its conflicts of law rules, and Arizona would be required to assert its lien under California law.

If Arizona could, and had chosen to, submit to the law of California for adjudication of its rights, it might have done so directly, without such a roundabout procedure, by itself instituting an action against California. Whether, in view of the all-inclusive language of 28 U.S.C. § 1251(a)(1), such a suit can be maintained is questionable; even if it can, the existence of the suggested alternative does not defeat the jurisdiction of this Court. *Georgia* v. *Pennsylvania R. Co.*, 324 U.S. 439, 466 (1945).

The other arguments made by California and by Charles L. Harney, Inc., are arguments addressed to

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* The suggestion assumes that the injured employee could maintain such an action against California, despite the fact that it was Arizona, not the employee, who complied with the California claims statute. The applicable California statute of limitation presently bars an action by the injured employee against Defendant Harney.

the merits of the litigation, and show no reason why leave to file the Complaint should be denied. California argues that the assigned claim of Grand Canyon College is defectively pleaded. However, paragraph 8 of the proposed Complaint very clearly alleges that Grand Canyon College lost Miss McIntosh's services and was damaged thereby.

California and Harney both argue—again on the merits— that under Arizona law the injured employee's claim for general damages has, by virtue of its assignment to Plaintiff, been lost. That argument is predicated upon the Arizona cases cited by Defendants* (Calif. Br. p. 3; Harney Br. p. 3), which hold in substance that when, under Arizona law, an injured employee elects to receive compensation, his entire claim against a third-party tortfeasor is thereby assigned to the state, but that the state may not recover from the tortfeasor more than it has expended in compensation benefits. However, those cases did not involve out-of-state acidents, and nothing in the language of the decisions indicates that they would be applied extra-territorially. Indeed, Arizona municipal law should not apply to limit a claim for common-law damages where the accident in question occurred in California, arose out of the maintenance of California real property and the third party tortfeasor is a California domiciliary. *Carroll* v. *Lanza,* 349 U.S. 408 (1955). See also, Ford: *Liability of Non-employer Tortfeasors Under State Workmen's Compensation Statutes: A Choice-of-Law Problem,* 68 Yale L.J. 54 (1958); Ehrenzweig, *Conflict of Laws,* 604-605 (1962).

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* *State* v. *Pressley,* 74 Ariz. 412, 250 P.2d 992; *Industrial Commission* v. *Nevelle,* 58 Ariz. 325, 119 F.2d 934.

Even if the Defendants' argument is correct—and we do not concede that it is—it affects only the amount of Arizona's potential recovery. The possibility that Arizona may not recover all it seeks is no ground for summarily denying its application to invoke the jurisdiction of this Court.

Further attacking the merits of Plaintiff's claim for the injured employee's general damages, both Defendants argue that that claim was non-assignable, and that it is barred by the Arizona and California statutes of limitation. Again, choice of law may be determinative when the merits of the litigation are reached. The claim is clearly assignable under Arizona law and has been assigned to Plaintiff, both in writing and by operation of law. Even if, as argued by Defendants, a claim for general damages arising from personal injury is not assignable under the law of California, Arizona here sues not as an ordinary assignee, but as one entitled to sue under California law. See California Labor Code §§ 3850 *et seq.*

Nor can the statute of limitations questions raised by Defendants be decided summarily, for again, choice of law questions are involved. To Defendants' assertion that Arizona is barred by its own statute of limitations, it need only be answered that Ariz. Rev. Stat. § 12-510, specifically exempts the State from the operation of its own statutes of limitation. If California law should be chosen, the one year limitation period noted by Defendant Harney (Br. p. 3) applies only with respect to the injured employee's general damage claim. As to the balance of the claim, the three-year period prescribed by Code of Civil Procedure § 388 is applicable. *Morris* v. *Standard Oil Co.,* 200 Cal. 210, 252 Pac. 605 (1926); *Limited Mutual Comp. Ins.*

Co. v. *Billings,* 74 Cal. App. 881, 169 P. 2d 673 (1946). And since the injured employee's general damage claim was assigned to Arizona, a sovereign,* within one year after the accident it is not time-barred under the doctrine of *United States* v. *Nashville C. & St. L. Ry.,* 118 U.S. 120 (1886).

Again, both of these arguments bear only upon the amount of Plaintiff's eventual recovery, for neither of them is directed at Plaintiff's claim for compensation benefits actually paid. Moreover, each of those arguments raises complex questions of conflict of laws** which need not, and indeed, *should* not, be resolved

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* In view of the statement in *Guaranty Trust Co.* v. *United States,* 304 U.S. 126, 133 (1938) that the

> "immunity of the domestic 'sovereign,' state or national, has been universally deemed to be an exception to local statutes of limitations where the government, state or national, is not expressly included . . .,"

it is doubtful that any statute of limitation is applicable against Arizona. In a case arising under federal law which is not governed by any federal statute of limitations the use of state statutes of limitation is inappropriate. See, *Royal Air Properties Inc.* v. *Smith,* 312 F.2d 210 (9th Cir. 1962).

** See, *e.g., Carroll* v. *Lanza,* 349 U.S. 408 (1955); *Tucker* v. *Texas Company,* 203 F.2d 918 (5th Cir. 1953); Concurring Opinions in *Wilson* v. *Faull,* 27 N.J. 105, 141 A.2d 768 (1958); Restatement, Conflict of Laws § 401 Comment b (1948 Supp.); Restatement, Conflict of Laws Second, Tent. Draft No. 8, §§ 390b, 390e (1963); Ford: *supra,* 68 Yale L.J. 54, 67 (1958); Ehrenzweig, *supra.* These already difficult choice-of-law problems, including the choice of a statute of limitations, if any, are considerably complicated by the fact that Yerba Buena Island, where the accident in question occurred, is a federal enclave subject to the provisions of 16 U.S.C. § 487, which makes California law applicable. It has not been determined whether this means California internal law only or the whole body of California law, including its conflicts rules *Cf. Richards* v. *United States,* 369 U.S. 1 (1962).

at this preliminary stage of the proceedings. Only after a trial upon the merits will there be before the Court all the facts necessary for a decision which adjusts and accords proper weight to the competing policies and governmental interests of the two states involved, as well as the rights of the injured employee, the employer, and the two tortfeasors.

Plaintiff is now and has been for some time the absolute owner of valuable property rights in the form of three somewhat different claims against both Defendants. Plaintiff acquired those rights in the course of its governmental and propriety functions in (1) administering its workmen's compensation law, and (2) paying for accident and disability compensation benefits thereunder. Although most of the cost of those functions is borne by Arizona employers in the form of insurance premiums, the balance is paid out of Plaintiff's general funds.

It is clear that the claims of Arizona against California and its citizen are squarely within the original exclusive jurisdiction of this Court. If this Court denies Arizona leave to file its Complaint, it will deprive Arizona of any opportunity to litigate its property rights before the only tribunal which is authorized to hear and determine "Controversies between two or more States."

The value of the claims in suit should be no consideration in determination of the present motion. Indeed, claims such as the present may be few and far between largely because the availability of this Court as a forum more often than not impels States to settle disputes such as the present. That it has not had that effect here does not make this case "a serious

imposition upon the Court and the parties which the law does not require." (Calif. Br. p. 4).

The case can be tried expeditiously before a master. If this Court should appoint as master a retired Federal Judge, prosecution of this action should involve very little more expense, and very likely less time, than an action of the sort suggested by California.

CONCLUSION

For the reasons stated, Motion for Leave to File should be granted.

Respectfully submitted,

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