

Sec. 1—Full Faith and Credit

constitutional course of balancing coordinate States' competing interests to resolve conflicts of laws under the Full Faith and Credit Clause."¹¹¹

Transitory Actions: Death Statutes.—The initial effort in this direction was made in connection with transitory actions based on statute. Earlier, such actions had rested upon the common law, which was fairly uniform throughout the states, so that there was usually little discrepancy between the law under which the plaintiff from another jurisdiction brought his action (*lex loci*) and the law under which the defendant responded (*lex fori*). In the late 1870s, however, the states, abandoning the common law rule on the subject, began passing laws that authorized the representatives of a decedent whose death had resulted from injury to bring an action for damages.¹¹² The question at once presented itself whether, if such an action was brought in a state other than that in which the injury occurred, it was governed by the statute under which it arose or by the law of the forum state, which might be less favorable to the defendant. Nor was it long before the same question presented itself with respect to transitory action *ex contractu*, where the contract involved had been made under laws peculiar to the state where made, and with those laws in view.

Actions Upon Contract.—In *Chicago & Alton R.R. v. Wiggins Ferry Co.*,¹¹³ the Court indicated that it was the law under which the contract was made, not the law of the forum state, that should govern. Its utterance on the point was, however, not merely *dictum*, but was based on an error, namely, the false supposition that the Constitution gives "acts" the same extraterritorial operation as the Act of 1790 does "judicial records and proceedings." Notwithstanding which, this *dictum* is today the basis of "the settled rule"

¹¹¹ *Franchise Tax Bd. of Cal. v. Hyatt*, 538 U.S. 488, 498, 499 (2003).

¹¹² *Dennick v. Railroad Co.*, 103 U.S. 11 (1881), was the first so-called "Death Act" case to reach the Supreme Court. See also *Stewart v. Baltimore & O.R.R.*, 168 U.S. 445 (1897). Even today the obligation of a state to furnish a forum for the determination of death claims arising in another state under the laws thereof appears to rest on a rather precarious basis. In *Hughes v. Fetter*, 341 U.S. 609 (1951), the Court, by a narrow majority, held invalid under the full faith and credit clause a statute of Wisconsin which, as locally interpreted, forbade its courts to entertain suits of this nature; in *First Nat'l Bank v. United Air Lines*, 342 U.S. 396 (1952), a like result was reached under an Illinois statute. More recently, the Court has acknowledged that the Full Faith and Credit Clause does not compel the forum state, in an action for wrongful death occurring in another jurisdiction, to apply a longer period of limitations set out in the wrongful death statute of the state in which the fatal injury was sustained. *Wells v. Simonds Abrasive Co.*, 345 U.S. 514 (1953). Justices Jackson, Black, and Minton, in dissenting, advanced the contrary principle that the clause requires that the law where the tort action arose should follow said action in whatever forum it is pursued.

¹¹³ 119 U.S. 615 (1887).