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shipper from setting off damages of shipment against freight charges.¹¹ If in an action by the carriers for charges, a shipper cannot counterclaim for a cause of action ordinarily pleadable as such, then as a corollary, in an action by the shipper the carrier should not be permitted to counterclaim. There is no ground for differentiating or for treating suits by one wherein the other counterclaims as presumptively collusive.¹² It must be assumed that, when litigants come into a court, they are submitting a real controversy for settlement.¹³ Adjustments of demands by counterclaims rather than by independent suit serves to avoid circuitry of action and is encouraged by law.¹⁴ Commendable economy and efficiency in judicial procedure would seem to justify the disposition of the entire related controversy in one action.¹⁵

G. A. LONG.

Conflict of Laws—Death by Wrongful Act—Limitations on Right of Action

Under the Florida laws, an action for damages for wrongful death may be brought at any time within two years after the death occurred.¹ The North Carolina wrongful death statute² specifies that the action must be brought within one year. More than one year, but less than two years, after a cause of action accrued in Florida, suit was instituted in North Carolina. *Held*, action barred.³

When common law actions are involved, the general rule is that the law of the place governs the right, and the law of the forum governs the remedy.⁴ Since general statutes of limitation are procedural in nature, it follows that the limitation of common law actions is governed by the *lex fori*.⁵ Thus, if action is barred by the statute of limitations of the forum, no action can be maintained

¹¹ *Battle v. Atkinson*, 9 Ga. App. 488, 71 S. E. 775 (1911); *Pennsylvania R. Co. v. Bellinger*, 101 Misc. Rep. 105, 166 N. Y. S. 652 (1917).

¹² *Chicago & N. W. Ry. Co. v. E. C. Tecktonius Mfg. Co.* 262 Fed. 715 (E. D. Wis. 1920).

¹³ *Wells Fargo & Co. v. Cuneo*, 241 Fed. 727 (S. D. N. Y. 1917).

¹⁴ *North Chicago Rolling Mill Co. v. St. Louis Ore & Steel Co.*, 152 U. S. 596, 615-616, 14 Sup. Ct. 710, 715-716, 38 L. ed. 565 (1894).

¹⁵ *Payne, Director General v. Clark*, 271 Fed. 525 (S. D. Cal. 1921).

¹ FLA. REV. GEN. STAT. (1920), §§4960-61, 2930 (6).

² N. C. CONS. STAT. ANN. (1919), §160.

³ *Tieffenbrun v. Flannery*, 198 N. C. 397, 151 S. E. 857 (1930).

⁴ *Scudder v. Union Nat. Bank*, 91 U. S. 406, 23 L. ed. 245 (1875); 1 Wood, LIMITATIONS (4th ed. 1916) 62.

⁵ *McElmoyle v. Cohen*, 13 Pet. 312, 10 L. ed. 177 (1839); *Patton v. Lumber Co.*, 171 N. C. 837, 73 S. E. 167 (1916); Note (1900) 48 L. R. A. 625.

though the action is not barred in the state in which the cause of action arose.⁶ Conversely, if an action is not barred by the *lex fori*, it may be maintained though it is barred by the *lex loci delicti*.⁷

The right of action for damages for wrongful death is unknown to the common law.⁸ When the statute which creates the right specifies the time in which action must be brought, this limitation is a condition annexed to the right,⁹ and, like other substantive matters,¹⁰ is governed by the law of the place of the wrong. Consequently, no state will allow recovery on the statute after the limitation has elapsed.¹¹ The same result has been reached, moreover, when the limitation was not incorporated in the same statute which created the cause of action for wrongful death, but was directed expressly to that cause of action.¹²

On the theory, that when such prescribed limitation has expired, the cause of action is extinguished, recovery has been denied where suit was brought *after* the time provided by the *lex loci delicti* but *within* the time required for bringing action on a similar cause of

* CONFLICT OF LAWS RESTATEMENT (Am. L. Inst. 1929) §631. See McCoy v. Chicago etc. Ry. Co., 134 Mo. 622, 627, 114 S. W. 1124 (1909). But see Note (1913) 46 L. R. A. (N. S.) 687, 690.

⁷ CONFLICT OF LAWS RESTATEMENT, *supra* note 6, §632; O'Shields v. Ga. Pac. Ry., 83 Ga. 621, 10 S. E. 268, 6 L. R. A. 152 (1889); Tarbell v. Grand Trunk Ry. Co., 94 Vt. 449, 111 Atl. 567 (1920). But where title to a chattel has been acquired by adverse possession under the law of the *situs*, the rights acquired will be respected in another jurisdiction to which the chattel has been subsequently removed, although the statute of limitations of the forum would not have barred the original owner's action. Shelby v. Guy, 11 Wheat. 361, 6 L. ed. 495 (1826).

⁸ It was not until the enactment, in 1876, of Lord Campbell's Act that recognition was given to the doctrine that "it is oftentimes right and expedient that the wrongdoer in such cases should be answerable in damages" for the death so caused by him. (9 & 10 Vict. c. 93.)

⁹ 2 WHARTON, CONFLICT OF LAWS (3rd. ed. 1905) 1261; Taylor v. Cranberry Iron Co., 94 N. C. 525 (1886); Hanie v. Penland, 193 N. C. 800, 138 S. E. 165 (1927). See also Engel v. Davenport, 271 U. S. 33, 46 S. Ct. 410, 70 L. ed. 813 (1926) (the time provision in a Federal Employers' Liability Act is substantive, and the shorter period prescribed by a state limitation statute will not prevail).

¹⁰ Wrongful death statutes usually specify the party who must bring suit. See Notes (1926) 24 MICH. L. REV. 411; (1928) 37 YALE L. J. 666; (1923) 9 VA. L. REV. 567.

¹¹ The Harrisburg, 119 U. S. 199, 75 Sup. Ct. 140, 30 L. ed. 358 (1886); Boyd v. Clark, 8 Fed. 849 (E. D. Mich. 1881); CONFLICT OF LAWS RESTATEMENT, *supra* note 7, §433. See Note (1900) 48 L. R. A. 639.

¹² Negaubauer v. Gt. Northern Ry., 92 Minn. 184, 99 N. W. 620, 104 Am. St. Rep. 674, 2 Ann. Cas. 150 (1900). See also, Brunswick Terminal Co. v. National Bank, 99 Fed. 635, 48 L. R. A. 625 (C. C. A. 4th, 1900); Davis v. Mills, 194 U. S. 451, 24 Sup. Ct. 692, 48 L. ed. 1067 (1904). But see Gregory v. Sou. Pac. Co., 157 Fed. 113 (C. C. D. Ore. 1907) (Wrongful death statute contained no limitation, and general limitation statutes of *locus delicti* made no reference to this cause of action, held, *lex fori* will govern.); Munos v. Southern Pac. Ry., 51 Fed. 188 (C. C. A. 5th, 1892).

action arising within the forum.¹³ But as to the reverse situation, where suit is brought *within* the time provided by the *lex loci delicti* but *after* the time required by the *lex fori*, the authorities are sharply divided.¹⁴

The determinative question in situations of this type is whether the time limit contained in the statute of the forum is, in reality, both a statute of limitation and a condition annexed to the substantive right.¹⁵ Minnesota has held that the limitation is substantive only and, applying the general rule that the law of the state creating the right governs, has allowed action on a foreign wrongful death statute to be maintained even though the same action would have been barred had the wrong occurred in the state of the forum.¹⁶ There are Federal Court decisions in accord.¹⁷

A contrary result was reached by the North Carolina court when the question was fairly presented by the principal case. If the North Carolina statute is substantive only, and not a statute of limitation, it inevitably follows that the one year limit contained therein is intended to govern actions for wrongful deaths occurring in North Carolina, and has no effect on admittedly, good, transitory¹⁸ causes of action arising in other states and brought to the forum for trial. However, the declaration of the court that the time limit in the statute is both a condition annexed to the cause of action and a legislative declaration of the policy of the state as to when wrongful death actions shall be asserted in the state, is sound, is in accord with the suggestion made in the American Law Institute's *Restatement of Conflict of Laws*,¹⁹ and will doubtless point the way for other decisions in this disputed area of the law.

THOMAS W. SPRINKLE.

¹³ *Wingert v. Carpenter*, 101 Mich. 395, 59 N. W. 662 (1894); *Ry. Co. v. Lacy*, 49 Ga. 107 (1873).

¹⁴ 2 WHARTON, *supra* note 9, 1264.

¹⁵ See GOODRICH, *CONFLICT OF LAWS* (1927) 171.

¹⁶ *Negaubauer v. Gt. Northern Ry Co.*, *supra* note 12.

¹⁷ *Keep v. National Tube Co.*, 154 Fed. 121 (D. N. D. 1907); *Theroux v. Northern Pac. Ry. Co.*, 64 Fed. 84 (C. C. A. 8th, 1894).

¹⁸ *Dennick v. Railroad*, 103 U. S. 11, 26 L. ed. 439 (1880); *Harrell v. South Carolina, etc. R. Co.*, 132 N. C. 655, 44 S. E. 109 (1903). But see *McLay v. Slade*, 48 R. I. 357, 138 Atl. 212 (1927), *Noted* (1927) 26 MICH. L. REV. 325. (When the death statute is penal, there can be no recovery in another state.)

¹⁹ *CONFLICT OF LAWS RESTATEMENT* (Am. L. Inst. 1928) §433, comment (b), "The limit of time in the death statute of the forum may be interpreted as a statute of limitations for actions for death; and in that case the suit must be brought within the time limited in that statute, as well as within the time limited in the statute of the place of injury."