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if a deposition of the prisoner had been admissable. Generally the right of confrontation prohibits the use of depositions of a witness if the witness is within the jurisdiction of the court and it is possible to obtain his presence by proper process.[13] There are certain exceptions to this rule. If a witness dies after giving testimony at a prior trial where the accused had an opportunity to cross examine, his testimony may be read at subsequent trial for the same offense.[14] If the accused has not had an opportunity to cross examine, depositions of an absent or deceased witnes are inadmissable,[15] unless the accused has caused the witness to be absent.[16] Statutes permitting the admission of depositions in criminal actions where the witness is in imminent danger of death or is residing without the state are constitutional if the accused is afforded the opportunity to be present when the deposition is taken so that he can confront and cross examine the witness.[17]

The use of depositions in the instant case would not come within any of the recognized exceptions to the rule of confrontation. Of course, since a friendly witness is involved here, the accused would not object to the introduction of the testimony by the use of a deposition, if it were necessary to do so.

The question in the instant case would arise only in states having constitutions following the language of the Oregon document.[18] The majority of the states with constitutional provisions on the point substantially follow the federal constitution.[19] North Dakota follows the majority, but the right of confrontation is purely statutory.[20]

The result in the instant case appears correct, but as indicated in the concurring opinion, a sounder ground for the decision would seem to be that the statute requiring testimony of imprisoned felons to be taken by deposition denies the constitutional right to compulsory process.[21]

KENNETH R. YRI

COURTS — JURISDICTION — FORUM NON CONVENIENS. — Plaintiff, a resident and citizen of Nebraska, was injured in a railroad accident in that state. The defendant railroad company did business in both Nebraska and Minnesota. Plaintiff brought an action under the Federal Employers' Liability Act in the District Court, Washington County, Minnesota. The action was dismissed without prejudice on ground of *forum non conveniens*. On appeal, it was *held*, that the trial court has the discretionary power to invoke the doctrine *forum*

13. Catron v. Commonwealth, 268 Ky. 536, 105 S.W.2d 618 (1937).
14. Walls v. State, 194 Ark. 578, 109 S.W.2d 143 (1937); State v. Barnes, 274 Mo. 625, 204 S.W. 267 (1918); State v. Maynard, 184 N.C. 653, 113 S.E. 682 (1922).
15. Harrison v. Commonwealth, 266 Ky. 840, 100 S.W.2d 837 (1937); State v. Hutchinson, 163 La. 146, 111 So. 656 (1927).
16. Reynolds v. United States, 98 U. S. 145 (1878).
17. People v. Chin Hane, 108 Cal. 597, 41 Pac. 697 (1895); People v. Fish, 125 N. Y. 136, 26 N.E. 319 (1891); Drew v. Shaughnessy, 212 Wis. 322, 249 N.W. 522 (1933). *But see* State v. Potter, 6 Idaho 584, 57 Pac. 431, 432 (1899); State v. Chambers 44 La. 603, 10 So. 886 (1892).
18. Ill. Const. Art. II, §9; Ind. Const. Art. I §65; Tenn. Const. Art. 1 §9.
19. Ark. Const. Art. II, §10; Ariz. Const. Art. II, §24; Minn. Const. Art. I, §6; N. J. Const. Art. I, §8; S. D. Const. Art. VI, §7.
20. N. D. Rev. Code, §29-0106 (1943) "In all criminal prosecutions the party accused shall have the right to meet the witnesses against him face to face."
21. Rudolph v. Ryan, 327 Mo. 728, 38 S.W.2d 717 (1931); approved at 8 Wigmore, Evidence 111 (3rd ed. 1940). *Contra*: Pirkle v. State, 31 Ala. App. 464, 18 So.2d 694 (1944); Tiner v. State, 110 Ark. 251, 161 S.W. 195 (1913).

non conveniens over transitory actions brought by non-residents. *Johnson v. Chicago, B. & O. Ry.*, 66 N.W.2d 763 (Minn. 1954).

Originally, federal venue statutes limited actions brought under the Federal Employers' Liability Act to the state of defendant's residence.[1] An amendment in 1910 liberalized this limitation by authorizing the employee to bring suit not only in the state or federal court in the district of the residence of the defendant, but also in the district in which the cause of action arose, or in any state in which the defendant was doing business at the time the suit was commenced.[2] This aid to the employee-litigant has, unfortunately, in many cases imposed an unfair burden on the defendant-employer. Not only is the plaintiff in a position to shop for a favorable forum, but he has often used this power to force settlement by threatening the defendant with the additional expense which would be incurred transporting witnesses and counsel great distances.[3]

An attempt to induce Congress to enact corrective legislation has failed.[4] Carrier-defendants have petioned courts of the resident state of the employee to enjoin its citizens from bringing action outside the state, but this relief has been denied, as not being within the court's authority under the Federal Employers' Liability Act.[5]

However, a suitable means to protect the interest of the defendant-employer has been found in the equitable doctrine of *forum non conveniens*. This rule permits a court in its discretion to decline to exercise jurisdiction over a transitory cause of action when trial in the court would be seriously inconvenient to the defendant and the action may more equitably be tried in some other available and competent jurisdiction.[6] In 1948 Congress gave the federal courts the power to invoke the doctrine.[7] At first, state courts refused to make use of the rule on the theory that its use might involve discrimination against non-citizens prohibited by the privileges and immunities clause of the United States Constitution.[8] However, in 1950 the Supreme Court of the United States held that if the state invoked the doctrine indiscriminately as to non-resident citizens and non-resident non-citizens, there would be no violation of the Federal Constitution.[9] Hence, *forum non conveniens* may be used in the sound discretion of the state court.[10]

The failure of some states to utilize this doctrine resulted in a pronounced concentration of Federal Employers' Liability Actions in the states of Illinois,

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1. 25 Stat. 433, 434 (1888).
2. 36 Stat. 291 (1910), as amended, 45 U. S. C. §56 (Supp 1950).
3. Kilpatrick v. Texas & P. Ry. 166 F.2d 788 (2nd Cir. 1948); Naughton v. Pennsylvania Ry., 85 F. Supp. 761 (E. D. Pa. 1949); See Atchison, T. & S. F. Ry. v. Andrews, 338 Ill. App. 552, 88 N.E.2d 364 (1949), (Unethical practice by attorney in forming organization to acquire outstate claims for importation to Chicago); *accord*: Mooney v. Denver R. G. W. Ry., 221 P.2d 628 (Utah 1950); See Barrett, *The Doctrine of Forum Non Conveniens*, 35 Calif. L. Rev. 380, 381-385 (1947).
4. See 35 Minn. L. Rev. 496 (1951).
5. Miles v. Illinois Central Ry., 315 U. S. 698 (1942); Baltimore Ohio Ry. v. Kepner, 314 U. S. 44 (1941).
6. Hayes v. Chicago, R. I. & P. Ry., 79 F. Supp. 821, 824 (D. Minn. 1949); Leet v. Union Pac. Ry., 25 Cal.2d 605, 155 P.2d 42, 44 (1945).
7. 28 U. S. C. 1404(a) (Supp. 1946) "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought".
8. U. S. Const., Art. IV, §2.
9. Missouri v. Mayfield, 340 U. S. 1 (1950).
10. *Ibid.*

New York, Minnesota, Missouri, and California.[11] California has recently reversed its position in *Price v. Atchison, T. & S. F. Ry.*[12] New York limits its application to tort actions.[13] However, Missouri and Illinois still refuse to apply the doctrine to Federal Employers' Liability Act actions.[14] The question has not been raised in North Dakota.

By the decision in the instant case, the Minnesota court has overruled the case of *Boright v. Chicago, R. I. & P. Ry.*,[15] which held that the doctrine could not be applied in transitory actions brought by residents of foreign states. It has thus alleviated the hardship to defendants[16] and the unfair burden to local taxpayers,[17] and has effectuated the result desired from the 1948 amendment.[18]

JEROME J. MACK

INSURANCE — EFFECT OF NONLIABILITY CLAUSE UPON RIGHT TO CONTRIBUTION FROM TORTFEASOR'S INSURER — W, while a passenger in an automobile owned and operated by her husband, sustained injuries in a car-train collision. A suit against the Railroad Company and the husband as negligent joint tortfeasors resulted in recovery of a judgment against both defendants which was collected in full from the Railroad Company. In an attempt by the latter to enforce its right of contribution against the husband's insurer, the court *held,* that enforcement of such right was precluded by a provision in the insurance policy absolving the insurer from all liability for injuries to the insured or members of his household. *Puller v. Puller,* 110 A.2d 175 (Pa.1955).

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11. Hearings before Subcommittee No. 4, Committee on the Judiciary, on H. R. 1639, 80th Cong., 1st Sess. (1947); See Barrett, *The Doctrine of Forum Non Conveniens, Supra* note 3 at 383, "A survey conducted by 51 leading railroads showed that during a five year period ending in 1946, 2512 suits were filed outside the federal districts in which the accident occurred or in which the Plaintiff resided at the time of the accident and that 92% of these suits were concentrated in the states of Illinois, New York, Minnesota, Missouri and California".

12. 268 P.2d 457 (Calif. 1954).

13. White v. Boston & M. Ry., 129 N. Y. S.2d 15 (1954); Wurnan v. Wabash Ry., 246 N. Y. 244, 158 N.E. 508 (1927); Gregonis v. Philadelphia R. C. & I. Co., 235 N. Y. 162, 139 N.E. 223 (1923).

14. See note 9 *Supra;* Wintersteen v. National Cooperage Co., 316 Ill. 95, 197 N.E. 578 (1935); Bright v. Wheelock 323 Mo. 840, 20 S.W.2d 684 (1929).

15. 180 Minn. 52, 230 N.W. 457 (1930).

16. Mooney v. Denver & R. G. W. Ry., *Supra* note 3; Gulf Oil Corp. v. Gilbert, 330 U. S. 501, 508 (1947); *cf,* Davis v. Farmers Co-operative Co., 262 U. S. 312 (1923); *But see* Baltimore & Ohio Ry. v. Kepner, *supra* note 5. See Barrett, *The Doctrine of Forum Non Conveniens, supra* note 3.

17. Universal Adjustment Corp. v. Midland Bank, 281 Mass. 303, 184 N.E. 152; Gulf Oil Corp. v. Gilbert, *supra* note 16; *cf.* Davis v. Farmers Co-operative Co., *supra* note 16; *But see* Baltimore & Ohio Ry v. Kepner, *supra* note 5.

18. See note 7 *supra.* If state courts do not invoke the doctrine when federal courts must, the plaintiff when dismissed in the federal court may re-enter the jurisdiction through the state courts, thus frustrating the purpose of the amendment.

The instant case also pointed out that actions brought by tourists who spend considerable time in the state or by residents of border states shall not be disturbed. Maloney v. New York, N. H. & H. Ry., 88 F.Supp. 568 (S.D. N.Y. 1949) suggested the following for consideration in determining if the doctrine should be invoked: "(a) relative ease of access to source of proof; (b) availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; (c) possibility of view of premises, if such be appropriate; (d) all other practical problems that may make the trial of a case easy, expeditious and inexpensive." See Naughton v. Pennsylvania Ry., *supra* note 4 at 763.