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GARNISHMENT — FULL FAITH AND CREDIT — NATURE OF PRINCIPAL JUDGMENT — Plaintiff, appellee, sued an Illinois insurance company for legal services, and on the same day sued out a writ of garnishment against a Michigan debtor of the insurance company. Two days later the insurance company was dissolved in Illinois under the provisions of the Illinois Insurance Code, and an Illinois liquidator was vested with title to all of the insurance company's

property, wherever located.[1] The liquidator intervened in this case, claiming prior title to the garnishment debt, by virtue of the Illinois statute and judicial proceedings. *Held,* the commencement of the garnishment suit gave plaintiff a lien on the garnishment debt, which was not divested by the liquidation proceedings in Illinois, and being prior in time, is superior to the liquidator's statutory title to the debt as an asset of the dissolved company. *Smith v. Builders & Manufacturers Casualty Co.,* 288 Mich. 146, 284 N. W. 678 (1939).

The full faith and credit clause of the Federal Constitution [2] requires that local courts "recognize" the title of a liquidator, which he holds by virtue of the statutes of another state, but it does not require them to concede to his title priority over liens of local creditors, acquired either before or after title vests in the liquidator.[3] It has long been settled that in spite of the wording of the constitutional clause, local statutes do not have extraterritorial effect unless the parties expressly or impliedly so agree.[4] Under these circumstances, the courts have not given foreign receivers and liquidators with title priority over liens previously acquired, as in the present case.[5] Nor do most courts give the liquidator priority even over local liens subsequently acquired.[6] Under the Michigan statute,[7] the service of process on the garnishee fastens a lien on the garnishment debt,[8] which is unaffected by the subsequent liquidation. The result is not conducive to

[1] Ill. Laws (1937), p. 696; Ann. Stat. (Smith-Hurd, Supp. 1938), c. 73, §§ 803, 806.

[2] U. S. Constitution, art. 4, § 1: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

[3] Clark v. Williard, 292 U. S. 112, 54 S. Ct. 615 (1935), 294 U. S. 211, 55 S. Ct. 356, 98 A. L. R. 347 at 374 (1935). See 48 HARV. L. REV. 835 (1935). Perhaps foreign liquidators must not be treated less favorably than local receivers. But in Michigan a local receiver's title is junior to that of a prior lienholder. Travis v. McBride, 166 Mich. 126, 131 N. W. 520 (1911).

[4] Scott v. Sandford, 60 U. S. 393 (1856); Bonaparte v. Tax Court, 104 U. S. 592 (1881). The exceptional cases are those in which suit is grounded on a contract made pursuant to the foreign statutes, such as a suit by stockholder against foreign corporation, or by member or policyholder against foreign insurance company. See Modern Woodmen of America v. Mixer, 267 U. S. 544, 45 S. Ct. 389 (1925); Converse v. Hamilton, 224 U. S. 243, 32 S. Ct. 415 (1912). In such cases Michigan has enforced the foreign statutes and refused preferential treatment of local plaintiffs. Wheeler v. Dime Savings Bank, 116 Mich. 271, 74 N. W. 496 (1898).

[5] See, e.g., Watts v. Southern Surety Co., 216 Iowa 150, 248 N. W. 347 (1933); Clark v. Williard, 294 U. S. 211, 55 S. Ct. 356 (1935).

[6] Davis v. Amra Grotto, 169 Tenn. 564, 89 S. W. (2d) 754 (1935), 170 Tenn. 19, 91 S. W. (2d) 294 (1936); Shloss v. Metropolitan Ins. Co., 149 Iowa 382, 128 N. W. 384 (1910); Illinois Trust & Savings Bank v. Northern Bank & Trust Co., 292 Ill. 11, 126 N. E. 533 (1920); Zachner v. Fidelity Trust & Safety-Vault Co., 109 Ky. 441, 59 S. W. 493 (1900). *Contra:* Martyne v. American Union Fire Ins. Co., 216 N. Y. 183, 110 N. E. 502 (1915); Kinsler v. Casualty Co., 103 Neb. 382, 172 N. W. 33 (1919).

[7] Mich. Comp. Laws (1929), § 14857; Stat. Ann. (1938), § 27.1855.

[8] Rickman v. Rickman, 180 Mich. 224, 146 N. W. 609 (1914); Sinclair Co. v. Becker Coal Co., 263 Mich. 617, 249 N. W. 13 (1933).

the orderly administration of insolvent insurance companies, and these preferential liens cannot be avoided under the federal bankruptcy law, which does not apply to insurance companies.[9] It does not seem fair that local creditors should be protected further than to assure them a ratable share of the assets.[10] A possible ameliorative is enactment of the uniform reciprocal state statute, adopted in New York in 1936,[11] which proscribes commencement or continuation of action against the insurer or its assets, after institution of liquidation proceedings in a "reciprocal state," without the liquidator's consent. Another difficulty was presented in the case under discussion by the fact that dissolution of the principal defendant rendered impossible a judgment against it in personam.[12] But a judgment against the principal defendant is a condition to continuance of proceedings against the garnishee.[13] The courts said,[14] "The judgment rendered, however, adjudged the principal defendant indebted to the plaintiff and also found the garnishee defendant indebted to the principal defendant, so we have an adjudication on the merits of plaintiff's claim and the liability of the principal defendant therefor and, while it might have been better to have carried the same into the form of judgments *in rem*, we do not think that any real purpose would be served by remanding the case for the entry of such judgments." It seems, then, that the court treated the findings of the court below as incidentally including a judgment in rem against the principal defendant, rather than in personam, and based the garnishment judgment thereon, the res being identical in both judgments. Under the Michigan statute, a garnishment suit may be ancillary to an attachment suit,[15] which is clearly not an action in personam. Therefore it seems consistent for a garnishment suit which began as ancillary

[9] 11 U. S. C. (1934), § 22b.

[10] In fact, the privileges and immunities clause requires that such local liens be available to non-resident as well as resident creditors. Blake v. McClung, 172 U. S. 239, 19 S. Ct. 165 (1898), 176 U. S. 59, 20 S. Ct. 307 (1900); Torrington v. Sidway-Topliff Co., (C. C. A. 7th, 1934) 70 F. (2d) 949.

[11] 27 N. Y. Consol. Laws (McKinney, 1937), "Insurance Law," § 406f. See 37 COL. L. REV. 1031 (1937). It has also been suggested that by virtue of the second sentence in the full faith and credit provision of the constitution ("And Congress may . . . prescribe . . . the Effect thereof"), Congress may have constitutional power to give statutes, such as insolvency statutes, extraterritorial effect. Corwin, "The 'Full Faith and Credit' Clause," 81 UNIV. PA. L. REV. 371 (1933).

[12] United States Truck Co. v. Pennsylvania Surety Corp., 259 Mich. 422, 243 N. W. 311 (1932) (in the absence of any statute keeping foreign corporations alive for purposes of a pending suit); Pendleton v. Russell, 144 U. S. 640, 12 S. Ct. 743 (1891).

[13] Mich. Comp. Laws (1929), § 14897; Stat. Ann. (1938), § 27.1895: "A failure to recover judgment against the principal defendant, or a satisfaction of such judgment, in any manner, shall be deemed a discontinuance of all proceedings against the garnishee."

[14] Principal case, 288 Mich. at 151.

[15] Mich. Comp. Laws (1929), § 14857: "In all personal actions arising upon contract . . . whether commenced by declaration, writs of capias, summons or attachment, and in all cases where there remains any sum unpaid upon any judgment or decree . . . if the plaintiff, his agent or attorney, shall file with the clerk of said circuit court . . . an affidavit . . . a writ of garnishment shall be issued. . . ."

process to an action in personam against the principal defendant to depend for its final result upon an in rem judgment against the principal defendant, inherent in the garnishment judgment itself,even though the action in personam has abated. Perhaps another solution would have been to base the garnishment judgment on a judgment in personam against the liquidator as statutory successor to the principal defendant, inasmuch as he filed a petition which was allowed to stand as an answer, and which did not deny the liability of the company to plaintiff.[16]

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[16] Record in principal case, Jan. Term, 1939, No. 105, p. 24.