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CONFLICT OF LAWS-FULL FAITH AND CREDIT AS APPLIED TO STATUTES

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COMMENTS

CONFLICT OF LAWS—FULL FAITH AND CREDIT AS APPLIED TO STATUTES—While the full faith and credit clause of the Constitution[1] makes no apparent distinction between judgments and public acts, it is clear that statutes have not been afforded the same degree of full faith and credit as judgments.[2] Whether or not a statute will receive full faith and credit has been questionable in most cases, and serious problems of prediction still arise. The recent cases of *Hughes v. Fetter*[3] and *First National Bank of Chicago v. United Air Lines, Inc.*[4] illustrate some of the problems in the field as well as what may be the Supreme Court's present position on this question. In the former case, the plain-

[1] U.S. Const., art. IV, §1.

[2] See GOODRICH, CONFLICTS OF LAWS, 3d ed., §§208-218 (1949); 2 BEALE, CONFLICTS OF LAWS §446.1 (1935).

[3] 341 U.S. 609, 71 S.Ct. 980 (1951).

[4] 342 U.S. 396, 72 S.Ct. 421 (1952).

tiff, whose decedent was fatally injured in Illinois, brought an action under the Illinois wrongful death act[5] in the Wisconsin courts. The action was dismissed on the grounds that a similar action provided by Wisconsin statute[6] was limited to deaths occurring in Wisconsin, indicating a local public policy against entertaining suits for deaths occurring out of the state. The Wisconsin Supreme Court affirmed,[7] but the United States Supreme Court reversed, holding that the Wisconsin public policy must give way before the full faith and credit requirement. In the latter case, plaintiff's decedent was killed in an airplane crash in Utah, and recovery was sought in the federal courts in Illinois under the wrongful death act of Utah. Defendant interposed section 2 of the Illinois wrongful death act,[8] which stated that no suit should be maintained in the Illinois courts if the death occurred outside the state and service of summons was obtainable there, and argued that the federal courts were bound to observe the state policy in diversity cases under the doctrine of *Erie R. Co. v. Tompkins*.[9] The district court dismissed the action, and the court of appeals affirmed.[10] However, the Supreme Court reversed, again holding that the policy barring foreign actions must fall before the full faith and credit requirement, basing its opinion in large part on the similar holding in *Hughes v. Fetter*. It is interesting to note that of the four Justices dissenting in *Hughes v. Fetter*,[11] only two dissented in this case.[12] The other two joined in a concurring opinion, supporting the result upon different grounds.

It is clear in both cases that if plaintiff had first reduced his claim to judgment in the state where the death occurred, other states would have been bound to enforce it regardless of any local public policy to the contrary.[13] The public policy exception to the full faith and credit clause as it applies to statutes lies at the root of this difference in treatment, and is a concept difficult of specific application.

I. *Development of Full Faith and Credit as Applied to Statutes*

It seems clear that the full faith and credit clause was not intended to have general application to statutes at the time the Constitution was

[5] Ill. Ann. Stat. (Smith-Hurd, 1941) c. 70, §§1, 2.
[6] Wis. Stat. (1949) §331.03.
[7] 257 Wis. 35, 42 N.W. (2d) 452 (1950).
[8] Ill. Ann. Stat. (Smith-Hurd, 1941) c. 70, §2.
[9] 340 U.S. 64, 58 S.Ct. 817 (1938).
[10] (7th Cir. 1951) 190 F. (2d) 493.
[11] Frankfurter, Reed, Jackson, and Minton.
[12] Frankfurter and Reed.
[13] See note 2 supra.

adopted. The provision for public acts was added to a similar clause in the Articles of Confederation to provide for a few limited instances, such as legislative decrees of insolvency and divorce.[14] This interpretation of the clause was reflected in the subsequent legislation implementing the constitutional provision.[15] The same interpretation continued until quite recently, and the application of sister state statutes was based upon other theories, notably, due process.[16] In tracing the rise of full faith and credit as a basis for compulsory application of the law of a sister state, it seems most profitable to group the cases according to their subject matter rather than by strict chronology.

In the area of workmen's compensation, the first case considering the application of full faith and credit to a sister state statute was *Bradford Electric Co. v. Clapper*.[17] Although properly laid under New Hampshire law, that state's courts were required to dismiss the action because it contravened the terms of the Vermont statute, which was held to control. Vermont was the domicile of both the employer and employee, and the contract of employment was made there. The employment was usually carried on in Vermont. New Hampshire's sole connection with the action was that the injury occurred there. Justice Stone concurred in the result but objected to the compulsory aspect of full faith and credit. He felt that the full faith and credit clause "should be interpreted as leaving the courts of New Hampshire free, in the circumstances now presented, either to apply or refuse to apply the law of Vermont, in accordance with their own interpretation of New Hampshire policy and law."[18] Justice Brandeis, writing the majority opinion, stated that full faith and credit did not require the enforcement of every right arising by virtue of foreign statute, since some accommodation of local policies should be granted.[19]

In the second case in this field, *Alaska Packers Assn. v. Industrial Accident Commission*,[20] the court at the forum was allowed to apply its own statute. This suit was brought under the California workmen's compensation act, and was defended on the grounds that the injury occurred in Alaska, and the contract of employment made the Alaska statute applicable. Justice Stone, writing the Court's opinion, seized

[14] See 2 FARRAND, THE RECORDS OF THE FEDERAL CONVENTION 447 (1911).
[15] 1 Stat. L. 122, c. 11 (1790), 28 U.S.C. (1940) §687.
[16] Kryger v. Wilson, 242 U.S. 171, 37 S.Ct. 34 (1916); New York Life Ins. Co. v. Dodge, 246 U.S. 357, 38 S.Ct. 415 (1918).
[17] 286 U.S. 145, 52 S.Ct. 571 (1932).
[18] Id. at 164-165.
[19] Id. at 160.
[20] 294 U.S. 532, 55 S.Ct. 518 (1935).

upon the public policy exception to full faith and credit, recognized but not applied in the *Bradford* case, and held that the policy considerations of California were strong enough to preclude application of the full faith and credit clause. Several factual differences from the *Bradford* case seem to warrant this result: the injured claimant worked in Alaska only temporarily and had returned to California, and the California act stated that it was to be an exclusive remedy.[21] In addition, the Court mentioned the very small likelihood that the claimant would in fact be able to bring an action in Alaska, and seemed to feel that the employer had taken advantage of him by making the Alaska statute applicable.

In spite of the factual differences, the language of the opinion made it clear that public policy had come into its own as a basis for denying full faith and credit to a sister state statute.

Pacific Employers Insurance Co. v. Industrial Accident Commission[22] held that California could apply its own workmen's compensation law where the Massachusetts act was offered as a defense to the action. The injured employee and the employer were residents of Massachusetts, the contract was made in Massachusetts, and the law of Massachusetts was designed as an exclusive remedy. The employee was in California on a temporary assignment. Nevertheless, California's public policy considerations were held weighty enough to prevent enforcement of the Massachusetts law. The factor giving rise to this result was said to be the interest of California in assuring payment to its residents who rendered services to the employee after his injury. It is interesting to note that this case reaches a result opposite to the *Bradford* case on very similar facts. The only substantial difference is that in the *Bradford* case the employee died, while here the employee lived and was cared for in California.

In contrast to the divergent results in workmen's compensation cases, stockholders' or members' liability is uniformly governed by the laws of the state of incorporation. In these cases, the Court has, without exception, held that full faith and credit must be applied. As early as 1912 it was said that the subject of stockholders' liability is so within the regulatory powers of the state of incorporation that no other state can have a policy on it.[23] This statement appeared again in *Broderick v. Rosner*,[24] twenty-three years later, when it was held that New Jersey

[21] "No contract, rule or regulation shall exempt the employer from liability for the compensation fixed by this act. . . ." Cal. Gen. Laws (Deering, 1931) Act 4749, §27a.

[22] 306 U.S. 493, 59 S.Ct. 629 (1939).

[23] Converse v. Hamilton, 224 U.S. 243, 32 S.Ct. 415 (1912).

[24] 294 U.S. 629, 55 S.Ct. 589 (1935).

could not, by means of a procedural requirement impossible of fulfillment, close its courts to suits involving stockholder liability arising under the laws of New York. *Pink v. A.A.A. Highway Express*[25] might appear to deviate from this pattern, since Georgia refused to enforce an assessment made by a New York mutual insurance company against its citizens. The actual holding in that case, however, was that the Georgia defendants were not members of the society as the contract of insurance was interpreted by Georgia courts, and that Georgia was competent to interpret the contract. There is dictum to the effect that if the fact of membership had been found, full faith and credit would have been given.[26]

Fraternal benefit societies are likewise treated in a consistent manner, and the law of the state of incorporation is held to govern in cases of conflict. A recent case, *Order of United Commercial Travelers v. Wolfe*,[27] held that South Dakota must apply a statute of Ohio which allowed a fraternal benefit society to limit the time in which claims might be brought, despite the fact that a statute of South Dakota made such a provision void. The contract was made in South Dakota, and the deceased died in that state. Application of the laws of the state of incorporation is particularly striking in this case, as it is contrary to the usual rule that the law where the contract was made or is to be performed should govern.[28]

In the field of commercial insurance there seems to be no such uniformity as is found in the treatment of fraternal benefit societies. The Court has been unwilling to extend its recognition of the need for uniformity in cases involving fraternal benefit societies[29] to the commercial insurance cases. Thus *Griffen v. McCoach*[30] held that a beneficiary who had no insurable interest under Texas law could not recover on a policy, although payment was permitted by New York statute, the contract was made in New York, and the contesting beneficiaries were not residents of Texas. However, the Court in *John Hancock Mutual Life Ins. Co. v. Yates*[31] required Georgia to give effect to a parol evidence statute which prevented recovery upon an insurance contract made in

[25] 314 U.S. 201, 62 S.Ct. 241 (1941).
[26] Id. at 207.
[27] 331 U.S. 586, 67 S.Ct. 1335 (1947).
[28] See also Sovereign Camp v. Bolin, 305 U.S. 66, 59 S.Ct. 35 (1938); Modern Woodmen v. Mixer, 267 U.S. 544, 45 S.Ct. 389 (1925); Supreme Council of Royal Arcanum v. Green, 237 U.S. 531, 35 S.Ct. 724 (1915).
[29] See Order of Commercial Travelers v. Wolfe, 331 U.S. 586, 67 S.Ct. 1335 (1947); Modern Woodmen v. Mixer, 267 U.S. 544, 45 S.Ct. 389 (1925).
[30] 313 U.S. 498, 61 S.Ct. 1023 (1941).
[31] 299 U.S. 178, 57 S.Ct. 129 (1936).

New York. This case seems to be the usual result when an attempt is made to extend the liability of the insurer beyond the limits of its contract as construed under the *lex loci.* Although the *Yates* case deals with the problem in terms of full faith and credit, several earlier cases reached a similar result on the basis of due process.[32]

The final area in which full faith and credit has been considered, i.e., wrongful death actions, is illustrated by *Hughes v. Fetter,* and *First National Bank of Chicago v. United Air Lines, Inc.,* discussed earlier. These two cases hold that a court is required to entertain a wrongful death action arising under a sister state statute, even though the state's own wrongful death act indicates a contrary policy. This position might follow from much earlier decisions[33] tending in this direction. These, however, were not decided in terms of full faith and credit, but were based on the transitory nature of what is essentially a tort action.

II. *Evaluation of Present Position*

Various explanations might be ventured to clarify the present situation, one of which is the influence of Chief Justice Stone. It was he who expressed disagreement with the compulsory aspect of full faith and credit as set forth in the *Bradford* case, and established the public policy exception in the *Alaska Packers* decision. *Griffen v. McCoach* and *Pink v. A.A.A. Highway Express,* both denying full faith and credit, were the last decisions in which he participated. No similar consistency is found on the part of the other Justices. All of the majority in *Order of Commercial Travelers v. Wolfe* heard *Hughes v. Fetter.* Both cases were five to four decisions upholding full faith and credit. However, only two of these Justices were in the majority in the latter case, while three joined the dissenters. Thus of the seven Justices hearing both cases, only two felt that full faith and credit should be required in both instances.

The "inconsistency" of the individual Justices described above emphasizes the value of a subject matter analysis, for the alignment in the *Hughes* case was followed in *First National Bank of Chicago v. United Air Lines, Inc.,* on the issue of the applicability of full faith and credit. Both of these cases dealt with the question of whether full faith and credit required the court at the forum to entertain a wrongful death

[32] See Home Ins. Co. v. Dick, 281 U.S. 397, 50 S.Ct. 338 (1930); Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143, 54 S.Ct. 634 (1934).

[33] Stewart v. B. & O. R.R. Co., 168 U.S. 445, 18 S.Ct. 105 (1897); Atchison, Topeka & Santa Fe R. Co. v. Sowers, 213 U.S. 55, 29 S.Ct. 397 (1909).

action arising under a sister state statute, and the entire Court responded in the same way both times. Thus it would seem that a fairly reliable prediction could be made in this area, as long as the Court's composition remains the same. However, the Court has rendered decisions on the full faith and credit requirement in only a few areas. Therefore, the main value of a classification based upon the subject matter of the cases would seem to lie in the possibility that it can serve as a basis for prediction in an area not yet decided. It is submitted that this possibility exists if one accepts the premise that the conflicting policy considerations and interests of the states tend to be the same in repeated situations of a given nature. Thus it may be possible to extract particular policy conflicts from the decided cases and predict the result where the same or a similar conflict arises in a hitherto undecided area. It must be remembered that the paucity of decided cases restricts the usefulness of this technique of analysis. Nevertheless, it is not without value, as a few examples will show. Applying the policy conflicts and the known result in the wrongful death cases, it could be expected that a state would have to entertain a statutory action, other than for wrongful death, which arose in another state, where the state of the forum has a comparable statute, limited by its terms to actions arising in the state. The exclusionary policy would fall before the stronger policy of enforcing a valid right regardless of where it arises.[34] However, it must not be assumed that the policy of the forum is ignored, for if the action were based upon a wagering contract, valid where made but illegal in the state of the forum, an opposite result might well be reached.

The application of this suggested approach becomes more difficult in an area, such as the workmen's compensation cases, where the results are not uniform. As will be remembered, the Court has held both ways on the applicability of full faith and credit in these cases. However, an investigation of the factual situations in those cases indicates that the state in which the employee is injured and treated,[35] or in which he is liable to remain following his injury[36] has a sufficiently strong interest to warrant denial of full faith and credit to a conflicting statute. The *Bradford* case, in which full faith and credit was required although the

[34] Stated in Milwaukee County v. White, 296 U.S. 268 at 277, 56 S.Ct. 229 (1935), that the full faith and credit clause was designed to make "a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin."

[35] As in Pacific Employers Ins. Co. v. Industrial Accident Commission, 306 U.S. 493, 59 S.Ct. 629 (1939).

[36] As in Alaska Packers Assn. v. Industrial Accident Commission, 294 U.S. 532, 55 S.Ct. 518 (1935).

injury occurred in the state of the forum, is not inconsistent with this statement; in that case the injured employee died. On the other hand, the fact that the conflicting statute provides an exclusive remedy, or that the statute is made applicable by the contract of employment, has been held only secondary in an assessment of the state's relative interests. Thus, even in this area, it is possible to find specific interests of the state which will outweigh other particular relationships when a conflict arises, and predict the result whenever this or a similar conflict appears.

III. *Conclusion*

In the present state of the law, all that can be said with any basis in the decided cases is that full faith and credit is required in cases of wrongful death actions, stockholders' liability, and fraternal benefit societies, but will not be automatically applied in workmen's compensation cases. It seems certain, however, that the doctrine of full faith and credit as applied to statutes will have a much wider impact in the future.

The starting point in an attempt to assess this future impact should be the constitutional provision giving rise to the full faith and credit requirement. However, even a cursory study of the cases indicates that this provision cannot be interpreted literally, but rather, must be read in the light of its application through the years. The serious difficulties of prediction discussed above are therefore increased, if anything, by a reference to the basic statement of the rule.

As has been seen, statutes were not considered proper subjects for full faith and credit to any extent until quite recently. Therefore, it might be said that the constitutional provision, as it applies to statutes, operates not as a rule but as an exception to another rule which might be loosely stated as the power of a state to apply its own laws. The method by which this exception to state autonomy is applied is a consideration of the relative interests of the conflicting states, and application of the law of that state whose interests are weightier. It is submitted that this approach will govern future decisions on this subject, and that one seeking enforcement of a foreign statute will be required to show why that law, rather than the law of the forum, should govern.[37]

[37] "*Prima facie* every state is entitled to enforce in its own courts its own statutes. . . . One who challenges that right, because of the force given to a conflicting statute of another state by the full faith and credit clause, assumes the burden of showing . . . that of the conflicting interests involved those of the foreign state are superior to those of the forum." Justice Stone in Alaska Packers Assn. v. Industrial Accident Commission, 294 U.S. 532 at 547, 55 S.Ct. 518 (1935).

The cases indicate that the decision as to which law will govern will be stated in terms of conflicting policies and interests. That these considerations are the basis of such a decision should not be startling; they have a venerable position in the concept of applying foreign law by comity. The real significance of the recent cases applying full faith and credit to statutes seems to lie not in their consideration of policy factors, but rather in taking the final choice out of the hands of the state courts. State courts are no longer free, as they once were,[38] to apply or not to apply the law of another state as they may choose, subject only to the restrictions of due process. The optional character of interstate comity disappears if the Supreme Court finds the sister state statute supported by stronger policy interests. Occasional statements to the contrary notwithstanding,[39] it now seems that the Supreme Court chooses between the conflicting policies and decides which law will be enforced.[40] In other words, a constitutional obligation now exists on the part of each state, requiring that full faith and credit be given a sister state statute, if the Supreme Court finds such a result warranted by its assessment of the conflicting policies and interests in the particular case.[41]

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[38] Kryger v. Wilson, 242 U.S. 171 at 176, 37 S.Ct. 34 (1916), states that choice of law by a state court is ". . . purely a question of local common law, [and] is a matter with which this court is not concerned."

[39] See Griffin v. McCoach, 313 U.S. 498 at 507, 61 S.Ct. 1023 (1941), and the dissent in Hughes v. Fetter, 341 U.S. 609 at 620, 71 S.Ct. 980 (1951).

[40] As stated in the majority opinion in Hughes v. Fetter, 341 U.S. 609 at 611, ". . . it is for this Court to choose in each case between the competing public policies involved."

[41] The tendency to make enforcement of sister state statutes compulsory in some instances is illustrated by the revision of the Judicial Code including "public acts" in the legislation implementing the constitutional provision. 28 U.S.C. (1948) §1738. While this change has not been the basis of any decision as yet, it might be indicative of a trend toward such enforcement.

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