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CONFLICT OF LAWS-CONSTITUTIONAL LAW-FULL FAITH AND CREDIT-FRATERNAL BENEFIT SOCIETY'S CONSTITUTION CONTROLLING OVER STATUTE OF LIMITATIONS OF FORUM STATE

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CONFLICT OF LAWS—CONSTITUTIONAL LAW—FULL FAITH AND CREDIT —FRATERNAL BENEFIT SOCIETY'S CONSTITUTION CONTROLLING OVER STATUTE OF LIMITATIONS OF FORUM STATE—In an action against an Ohio fraternal benefit society to recover insurance benefits resulting from the death of an insured member, the defense was that the constitution of the society prohibited the bringing of an action on such a claim more than six months after disallowance of the claim. This provision was valid under the statutes and court decisions of Ohio. The statute of limitations of the state of the forum, South Dakota, was six years on contract actions. Another statute of South Dakota declared void every stipulation in a contract limiting the time within which a party may enforce his rights. The South Dakota Supreme Court affirmed judgment for claimant although his action was brought more than six months after disallowance of the claim. On certiorari to the United States Supreme Court, *held*, reversed. South Dakota, as the state of the forum, is required by the Constitution of the United States to give full faith and credit to the public acts of Ohio under which the fraternal benefit society was incorporated and to the six month limitation in the constitution of the society. *Order of United Commercial Travelers v. Wolfe*, (U.S. 1947) 67 S.Ct. 1355.

The force of the full faith and credit clause [1] in compelling recognition of the public acts of foreign states by the state of the forum has been confined to relatively few fields.[2] The Court has relied mainly on an appraisal of the governmental interests involved in determining whether the foreign statute must be observed. Thus, stockholders' liability[3] and assessments against mutual in-

[1] "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." U.S. Const., Art. IV, sec. 1.

[2] The application of the full faith and credit clause to statutes is a comparatively recent development. The first square holding that the clause included statutes within its purview was Bradford Elec. Light Co., Inc. v. Clapper, 286 U.S. 145, 52 S.Ct. 571 (1932). Other earlier cases, infra notes 6,7, seem properly to be explained on the same basis, although there is some disagreement on this point. Cf. Langmaid, "The Full Faith and Credit Required of Public Acts," 24 ILL. L. REV. 383 (1929); Corwin, "The 'Full Faith and Credit' Clause," 81 UNIV. PA. L. REV. 371 (1933); CARNAHAN, CONFLICT OF LAWS AND LIFE INSURANCE CONTRACTS, §§ 17, 28 (1942). For cases involving conflict between workmen's compensation statutes, not discussed herein, see Alaska Packers Assn. v. Ind. Accident Comm. of Cal., 294 U.S. 532, 55 S.Ct. 518 (1935); Pacific Employers Ins. Co. v. Ind. Acc. Comm. of Cal., 306 U.S. 493, 59 S.Ct. 629 (1939).

[3] See Converse v. Hamilton, 224 U.S. 243, 32 S.Ct. 415 (1912); Broderick v. Rosner, 294 U.S. 629, 55 S.Ct. 589 (1935); Pink v. A.A.A. Highway Express, Inc., 314 U.S. 201, 62 S.Ct. 241 (1941).

surance[4] policyholders are controlled by the laws of the state granting incorporation because the financial structure of the organizations is intimately involved and the chartering state's interest in the solvency of its corporations is predominant. The full faith and credit clause has been extended furthest in cases involving fraternal benefit societies. The principal case indicates that in all cases involving the rights and obligations of members, whether dealing with assessments or not, the constitution and by-laws of the society are controlling if valid in the state of incorporation.[5] The policy reflected in the principal case finds its origin in *Supreme Council of the Royal Arcanum v. Green*,[6] which upheld an increased assessment on members under the constitution of the fraternal society in the face of the law of the state of the forum, where the contract of membership was made, denying the validity of the increase. In *Modern Woodmen v. Mixer*,[7] the Supreme Court developed the idea that the act of becoming a member of a fraternal benefit society is something more than entering into an ordinary contract. Because of the "complex and abiding relationship" between the members, the rights and obligations of all must be determined by the laws of the state granting incorporation. Thus, the Court refuses to treat the principal case as one involving an ordinary insurance contract. The insurance rights of a member are regarded as inseparable from his other rights. The dissenting justices, on the other hand, argue that the insurance business of fraternal benefit societies and that of other mutual insurance companies are conducted alike and should be treated alike. How far the Court's theory has extended the full faith and credit clause is indicated by the problems encountered and the contrast with other related cases. The question posed at the outset is, of course, to what must full faith and credit be given? The answer appears to be the public acts of the state

[4] Hartford Life Ins. Co. v. Ibs, 237 U.S. 662, 35 S.Ct. 692 (1915); Hartford Life Ins. Co. v. Barber, 245 U.S. 146, 38 S.Ct. 54 (1917).

[5] During the period in which the Green case, infra, note 6, was decided, these fraternal benefit societies were characterized by acute financial problems. It has been suggested that this largely accounts for the policy of the Court, in the earlier cases, in requiring uniform recognition of their by-laws where the financial structure and stability of the society would be affected. CARNAHAN, CONFLICT OF LAWS AND LIFE INSURANCE CONTRACTS, §§ 28, 108 (1942). But these considerations are not present in the principal case. For another interpretation of these cases, see O'Meara, "Constitutional Aspects of Conflict of Laws: Recent Developments," 27 MINN. L. REV. 500 (1943). For a criticism of the principal case, see Harper, "The Supreme Court and the Conflict of Laws," 47 COL. L. REV. 883 (1947).

[6] 237 U.S. 531, 35 S.Ct. 724 (1915). This case placed considerable emphasis on the peculiar features of fraternal benefit societies.

[7] 267 U.S. 544, 45 S.Ct. 389 (1925). Here, the Court held that the state of the forum, in which the contract was made, was required to observe a by-law of the fraternal society providing that continued absence of a member should give the beneficiary no right to recover until the member's life expectancy had expired. The law of the forum was that seven years unexplained absence was sufficient to establish death for purposes of such a recovery. See also, Sovereign Camp, W.O.W. v. Bolin, 305 U.S. 66, 59 S.Ct. 35 (1938), in which the Nebraska Court had determined that a by-law of a Nebraska fraternal society, incorporated in the beneficiary certificate, was ultra vires and void under the Nebraska statute. Although the contract was made in Missouri and the by-law was valid under Missouri law, Missouri was required to accept the Nebraska law as to the validity of the by-law.

of incorporation creating and regulating in detail the fraternal society, although it has been suggested that the charter and by-laws are themselves treated as public acts.[8] Prior to the principal case the Court had held that the full faith and credit clause did not preclude the state of the forum from applying its own statute of limitations.[9] The present decision necessarily limits this rule, although the Court disclaims any intention of overthrowing it. In other cases related to the problem of the principal case, the Court has emphasized the place where the contract was made and was to be performed in determining whether the state of the forum could apply its own laws.[10] This approach is rejected in the present case, although strongly urged as a controlling factor by the dissenting justices. Similarly, the present decision is in contrast with others which have stressed the right of a state to control insurance contracts and transactions within its borders and to enforce its own public policy with respect thereto.[11] Nor does the Court rely primarily upon the governmental interest of the two states involved in reaching its decision. It seems clear, however, that the principal case does not foreshadow a general extension of the full faith and credit clause because of the Court's emphasis on the unique character of fraternal benefit societies and the

[8] See Field, "Judicial Notice of Public Acts Under the Full Faith and Credit Clause," 12 MINN. L. REV. 439 (1928). The dissenting judges say no "public act" is involved, but only a regulation adopted by the society's members, and that this is not within the protection of the full faith and credit clause.

[9] Hawkins v. Barney's Lessee, 5 Pet. (30 U.S.) 457 (1831); McElmoyle v. Cohen, 13 Pet. (33 U.S.) 312 (1839); Campbell v. Holt, 115 U.S. 620, 6 S.Ct. 209 (1885). There is room for argument that these cases are not squarely in point, although often cited for this proposition. See CONFLICT OF LAWS, RESTATEMENT, § 604 (1934): "If action is not barred by the statute of limitations of the forum, an action can be maintained, though action is barred in the state where the cause of action arose."

[10] Aetna Life Ins. Co. v. Dunken, 266 U.S. 389, 45 S.Ct. 129 (1924); New York Life Ins. Co. v. Dodge, 246 U.S. 357, 38 S.Ct. 337 (1918). It is proper to point out, however, that in many of the cases emphasizing the place of contracting and performance, the question was whether the due process clause, not the full faith and credit clause, forbade a state to apply its own law. A state cannot apply its own law merely because it supplies the forum. The state must have sufficient interest in the making or performance of a contract, or a party thereto, to justify application of its own law in view of the due process clause. Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143, 54 S.Ct. 634 (1934); Home Ins. Co. v. Dick, 281 U.S. 397, 50 S.Ct. 338 (1930); New York Life Ins. Co. v. Head, 234 U.S. 149, 34 S.Ct. 879 (1914).

[11] A number of decisions have upheld the power of a state to regulate insurance contracts made in the state, and to declare void provisions deemed contrary to the state's public policy. See Hancock Mutual Life Ins. Co. v. Warren, 181 U.S. 73, 21 S.Ct. 535 (1901); Knights Templars' & Masons' Life Indemnity Co. v. Jarmen, 187 U.S. 197, 23 S.Ct. 108 (1902); Whitfield v. Aetna L. Ins. Co., 205 U.S. 489, 27 S.Ct. 578 (1907); New York Life Ins. Co. v. Cravens, 178 U.S. 389, 20 S.Ct. 962 (1900). Contrast with the principal case Griffin v. McCoach, 313 U.S. 498, 61 S.Ct. 1023 (1941), in which the doctrine and broad policy of Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817 (1938), was so extended as to uphold the power of Texas to apply her own policy to a contract made elsewhere on the ground that a state is not required to enforce a law contrary to its public policy.

inseparability of a member's insurance rights from his other rights. In the average case, the Court will probably continue to rely on the test of balancing the governmental interests involved in determining whether the state of the forum must accept the public acts of a foreign state which are contrary to its own public policy.

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