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CONFLICT OF LAWS AND FULL FAITH AND CREDIT

A recent decision in the Supreme Court of the United States[1] presented an interesting problem in the conflict of laws, complicated by a question of federal constitutional law. A mutual benefit society, incorporated under the laws of Massachusetts, established a branch local lodge or council in the state of New York. In 1883, one Green became a member of the New York branch, and in his application for membership, agreed "to conform in all respects to the laws, rules and usages of the order now in force, or which may hereafter be adopted by the same." In October, 1905, the assessment rate was increased by the Supreme Council, and Green paid the increased rate under protest for several years. In November, 1905, sixteen members of the order brought a bill in the Massachusetts court, in behalf

[1] *Supreme Council of the Royal Arcanum v. Green*, 237 U. S. 531, 35 Sup. Ct. Rep. 724.

of themselves and others, to vacate the by-law increasing the rates. The Supreme Judicial Court of Massachusetts dismissed the bill on the grounds that the amendment was neither ultra vires nor violative of the contract rights of the members.[2] In 1910, Green refused to continue to pay the increased assessment, brought an action in New York against the Supreme Council, and recovered a judgment in the Court of Appeals which sustained his contention that by the law of New York his contract rights had been violated.[3] The defendant appealed to the Supreme Court of the United States, claiming that the New York court violated Article IV, Sec. 1, of the Federal Constitution.[4] The court, Mr. Chief Justice White rendering the opinion, reversed the judgment on the ground that the New York court failed to give full faith and credit to the Massachusetts judgment, and on the further ground that full faith and credit had been denied the Massachusetts charter of the corporation and the laws of that state to determine the powers of the corporation and the rights and duties of its members.

When Green brought his action in New York, the courts of that state were primarily confronted with a conflict of laws. By the law of Massachusetts, the contract between the corporation and its members authorized the increase in the assessment rate,[5] but by the law of New York such increase was not authorized.[6] In general, the nature and extent of the legal relations existing between the stockholders of a corporation and the corporation itself are determined by the law of the state which created the corporation,[7] that is, for the purpose of that deter-

[2] *Reynolds v. Supreme Council R. A.*, 192 Mass. 150.

[3] *Green v. Supreme Council R. A.*, 206 N. Y. 591.

[4] "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, & the Effect thereof."

[5] *Reynolds v. Supreme Council R. A., supra.* Under a similar contract, this rule is followed in Ill. See *Fullenwider v. Sup. Council R. L.*, 180 Ill. 621. Also XXIV Yale Law Journal 337.

[6] *Wright v. Knights of Maccabees*, 196 N. Y. 391. This rule is followed in several States. See *Benjamin v. Mutual, etc., Ass'n*, 146 Cal. 34; *Ebert v. Mutual, etc., Ass'n*, 81 Minn. 116; *Strauss v. Mutual, etc., Ass'n*, 126 N. C. 971.

[7] *Nashua Savings Bank v. Anglo-Amer., etc., Co.*, 189 U. S. 221; *Gaines v. Supreme Council R. A.*, 140 Fed. 978; *Lewisohn v. Stoddard*, 78 Conn. 575.

mination, the *lex fori* incorporates the *lex domicilii corporationis*, but the New York court did not apply this general doctrine of conflict of laws. It asserted that Green's contract with the corporation was made in New York, that the *lex loci contractus* governed, and that by that law Green was entitled to judgment. There was then, a conflict between the conflict of laws doctrine of New York and the general doctrine. As between two conflicting doctrines of the conflict of laws, that of the forum will usually control, but if the application of the doctrine of the forum necessarily involves a violation of the Federal Constitution, the courts are bound to disregard the doctrine.[8] It becomes necessary then to consider what constitutes a violation of the "full faith and credit" clause.

This section of the Constitution[9] taken together with the legislation of Congress with respect to it,[10] under legal interpretation has been construed to mean such judicial determinations as have been rendered by a competent court having jurisdiction of the subject matter or the thing.[11] In the leading case of *Mills v. Duryee*,[12] Mr. Justice Story said, "It remains only then to inquire in every case what is the effect of a judgment in the state in which it is rendered." Giving full faith and credit does not mean that all the effects and consequences of a litigation in one state shall follow it to another,[13] nor does it require the recognition of foreign judgments as precedents.[14] Unless a former judgment binds the property in or parties to a subsequent action, it is not entitled to full faith and credit under the Constitution.[15] In regard to the principal case, there is reason to believe that the decree of the Massachusetts court in the *Reynolds* case was conclusive in Massachusetts as to all of the stockholders,[16] and therefore entitled to full faith and credit in New York, but the court does not base its decision upon that point alone.

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[8] Constitution of the United States, art. III, sec. 2, par. 1; art. VI, par. 2.

[9] Art. IV, sec. 1.

[10] Act of May 26, 1890. U. S. Comp. St. (1901), p. 677.

[11] *Bissel v. Briggs*, 9 Mass. 465.

[12] 7 Cranch 481. See also *Harris v. Balk*, 198 U. S. 215.

[13] *Shelton v. Johnson*, 4 Sneed (Tenn.) 672.

[14] Mr. Justice Bradley in *Thompson v. Whitman*, 18 Wall. 457, 463; *Johnson v. N. Y. Life Ins. Co.*, 187 U. S. 491.

[15] Cooley's Constitutional Limitations (7th Ed.) p. 41, note, & cases cited.

[16] See *Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662; *Hawkins v. Glenn*, 131 U. S. 319; Pomroy's Eq. Juris., 3rd Ed., §267-8; *Corey v. Sherman*, 96 Iowa 114.

In the case of *Eastern Building & Loan Association v. Williamson*,[17] Mr. Justice Brewer said, "If it appeared that the South Carolina court, without questioning the validity, simply construed a statute of New York, no federal question would be presented." A mistake in understanding the true meaning of a statute of a sister state as interpreted by the courts thereof is not a refusal to give full faith and credit to such statute.[18] The New York Court of Appeals did not deny the validity of the Massachusetts charter, nor did it make a mistake as to what interpretation that state put upon it, but it ignored that interpretation. Was this a denial of full faith and credit?

The cases cited by the Supreme Court apply to the first ground of the decision only. In *Hawkins v. Glenn*,[19] a decree against a corporation in respect to corporate matters was held necessarily to bind the stockholders. In *Whitman v. National Bank*,[20] the question of full faith and credit was not involved. *Bernheimer v. Converse*,[21] *Selig v. Hamilton*,[22] and *Converse v. Hamilton*,[23] involved giving full faith and credit to a Minnesota judgment against a corporation, which judgment was made binding upon the stockholders of the corporation by a statute of Minnesota.[24] These cases do not overrule *Finney v. Guy*,[25] in which a similar question was involved before the passage of the statute just referred to.

In the case of *Green v. VanBuskirk*,[26] the Supreme Court of the United States decided that in an action of trover in New York for the conversion of property situated in Illinois, where an Illinois judgment binding the property was pleaded as a defense, the New York court "necessarily decided what effect the attachment proceedings in Illinois had by the law and usage of that state," and as it decided against the effect given by the law of Illinois, full faith and credit had been denied. In the principal case, the New York court was determining the

[17] 189 U. S. 122, 125.
[18] *Banholzer v. N. Y. Life Ins. Co.*, 178 U. S. 402; *Glenn v. Garth*, 147 U. S. 360.
[19] 131 U. S. 319.
[20] 176 U. S. 559.
[21] 206 U. S. 516.
[22] 234 U. S. 652.
[23] 224 U. S. 243.
[24] Gen. Laws 1899, p. 317.
[25] 189 U. S. 335.
[26] 5 Wall. 307 and 7 Wall. 139.

power of the corporation to raise the rate of, and its right to the increased assessment, and correlatively Green's liability to the increase, and his duty to pay it. The powers and rights of the corporation are derived from its charter, and therefore in a determination of them by the New York court, that court necessarily decided what effect the charter, a statute of Massachusetts, had by the law and usage of that state. Since the Court of Appeals ignored the effect given to the charter by the Supreme Judicial Court of Massachusetts, it was held to have denied that *Public Act* of Massachusetts the full faith and credit required by Article IV, Sec. 1, of the Constitution of the United States. Although the decision of the principal case, resting upon the ground that a judgment in one state binding on stockholders in another is entitled to full faith and credit in that other state is no advance in doctrine, the reasoning of the court as to the further ground stated seems to extend the scope of the "full faith and credit" clause so that a charter of a corporation, once interpreted in the state of incorporation, must be given the same meaning in other states. This extension will tend to unify to a greater degree the decisions of our numerous jurisdictions, and opens the way for a possible further broadening of the scope of the "full faith and credit" clause to apply to all statutes.

S. H. S.

WANT OF PROBABLE CAUSE AS AN ISSUE FOR THE JURY

A recent New York decision,[1] reverting to an older ruling in that state,[2] has held that the issue of probable cause in actions for malicious prosecution should be submitted to the jury, in case of the possibility of more than one reasonable generalization from the facts. This doctrine, though contrary to the settled weight of authority,[3] has received sufficient support from previous criticism of the law,[4] to warrant an inquiry whether it is sound on principle.

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[1] *Galley v. Brennan,* 110 N. E. (N. Y.) 179.

[2] *Heyne v. Blair,* 62 N. Y. 19. *Contra, Anderson v. How,* 116 N. Y. 336; *Rawson v. Leggett,* 184 N. Y. 504.

[3] *Panton v. Williams,* (1841) 2 Q. B. 169; *Stewart v. Sonneborn,* 98 U. S. 187, 194; *Davis v. Tel. & Tel. Co.,* 127 Cal. 312; *Stone v. Crocker,* 24 Pick. (Mass.) 81; *Hess v. Oregon Baking Co.,* 31 Ore. 503. *Contra, Davis v. McMillan,* 142 Mich. 391, 402; *Richardson v. Dybedahl,* 14 S. D. 126; *Indiana Bicycle Co. v. Willis,* 18 Ind. App. 525.

[4] See, e. g., Lord Westbury in *Lister v. Perryman,* L. R. 4 H. L. 521 (1870).

Probable cause is not, as generally asserted,[5] an issue of law, nor even a "mixed question of law and fact," but a generalization of fact with reference, not to a specific legal rule, but to a very general, indeterminate standard. It thus belongs to a numerous intermediate class of questions, many of which, like negligence, are decided by the jury,[6] many others of which, like the reasonableness of a by-law, belong to the court.[7]

Thus the fact that an indeterminate standard of reference is employed does not of itself render the question appropriate for the jury. Judging merely from the bare analogy of cases involving the application of specific rules of law to the facts,[8] we should not expect the process of generalization of fact, as distinguished from that of inference of fact, to devolve upon the jury at all. In those cases in which it does so, two facts may always be observed. First, the subject-matter relates to pure questions of fact entirely within the compass of common human experience. Second, the standard of reference, where conduct is involved, is that of the ordinary reasonable man.[9]

Clearly the question of probable cause, involving the legal consequences of a group of facts, presents a specialized subject-matter radically different from the first class above mentioned.[10] A supposed analogy,[11] however, has been found in the fact that the "reasonably prudent man," to whom is referred the question of reasonable care and of reasonable belief in cases of estoppel, self-defense, etc., is also the standard of reference in the question of probable cause. In the former cases, however, his degree of attentiveness and his conduct are under scrutiny; in the latter,

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[5] *Driggs v. Burton*, 44 Vt. 124, 146; *Lancaster v. McKay*, 103 Ky. 616. Cf. *Lister v. Perryman, supra.*

[6] *Bridges v. Ry.*, L. R. 4 H. L. C. 213; *Gilman v. Noyes*, 57 N. H. 627 (proximate cause); *Dickinson v. Dickinson*, 25 Gratt. (Va.) 321 (reasonable notice); *Facey v. Hurdon*, 3 B. & C. 213 (reasonable time); *Fletcher v. Pullen*, 70 Md. 205 (reasonable belief in estoppel case); *Ryder v. Wombwell*, L. R. 4 Ex. 32 ("necessaries" in infancy case).

[7] *Daniel v. Co.*, 64 N. J. L. 603; *Hutchinson v. Bowker*, 5 M. & W. 535 (existence and content of contractual obligation); *"Joannes" v. Bennett*, 5 All. (Mass.) 169 (conditional privilege); *Martell v. White*, 185 Mass. 255 (justification); *Com. v. Peaslee*, 177 Mass. 267 (degree necessary to criminal attempt); *Lochner v. N. Y.*, 198 U. S. 45 (due process of law).

[8] *Tindal v. Brown*, 1 T. R. 167, 168.

[9] See notes 6 and 7.

[10] Cf. *Tolman v. Phelps*, 14 D. C. 154.

[11] *Heyne v. Blair, supra*, 22, 23.

his reasoning processes. Questions of correct inference are of little moment in fixing a standard of reasonableness in the issues regularly presented to the jury; they are all-important in fixing a standard for deliberate judgment, such as is necessarily involved in probable cause.[12]

Is the average mind peculiarly adapted to judge of the reasonableness of another average mind's processes of inference? The present demarcation of functions between court and jury affords no support to such a contention. The very similar question which is involved in the interpretation of contracts by estoppel is always for the court.[13] So too, with the equally similar question presented with reference to the sufficiency of evidence to warrant the submission of a case to the jury. This function is one of well-recognized difficulty, and has frequently divided courts.[14] Such an inquiry would involve for the juror two anomalous functions,—first, the formation of a tentative conclusion as to the application of a rule of law to the facts presented to the mind of the defendant; second, the much more difficult task of demarking the boundaries of reasonably possible inferences concerning the application of the rule of law to the facts. The former is admittedly not a proper function of the jury; *a fortiori,* when the latter inquiry is also involved.

It is significant in this connection to note the numerous verdicts which have been set aside, on this issue, in a jurisdiction adhering consistently to the rule of the principal case.[15]

A mistaken generalization on the issue of negligence results merely in a particular denial of justice. To refer the more complex issue of probable cause to the jury would not merely be attended by a greater probability of such miscarriage of justice. The whole process of criminal prosecution would be impeded by the hazard of a possible review by a tribunal peculiarly ill adapted to the purpose.[16]

We must conclude that the principal case not merely controverts the decisive weight of authority, but imposes upon the jury an anomalous function, unsupported by the analogies of the law, and vitally objectionable on grounds of policy.

C. R. W.

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[12] *Hamilton v. Smith,* 39 Mich. 222, 227.
[13] *Mansfield v. Hodgon,* 147 Mass. 304.
[14] *Lorenzo v. Wirth,* 170 Mass. 596.
[15] *Sandoz v. Veazie,* 106 La. 202, and cases there cited.
[16] Cf. *Ball v. Rawles,* 93 Cal. 222, 228.