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Conflict of Laws--Constitutional Law--Full Faith and Credit to Public Acts

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RECENT CASE COMMENTS

CONFLICT OF LAWS — CONSTITUTIONAL LAW — FULL FAITH AND CREDIT TO PUBLIC ACTS. — The beneficiary of a life insurance policy which had been applied for, issued and delivered in New York, where the insured and the beneficiary were domiciled, removed to Georgia on the death of the insured and there sued on the policy. The insurance company proved that under the New York statute¹ and decisions² the insurance application when attached to the policy became a part of the contract, and that a misrepresentation as to prior medical treatment was material and as a matter of law avoided the contract. The Georgia court permitted the beneficiary to show over the objection of the insurance company that truthful answers had been given by the insured and that the misrepresentation resulted from the insertion by the examiner of the incorrect answers. The Supreme Court of Georgia held that the materiality of the misrepresentation was a matter of procedure, to be governed by the *lex fori*, and applied Georgia law which left the materiality of the misrepresentation to be determined by the jury.³ The United States Supreme Court granted *certiorari*. *Held*, that the New York statute, as construed, enacted a rule of substantive law to which the Georgia courts had denied the full faith and credit to which it was entitled under the Federal Constitution. *John Hancock Mutual Life Ins. Co. v. Yates*.⁴

In determining whether this New York statute was a rule of substantive law the Supreme Court probably reached the correct result. In general the *lex loci contractu* is where the policy is delivered⁵ and this law “. . . governs in determining whether a con-

¹ N. Y. INS. LAW (1909) c. 33, § 53: “Every policy of insurance issued or delivered within the state on or after the first day of January, nineteen hundred and seven, by any life insurance corporation doing business within the state shall contain the entire contract between the parties and nothing shall be incorporated therein by reference to any constitution, by-laws, rules, application or other writings unless the same are indorsed upon or attached to the policy when issued; and all statements purporting to be made by the insured shall in the absence of fraud be deemed representations and not warranties. Any waiver of the provisions of this section shall be void.”

² *Travelers' Ins. Co. v. Pomerantz*, 246 N. Y. 63, 158 N. E. 21 (1927); *Minsker v. John Hancock Mutual Life Ins. Co.*, 254 N. Y. 333, 173 N. E. 4 (1930), 81 A. L. R. 829 (1932); *Archer v. Equitable Life Assur. Soc.*, 169 App. Div. 43, 154 N. Y. S. 519 (1915), *aff'd* 218 N. Y. 18, 112 N. E. 433 (1916).

³ *John Hancock Mutual Life Ins. Co. v. Yates*, 50 Ga. App. 713, 179 S. E. 239 (1935); *John Hancock Mutual Life Ins. Co. v. Yates*, 182 Ga. 213, 185 S. E. 268 (1936).

⁴ 57 S. Ct. 129 (1936).

⁵ *Great Southern Life Ins. Co. v. Burwell*, 12 F. (2d) 244 (C. C. A. 5th, 1926); *Aetna Life Ins. Co. v. Geher*, 50 F. (2d) 657 (C. C. A. 9th, 1931);

tract if [is] void or voidable for fraud, duress, illegality, mistake, or other legal or equitable defence.”⁶ Thus it is said that, nothing to the contrary appearing, the materiality and effect of a false statement in an application for insurance is governed by the *lex loci contractu*.⁷

However, this case is interesting and important for another reason. Formerly it was thought that the highest state tribunal was the court of last appeal to review an allegedly erroneous decision as to whether a question was one of procedural or substantive law, the established rule of conflict of laws being that the court of the forum was entitled to determine this problem.⁸ In light of the present decision of the Supreme Court it appears that this principle of conflict of laws is no longer altogether true. From the broad language used in the principal case it would seem that the Supreme Court intends to extend the full faith and credit clause to cover “decision law” allegedly construing the public act as well as “the public Acts, Records, and judicial Proceedings of every other State”. Until comparatively recent times the full faith and credit clause was applied only to judgments and decrees. While the Supreme Court recognized that this clause of the Constitution covered “public acts”, all questions as to the failure of a state to give full faith and credit to the public acts of another state were apparently disposed of on the basis that so long as the validity of the “public act” was not questioned there was no problem of full faith and credit.⁹

There are various considerations which have induced the Supreme Court to give full faith and credit to public acts; thus, the

Northwestern Mutual Life Ins. Co. v. Adams, 155 Wis. 335, 144 N. W. 1108, 52 L. R. A. (N.S.) 275 (1914).

⁶ 2 BEALE, CONFLICT OF LAWS (1935) § 347.1; Pritchard v. Norton, 106 U. S. 124, 1 S. Ct. 102 (1882).

⁷ 2 BEALE, CONFLICT OF LAWS § 347.1, and cases cited thereunder; but see Georgia *contra*, Massachusetts Benefit Life Ass'n v. Robinson, 104 Ga. 256, 30 S. E. 918 (1898), 42 L. R. A. 261 (1899).

⁸ 3 BEALE, CONFLICT OF LAWS § 584.2.

⁹ Dodd, *The Power of the Supreme Court to Review State Decisions in the Field of Conflict of Laws* (1926) 39 HARV. L. REV. 533; Ross, “Full Faith and Credit” in a Federal System (1936) 20 MINN. L. REV. 140. There are dicta in a number of cases that “full faith and credit” did have some application to the statutes of other states, but the court avoided giving them full faith and credit by saying that so long as the validity of the statute was not questioned, its misinterpretation did not amount to a denial of full faith and credit. See Chicago & A. R. R. v. Wiggins Ferry Co., 119 U. S. 615, 7 S. Ct. 398 (1877); Smithsonian Institute v. St. John, 214 U. S. 19, 29 S. Ct. 601 (1909); Pennsylvania Fire Ins. Co. v. Gold Issue M. & M. Co., 244 U. S. 93, 37 S. Ct. 344 (1917).

Court has weighed the interests of the states involved in considering whether a statute should be given full faith and credit;¹⁰ also whether the failure to give full faith and credit merely denies to a party the right to use the courts of a state to enforce a right, leaving unimpaired his cause of action or subjects the party to irremediable injury by denying him a defense.¹¹

The present case, when considered with two other recent decisions,¹² would seem to indicate that the Supreme Court under the influence of Justice Brandeis has embarked upon a policy of determining some of the vexatious phases of conflict of laws on the constitutional basis of full faith and credit.¹³ To what extent this policy can and will be carried is purely speculative at this early date in its development.

J. E. C.

¹⁰ *Alaska Packers Ass'n v. Industrial Accident Comm.*, 294 U. S. 532, 55 S. Ct. 518 (1935); Note (1935) 35 COL. L. REV. 751. Justice Stone, who wrote the opinion in this case, in speaking of the instance where the policy of a statute of the forum comes into conflict with that of another state, said ". . . the conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight." *Id.* at 547.

¹¹ *Bradford Electric Light Co. v. Clapper*, 286 U. S. 145, 52 S. Ct. 571 (1932); Note (1932) 46 HARV. L. REV. 291. In this case Justice Brandeis said, "A State may, on occasion, decline to enforce a foreign cause of action. In so doing, it merely denies a remedy, leaving unimpaired the plaintiff's substantive right But to refuse to give effect to a substantive defense under the applicable law of another State, as under the circumstances here presented, subjects the defendant to irremediable liability. This may not be done." *Id.* at 160.

¹² *Bradford Electric Light Co. v. Clapper*, 286 U. S. 145, 52 S. Ct. 571 (1932); *Broderick v. Rosner*, 294 U. S. 629, 55 S. Ct. 539 (1935), 100 A. L. R. 1133 (1936); Note (1935) 45 YALE L. J. 339. In this case Justice Brandeis said, "For the States of the Union, the constitutional limitation imposed by the full faith and credit clause abolished, in large measure, the general principle of international law by which local policy is permitted to dominate the rules of comity." *Id.* at 643.

¹³ Ross, *loc. cit. supra* n. 9; Note (1930) 40 YALE L. J. 291; Note (1937) 50 HARV. L. REV. 520.