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Judicial Comity and State Judgments

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Ohio court has contributed wisely to the future growth of the law in that area.

CONCLUSION

Science and technology have made great progress in the twentieth century. Such media of communication as the radio, films, television and the press enjoy an audience and a circulation undreamed of in an earlier era. The world is smaller, and lacking physical frontiers; society encroaches more and more upon the individual. Such is the price attending the benefits of a highly-developed social structure. But the demands or interests of the individual increase with increasing civilization, and the pressure upon the law to meet these interests increases the scope and character of legal rights. The greatness of the common law lies in its vitality and capacity for growth. It must be dynamic to meet the changing conditions of the times. The increasing complexities of our contemporary civilization demand a concomitant progress in legal thinking. The courts must inevitably recognize that the human personality requires protection in all its facets, mental as well as physical.

A step in this direction has been made by the acceptance of the tort of invasion of privacy in the majority of jurisdictions which have discussed the problem, and in the recent *Housh* decision in Ohio. In this acceptance, most of these courts have attempted to achieve a wise balance between the individual's interest in privacy and society's interest in a free press and the dissemination of news. But the reluctance to infringe on the freedom of the press still causes hardship to individual sensibilities in some cases. This could be remedied by a shift of emphasis from the test of "matters of public interest" over to the better test of "violation of common decencies." No matter how newsworthy a publication may be, an outrage to ordinary sensibilities should be prevented. As the law of privacy develops, a crystallization of the types of situations in which the interest will be protected must necessarily follow, along with a reasonably uniform application of the remedy.

PATRICIA A. WILBERT

Judicial Comity and State Judgments

JUDICIAL comity refers to the principle in accordance with which the courts of one state or jurisdiction give effect to the laws and judicial decisions of another, not as a matter of obligation but out of deference and

respect.[1] This article concerns the scope of judicial comity with reference to judgments of state courts.

A state court's judgment can never in and of itself have effect in any jurisdiction other than that in which it was rendered.[2] However, it may be given effect by the courts of a sister state either in an action brought in state 2 upon the prior judgment of state 1, or in an action in state 2 in which state 1's judgment is dispositive of one or more issues. State 1's judgment may be required to be given effect by the full faith and credit clause of the United States Constitution. However, this article is concerned with those situations in which the full faith and credit clause does not apply. May the judgment be given effect anyway, or do the same rules which deny the judgment full faith and credit also prohibit its recognition by judicial comity? To the extent that the rules governing full faith and credit coincide with those governing comity, judicial comity as to state judgments is a myth. To the extent that they differ, the doctrine has significance.

In order to evaluate the limits of judicial comity as to judgments we must first determine the situations in which full faith and credit may not be given. Normally a judgment of a sister state will be given full faith and credit when the court rendering it had jurisdiction over the subject matter and the parties and it is not for the enforcement of a penalty.[3] In order to maintain an action in one state upon a judgment rendered in another, the judgment should be a valid,[4] final adjudication,[5] currently in full force and effect where rendered,[6] and presently capable of being enforced there by final process.[7] If these tests are not met, then the constitutional provision for full faith and credit will not apply.

Courts have said that in the absence of the requirement for full faith and credit, the judgment of a sister state stands upon the same ground as a judgment of a foreign country, to be recognized if at all, by comity.[8] It seems evident that there are areas in which state courts are willing to recognize judgments of sister states which are not entitled to full faith and credit. A graphic example is afforded by the situation in which the plaintiff seeks to enforce a decree for alimony in a state other than that in which it was rendered. The Supreme Court of the United States has stated:

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[1] Bobala v. Bobala, 68 Ohio App. 63, 33 N.E.2d 845 (1940).

[2] M'Elmoyle v. Cohn, 31 Peters 312, 10 L. Ed. 177 (1839).

[3] Hieston v. National City Bank of Chicago, 280 Fed. 525 (D.C. Cir. 1922).

[4] Adams v. Stenehjem, 50 Mont. 232, 146 Pac. 469 (1915).

[5] Dow v. Blake, 148 Ill. 76, 35 N.E. 761 (1893).

[6] Ellis v. McGovern, 153 App. Div. 26, 137 N.Y.S. 1029 (1912).

[7] Bank of Chadron v. Anderson, 6 Wyo. 518, 48 Pac. 197 (1897).

[8] Iowa-Wisconsin Bridge Co. v. Phoenix Finance Corp., 2 Terry 527, 25 A.2d 383 (1942), *cert. denied*, 317 U.S. 671 (1942).

> (The full faith and credit rule) does not obtain where by the law of the State in which a judgment for future alimony is rendered, the right to demand and receive such future alimony is discretionary with the court which rendered the decree, to such an extent that no absolute or vested right attaches to receive the installments ordered by the decree to be paid.[9]

Moreover, it is also true that full faith and credit need not be given a decree as to alimony payments which are past due if the court has retained the right to modify its decree retroactively.[10]

However, the Supreme Court of California has held that a Missouri decree as to future alimony, subject to modification by the Missouri court, was entitled to enforcement under the rules of comity.[11] The California court rendered a decree upon the Missouri decree, good until the Missouri court modified its decree. The case specifically held that the Missouri decree would be enforced even though not entitled to full faith and credit.

A New Jersey court has followed this line of reasoning with respect to a New York alimony decree which was subject to modification as to accrued installments.[12]

The Supreme Court of South Dakota disposed of an action on a Nebraska decree for support of children in a similar manner. The court announced that it would give effect to the Nebraska decree both as to accrued and unaccrued installments under the doctrine of judicial comity and refused to consider the question of the extent to which this would be required under the Constitution.[13]

If it is true that full faith and credit need not be given a judgment or decree that is not a final adjudication it certainly follows that a court need not recognize that an action is currently in progress in a sister state. Yet a California appellate court issued an order to a trial court to stay all proceedings until final determination of an identical Texas proceeding in which the parties were reversed.[14] The court held that it would be an abuse of discretion not to recognize the Texas action under the doctrine of judicial comity.

A North Carolina court was faced with a habeas corpus proceeding brought by an inmate of a local mental hospital. The petitioner, having

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[9] Sistare v. Sistare, 218 U.S. 1 (1910).

[10] Weston v. Weston, 177 La. 305, 148 So. 241 (1933)

[11] Biewend v. Biewend, 17 Cal.2d 108, 109 P.2d 701 (1941).

[12] Bolton v. Bolton, 86 N.J.L. 69, 89 Atl. 1014 (1914).

[13] Sorenson v. Spense, 65 S.D. 134, 272 N.W 179 (1937). *Contra,* Lape v. Miller, 203 Ky. 742, 263 S.W 22 (1924); Levine v. Levine, 95 Ore. 94, 187 Pac. 609 (1920); Cureton v. Cureton, 132 Ga. 745, 65 S.E. 65 (1909).

[14] Simmons v. Superior Ct. Los Angeles Cty., 96 Cal. App.2d 119, 214 P.2d 844 (1950); *accord,* Moody v. Branson, 192 Okl. 327, 136 P.2d 925 (1943)

been adjudged insane in a Florida proceeding had been placed in the North Carolina hospital by the Florida-appointed guardian. Claiming that the guardian had no authority outside the jurisdiction in which he was appointed, petitioner alleged that she was being wrongfully detained in North Carolina hospital by the Florida-appointed guardian. Claiming that the guardian had exceeded his authority. The court denied the writ and held that it would recognize the Florida proceeding and thus the power of the guardian under the doctrine of judicial comity.[15]

In *Milwaukee County v. White Co.*[16] the Supreme Court of the United States said in a very strong dictum that "a state court, in conformity to state policy, may by comity, give a remedy which the full faith and credit clause does not compel." The case concerned an action brought in Illinois on a judgment for taxes, which the plaintiff, a Wisconsin county, had recovered in Wisconsin. The Supreme Court stated that even if full faith and credit were not required there is nothing in the Constitution or laws of the United States which requires a court to deny relief upon a judgment because it is for taxes. The Court then went on to hold that the judgment was entitled to full faith and credit.

The doctrine of judicial comity has its limitations. Federal courts have held that a judgment of a court of a foreign country may not be recognized under comity if such court did not comply with procedural due process.[17] The defendant must have been given reasonable notice of hearing. If a judgment of a sister state which does not fall under the full faith and credit clause stands upon the same ground as a foreign judgment, it logically follows that the procedural due process limitation applies with respect to the recognition of state judgments. The Supreme Court of the United States has indicated that this is true. The following line of cases shows the growth of this principle.

In *National Exchange Bank v. Wiley*[18] the Supreme Court held that a judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction. *Old Wayne Mutual Life Association v. McDonough*[19] affirmed this principle when the court found that it was a violation of due process of law to allow the Pennsylvania Commissioner of Insurance to be served in lieu of the defendant insurance company. This had been done pursuant to a Pennsylvania statute which provided for such service when the company had failed to appoint

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[15] *In re* Chase, 195 N.C. 143, 141 S.E. 471 (1928).

[16] 296 U.S. 268 (1935).

[17] Compagnie Du Port De Rio De Janeiro v. Mead Morrison Mfg. Co., 19 F.2d 163 (D. Maine 1927).

[18] 195 U.S. 257 (1904).

[19] 204 U.S. 8 (1907); see Wuchter v. Pizzutti, 276 U.S. 13 (1928).

a statutory agent. The Supreme Court said that such a statute could not apply in a case in which the contract in question was made with a Pennsylvania citizen not then in the state of Pennsylvania. Such a statute is only applicable when the contract is made in Pennsylvania. A contrary holding, said the court, would fly in the face of the fourteenth amendment, and thus an Illinois court was not allowed to give full faith and credit to the Pennsylvania judgment.

In *Simon v. Southern Ry. Co.*[20] the Supreme Court held that a United States District Court could enjoin a judgment creditor from enforcing a judgment of a state court, obtained without valid notice to the judgment debtor. In the words of Mr. Justice Lamar, speaking for the court: "Such judgments are not erroneous and not voidable, but upon principles of natural justice, and under the due process clause of the fourteenth amendment, are absolutely void."[21]

Finally, in 1946, the Supreme Court said in *Griffin v. Griffin* that "due process requires that no other jurisdiction shall give effect, even as a matter of comity, to a judgment elsewhere acquired without due process."[22]

A few state supreme court cases have held that judgments which would not have been within the purview of the full faith and credit clause because of defective service, could nevertheless be enforced under judicial comity.[23] Due process of law was not discussed at all by these courts. It seems clear that these cases would not be upheld by the Supreme Court of the United States today. That judicial comity is limited by the fourteenth amendment seems a certainty since the *Griffin* case.

Griffin also casts a suspicion of doubt on the alimony cases allowing recognition of non-final decrees under the doctrine of judicial comity. In the *Griffin* case the plaintiff had obtained a judgment in New York based upon accrued amounts due under a previous New York alimony decree. No service was had on the defendant in the second case, the court merely granting judgment for the amount then due under the former decree. The plaintiff then took the money judgment to another state and attempted to obtain a judgment on it. The Supreme Court of the United States would not allow this to be done because the New York court which granted the original decree had the power to modify its decree retroactively as to accrued installments. When the money judgment had been granted in New York without valid service on the defendant, the court held that the defendant had been denied an opportunity to persuade the

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[20] 236 U.S. 115 (1915)

[21] *Id.* at 122.

[22] 328 U.S. 876 (1946)

[23] Beckwith v. Bailey, 119 Fla. 316, 161 So. 576 (1935) Herron v. Passailaigue, 92 Fla. 818, 110 So. 539 (1926)