

The principal case gives assurance that the Constitution protects one's right to attend meetings of societies advocating policies opposed to the present form of government, and there express his opinions on all economic, social and political questions, so long as immediate violence is not urged and no public disturbance is created. The greater the importance of protecting our institutions from overthrow by force and violence, the greater is the need of preserving the constitutional rights of free speech, free press, and free assembly. Changes by peaceful means can be assured only by preserving the channels for free political discussion.<sup>21</sup> This freedom, which lies at the foundation of the Republic, has been zealously guarded by public opinion.<sup>22</sup>

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CONSTITUTIONAL LAW: FULL FAITH AND CREDIT—CONFLICT OF LAWS—SUPREME COURT REVIEW OF ERRONEOUS CHOICE OF LAW—[United States].—In an action in Georgia on an insurance policy issued in New York, misstatements had been made in the application for the policy although the true facts had been disclosed orally to the agent. Under a New York statute, such misstatements amount to material misrepresentation which voids the policy. In Georgia it is a jury question whether such facts constitute a material misrepresentation. The trial court, applying the Georgia law, submitted the case to the jury. There resulted a judgment for plaintiff which was affirmed by the Court of Appeals and Supreme Court of Georgia. On certiorari to the United States Supreme Court; reversed, because the Georgia courts had refused to give full faith and credit to the public acts of New York.<sup>1</sup>

The question of the extent to which the Supreme Court will review erroneous state decisions on choice of law in conflicts situations is not as yet clearly defined. At times various clauses of the Federal Constitution have been used as grounds for such review; for instance, full faith and credit;<sup>2</sup> due process;<sup>3</sup> liberty of contract;<sup>4</sup> commerce;<sup>5</sup> control over the District of

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21. 57 S. Ct. 260.

22. See editorials on principal case. St. Louis Post-Dispatch, Jan. 5, 1937, p. 2C:3; St. Louis Star-Times, Jan. 5, 1937, p. 14: 2; New York Times, Jan. 6, 1937, p. 22: 1. Chafee, *Freedom of Speech* (1920) 24-39, 207-221; Laski, *Grammar of Politics* (1925) 120, 121.

1. John Hancock Mut. Life Ins. Co. v. Yates, 57 S. Ct. 129, 81 L. ed. 110 (1936).

2. Converse v. Hamilton, 224 U. S. 243, 32 S. Ct. 415, 56 L. ed. 749 (1912); Royal Arcanum v. Green, 237 U. S. 531, 35 S. Ct. 724, 59 L. ed. 1089 (1915); Modern Woodmen of America v. Mixer, 267 U. S. 544, 45 S. Ct. 389, 69 L. ed. 783 (1925); Aetna Life Ins. Co. v. Dunken, 266 U. S. 389, 45 S. Ct. 129, 69 L. ed. 342 (1924), where court took jurisdiction under full faith and credit clause but decided case on merits under due process clause.

3. Aetna Life Ins. Co. v. Dunken, supra, note 2; Home Ins. Co. v. Dick, 281 U. S. 397, 50 St. Ct. 338, 74 L. ed. 926 (1930).

4. New York Life Ins. Co. v. Head, 234 U. S. 149, 34 S. Ct. 879, 58 L. ed.

Columbia,<sup>6</sup> and the bankruptcy clause.<sup>7</sup> It would seem, however, that mere misconstruction or misapplication of a foreign statute does not raise a federal question.<sup>8</sup>

Those of the above listed clauses which are more often involved are the due process and the full faith and credit clauses.<sup>9</sup> Their use is not necessarily overlapping. The latter is involved where a state statute is denied its proper application in the courts of a sister state. The former is usually concerned where a local statute is improperly applied to bring within the jurisdiction of a state's law a case properly lying without it.<sup>10</sup>

It would seem that if the extension of this federal exercise of review is to be made, the full faith and credit clause will be most often in question. If that clause requires recognition by the states of judgments, judicial proceedings, statutes and decisional doctrine of sister states, the power of review would cover all conflict of laws cases.<sup>11</sup> But under the doctrine of *Swift v. Tyson*<sup>12</sup> the full faith and credit clause would not compel the recognition of a line of decisions of a sister state.<sup>13</sup> On the other hand, that clause undoubtedly is binding in situations involving judgments and judicial proceedings of states of the Union. The outstanding problem is its application in compelling recognition of statutes of other states.

The decisions themselves do little to clarify and explain the Supreme Court's attitude on this particular problem. This explains why writers on this subject do not agree as to the trend or direction indicated by the cases. Professor Dodd feels that the tendency is toward broader exercise of the power of review when occasion demands.<sup>14</sup> Others believe that, although the Court may possess broad powers in this field, it is unlikely that it will use them except in two classes of cases: cases involving the liability of stockholders in a foreign corporation, and cases involving statutes regulating insurance.<sup>15</sup>

The explanation of this reluctance to predict that the Supreme Court will adopt a general policy of reviewing state choice of law is found in the

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1259 (1914); *New York Life Ins. Co. v. Dodge*, 246 U. S. 357, 38 S. Ct. 337, 62 L. ed. 772 (1918).

5. *Western Union Telegraph Co. v. Boegli*, 251 U. S. 315, 40 S. Ct. 167, 64 L. ed. 281 (1920).

6. *Western Union Telegraph Co. v. Brown*, 234 U. S. 542, 34 S. Ct. 955, 58 L. ed. 1457 (1914).

7. *Converse v. Hamilton*, *supra*, note 2.

8. *Chicago and Alton R. R. v. Wiggins Ferry Co.*, 119 U. S. 615, 7 S. Ct. 398, 30 L. ed. 519 (1887); *Banholzer v. New York Life Ins. Co.*, 178 U. S. 402, 20 S. Ct. 972, 44 L. ed. 1124 (1900); *Pennsylvania Ins. Co. v. Gold Issue Co.*, 243 U. S. 93, 37 S. Ct. 344, 61 L. ed. 610 (1917).

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.

10. Note, 38 Harv. L. Rev. 804 (1925).

11. Note, 40 Yale L. J. 291, 295 (1930).

12. 16 Pet. 1, 10 L. ed. 865 (1842).

13. Dodd, *op. cit.*, 546; Note, 38 Harv. L. Rev. 804, 806 (1925).

14. Dodd, *op. cit.*, 556.

15. Note, 40 Yale L. J. 291, 296 et. seq. (1930) (written before the Bradford case discussed *infra*).

case of *Kryger v. Wilson*.<sup>16</sup> That case came up on the question of due process. The Supreme Court there said on the question of erroneous choice of law, "The most that the plaintiff in error can say is that the state court made a mistaken application of doctrines of the conflict of laws in deciding that the cancellation of a land contract is governed by the law of the situs instead of the place of making and performance. But that, being purely a question of local common law, is a matter with which this court is not concerned."<sup>17</sup> Although it would seem that *Kryger v. Wilson* is not necessarily authority in a case arising under the full faith and credit clause,<sup>18</sup> yet no attempt has ever been made so to distinguish the case, and the case indicates *sub silentio* that the Supreme Court has no general policy of bringing uniformity into state decisions in conflict of laws cases.<sup>19</sup> *Kryger v. Wilson* has never been overruled.<sup>20</sup>

The writers seem to agree, moreover, that in the cases in which the Supreme Court has granted such review, questions of national importance were involved.<sup>21</sup> Besides the insurance and foreign corporation cases, review has been extended to Workmen's Compensation cases.<sup>22</sup> Even Professor Dodd, in his article, speaks of "important questions."<sup>23</sup> The deciding factor in determining whether or not the Supreme Court will take jurisdiction to review an erroneous state court decision on choice of law would appear to be: is there present in the case, a question of broad national importance? But the present decisions furnish no authoritative definition of such a question of national importance.

The instant case<sup>24</sup> throws no additional light upon the problem as to when the Supreme Court will invoke the various constitutional limitations in order to review state decisions on erroneous choice of law. This was an insurance case and so involved a question of national importance according to the previous cases on this point.<sup>25</sup> Even under the most conservative view<sup>26</sup> this would have been a proper case for constitutional circumscription.

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16. 242 U. S. 171, 37 S. Ct. 34, 61 L. ed. 229 (1916).

17. 242 U. S. 171, 176 (1916).

18. See Dodd, op. cit.; and Note, 38 Harv. L. Rev. 804 (1925). These would seem to indicate that there is more chance for a reversal under the full faith and credit clause than under due process, since under the latter clause a stronger case is necessary.

19. Note, 40 Yale L. J. 291, 299 (1930); Note, 46 Harv. L. Rev. 291, 295 (1932).

20. Supra, note 19.

21. Note, 40 Yale L. J. 291, 299 (1930); Note, 46 Harv. L. Rev. 291, 296 (1932).

22. Bradford Electric Light Co., Inc., v. Clapper, 286 U. S. 145, 52 S. Ct. 571, 76 L. ed. 1026 (1931); and see Note, 46 Harv. L. Rev. 291 (1932); Alaska Packers Assn. v. Industrial Accident Commission, 294 U. S. 532, 55 S. Ct. 518, 79 L. ed. 1044 (1935).

23. Dodd, op. cit., 562.

24. John Hancock Life Ins. Co. v. Yates, 57 S. Ct. 129, 81 L. ed. 110 (1936).

25. Supra, notes 2, 3, and 4.

26. Supra, note 15.