THE "FULL FAITH AND CREDIT CLAUSE" OF THE UNITED STATES CONSTITUTION

There has been much discussion among members of the bar as to the interpretation which has been given the "Full Faith and Credit Clause" of our national constitution, but the question seems to have been the subject matter of comparatively little judicial discussion. Yet along with a goodly number of other such problems which have never come up for a really exhaustive survey by the courts, it is one of which we would all like to have such slight information as there is.

Before beginning the bodily discussion of the "clause" we present it in the succeeding paragraph, in order that we may see how our own personal interpretation of it; as we will gain that interpretation from its construction and content; differs from the construction which has been given it by the courts.

Article 4, Sec. 1 of the United States Constitution: 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 made by general laws prescribed the manner in which such acts, records and proceedings shall be proved, and the effect thereof."[1]

On reading the clause we would almost unanimously hold that it means domestic judgments shall be executory force in foreign states. And we would not be without good authority backing us in such a view. Yet no court has perhaps ever given recognition or held to such a construction. The judges seem to have done with it that which has been done with so many other parts of the constitution; namely, they have construed it with the idea of adapting it to the best practical needs of the country, and not with any idea in mind as giving it a didactic literal interpretation.

The very early cases on the subject did have a very strong

1. An Act of Congress, May 26, 1790, 1 stat. 122, to all practical purposes merely confirmed the "full faith and credit" clause. It has no special bearing in this discussion and will receive no separate attention.

tendency toward a literal and parenthetical interpretation of the clause. It is said, (although contemporaneous authority cannot be found on the subject,) that Chief Justice Marshall was the only judge of his court who held that a foreign state judgment was not of conclusive effect. But few cases arose on the subject in those days on national construction, perhaps due to the small amount of interstate commerce and travel; but of those early cases perhaps D'Arcy v. Ketchum[2] is the most important. In that case probably originated much of the present day legal construction given to the clause. There the court held that a foreign state judgment did not preclude an inquiry into the jurisdiction of the court, not of the right of the state over the person or subject matter. This decision started the present day line of thought and since that time the trend has steadily been to question foreign state judgments more and more, and so has the tendency been down until the present day.

Of all the text book writers who have given thought on the subject, the courts seem to have given Story[3] the greatest preference in the matter of quotations. The author prefers Black[4] as he is more modern (1910). Both Story and Black have written good discussions and furnished good references on the subject. Largely drawn from the two authors above mentioned; although much has been gathered from other texts and the original sources; there is below in condensed form the author's conception of the present day interpretation given to the clause.

First, a judgment rendered in one state, by a court having jurisdiction over both parties and subject matter, is conclusive on its merits in every other state, when used as a cause of action, and in the event of such an action an inquiry into the merits is not allowable.

Secondly, a judgment valid at home, to become of executory effect in another state, must be used as a cause for a new

2. 11th of Howard, 165.
3. Story—Commentaries on Constitutional Law; Story—Conflict of Laws.
4. Black—Constitutional Law.

action in that state, and must be merged in a new domestic judgment.

Thirdly, the priority, privilege and lien accorded to domestic judgments is not accorded to foreign judgments. Only such powers as are given by the lex fori are accorded them.

And fourthly, a foreign state judgment is only either a sound basis of prima facie evidence for a new suit. Text authors conflict as to its exact status in a domestic court,[5] although judges seem to have paid even less attention to this phase, comparatively speaking, than they have the general subject, probably due to the fact that whether such a judgment operates as a highly meritably basis or merely as a best grade of prima facie evidence for a suit, the court proceedings would be practically the same.

There are several defenses as against a foreign judgment. As before said the tendency to question them has become steadily stronger, so that today there are several pleadings permissible against them. They are:

First—Plea to the jurisdiction of the court. This may be carried out as regards the authority of the preceding court over the person, or of its power over the subject matter. It may be used in cases of judgments in personem; as where the court has failed to obtain jurisdiction over the person as by improper service, etc.), and it will also be a defense, as against a foreign court's judgment which if extended would be of extra territorial effect.

Secondly—The defendant may show that the judgment has been set aside or reversed by an appellate court.

Thirdly—If the statute of limitations runs as to judgments in the state wherein the foreign decree is being considered it will constitute a valid defense.

5. In Dwyer's "Cases on Private International Law," and in Rorer on "American Interstate Law," it is spoken of as mere *prima facie* evidence; while both Story and Black, referred to *supra*, hold that it is conclusive on its merits.

Fourthly—The defendant may show cause in some cases. Both authors and judges disagree as to the admissibility of it as a defense, some holding that it may not be plead because the party who desires to avoid a judgment on such grounds has had his opportunity in the court which rendered the judgment, and that therefore he may be considered to have waived it; while others hold that fraud is at all times a defense; and may be raised accordingly.

From the above paragraphs it may be seen that the "full faith and credit" clause of the United States Constitution has anything but a strict interpretation, yet in spite of the conflicting authority as to minor points in its construction, the courts have been almost unanimous in their views as to the main subject matter, and have worked out, or are working out, what is perhaps the best possible solution of the problem.

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