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REFLECTIONS ON *MAGNOLIA PETROLEUM CO.* V. *HUNT*[1]

HAROLD WRIGHT HOLT

I. THE BACKGROUND

The reasoning of the Supreme Court in a group of cases that have arisen under Workmen's Compensation Acts has stirred the interest of students of Conflict of Laws.[2] In the first, *Bradford Electric Light Co., Inc.*, v. *Clapper*,[3] the petitioner was a Vermont corporation, with its principal place of business in that state, but with power lines extending into New Hampshire. In Vermont it hired Clapper, a citizen and resident of that state, as a lineman for emergency service in either that state or New Hampshire. He was killed in New Hampshire in the course of his employment. His administratrix chose to bring an action in a court of New Hampshire to recover damages for his death rather than to seek compensation under the New Hampshire Employer's Liability and Workmen's Compensation Act.[4] The New Hampshire statute permitted her that election.[5] Under the diversity of citizenship jurisdiction, the action was removed into the United States District Court for the District of New Hampshire.

The Light Company contended that only under the Vermont Workmen's Compensation Act could it be held civilly liable to give redress for the death of Clapper. That statute professed to make "exclusive" the remedy providing for an injury suffered outside of Vermont by a workman in the course of his employment when the employee had been hired in Vermont by a Vermont employer for work outside of the state and the parties to the contract of employment had agreed that the statutory remedy should be the only remedy for any such injury.[6] According to the Vermont Act, Clapper and his employer had so "agreed" because prior to his death neither party to the employment contract had filed with the proper authority an express statement to the contrary.[7] Under the circumstances of the case, so the Light Company

[1] 320 U. S. 430, 64 Sup. Ct. 208 (1943).

[2] See Dunlap, *The Conflict of Laws and Workmen's Compensation* (1935) 23 CALIF. L. REV. 381; Dwan, *Workmen's Compensation and the Conflict of Laws—The Restatement and Other Recent Developments* (1935) 20 MINN. L. REV. 19; Notes (1935) 35 COL. L. REV. 751, (1939) 39 COL. L. REV. 1024, (1935) 44 YALE L. J. 869.

[3] 286 U. S. 145, 52 Sup. Ct. 571 (1932).

[4] N. H. PUB. LAWS (1926) c. 178.

[5] *Id.* at § 11.

[6] VT. GEN. LAWS (1917) c. 241, § 5774.

[7] *Id.* at § 5765.

argued, the court in New Hampshire was required to give full faith and credit to the provisions of the Vermont Act by dismissing the action. This the District Court refused to do. It held the plaintiff entitled to maintain her action to recover damages for what was a tort in New Hampshire—Clapper's wrongful death. Ultimately the plaintiff had a verdict and a judgment for $4000. The Circuit Court of Appeals, First Circuit, at first reversed, then affirmed, the judgment.[8] On certiorari the Supreme Court reversed the judgment of the Circuit Court of Appeals. The majority of the Supreme Court were of the opinion that a denial of recovery in the New Hampshire action would not violate the public policy of New Hampshire. True, the legislation of that state did not conform to that of Vermont. This lack of conformity did not mean that it would contravene the public policy of New Hampshire to give effect to the Vermont Act.[9] New Hampshire's interest in the case was only "casual." Clapper had not been a resident of that state. He had not been continuously employed there. Seemingly, he had left no dependent there. No interest of New Hampshire, it seemed, would be subserved by burdening its courts with the litigation.[10]

It seems that the Supreme Court recognized that it could have rested its decision on the ground that the Circuit Court of Appeals had reached the wrong conclusion as to what the public policy of New Hampshire required.[11] Mr. Justice Brandeis, however, speaking for the majority, had previously said that full faith and credit did require the court in New Hampshire to recognize the provision of the Vermont Act (that its remedy should be the only one available to the injured employee or his representative) as a defense to the New Hampshire action.[12] The Light Company was not seeking to enforce a cause of action arising under a Vermont statute.

"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, so that he is free to enforce it elsewhere. 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 defendent to irremediable liability. This may not be done."[13]

In a specially concurring opinion Mr. Justice Stone hesitated to say "that

[8] 851 F. (2d) 992, 999 (C. C. A. 1st, 1931).
[9] 286 U. S. 145, 161, 162, 52 Sup. Ct. 571, 576, 577 (1932).
[10] *Id.* at 162, 52 Sup. Ct. at 577.
[11] *Id.* at 161, 52 Sup. Ct. at 576, criticizing the assumption as to public policy of New Hampshire. Note (1932) 46 HARV. L. REV. 291, 292, 293, n. 7.
[12] 286 U. S. 145, 155-158, 52 Sup. Ct. 571, 574, 575 (1932).
[13] *Id.* at 160, 52 Sup. Ct. at 576.

the Constitution projects the authority of the Vermont statute across state lines into New Hampshire, so that the New Hampshire courts, in fixing the liability of the employer for a tortious act committed within the state, are compelled to apply Vermont law instead of their own. The full faith and credit clause has not hitherto been thought to do more than compel recognition, outside the state, of the operation and effect of its laws upon persons and events within it."[14]

Admittedly, he continued, the "status" of employer-employee had been created in Vermont by the law of Vermont between the Light Company and Clapper. He was not, however, "prepared to say that that status, voluntarily continued by employer and employee, and given a locus in New Hampshire by their presence within the state, may not be regulated there according to New Hampshire law, or that the legal consequences of acts of the employer or employee there, which grow out of or affect the status in New Hampshire, must, by mandate of the Constitution, be either defined or controlled, in the New Hampshire courts, by the laws of Vermont rather than of New Hampshire."[15]

Bradford Electric Light Co., Inc. v. *Clapper* is noteworthy in that never before had the Supreme Court, in such clear language, extended to a statute, quite apart and distinct from a judgment or judicial proceedings, the duty to give full faith and credit. Previous cases would warrant the belief that the Court already had in effect extended the full faith and credit clause to statutes of certain types.[16] Prior to this case, however, that belief would have rested in large part on what the Court had done rather than on what it had said; and in some of the cases either the issue of extending full faith and credit to a statute was not squarely raised or the Court chose not to regard it as so presented.[17]

Conceivably, Vermont could have so worded its Act as to have permitted the plaintiff an election either to recover Workmen's Compensation in Vermont or to proceed under the statute of New Hampshire. Then, of course, full faith and credit would not have required greater effect to be given the Vermont Act elsewhere than was given it in the courts of Vermont. Such seems to be the conclusion to be drawn from the second case in the

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[14]*Id.* at 163, 164, 52 Sup. Ct. at 577.
[15]*Id.* at 164, 52 Sup. Ct. at 577.
[16]See Comment (1935) 45 YALE L. J. 339.
[17]See Langmaid, *The Full Faith and Credit Required for Public Acts* (1929) 24 ILL. L. REV. 383. *Cf.* Dodd, *The Power of the Supreme Court to Review State Decisions in the Field of Conflict of Laws* (1926) 39 HARV. L. REV. 533, 550 *et seq.*

series, *Ohio* v. *Chattanooga Boiler & Tank Co.*[18]

The third case, *Alaska Packers Association* v. *Industrial Accident Commission,*[19] is perhaps the most interesting. A laborer hired in California for employment in Alaska and there injured in the course of his employment was held entitled to recovery of compensation under the Workmen's Compensation Act of California. That state was under no duty to give full faith and credit to the Workmen's Compensation Act of Alaska, which purported to give an exclusive remedy for the injury, by recognizing it as a defense to the laborer's application for an award under the California Act because,

> Prima facie every state is entitled to enforce in its own courts its own statutes, lawfully enacted. One who challenges that right, because of the force given to a conflicting statute of another state by the full faith and credit clause, assumes the burden of showing, upon some rational basis, that of the conflicting interests involved those of the foreign state are superior to those of the forum . . . .[20]

In further exposition, Mr. Justice Stone stated that, in the case then before the Court, "only if it appears that, in the conflict of interests which have found expression in the conflicting statutes, the interest of Alaska is superior to that of California, is there rational basis for denying to the courts of California the right to apply the law of their own state."[21]

The party contending for the extension, in the California proceeding, of full faith and credit to the Workmen's Compensation Act of Alaska, had failed to show any superiority of "governmental interests" in Alaska over those of California. It is true that in the Clapper case the Court had not expressly professed to appraise the governmental interests of the two states—Vermont and New Hampshire; but, as Mr. Justice Stone indicates in the later case, the decision in the earlier is consistent with the reasoning of the Court in the later.[22] The attention of the reader is again directed to the final sentence of Mr. Justice Brandeis' opinion in the earlier case:

> We have no occasion to consider whether, if the injured employee had been a resident of New Hampshire, or had been continuously employed there, or had left dependents there, recovery might validly have been permitted under New Hampshire law.[23]

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[18]289 U. S. 439, 53 Sup. Ct. 663 (1933).
[19]294 U. S. 532, 55 Sup. Ct. 518 (1935).
[20]*Id.* at 547, 548, 55 Sup. Ct. at 523, 524.
[21]*Id.* at 549, 55 Sup. Ct. at 524.
[22]*Id.* at 548, 549, 55 Sup. Ct. at 524.
[23]286 U. S. 145, 163, 52 Sup. Ct. 571, 577 (1932).

To repeat, New Hampshire's interest was not substantial, but only "casual."

After *Alaska Packers Association* v. *Industrial Accident Commission,* slight opportunity was left for extension of full faith and credit to a Workmen's Compensation Act. If the statute of the forum satisfied the due process requirements and if the interests of the forum in the case of an applicant for compensation under its statute were substantial, or at least not "casual," seldom would a party contending for the extension of full faith and credit to the statute of a sister state be able to meet the burden of proving a "superiority of governmental interest" in the sister state. That decision has been neatly described as a triumph "for the cause of local regulation and flexibility of venue."[24] Nor was the preferred position of the forum in applying its own statute weakened if the statute of the sister state were of the "exclusive" type, *i.e.,* a statute that purported to make its remedy the only one available. In *Pacific Employers Insurance Co.* v. *Industrial Accident Commission,*[25] California was held not obligated to give full faith and credit to a Massachusetts statute of that type. California was under no duty to recognize the Massachusetts statute as a defense to an application for compensation under the California Act for an injury received by an employee in California while temporarily there in the course of his employment. The Massachusetts residence of the employee, the fact that the contract of employment had been made there and the fact that he was regularly employed there, were not enough to compel the rendition in California of full faith and credit to the Massachusetts statute.

The last two cases discussed certainly gave an injured employee a choice of venue in that they seemed to permit him to seek compensation under the Workmen's Compensation Act of any state that had a substantial number of "contacts" with his employment. And in fact recovery of compensation under more than one act was far from uncommon. The amount of an earlier award or awards was generally credited on the later.[26]

The California cases may have narrowed the field of operation of the *Clapper* case as a precedent in conflict of laws situations under Workmen's Compensation Acts, but they hardly "distinguished away" the earlier case. Its facts differ materially from those in the California cases. In the *Clapper* case the employee had died, leaving no dependent in New Hampshire. In the

[24]Note (1935) 35 COL. L. REV. 751, 761.
[25]306 U. S. 493, 59 Sup. Ct. 629 (1939).
[26]See dissenting opinion of Black, J., in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 457, 64 Sup. Ct. 208, 222 (1943).

California cases he was still living, injured and in need of care in California. The *Clapper* case still stands as a landmark in that the Court, in effect, there told the courts of one state (New Hampshire) that they were under a constitutional duty to dispose of a conflict of laws case in accord with the direction of another state (Vermont).[27]

II. The Case of *Magnolia Petroleum Co.* v. *Hunt*

In the last month of 1943 the Supreme Court radically lessened the chances for recovery under more than one Workmen's Compensation Act by its decision in *Magnolia Petroleum Co.* v. *Hunt*.[28] It appears that Magnolia Petroleum Company employed in Louisiana one Hunt, a resident of that state, as a laborer in oil well drilling. In the course of his employment he went to Texas and was injured there. He applied for compensation under the Texas Workmen's Compensation Act[29] and procured an award *against his employer's insurer*. Under the Texas statute, when the award became final (as it did), Hunt had no right at common law or under any statute of Texas against his employer.[30] After the rendition of the Texas award Hunt sued his employer, Magnolia Petroleum Company, in a court in Louisiana for compensation under the Workmen's Compensation Act of that state. The defendant employer pleaded that the recovery sought was barred as *res adjudicata* by the Texas award and that that award was entitled to full faith and credit. The court overruled that defense and awarded the compensation allowed by Louisiana's Act, with a deduction, as required by the Louisiana statute, for the amount of the Texas payments. The Louisiana Court of Appeal affirmed. According to that tribunal, despite the full faith and credit clause, Louisiana courts were entitled to give effect to the Louisiana Workmen's Compensation Act even though the injury had occurred in Texas.[31]

In the United States Supreme Court Mr. Chief Justice Stone speaking for a majority composed of himself and Justices Frankfurter, Jackson, Reed and Roberts, reasoned that the full faith and credit clause and the federal statute

[27]For a contrary opinion, Cheatham, *Res Judicata and the Full Faith and Credit Clause: Magnolia Petroleum Co.* v. *Hunt* (1944) 44 Col. L. Rev. 330, 341, n. 31. Certain cases seem as hard to "kill" as the proverbial cat. It may yet be found that in spite of Williams v. North Carolina, 317 U. S. 287, 63 Sup. Ct. 207 (1942) the famous *Haddock* case has not been "overruled." See Bingham, *Song of Sixpence, Some Comments on Williams* v. *North Carolina* (1943) 29 Cornell L. Q. 1 and Holt, *The Bones of Haddock* v. *Haddock* (1943) 41 Mich. L. Rev. 1013.

[28]320 U. S. 430, 64 Sup. Ct. 208 (1943).

[29]Tex. Rev. Civ. Stat. (Vernon, 1936) Title 130, Art. 8306 *et seq.*

[30]*Id.* at Art. 8306, § 3.

[31]Hunt v. Magnolia Petroleum Co., 10 So. (2d) 109, 113, 114 (1942).

implementing it[32] made a distinction between a judgment and a statute in that,

> In the case of local law, since each of the states of the Union has constitutional authority to make its own law with respect to persons and events within its borders, the full faith and credit clause does not ordinarily require it to substitute for its own law the conflicting law of another state, even though that law is of controlling force in the courts of that state with respect to the same persons and events.[33]

Accordingly, had there been no award in Texas, the cases of Alaska Packers Association and Pacific Employers Insurance Co. against the Industrial Accident Commission, would have allowed Louisiana to apply its statute. In neither of those two cases had the injured employee been awarded compensation when he applied for compensation under the Act of California. *Res adjudicata,* therefore, could not have been pleaded in the California proceeding in either case. Hunt, however, had already received an award in Texas when he sought compensation in Louisiana.

"But when the employee who has recovered compensation for his injury in one state seeks a second recovery in another he may be met by the plea that full faith and credit requires that his demand, which has become res judicata in one state, must be recognized as such in every other."[34]

It was irrelevant whether or not the Texas award purported to "adjudicate the rights and duties of the parties under the Louisiana law or to control persons and courts in Louisiana" because Texas "is without power to give extraterritorial effect to its laws . . . ."[35]

Pausing for comment, will any one disagree with this last statement? Hardly. Under the Constitution, the Supreme Court of the United States, not the Texas courts or the Texas legislature, will decide whether or not Louisiana courts must dispose of a conflict of laws case involving Workmen's Compensation in harmony with a direction of the Texas legislature (a statute or "law" of Texas). And in view of the cases of Alaska Packers Association and Pacific Employers Insurance Co. against the Industrial Accident Commission of California, one would hardly expect the Court to hold the Texas

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[32]"And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken." REV. STAT. § 905 (1878), 28 U. S. C. § 687 (1940). Hereinafter this statute will be referred to as the "implementing statute." It was not a factor in the earlier cases before the Supreme Court involving conflict of laws situations under Workmen's Compensation Acts.

[33]320 U. S. 430, 436, 437, 64 Sup. Ct. 208, 212 (1943).

[34]*Id.* at 437, 64 Sup. Ct. at 212.

[35]*Id.* at 440, 64 Sup. Ct. at 214.

Workmen's Compensation Act, apart from any award, a bar to a suit in Louisiana under the Louisiana Workmen's Compensation Act. Mr. Chief Justice Stone said as much.

In the *Clapper* case the Court did in effect rule that New Hampshire courts should follow a direction indicated in a Vermont statute. But no matter how clearly Vermont's statute might have forbidden New Hampshire courts to give any remedy in a case like the *Clapper* case, New Hampshire as a state, in the absence of Constitutional provisions, would have been free in its own courts to disregard the Vermont statute. By virtue of the full faith and credit clause, the Court directed the New Hampshire courts to allow no action under the New Hampshire statute for Clapper's death. Why? Because in Vermont the only remedy available was that provided by the Vermont Workmen's Compensation Act. Because of full faith and credit, the existence of the Vermont Act leads to an "effect" in New Hampshire so *strongly similar* to the effect which the Act has in Vermont that one is justified for most purposes in saying that full faith and credit gives the Vermont Act the "same effect" in New Hampshire as in Vermont. But Vermont is not giving "extra-territorial effect to its laws." Vermont would not have allowed in its courts an action based on any wrongful death statute of New Hampshire for the recovery of damages for Clapper's death. To speak accurately, Vermont would not have created a "Vermont right" enforceable in Vermont courts and patterned or modelled upon a "New Hampshire created right" enforceable in New Hampshire courts. Because Vermont and New Hampshire are states of the Union, the full faith and credit clause could be invoked. Thereunder, the Court held that it should direct New Hampshire courts to create no right under the New Hampshire statute for the recovery of damages for Clapper's death.

So, also, the Supreme Court of the United States, not the Texas courts or the Texas legislature, will decide whether or not Louisiana courts must make a certain disposition of a conflict of laws case involving Workmen's Compensation because Texas has made an award. It would seem obvious that Texas had not undertaken to create a "Texas right" enforceable in Texas and patterned or modelled upon a "Louisiana created right" enforceable in Louisiana. That is not material.[36] But the Texas legislature had in effect said that once a final award had been given against the insurer in Texas, there should be no "Texas right" enforceable in Texas in favor of Hunt against his employer. Under the full faith and credit clause and the implementing statute, the exist-

[36] *Id.* at 440, 441, 64 Sup. Ct. at 214.

ence in Texas of an award leads to an "effect" in Louisiana so *strongly similar* to that obtaining in Texas that one is justified for most purposes in saying that the Texas award has the "same effect" in Louisiana as in Texas. But Texas is not giving "extraterritorial effect" to its award. It is the Supreme Court of the United States that gives force to the direction indicated in the Texas Workmen's Compensation Act and the Texas award—that the courts of Louisiana should refrain from creating a "Louisiana right" under the Louisiana Workmen's Compensation Act.

It is not clear, from the opinion of Mr. Chief Justice Stone, whether the Texas award was to be given under the implementing statute "such faith and credit" as it had "by law or usage in the courts of" Texas because it was a "record" or a "judicial proceeding."

Granting that Louisiana had an interest in awarding compensation to Louisiana employees injured elsewhere, its interest was overridden by that of Texas, once Texas had made an award. Said the Chief Justice:[37]

> No convincing reason is advanced for saying that Louisiana has a greater interest in awarding compensation for an injury suffered in an industrial accident, than North Carolina had in determining the marital status of its domiciliary against whom a divorce decree had been rendered in another state, *Williams* v. *North Carolina*,[38] or Mississippi in stamping out gambling within its borders, *Fauntleroy* v. *Lum*,[39] or South Carolina in requiring a parent to support his child who was domiciled within that state, *Yarborough* v. *Yarborough*.[40]

Concurring with the Chief Justice, Mr. Justice Jackson felt that the Court should reverse the Louisiana judgment so long as *Williams* v. *North Carolina* was not overruled.

In his dissent, Mr. Justice Douglas took the position that *Williams* v. *North Carolina* was not in point. According to him the Texas award when fully paid would, under the Texas Act, have discharged the insurer "from all liability by reason *of this claim for compensation*."[41] Texas had, "under the most charitable construction," merely undertaken to adjust legal relations of the parties only so long as they remained subject to its jurisdiction.[42]

"If the Texas award had undertaken to adjudicate the rights and duties of the parties under the Louisiana contract of employment, which we are told

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[37] *Ibid.*
[38] 317 U. S. 287, 63 Sup. Ct. 207 (1942).
[39] 210 U. S. 230, 28 Sup. Ct. 641 (1908).
[40] 290 U. S. 202, 54 Sup. Ct. 181 (1933).
[41] 320 U. S. 430, 448, 64 Sup. Ct. 208, 218 (1943).
[42] *Id.* at 449, 64 Sup. Ct. at 218.

carries the right to compensation under the Louisiana Act (10 So. 2d 109, 112), the result would be quite different. Then the judgment, like the divorce decree in the *Williams* case, would undertake to regulate the relationship of the parties, or their rights and duties which flow from it, as respects their undertakings in another State. And since Texas would have had jurisdiction over the parties its decree would be a bar to the present action in Louisiana."[43]

In agreement with Mr. Justice Douglas, Mr. Justice Black stated that under the Texas statute the award made in that state against the insurer did not bar the right of the employee to collect from his employer for the same injury, the difference between the amount allowed by Texas and the larger compensation allowed by Louisiana. To the writer it seems that the following language of Mr. Justice Black shows that he so felt, even more strongly than Mr. Justice Douglas:

> The proceeding in this case before the Texas Board was against the insurer only and the award entered, by its express terms, was limited to a release of the insurance company from further liability. The liability of the employer under Louisiana law was not in issue before the Board and could not have been put in issue. The employer was not a party to that proceeding; nor was there "privity" between the insurer and the employer since the insurer's liability did not extend to rights which the employee might have against his employer under Louisiana law . . . . The decision of this Court today, therefore, is tantamount to holding that Texas intended to extinguish a claim against the employer in a proceeding in which the employer was not a party and the issue of its liability under Louisiana law was not allowed to be raised. I cannot impute such an intention to Texas.[44]

Even if it were to be assumed, said Mr. Justice Black, that Texas did have such an intention, the interest of Louisiana in regulating the employment contracts of its residents permitted it to grant as a matter of policy a measure of compensation larger than was granted in Texas. "The interest of Texas in providing compensation for an injured employee who like respondent was only temporarily employed in the state is not the same as that of Louisiana where respondent was domiciled and where the contract of employment was made. . . . The Louisiana Act was passed in the interest of the general welfare of the people of Louisiana. If it chooses to be more generous to injured workmen than Texas, no Constitutional issue is presented."[45]

So much for a statement of the opinions in *Magnolia Petroleum Co.* v.

[43] *Id.* at 448, 449, 64 Sup. Ct. at 218.
[44] *Id.* at 453, 64 Sup. Ct. at 220.
[45] *Id.* at 456, 64 Sup. Ct. at 221.

Hunt. It may well be that so long as this decision stands there will be a race between the injured employee and the employer, or perhaps an insurer of the employer, to secure an award of compensation in the state which is regarded by the winner of the race as having a Workmen's Compensation Act more favorable to it than the statute of any other state would be. In this connection it should be noted that Hunt had merely filed application for compensation under the Texas Act when he decided that his interests would be furthered by suit under the Louisiana statute. He gave notice to that effect to the insurer. Nevertheless, the Texas Industrial Accident Board proceeded to hold a hearing without any request from Hunt and gave its award in a proceeding in which Hunt had not participated otherwise than as just described. Hunt had filed his Louisiana action before the Texas award became final.[46] Whether or not such a race for an award is a contest that should have judicial encouragement may be an interesting subject for speculation, but this paper will give no further attention to it.

It is interesting that the majority seems to have predicated its decision on what may be termed Hunt's "voluntary submission to the jurisdiction" of Texas.[47] In other words, the majority felt that Hunt's conduct sufficed to justify the Texas Industrial Accident Board in granting an award that would bind him. The facts may be beyond dispute. Whether or not the conclusion drawn from the facts by the majority is reasonable may be arguable. What conduct of Hunt brought him within the "jurisdiction" of the Texas Industrial Accident Board?

> Confined to a hospital he was told that he could not recover compensation unless he signed two forms presented to him. As found by the Louisiana trial judge there was printed on each of the forms 'in small type' the designation 'Industrial Accident Board, Austin, Texas.' To get his compensation Hunt signed the forms and the Texas insurer began to pay. Returning to his home in Louisiana Hunt apparently discovered that his interests would be more fully protected under Louisiana law and notified the insurer of an intention to claim under the statute of that state.[48]

[46] See dissenting opinion of Black, J., 320 U. S. 430, 450, 64 Sup. Ct. 208, 219 (1943).

[47] "But it does not follow that the employee who has sought and recovered an award of compensation in either state may then have recourse to the laws and courts of the other to recover a second or additional award for the same injury." 320 U. S. 430, 437, 64 Sup. Ct. 208, 213 (1943).

"Respondent was free to pursue his remedy in either state but, having chosen to seek it in Texas, where the award was res judicata, the full faith and credit clause precludes him from again seeking a remedy in Louisiana upon the same grounds." *Id.* at 444, 64 Sup. Ct. at 216.

[48] *Id.* at 450, 64 Sup. Ct. at 219, dissenting opinion of Black, J.

Subsequent proceedings by the Board were without any request or participation by Hunt. Before the Texas award had become final, Hunt had started his action in Louisiana. He declined to accept further payments from the Texas insurer.

Very little sufficed to bring Hunt within the "jurisdiction" of the Texas Industrial Accident Board! It is respectfully submitted that the conclusión of the majority as to Hunt's "voluntary submission to the jurisdiction" of Texas may be an unfortunate precedent. May it not facilitate the execution of ethically questionable plans to bring an injured employee "within the jurisdiction" of one particular state?

To the reader there have doubtless occurred other interesting problems. At the risk of seeming neglect of them the writer wishes now to point out what to him is significant in the decision.

III. Its Significance in Conflict of Laws

The decision emphasizes an unwillingness by the Court, increasingly marked of late, to subsume issues in conflict of laws under due process. In the majority opinion, Mr. Chief Justice Stone, by implication at least, leads one to believe that he would not have held that Hunt's recovery under the Louisiana Act as well as the Texas Act, violated due process because of some Constitutional policy against recovery under the statutes of more than one state of compensation for the same injury. It is true that to Mr. Justice Black the majority seem "in some parts of its opinion to adopt a wholly new and far reaching policy relating to the power of states to allow complete indemnification for a personal injury by permitting more than one suit against the wrongdoer, and to engraft this policy on to the full faith and credit clause. Courts schooled in the common law have long objected to what has been designated 'splitting a cause of action.' They have phrased this policy objection in many common law concepts, one of which has been the doctrine of 'election of remedies.' This predilection of common law judges in favor of compelling the aggregation of all possible elements of damage into one law suit is here apparently elevated to a position of constitutional impregnability in the full faith and credit clause."[49]

Mr. Justice Black's criticism may be answered by varying the *Clapper* case a bit. Suppose that Vermont had had no wrongful death statute and had refused to entertain in her courts any suit for the recovery of damages under the wrongful death statute of any other state. Suppose, further, that a final

[49] *Id.* at 460, 461, 64 Sup. Ct. at 223.

award had been made in Vermont under the Vermont Workmen's Compensation Act. Undoubtedly that award would have been entitled to recognition in New Hampshire under the full faith and credit clause and the implementing statute as a bar to any New Hampshire action for Clapper's death. Vermont would not have created a "Vermont right" enforceable in the courts of Vermont and patterned or modelled upon a "New Hampshire created right" enforceable in the courts of New Hampshire. The only "Vermont created right" was that given by the Workmen's Compensation Act of the state. New Hampshire would have been directed by the United States Supreme Court not to create under its statute a "New Hampshire right" for Clapper's death.

In *Magnolia Petroleum Co.* v. *Hunt,* therefore, the majority of the Court did not cut loose from what was reasonably implied in precedent. But the majority may have been answering Mr. Justice Black's criticism by the statement that "if the award of compensation in Texas were not res judicata there, full faith and credit would, of course, be no bar to the recovery of an award in another state."[50] It had already stated that under full faith and credit, Louisiana could not deny the Texas award "the *same* binding effect on the parties in Louisiana as it has in Texas."[51] Fuller exposition by the majority of its position on the answer to Mr. Justice Black's criticism would have been helpful.

One may reasonably disagree with Mr. Justice Black's opinion that the majority have established a "drastic new Constitutional doctrine" involving as a "practical result" the rendition by State B (Louisiana) of *"more* faith and credit to State A's judgment for damages for personal injury than State A itself intended the judgment should be given."[52]

At this point it may be noted that the majority of the Court does not consider whether or not the Texas legislature acted wisely in making its Workmen's Compensation remedy "exclusive" of any other redress against the employer. That question was not discussed. Nowhere in the majority opinion is there any indication as to what the Justices would hold as "sound" or juridically "correct" conflict of laws principles which would dictate or justify the expediency of the Texas legislation. Conceivably Texas could have framed its Workmen's Compensation Act so as to exclude from its scope the case of a workman resident in Louisiana and hired under a contract of employment entered into there, even though he received in Texas, in the course of his

[50] *Id.* at 443, 64 Sup. Ct. at 215.
[51] *Id.* at 440, 64 Sup. Ct. at 214.
[52] *Id.* at 461, 64 Sup. Ct. at 223.

employment, an injury. The exclusion might have been conditioned upon the existence of a Workmen's Compensation Act in Louisiana (or some other state) applicable to such workman. Or the exclusion could have been absolute. Nowhere in the opinion of the Chief Justice or in the opinions of any of the other Justices do we find any statement to indicate that the Court would have felt such exclusion desirable. The attitude of the majority brings to mind a case not mentioned in any of the opinions—*Kryger* v. *Wilson*.[53]

In the *Kryger* case a contract was made in Minnesota for the sale of a tract of North Dakota land to *D*, a resident of Minnesota. Payment was to be in installments and seemingly the installments were to be paid in Minnesota and final papers were to be passed there. The buyer defaulted and the seller cancelled the contract in accord with formalities prescribed by the statute of North Dakota and sold the tract to the plaintiff who brought suit in North Dakota to quiet title against *D*. *D* defended and asked for counter-relief on the ground that action prescribed by a Minnesota statute for the cancellation of a contract for the sale of land had not been taken. The court held that the North Dakota statute governed, that under it the contract had been duly cancelled and that title should be quieted in the plaintiff. The Supreme Court of North Dakota affirmed. On writ of error the United States Supreme Court affirmed the North Dakota decree, holding that there had been no denial of due process because the court in North Dakota had had jurisdiction both of the subject matter and of the parties, saying:

> 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. . . .[54]

In *Kryger* v. *Wilson* it might have been contended that full faith and credit must be accorded the Minnesota statute by the courts of North Dakota. No such contention, however, was made. The courts of North Dakota may not have made a "sound" choice, from the point of view of students of conflict of laws, in selecting the North Dakota statute rather than that of Minnesota to prescribe the formalities to be observed for cancellation of a contract for the sale of North Dakota land.[55] The error, if any, was that of

[53]242 U. S. 171, 37 Sup. Ct. 34 (1916).
[54]*Id.* at 176, 37 Sup. Ct. at 35.
[55]For an opinion that the North Dakota courts had applied the *correct* conflict of laws rule in the view of the Supreme Court, see Note (1935) 35 COL. L. REV. 751, 753, n. 12.

the courts. It was not a "mistake" committed by the legislature of the state. That body had not undertaken to deal with a conflict of laws problem. But any error of the North Dakota courts in its choice of law was not to be corrected by subsuming it under denial of due process.

According to the majority decision of the Supreme Court in *Magnolia Petroleum Co.* v. *Hunt* the Texas legislature had undertaken to deal with a conflict of laws problem. As has been pointed out, the majority did not concern itself with the wisdom or expediency of the Texas legislation. The majority may have felt that the Texas legislature had made "a mistaken application of doctrines of conflict of laws" in bringing a workman like Hunt within the scope of its Workmen's Compensation Act. But any such misapplication will not militate against the extension of full faith and credit to an award made under the statute passed by the "misapplying" legislature.

It may well be that a state, *F-1,* is not at liberty to deny full faith and credit to a money judgment of a sister state, *F-2,* even though the *F-2* court in rendering the judgment may have failed to give the recognition to a statute of *F-1* which the Supreme Court may have felt could, or perhaps *should,* have been given. As evidence one need only cite *Fauntleroy* v. *Lum*[56] and *Roche* v. *McDonald*.[57] In both of those cases it was the courts in *F-2* that failed to regard the interest of *F-1,* in the transaction on which the particular litigation in *F-2* was based, as controlling or even influencing the decision to be reached in *F-2.* In both those cases the interest of *F-1* was set forth in statutes. In both cases the *F-2* courts may have misapplied the "doctrines of the conflict of laws." In *Kryger* v. *Wilson* it was the court in North Dakota that may have made a similar failure as to the interest of Minnesota; and one may safely venture the opinion that Minnesota would have been required to give full faith and credit to the North Dakota decree.[58] *Magnolia Petroleum Co.* v. *Hunt* follows a parallel road in holding that Louisiana *(F-1)* must give full faith and credit to a judgment of Texas *(F-2)* even though it is the Texas legislature, rather than any aberrant Texas court, that by failure to give due recognition to the interest of a state other than Texas, deprives the court of Louisiana of any power to implement its policy in regard to a transaction in which undoubtedly that state had a substantial interest.

In short, the Supreme Court seems committed to compelling the extension

[56]210 U. S. 230, 28 Sup. Ct. 641 (1908).
[57]275 U. S. 449, 48 Sup. Ct. 142 (1928).
[58]Especially if the Supreme Court were to hold that North Dakota had applied the "correct" conflict of laws rule.

of full faith and credit to a money judgment (or the equivalent of a money judgment, *i.e.*, certain administrative "awards" or "records") rendered by *F-2*, a state court, with, of course, the requisite jurisdiction over parties and subject matter.[59] Seemingly another forum, *F-1*, is not to be allowed to deny full faith and credit in order to implement its own local policy merely because the judicial reasoning in *F-2* or the legislative reasoning in *F-2* may not have led to a selection of what to the Court might seem the best of the alternatives in the field of conflict of laws. Only when the choice was clearly unreasonable, will *F-1* be allowed to refuse to give recognition to the judgment. And then it will probably be vulnerable under the due process clause.

There have been occasions, even since *Kryger* v. *Wilson*, when the Court seemed to make itself the final arbiter of what should be the principles of conflict of laws to be followed by the legislatures of the states.[60] Over a period of years the Court handed down a series of decisions which, in effect, told the states how a proper system of conflict of laws, in the light of the due process clause, allotted the power to tax the succession to the interest of a stockholder in a corporation,[61] to state and municipal bonds,[62] to United States bonds,[63] to bank credits and promissory notes,[64] and to open and unsecured accounts,[65] or the power to tax intangibles, such as stocks and bonds, held in trust.[66] Perhaps some or all of these decisions were deviations "from unbroken legal history and fiscal practice."[67] However that may be, more recent decisions seem to be sweeping them into the discard.[68] In permitting

[59]See statement of Stone, C. J., in Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 438, 64 Sup. Ct. 208, 213 (1943).

[60]As to the occasionalness of this attitude, see opinion of Stone, J. in Curry v. McCanless, 307 U. S. 357, 363, 59 Sup. Ct. 900, 903 (1939).

[61]First National Bank of Boston v. Maine, 284 U. S. 312, 52 Sup. Ct. 174 (1932).

[62]Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204, 50 Sup. Ct. 98 (1930), *overruling* Blackstone v. Miller, 188 U. S. 189, 23 Sup. Ct. 277 (1903).

[63]Baldwin v. Missouri, 281 U. S. 586, 50 Sup. Ct. 436 (1930).

[64]*Ibid.*

[65]Beidler v. South Carolina Tax Commission, 282 U. S. 1, 51 Sup. Ct. 54, (1930).

[66]Safe Deposit & Trust Co. v. Virginia, 280 U. S. 83, 50 Sup. Ct. 59 (1929).

[67]See opinion of Frankfurter, J., in State Tax Commission v. Aldrich, 316 U. S. 174, 183, 62 Sup. Ct. 1008, 1012 (1942). *Cf.* Note (1942) 51 YALE L. J. 1398, 1399-1400.

[68]As to succession taxes on shares of corporate stock, see State Tax Commission v. Aldrich, 316 U. S. 174, 62 Sup. Ct. 1008 (1942); as to succession taxes on interests in intangibles held in trust: Stewart v. Pennsylvania, 312 U. S. 649, 61 Sup. Ct. 445 (1941) and Curry v. McCanless, 307 U. S. 357, 59 Sup. Ct. 900 (1939); *Cf.* Graves v. Elliott, 307 U. S. 383, 59 Sup. Ct. 913 (1939). As to taxation of income received in one state by beneficiary of trust when another state has collected a tax on income received by the trustee, see Guaranty Trust Co. v. Virginia, 305 U. S. 19, 59 Sup. Ct. 1 (1938), in which the Court relied on Lawrence v. State Tax Commission, 286 U. S. 276, 52 Sup. Ct. 556 (1932) and New York *ex rel.* Cohn v. Graves, 300 U. S. 308, 57 Sup. Ct. 466 (1937). *See also,* Note (1942) 51 YALE L. J. 1398.

in effect what is commonly called "multiple taxation" by two or more states, by ruling that thereby no violation of due process is involved, the Court is allowing state legislatures wide opportunity to work out and apply novel theories in that part of conflict of laws generally marked in casebooks and digests with some such subhead as "Jurisdiction to tax."[69] A similar development may be taking place with respect to state regulation of insurance.[70] Other examples could be given, but lack of space prevents. Enough has been said by way of illustration.

Magnolia Petroleum Co. v. *Hunt,* at first glance, seems to be merely an instance of a rigid application of the full faith and credit clause and the implementing statute. It is more than that. The decision is another illustration of the liberty that is being given states to embody their own views of conflict of laws in legislation. Thanks to the insistence upon a strict application of full faith and credit to "records" and "judicial proceedings," Texas is able to force its view of the proper treatment of a conflict of laws situation in Workmen's Compensation on Louisiana through the agency of the Supreme Court. In effect, the position of the majority of the Court is not unlike that of the members for whom Mr. Justice Brandeis spoke in the *Clapper* case. In neither the *Clapper* case nor the *Magnolia Petroleum Co.* case is any inquiry made by the Court into the wisdom or expediency of the view of conflict of laws in Workmen's Compensation taken by the legislature of the state which succeeds in monopolizing the giving of relief for an injury (fatal in the one case, not fatal in the other) to a workman. The *Alaska Packers Association* and *Pacific Employers Insurance Co.* cases had indicated the improbability of any state's acquiring such control. We cannot be so sure now.

IV. The Matter of Privity

One more point deserves consideration. Mr. Justice Black, we have seen, could not agree that the Texas award *against the insurer* was *res adjudicata* of the claim of Hunt *against his employer* under the Louisiana Act.[71] The employer will probably not object to the decision of the majority. Hunt and

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[69]"The Constitution is not a formulary. It does not demand of states strict observance of rigid categories nor precision of technical phrasing in their exercise of the most basic power of government, that of taxation. . . ." Frankfurter, J., in Wisconsin v. J. C. Penney Co., 311 U. S. 435, 444, 61 Sup. Ct. 246, 249 (1940). *See also,* his opinion in Newark Fire Insurance Co. v. State Board of Tax Appeals, 307 U. S. 313, 323, 324, 59 Sup. Ct. 918, 922 (1939); and Note (1941) 50 Yale L. J. 900.

[70]Holmes v. Springfield Fire & Marine Ins. Co., 311 U. S. 606, 61 Sup. Ct. 14 (1941); Osborn v. Ozlin, 310 U. S. 53, 60 Sup. Ct. 758 (1940).

[71]320 U. S. 430, 451-455, 64 Sup. Ct. 208, 219-221 (1943).

the insurer were parties to the Texas proceeding. It need not cause surprise that the majority should have held that an award against the insurer was *res adjudicata* as to the claim against the employer.

In *Kryger* v. *Wilson,* it was the grantee of the vendor in the contract of sale who brought suit in North Dakota. The vendor was not a party to the suit to quiet title. The defendant was the vendee in the original contract of sale. He was a resident of Minnesota who voluntarily "submitted to the jurisdiction" of the North Dakota court. If he had not, "the decree could have determined only the title to the land, and would have left him free to assert any personal rights he may have had under the contract. But, having come into court and specifically asked in his cross bill that he be declared entitled to the 'possession and control of the real estate described in the complaint herein under a contract of sale,' he cannot now complain if he has been concluded altogether in the premises."[72]

What the Court had in mind is not clear. It would seem as if it had in mind rights against the vendor in the original contract of sale for damages for breach of contract when it speaks of "personal rights . . . under the contract."

If the North Dakota decree in *Kryger* v. *Wilson* not only determined that the defendant had no title to the land in that state, but also cut off any right *in personam* he might have had in any other state against the vendor, who was not a party to the suit, is one's sense of fair play, *i.e.,* "due process," shocked by having the Texas award against the insurer cut off Hunt's rights against his employer, who was not a party to the Texas proceedings? Just as the defendant in *Kryger* v. *Wilson* sought relief under the law of North Dakota, so did Hunt in the principal case seek relief under the law of Texas. True, the defendant in *Kryger* v. *Wilson* pushed his claim further in North Dakota than Hunt did in Texas. Both, however, are considered to have made themselves parties to proceedings voluntarily, one in North Dakota, the other in Texas.

Again, suppose that *C* has a claim against *D* and *D* has a claim for money (a debt) against *G*. *G* is a citizen and resident of State *F-1, D* of *F-2*. At the suit of *C* the *F-1* court has jurisdiction to garnish *D's* claim against *G* in satisfaction of *C's* claim against *D*. It is enough if service of process is made in *F-1* on *G*. The judgment in garnishment against *G* at the suit of *C* must be given full faith and credit in the court of any other state in which *D* may later seek to recover judgment against *G* on his claim. This is so even though *D* was never subject to the jurisdiction of the court in *F-1*.[73]

[72]242 U. S. 171, 177, 37 Sup. Ct. 34, 35 (1916).
[73]Harris v. Balk, 198 U. S. 215, 25 Sup. Ct. 625 (1904).

Whatever may be the reasoning used to justify the grant of full faith and credit to *F-1's* judgment against *G* in favor of *C*, when *D* was not personally subject to the jurisdiction of *F-1*, fully as sound reasons could be found to justify the cutting off of Hunt's claim against his employer in Louisiana because of the Texas award.

The words "privies" and "privity" are used by courts merely as statements of conclusions. If a court feels that a person not personally a party to a judgment should be bound by, or entitled to the benefits of, that judgment for certain purposes, it will, with or without a statement of the reasons why it so feels, find that he is a "privy" to or "in privity with" one or the other of the parties to the judgment.[74] A thorough discussion of the situations when such findings will be made is beyond the scope of this article. Suffice it to say that so far as the problem of privity is tied up with the extension of full faith and credit to state judgments in this country, the United States Supreme Court must often have the final decision as to when "privity" is to be found to exist.

[74]RESTATEMENT, JUDGMENTS (1942) § 83.