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Conflict of Laws - Public Policy - Effect of Public Policy of the Forum on Foreign Contracts

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It must be remembered that the contest is not between labor and management, but between creditors of the bankrupt,[10] and strict construction of the priority by the courts, leaving expansion of the term "wages due to workmen" to Congress would seem to afford the best protection for the interests of all creditors.

ROBERT D. LANGFORD.

CONFLICT OF LAWS — PUBLIC POLICY — EFFECT OF PUBLIC POLICY OF THE FORUM ON FOREIGN CONTRACTS. — Proceeding for judgment of condemnation against the corporate-employer of husband against whom plaintiff had obtained a decree of separate maintenance. The defendants, husband and corporate-employer, entered into a contract in Illinois providing for the payment of salary in advance. Contracts for advance payments of salary, even to avoid garnishment, are legal in the state of Illinois. The United States District Court *held* that, under the District of Columbia Code, advance payments of salary for the purpose of avoiding garnishment were void and contrary to local public policy. Plaintiff was awarded judgment for one months salary paid to husband. *Welch v. Welch*, 166 F.Supp. 539 (D.C. 1958).

As a general rule, the law of the situs of a contract will be applied in the forum to the exclusion of the law of the forum.[1] There is a recognized exception to this broad principle in cases where the application of the law of the situs would contravene the established public policy of the forum.[2] In such a case, it may be conceded, that the courts of the forum are at liberty either to decline to assume jurisdiction over the controversy[3] or, while assuming jurisdiction and declining to apply the foreign law, to apply their own law. As between the States of the Union the question arises whether the court may decline to apply the law of the situs, because its application would violate local public policy, and apply the law of the forum; the domestic court would thus recognize and enforce rights and obligations, arising affirmatively or defensively,[4] which did not exist under the foreign law.

Some writers, working on the premise that foreign rights and obligations ordinarily should be enforced, have said that the public policy doctrine is to be narrowly confined, particularly when applied among the states.[5] A leading judi-

10. See Nathanson v. NLRB, 344 U.S. 28 (1952).

1. Gaston, Williams & Wigmore v. Warner, 260 U.S. 201 (1922); Chamblee v. J. B. Colt Co., 31 Ga. App. 34, 119 S.E. 438 (1923); Pope v. Hanke, 155 Ill. 617, 40 N.E. 839 (1894); Douglas County State Bank v. Sutherland, 52 N.D. 617, 204 N.W. 683 (1925). There is also authority to the effect that the law of the place of performance or the law intended by the parties governs. See Beale, *What Law Governs the Validity of a Contract*, 23 Harv. L. Rev. 1 (1909).

2. Union Trust Co. v. Grosman, 245 U.S. 412 (1918); Bond v. Hume, 243 U.S. 15 (1917); Continental Supply Co. v. Syndicate Trust Co., 52 N.D. 209, 202 N.W. 404 (1924). Federal Courts will follow the public policy of the state in which it is sitting. See Angel v. Bullington, 330 U.S. 183 (1947); Griffin v. McCoach, 313 U.S. 498 (1941).

3. See Goodrich, *Conflict of Laws* § 11 (3d ed. 1949); 3 Beale *Conflict of Laws* § 612.1 (1935); Restatement, Conflict of Laws § 612 (1934).

4. See Welch v. Welch, 166 F.Supp. 539 (D.C. 1958), where the rendition of a judgment on the merits deprived the defendant of a defense which would have been good in Illinois.

5. See Goodrich, *Public Policy in the Law of Conflicts*, 36 W. Va. L. Q. 156, 170-71 (1930). "To refuse local effect to a foreign claim when the claimed right arises in a foreign country is unfortunate. As among the States of our Union it is absurd. We have a common law, a common language, a common national government. Our differences may be dear to us but they are all minor in their nature." See also Strumberg, *Conflicts of Laws*, 171, 198-99, 278 (2d ed. 1951); Beach, *Enforcement of Vested Rights*,

cial expression of this view is that of Judge Cardozo in *Loucks v. Standard Oil Co.*[6] Nevertheless, a number of courts have held that the public policy of each state is found in its constitution, statutes and case law[7] and any substantial difference between those of the forum and those of the state where a transaction occurred justifies a refusal to entertain an action predicated upon the application of sister-state law.[8]

In numerous cases the right of the courts of the forum to decide a conflicts of law problem according to its local public policy has been tacitly assumed, without regard to constitutional provisions.[9] The "full faith and credit" clause of the federal constitution abolished in large measure the principle of international law by which local policy may dominate rules of comity as among the states of the Union.[10] Many rights acquired under the laws of another state are now protected by the "full faith and credit" clause,[11] the "equal privileges and immunities" clause[12] and the "due process" clause[13] of the United States Constitution.

The instant case seems to represent a strict application of the public policy concept. Even though advance payments for personal services to avoid garnishment are illegal in the forum, this type of arrangement has been held valid in a number of other courts as not being contrary to the good morals of the public.[14] It is felt that such a literal application of this concept of public policy, when constitutional restrictions are considered, will severely curtail the enforcement of sister-state law on a reciprocal basis.

RODNEY S. WEBB.

EMINENT DOMAIN — JUST COMPENSATION — COST OF MOVING PERSONAL PROPERTY. — The Circuit Court awarded defendant full compensation for condemnation of his land which included reasonable cost of moving personal property, where such condemnation of defendant's property necessitated vaca-

27 Yale L. J. 656, 663-64 (1918). But see Nussbaum, *Public Policy and the Political Crisis in the Conflict of Laws*, 49 Yale L. J. 1027, 1052-55 (1940).

6. 224 N.Y. 99, 111, 120 N.E. 198, 201-02 (1918). "We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home . . . [T]he courts . . . do not close their doors unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal."

7. See Harding v. American Glucose Co., 182 Ill. 551, 55 N.E. 577 (1899), *writ of error dismissed*, 187 U.S. 651 (1902); Continental Supply Co. v. Syndicate Trust Co., 52 N.D. 209, 202 N.W. 404 (1924); International Harvester Co. v. McAdam, 142 Wis. 114, 124 N.W. 1042 (1910).

8. *E. g.*, Farmers & Merchants Nat. Bank v. Anderson, 216 Iowa 988, 250 N.W. 214 (1933); Davis v. Ruzicka, 170 Md. 112, 183 Atl. 569, *cert. denied*, 298 U.S. 671 (1936); Poling v. Poling, 116 W. Va. 187, 179 S.E. 604 (1935).

9. *E. g.*, *cf.* Nonotuck Silk Co. v. Adams Exp. Co., 56 Ill. 66, 99 N.E. 893 (1912); Hanson v. Great Northern Ry. Co., 18 N.D. 324, 121 N.W. 78 (1909).

10. Broderick v. Rosner, 294 U.S. 629 (1935); *cf.* Hughes v. Fetter, 341 U.S. 609 (1951) (wrongful death action). The courts of the District of Columbia and the states are equally bound by the commands of the full faith and credit clause. See Suydam v. Ameli, 46 A.2d 763 (D.C. Mun. App. 1946).

11. See Broderick v. Rosner, *supra* note 10; Smithsonian Institute v. St. John, 214 U.S. 19 (1909); Cole v. Industrial Comm'n, 353 Ill. 415, 187 N.E. 520 (1933); Roller v. Murray, 71 W. Va. 161, 76 S.E. 172 (1912) *writ of error dismissed*, 234 U.S. 738 (1914).

12. See Blake v. McClung, 172 U.S. 239 (1898); *cf.* Missouri *ex rel* Southern Ry. Co. v. Mayfield, 340 U.S. 1 (1950).

13. See Hartford Acc. & Indem. Co. v. Delta & P. Land Co., 292 U.S. 143 (1934).

14. *E. g.*, Hall v. Armour Packing Co., 102 Ga. 586, 29 S.E. 139 (1897); Campagna v. Automatic Electric Co., 293 Ill. App. 437, 12 N.E.2d 695 (1938); Bump v. Augustine, 154 N.W. 782 (Iowa 1915).