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CHARITABLE INSTITUTIONS — MALPRACTICE OF PHYSICIANS — STATUTE OF LIMITATIONS.—Defendant is a charitable institution maintaining a hospital. The plaintiff submitted to an operation at defendant's free clinic. She brings this action against the defendant for personal injuries sustained by her due to the alleged negligence of the doctor assigned by the defendant to perform the operation. The plaintiff alleges that the defendant was negligent in selecting the physician assigned to her. This action was brought more than two and less than three years after the operation. Lower court dismissed the complaint on the ground that the physician's malpractice was the basis of the action, and the action was therefore barred by the two-year Statute of Limitations applicable to malpractice actions.

On appeal, *held,* reversed. A charitable institution is not liable for the malpractice of its physicians. It may be held liable only for its negligence in selecting doctors who are incompetent and unfit to perform the work assigned to them. Negligence, therefore, being the basis of the action, the suit could be brought at any time within three years after the cause of action arose. *Roewekamp* v. *New York Post-Graduate Medical School and Hospital,* 254 App. Div. 265, 4 N. Y. Supp. (2d) 751 (2d Dept. 1938).

CONSTITUTIONAL LAW — FEDERAL MUNICIPAL BANKRUPTCY ACT.—The question involved in this case is the constitutionality of a federal statute providing for the composition of the debts of municipalities with the consent of the state. The bankrupt involved is an "irrigation district" but inasmuch as it is a creature of the state, the question of the applicability of the statute is not affected. A prior statute was declared unconstitutional because it did not require the consent of the state. *Ashton* v. *Cameron County District,* 298 U. S. 513, 56 Sup. Ct. 892 (1936). But as amended, the statute meets all the objections raised in the above case—the sovereignty of the state is not encroached upon. It must be kept in mind that the states are forbidden from "impairing the obligation of contract", hence no adequate relief to such municipal bankrupts is available from such source. *Held,* the statute is constitutional. The Tenth Amendment did not destroy, however, the right of a state to *make* contracts and give consent to actions which do not contravene the Federal Constitution. The Fifth Amendment is no bar to the effectiveness of a plan for the composition of the debts of an insolvent debtor. *United States* v. *Bekins,* et al., — U. S. —, 58 Sup. Ct. 811 (1938).

MOTOR VEHICLES—"GUEST RULE"—LEX LOCI.—Action to recover for personal injuries allegedly sustained in Montana. The parties were taking an automobile trip, toward the expense of which,

each contributed a specified sum. The accident occurred in Montana when the defendant driver, attempting to pass another car, was forced to drive into a ditch at the side of the road. Under the Montana law the owner or operator is not liable to a passenger riding as a guest or by invitation unless such injuries are caused by the grossly negligent and reckless operation of the vehicle. *Held,* since the accident happened in Montana, the law of that state governs the rights and liabilities of the parties. However, it is for New York courts to decide whether a person was or was not a "guest" or invitee within the meaning of the Montana statute. It has been uniformly held that if there is mutual benefit or any benefit at all conferred upon the owner of the automobile by the presence of the "passenger", the latter is not regarded as a guest within the statute. And the presence of the plaintiff who agreed to contribute a specified sum toward the expenses of the trip was within such classification. *Smith* v. *Clute,* 277 N. Y. 407, 14 N. E. (2d) 455 (1938); *Cf. Master* v. *Horowitz,* 237 App. Div. 237, 261 N. Y. Supp. 722 (3d Dept. 1932), *aff'd,* 262 N. Y. 609, 188 N. E. 86 (1933).

JURISDICTION—ORIGINAL JURISDICTION OF SUPREME COURT OF THE UNITED STATES.—Action by the Commissioner of Banks in the name of the State of Oklahoma to recover the statutory liability of a citizen of another state as a shareholder in an insolvent state bank. The question arises as to whether the State of Oklahoma can invoke the original jurisdiction of the Supreme Court of United States under Article III, Section 2 (2) of the Constitution (suits between a state and citizen of another state). *Held,* jurisdiction denied. It is insufficient to show that the state is the plaintiff. It must be the real party in interest, as in *Florida* v. *Mellon,* 273 U. S. 12, 47 Sup. Ct. 265 (1927). The recovery here was for the professed purpose and benefit of the depositors in the bank. (OKLA. STAT. § 9179); *Oklahoma* v. *Cook,* — U. S. —, 58 Sup. Ct. 608 (1938); *Cf. Kansas* v. *Colorado,* 206 U. S. 46, 27 Sup. Ct. 655 (1906); *Georgia* v. *Tennessee Copper Co.,* 206 U. S. 230, 27 Sup. Ct. 618 (1907).

PLEADING AND PRACTICE—MOTION TO VACATE JUDGMENT ENTERED FIVE YEARS BEFORE AGAINST DEFENDANT—SECTIONS 108 AND 508 OF CIVIL PRACTICE ACT.—Plaintiff was served personally in New Jersey by the trustees of her father's estate to appear in New York in order to determine the respective rights and legal relations of all parties in interest. Plaintiff defaulted and judgment was rendered against her on the ground that she had renounced all the benefits provided for her by the will of her father, the trust being terminated by operation of law. No copy of this judgment or notice of entry thereof was ever served upon the plaintiff. This action was instituted after

a lapse of five years and a motion was made to vacate the judgment. The Court of Appeals *held,* motion granted. The default judgment is within the meaning of Section 108 of the Civil Practice Act which declares, "The court, in its discretion and upon such terms as justice requires, at anytime within one year after notice thereof, may relieve a party from a judgment, order or other proceeding, taken against him through his mistake, inadvertence, surprise or excusable neglect". Section 508 of the Civil Practice Act is addressed to judgments after trial and not to inquests on default to which Section 108 is applicable. No necessary conflict results when the two sections are read together. The word "notice" as used in Section 108 means service of a copy of a default judgment with written notice of entry thereof. *Redfield* v. *Critchley,* 277 N. Y. 336, 15 N. E. (2d) 73 (1938).

JURISDICTION—STATE LAW—"ERIE V. TOMPKINS" DOCTRINE. —In the instant case, the court found it necessary to construe the case of *Erie* v. *Tompkins,* 304 U. S. 64, 58 Sup. Ct. 817 (1938). In the prior action defendant posted a bond in the federal court, and after a decision for the plaintiff, the latter brought this action for attorney's fees. Defendant contends that according to the state law, attorney fees are deemed "damages" which are covered by the bond, and under the doctrine of the *Erie* case, the federal court must adopt the ruling of the state court. *Held,* for plaintiff. The bond in question is more than a simple contract. It is part of the "machinery" of the federal courts. The *Erie* case holds that state law is controlling "except in matters governed by the Federal Constitution or by acts of Congress". Since all proceedings in the federal courts, including requiring an injunction bond, are governed by the Constitution and the laws of the United States, defendant's contention must fall. *Travelers Mutual Casualty Co.* v. *Skeer,* — F. Supp. — (D. C. W. Mo. 1938); see Note (1938) 13 ST. JOHN'S L. REV. 71.