

# Constitutional Law--Conflict of Laws--Full Faith and Credit--Stockholders' Double Liability (Broderick v. Rosner, 294 U.S. 629 (1935))

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being mulcted by the seller<sup>5</sup> and giving the purchaser a ten-day period in which he can redeem seems to afford sufficient protection. It is apparent that Section 78 defines the rights of the buyer, by giving him ten days in which to redeem, and that Section 79 defines the rights of the seller, giving him the right to sell, if during the ten-day redemption period the buyer fails to redeem. There is no provision in either section that notice can be given only after the lapse of the ten-day period in which the buyer has the right to redeem.<sup>6</sup> The redemption period and the ten-day notice of resale may overlap.<sup>7</sup> If a seller wishes to advertise a public auction of the repossessed goods, he knows that such sale is subject to the purchaser's right of redemption. If the seller wishes to expend the necessary time and money in advertising a public auction to be held at the expiration of the redemption period, such action is not inconsistent with the purpose of the law. The purchaser is granted a ten-day period of redemption, and allowing this ten-day period to run concurrently with the ten-day period of notice does not defeat the purpose of the law, or in any way destroy the right of the purchaser to redeem, or the seller to sell at public auction.

G. H. M.

CONSTITUTIONAL LAW—CONFLICT OF LAWS—FULL FAITH AND CREDIT—STOCKHOLDERS' DOUBLE LIABILITY.—Plaintiff, as statutory liquidator of the Bank of the United States, a New York corporation, sought to recover in the New Jersey state courts unpaid assessments levied against defendant stockholders who are residents of New Jersey, pursuant to law.<sup>1</sup> By way of defense, the defendant, one of the stockholders, pleaded a New Jersey statute<sup>2</sup> under which plaintiff would have to bring an action in equity, naming all depositors, stockholders and creditors of the bank parties to the action. Plaintiff claimed that to sustain the defense would violate the full faith and credit clause of the Federal Constitution.<sup>3</sup> The trial court sustained the motion to strike out the complaint,<sup>4</sup> on the ground that the statute

<sup>5</sup> *Petze v. Waters*, 166 N. Y. Supp. 1000 (App. T. 2d Dept. 1917).

<sup>6</sup> *Commercial Credit Corporation v. Goldberg*, 130 Misc. 597, 224 N. Y. Supp. 177 (1927).

<sup>7</sup> *Ibid.*; *Freeman v. Engle*, *Strickland v. Hare and Chase, Incorporated*, both *supra* note 3.

<sup>1</sup> N. Y. CONST., art. VIII, §7; N. Y. BANKING LAW (1909) §§80, 120.

<sup>2</sup> 2 Comp. St. N. J. (1910) p. 1656, §94b; see 2 BEALE, CONFLICT OF LAWS (1935) §1868 for a discussion of this section.

<sup>3</sup> U. S. CONST., Art. IV, §1 provides, "that full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other state."

<sup>4</sup> *Broderick v. Abrams, et al.*, 112 N. J. L. 309, 170 Atl. 214 (1934), *aff'd*, 113 N. J. L. 305, 174 Atl. 507 (1934).

of New Jersey constituted a bar to plaintiff's action. The judgment was affirmed by the appellate court.<sup>5</sup> Plaintiff appealed to the Supreme Court of the United States. *Held*, reversed. The power of a state to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard therein is subject to the limitations imposed by the Federal Constitution. *Broderick v. Rosner*, 294 U. S. 629, 55 Sup. Ct. 589 (1935).

Whether the courts of one state will enforce the liability of a stockholder of a corporation created in another state depends entirely upon the comity of the former.<sup>6</sup> A state cannot escape its constitutional obligations (under the full faith and credit clause),<sup>7</sup> by the simple device of denying jurisdiction in such cases to courts otherwise competent.<sup>8</sup> A state can legislate only with reference to its own jurisdiction<sup>9</sup> and the full faith and credit clause does not require the enforcement of every right which has ripened into a judgment of another state or has been conferred by its statutes.<sup>10</sup> The statutory liability<sup>11</sup> sought to be enforced is contractual<sup>12</sup> and not penal.<sup>13</sup> The assessment is an incident of the incorporation. A corporation is subject to the regulatory power of the state of incorporation, so much so, that no other state can be said to have any public policy thereon. In respect to the determination of liability for an assessment,<sup>14</sup> the New Jersey stockholders submitted themselves to the jurisdiction of New York. For, "the act of becoming a member (of a corporation) is something more than a contract, it is entering into a complex and abiding relation, and as marriage looks to domicil,

<sup>5</sup> *Ibid.*

<sup>6</sup> *Whitman v. National Bank*, 176 U. S. 560, 20 Sup. Ct. 477 (1900).

<sup>7</sup> U. S. CONST., Art. IV, §1, *supra* note 3; Note, 74 A. L. R. 711; *Bradford Electric Light Co. v. Clapper*, 286 U. S. 145, 155, 52 Sup. Ct. 571 (1932). "Statutes are 'public acts' within the meaning of this clause."

<sup>8</sup> *Kenney v. Supreme Lodge*, 252 U. S. 411, 40 Sup. Ct. 371 (1920); *Fauntelroy v. Lum*, 210 U. S. 230, 28 Sup. Ct. 641 (1908). Under the full faith and credit clause of the Constitution the states of the Union must enforce a valid money judgment of a sister state even though it would have been contrary to the public policy of the forum to allow action on the original claim.

<sup>9</sup> *Bonaparte v. Tax Court*, 104 U. S. 592 (1881).

<sup>10</sup> *Bradford Electric Light Co. v. Clapper*, 286 U. S. 145, 160, 52 Sup. Ct. 571 (1932); *Alaska Packers Assn. v. Industrial Accident Commission*, 294 U. S. 532, 55 Sup. Ct. 518 (1935).

<sup>11</sup> N. Y. CONST., art. VIII, §7; N. Y. BANKING LAW (1909) §§80, 120; *Broderick v. Adamson*, 148 Misc. 353, 265 N. Y. Supp. 804 (1933).

<sup>12</sup> *Howarth v. Lombard*, 175 Mass. 570, 56 N. E. 888 (1900); *Howarth v. Angle*, 162 N. Y. 179, 187, 56 N. E. 489 (1900). *Contra*: *Van Tuyl v. Carpenter*, 135 Tenn. 629, 188 S. W. 234 (1916).

<sup>13</sup> *Huntington v. Attrill*, 146 U. S. 657, 13 Sup. Ct. 224 (1892); *Barth v. Pock*, 51 Mont. 418, 155 Pac. 282 (1915); RESTATEMENT, CONFLICT OF LAWS (1934) §611.

<sup>14</sup> *Converse v. Hamilton*, 224 U. S. 243, 260, 32 Sup. Ct. 415 (1912).

membership looks to and must be governed by the law of the State granting the incorporation."<sup>15</sup>

It is well settled that a receiver, in the absence of a statutory provision vesting him with rights as quasi-assignee or representative of creditors, has no power as of right to sue in the courts of a jurisdiction foreign to his appointment,<sup>16</sup> because he is considered merely as an arm or officer of the court which appoints him. The Superintendent of Banks is not an officer of any court, but is an administrative officer of the state<sup>17</sup> and in liquidation proceedings of any bank the corporate property and claims vest in him.<sup>18</sup> Where, however, the rights of a receiver do not rest merely upon his appointment by the court of another state, but there has been an assignment to him, in his official capacity, of the property in question, or, by virtue of the statute of such state, the title to the property is vested in him, he may sue and recover the same, not strictly by virtue of his appointment, but by reason of his title as an assignee.<sup>19</sup>

M. B. G.

CONSTITUTIONAL LAW—CONSTITUTIONALITY OF THE NATIONAL INDUSTRIAL RECOVERY ACT.—The defendants are slaughterhouse operators in Brooklyn. They buy most of their poultry at the freight depots in New York City, although on a few occasions they have made purchases directly from commission men in Philadelphia. The chickens are slaughtered immediately and sold to retailers for local consumption. The Attorney-General secured the indictment of these defendants for violations of the "Live Poultry Code,"<sup>1</sup> and they

<sup>15</sup> *Modern Woodmen of America v. Mixer*, 267 U. S. 544, 69 L. ed. 783, 45 Sup. Ct. 389 (1925); 2 BEALE, *CONFLICT OF LAWS* (1935) 865-882; *RESTATEMENT, CONFLICT OF LAWS* (1934) §187.

<sup>16</sup> *Booth v. Clark*, 58 U. S. 322 (1854); *Sterrett v. Second National Bank*, 248 U. S. 73, 76, 39 Sup. Ct. 27 (1915).

<sup>17</sup> *N. Y. BANKING LAW* (1909) §80; *Broderick v. McGuire*, 119 Conn. 83, 101, 174 Atl. 314, 94 A. L. R. 890 (1935); *Van Tuyl v. Lewis*, 165 App. Div. 412, 150 N. Y. Supp. 786 (1st Dept. 1914); *Van Tuyl v. Schwab*, 165 App. Div. 412, 150 N. Y. Supp. 786 (1st Dept. 1914). In enforcing the stockholder's individual liability, the Superintendent of Banks acts on behalf of the creditors and not in any sense on behalf of the bank itself.

<sup>18</sup> *Isaac v. Marcus, et al.*, 258 N. Y. 257, 263, 179 N. E. 487 (1932).

<sup>19</sup> *Converse v. Hamilton*, 224 U. S. 243, 257, 32 Sup. Ct. 415 (1912); *Selig v. Hamilton*, 234 U. S. 652, 34 Sup. Ct. 926 (1914); *Bullock v. Oliver*, 155 Ga. 151, 116 S. E. 293 (1922); *Broderick v. Stephano*, 314 Pa. 408, 171 Atl. 582 (1934); *Broderick v. McGuire*, *supra* note 17, the court said, "that the Superintendent of Banks is just as much a quasi or statutory assignee of the right to enforce the obligations of stockholders as is a receiver seeking to enforce a similar obligation."

<sup>1</sup> "Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area in and About the City of New York," approved by executive