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Foreign Judgments-Defense of Fraud

FOREIGN JUDGMENTS—DEFENSE OF FRAUD—Suit in United States District Court N. D. Indiana on a judgment rendered in United States District Court N. D. Illinois, eastern division, on a cognovit note made by defendant. Defense that note was obtained by fraud, and that an attorney in fact confessed judgment, when an attorney of a court of record was authorized to do so. *Held,* a good defense. Court not required under Art. 4, Sec. 1 of the Constitution to give effect to the foreign judgment because the Illinois court had no jurisdiction to render a judgment obtained by fraud. Also that attorney in fact could not confess judgment. *Nardi v. Poinsette,* 46 Fed. (2nd) 347.

The principal case can be supported on the ground that the attorney in fact had no power to confess judgment, *Thomas v. Verden,* 160 Fed. 418, 87 C. C. A. 370, *Citizens Bank v. Brooks,* 23 Fed. 21.

The other ground of the decision is more open to question.

It seems plausible to say that no court has jurisdiction to render a judgment void because of fraud in obtaining the judgment and therefore because of this lack of jurisdiction other states are not required to recognize it under the full faith and credit clause, and will not recognize it as a matter of conflict of laws. The courts have not, however, adopted this

position. *Hanley v. Donogheu*, 116 U. S. 1; *Christmas v. Russel*, 5 Wall. 290 and *Maxwell v. Stewart*, 21 Wall 71, apparently require that full faith and credit be given to judgments of sister states where the court had jurisdiction over the parties and the subject matter, even though they were obtained by fraud. Other cases throw doubt on this position. *United States v. Throckmorton*, 98 U. S. 61, 25 L. Ed. 93; *Toledo Scale Co. v. Computing Scale Co.*, 261 U. S. 397, 67 L. Ed. 719, 43 Sup. Ct. Rep. 458. As a result of the ambiguity of the Supreme Court's position there is much confusion among the state decisions. *Freeman on Judgments*, 661. Some cases flatly repudiate this principle, as applied to jurisdiction obtained over the person by fraud. *Dunlap v. Cody*, 31 Iowa 260, 7 Am. Rep. 129 and note, 136. The majority of the modern opinions allow the forum to give equitable relief for certain types of fraud. *United States v. Throckmorton, supra.* And in the code states, allow fraud in obtaining it to be plead as an equitable defense to the judgment where there was an equitable remedy available in the state where rendered. *Levin v. Gladstein*, 142 N. C. 482, 56 S. E. 371, 32 L. R. A. (NS) 904 and note; *Joster v. Currie*, 198 U. S. 144, 49 L. Ed. 988. These courts allow collateral attack when the judgment could be set aside where rendered (*Ambler v. Whipple*, 139 Ill. 311, but see *Bell v. Bell*, 181 U. S. 175, 45 L. Ed. 804) either because service on defendant has been obtained by fraudulent means (*Abercronbie v. Abercronbie*, 64 Kan. 29, 67 Pac. 539; *Field v. Field*, 215 Ill. 496, 74 N. E. 443) or because defendant did not have an opportunity on account of fraud, to present proper defense (*Rogers v. Gwinn*, 21 Ia. 58), Art. 4, Sec. 1, not requiring a sister state to give more credit to a judgment than it would receive at home. *Motter v. Davis*, 65 S. W. 969. The great majority of courts refuse to collaterally attack foreign judgments when the fraud consisted in the conduct of the litigation or the fabrication of the cause of action, since defendant had a chance to properly defend himself. *Muscatial v. Mo. A. R. Co.*, 1 Dill (U. S.) 536; The Acorn Fed. Cases 29; *Dathe v. Thomas*, 109 Ill. App. 434; *Motter v. Davis, supra.*

The question in the principal case is further complicated by the fact that both were Federal cases.

Art. 4, Sec. 1 does not apply to Federal Courts. *Supreme Lodge K. of P. v. Meyer*, 265 U. S. 30, 68 L. Ed. 885. But there decisions are entitled to full faith and credit as state decisions, as a conflict of laws rule. *Sup. Lodge K. of P. v. Meyer, supra; Embry v. Palmer*, 107 U. S. 3. They are to be treated as domestic judgments of the state where rendered. *DuPasseur v. Rochereau*, 21 Wall. 130; *Hancock Nat. Bank v. Foruum*, 176 U. S. 640, 44 L. Ed. 619. And where deciding local issues, they are to be controlled by state law. *Mason v. United States*, 260 U. S. 545, 67 L. Ed. 396.

Both the Indiana and the Federal rule allow collateral attack on foreign judgments void where rendered. *Amary v. Amary, supra; Jones v. Britton Fed. Case* No. 7455; *First National Bank v. Cunningham*, 48 Fed. 510; *Peninsular Iron Co. v. Eells*, 68 Fed. 24, 15 C. C. A. 189, contra. *English v. Aldrich*, 132 Ind. 500; *Duringer v. Machinv*, 93 Ind. 495. Complications would arise if the state and Federal rule were different. In the cases decided, the Federal Courts have ignored the state rule. *Worthington v. Ball*, 90 Fed. 404, 33 C. C. A. 690; *Rose v. N. W. Fire & Marine Ins. Co.*, 67 Fed. 439.

The Federal Court of Indiana in looking to see whether the judgment was void where rendered, meets the further complication of whether the Illinois rule or Federal rule is to govern. Probably it would apply the Federal rule as to the kind of fraud that would make the judgment void where rendered. *First National Bank v. Liewer*, 187 Fed. 16; *Penn. R. R. v. Hummel*, 167 Fed. 89.

The fraud that was practiced seems to have been in obtaining the note, the judgment apparently being regular in form. In similar circumstances both Illinois and the Federal courts have refused collateral attack. *Muscantine v. Mo. R. R. Co.*, 1 Dill (U. S.) 536; *Whitcomb v. Schultz*, 223 Fed. 268, 13 C. C. A. 510; *Hollester v. Sobra*, 264 Ill. 535, 106 N. E. 507.

J. S. G.