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## Constitutional Law—Full Faith and Credit

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## Full Faith and Credit

The sweeping language of the full faith and credit clause of the Federal Constitution<sup>29</sup> has been made the subject of a number of exceptions and the exact scope of the concept is still uncertain.<sup>30</sup> One of the traditional exceptions is the doctrine that a foreign judgment rendered without jurisdiction over the person or the subject matter will not be honored when sued upon in a sister state. The basis of this rule is, of course, the requirement of due process of law, as such a judgment is void even in the state which gave judgment.

When a New Jersey judgment<sup>31</sup> dealing with a fraudulent sale of two bridges by a syndicate to a county bridge commission was brought into the New York Courts for enforcement,<sup>32</sup> the defendants opposed a motion for summary judgment against them by relying on another claimed due process exception to the requirement of full faith and credit. They argued that the New Jersey court had exceeded its jurisdiction in granting a form of relief different from that prayed for in the complaint thus depriving them of the kind of notice guaranteed them by the Constitution. The exact error alleged was that though the plaintiff had demanded rescission of the fraudulently induced contract, the Court had refused rescission, affirmed title to the bridge in the commission and decreed that the profits of the defendant be turned over to the plaintiff. In this way, the court was able to protect some bona fide purchasers of a bond issue made by the bridge commission. This, the defendants claimed, was as much a denial of due process as the imposition of a jail sentence in a civil action for money damages.

The court held that there was no denial of due process. The judgment rendered was "substantially responsive to the issues presented by the pleadings," which is the test set up by the Supreme Court.<sup>33</sup> Nor was there any necessity to discuss the defendant's argument based on alleged inconsistencies between the findings and the decree. The full faith and credit clause "precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based."<sup>34</sup> It is then the allegations in the complaint, rather than the findings, which determines

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29. U. S. CONST. art. IV, §1.

30. See, e.g. W. L. M. Reese and V. A. Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 COL. L. REV. 153 (1949), B. MacChesney, *Full Faith and Credit-A Comparative Study* 44 ILL. L. REV. 298 (1949-50), for discussions of recent developments.

31. *Driscoll v. Burlington-Bristol Bridge Co.* 8 N. J. 453, 86 A 2d 201 (1952).

32. *Connolley v. Bell*, 309 N. Y. 581, 132 N. E. 2d 582 (1956).

33. *Reynolds v. Stockton*, 140 U. S. 254 (1891). See also N. Y. CIV. PRAC. ACT §111, allowing amendments at any stage to correct mistakes in the remedy requested.

34. *Milliken v. Meyer*, 311 U. S. 457 (1940).

the jurisdiction of the court so far as the kind of relief which may be granted without offending due process is concerned.<sup>35</sup>

### Public Utilities—New Element in Rate-Fixing

For many years the Supreme Court had held that in determining reasonable rates upon the fair value of a utility's property used in public service, various factors must be taken into consideration, including reproduction value and original cost.<sup>36</sup> This remained the law until 1944 when the court virtually reversed itself, holding that the Constitution did not mandate consideration of any specific factor in rate-fixing, provided the rate fixed be just and reasonable.<sup>37</sup>

The Public Service Commission Law, under which the Commission operates, requires that the rates of public utilities be based upon the value of the property actually used by the utility.<sup>38</sup> In setting utility rates, the first step is establishing the rate base; then the rate of return is set by looking at tradition and by examining the capital market; applying the rate of return to the rate base gives the amount of return; utility rates are set so as to yield this amount.<sup>39</sup> The initial task then is to determine the appropriate rate base. The conflict in this area comes from those who urge that "original cost" be used as the base and those who prefer that "reproduction cost" be the base. Until the present time, the Commission has steadfastly refused to use anything but "original cost" as their base in setting rates, attempting to keep the base low and making any adjustments which are deemed necessary in the rate of return.<sup>40</sup> The utilities, on the other hand, have maintained that using "original cost" basis does not allow for inflation in plant and equipment prices. Thus the utilities aim for a high base, hoping that the rate of return will remain commensurately high, allowing for the imposition of higher rates and yielding higher earnings to the utility.

In the instant case,<sup>41</sup> the utility contended, and the Court of Appeals upheld

35. *Standard Oil Co. of Indiana v. Missouri*, 224 U. S. 270 (1912).

36. *Smyth v. Ames*, 169 U. S. 466 (1898).

37. *Federal Power Com'n. v. Hope Natural Gas Co.*, 320 U. S. 591 (1944).

38. N. Y. PUBLIC SERVICE COMMISSION LAW §97 The Commission shall, with due regard, among other things to a reasonable average return upon the value of the property actually used in the public service and to the necessity of making reservation out of the income for surplus and contingencies, determine the just and reasonable rates.

39. Somers, *Cost of Money as the Determinant of Public Utility Rates*, 4 BUFFALO L. REV. 289, 309 (1955).

40. Case No. 15235 Re: New York Telephone Co., N. Y. P. S. C., Separate Print p. 48, 49 (1951).

41. *N. Y. Telephone Co. v. P. S. C.*, 309 N. Y. 569, 132 N. E. 2d 847 (1956). The telephone company brought an Article 78 proceeding (sections 1283 et seq. of the Civil Practice Act). The Appellate Division annulled the Commission's action and the Court of Appeals affirmed its decision.