Sec. 1—Full Faith and Credit

The question arises whether the application to date, not by the Court alone but by Congress as well, of Article IV, § 1, can be said to have met the expectations of its Framers. In the light of some things said at the time of the framing of the clause, this may be doubted. The protest was raised against the clause that, in vesting Congress with power to declare the effect state laws should have outside the enacting state, it enabled the new government to usurp the powers of the states, but the objection went unheeded. The main concern of the Convention, undoubtedly, was to render the judgments of the state courts in civil cases effective throughout the Union. Yet even this object has been by no means completely realized, owing to the doctrine of the Court, that before a judgment of a state court can be enforced in a sister state, a new suit must be brought on it in the courts of the latter, and the further doctrine that with respect to such a suit, the judgment sued on is only evidence; the logical deduction from this proposition is that the sister state is under no constitutional compulsion to give it a forum. These doctrines were first clearly stated in *McElmoyle* and flowed directly from the new states' rights premises of the Court, but they are no longer in harmony with the prevailing spirit of constitutional construction nor with the needs of the times. Also, the clause seems always to have been interpreted on the basis of the assumption that the term "judicial proceedings" refers only to final judgments and does not include intermediate processes and writs, but the assumption would seem to be groundless, and if it is, then Congress has the power under the clause to provide for the service and execution throughout the United States of the judicial processes of the several states.

SCOPE OF POWERS OF CONGRESS UNDER PROVISION

Under the present system, suit ordinarily must be brought where the defendant, the alleged wrongdoer, resides, which means generally where no part of the transaction giving rise to the action took place. What could be more irrational? "Granted that no state can of its own volition make its process run beyond its borders . . . is it unreasonable that the United States should by federal action be made a unit in the manner suggested?" [146]

Indeed, there are few clauses of the Constitution, the merely literal possibilities of which have been so little developed as the Full

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in the field of conflicts . . . although the precise circumstances under which it will regard itself as having jurisdiction for this purpose are far from clear." Dodd, *The Power of the Supreme Court to Review State Decisions in the Field of Conflict of Laws*, 39 HARV. L. REV. 533, 562 (1926). It can hardly be said that the law has been subsequently clarified on this point.

[146] Cook, *The Power of Congress Under the Full Faith and Credit Clause*, 28 YALE L.J. 421, 430 (1919).