

No. 1
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191-73
Dec 3
Dec 4/25/60

Record No. **3691**

In the
Supreme Court of Appeals of Virginia
at Richmond

WILLIAM B. SCOTT

v.

**COMMONWEALTH OF VIRGINIA, EX REL.
C. F. JOYNER, JR., COMMISSIONER, ETC.**

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

M. B. WATTS, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

191 VA 73

RULE 5:12—BRIEFS

\$1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

\$2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

\$3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

\$4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) The opening brief of the appellant shall be filed in the clerk's office within twenty-one days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. The brief of the appellee shall be filed in the clerk's office not less than twenty-one days, and the reply brief of the appellant not less than two days, before the first day of the session at which the case is to be heard.

(b) Unless the appellant's brief is filed at least forty-two days before the beginning of the next session of the Court, the case, in the absence of stipulation of counsel, will not be called at that session of the Court; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

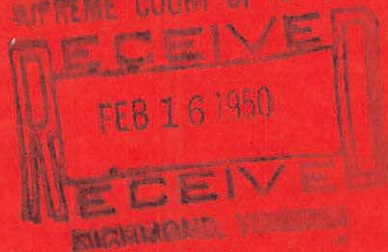
(c) Counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

\$5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

\$6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

\$7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

CLERK
SUPREME COURT OF APPEALS



The record reflects 1-14-60 - 1960

*Should be unconstitutional as to law
for it is not present in appeal in 1960
What correction means #22*

IN THE
SUPREME COURT OF APPEALS OF VIRGINIA
AT RICHMOND

WILLIAM B. SCOTT,

Appellant

v..

RECORD NO. 3691

COMMONWEALTH OF VIRGINIA, ex rel
C. F. JOYNER, JR., COMMISSIONER OF
THE DIVISION OF MOTOR VEHICLES,

Appellee

REPLY TO THE MEMORANDUM OF THE APPELLANT UPON THE
QUESTION OF THE AUTHORITY OF THE CIRCUIT COURT OF
FAIRFAX COUNTY TO REVIEW THE ACTION OF THE COMMISSIONER

The following is a reply to a memorandum which was filed by counsel for the appellant on April 24th, the day on which the oral argument of this case was heard.

Under the plain terms of Section 46-424 of the Code, the Courts are prohibited from reviewing cases where the action of the Commissioner in revoking operators' licenses is mandatory. The term "mandatory" here is used in contrast to the term "discretionary" in describing any action taken by the Commissioner under the Act. In other words, the actions of the Commissioner taken under the provisions of sections 46-420 and 46-423, in revoking licenses after hearings, are illustrations of cases where the Commissioner's acts are discretionary; whereas, his actions under the provisions of sections 46-416 and 46-454 of the Code are mandatory. Acting under the provisions of those sections, in revoking driving licenses, the Commissioner's duty is to accept the abstracts of convic-

tion as sent him by the various courts. Unless there is something on the face of the abstract or record itself that indicates that the court is not the court of proper jurisdiction, or there is some other irregularity attached to the proceeding, he must act. Certainly it was never the intention of the Legislature that the Commissioner should probe back of these convictions and ascertain in each instance whether the accused was properly represented by counsel, or whether the officers, in making the arrests, or the courts, in trying the cases, have fulfilled their duties. To have placed such a responsibility and duty on the Commissioner before he could lawfully act under the plain mandate of the statute would have placed on him a stupendous task, one not contemplated by the Legislature in an Act which has been in force for nearly two decades.

If we concede, for the sake of argument, that the Circuit Court of Fairfax County had the duty to review this act of the Commissioner (which it is prohibited to do by the Statute), then it is fair to ask the question: to what extent is the responsibility and duty of the reviewing court in such an instance? The term "review" in this connection means to scrutinize the acts of the Commissioner to determine whether that officer acted in accordance with the law. Under the provisions of Section 46-454, it is the duty of the Commissioner to revoke the driving permit of an individual "upon receiving notice of his conviction in a court of competent jurisdiction". The Circuit Court of Fairfax County did ascertain from the pleadings which were filed that the Virginia Motor Vehicle Commissioner was duly notified by the Maryland Motor Vehicle Department that Scott had been convicted and that that State had revoked his driving privileges. And the Circuit Court of Fairfax County went a step further and examined the authenticated certificate of the court pro-

ceedings in the Trial Magistrate's Court of Prince Georges County, Maryland, There being nothing on the face of this record to indicate jurisdictional defects, the Circuit Court of Fairfax County rightly accepted the judgment of conviction as valid, and refused to hear extrinsic evidence to the effect that the accused was not intoxicated at the time of the occurrence, having imbibed only two bottles of beer; that he had been maltreated by the arresting officers and held in jail until he furnished bond. By the weight of authority, in order that a judgment may be collaterally attacked for jurisdictional defects, the want of jurisdiction must affirmatively appear on the face of the record.

"A judgment or decree which is void for want of jurisdiction is open to contradiction or impeachment in a collateral, as well as a direct, proceeding. In order to be collaterally attacked the want of jurisdiction must affirmatively appear on the face of the record, and the facts showing the want of jurisdiction must be alleged."

49 C. J. S. Judgments, Sec. 421

See also Vol. 6 of Michie's Digest of Virginia and West Virginia Reports,

Sec. 357, reading in part as follows:

"A collateral attack is an attempt to impeach a judgment or decree in a proceeding not instituted for the express purpose of annulling, correcting, or modifying such judgment or decree. * * *

"Not open to such attack unless want of jurisdiction appears from face of record." Citing a host of authorities.

The case of Ex Parte Kearney, 7 Wheat. 38, 5 L. Ed. 391 (1822), quoted by the Appellant, was a habeas corpus proceeding before the Supreme Court of the United States, in which relief was sought from a judgment for contempt of a lower court. The Supreme Court held that it would not go back of the conviction in such cases and, therefore, relief was denied. This decision bears out our theory of the subject case.

If the Appellant has any reason to believe that the judgment against him in Maryland is void and could be successfully attacked collaterally, the doors of that forum are open to him, and he could proceed at this time or at any time to have the courts of that State pass on whether or not that judgment is a nullity. He knows very well that he would be unable to do that, and now seeks relief before the courts of this Commonwealth in a type of proceeding which was never intended to be used as a means of determining the validity of these judgments of conviction.

The Appellant has pointed to no authority to indicate that the Trial Magistrate Court of Prince Georges County, Maryland, which tried Mr. Scott, was not a court of competent jurisdiction; nor has he pointed out where that court did not have jurisdiction over the person of Mr. Scott. On the other hand, we have cited the Maryland statute to show that that court was a court of competent jurisdiction; we have referred the Court to the authenticated copy of the record, showing that Scott was before that court and requested that the case be continued, and that he deliberately failed to appear at the trial or to appeal from the judgment of the conviction. He has instituted no proceedings whatsoever in the State of Maryland or elsewhere to test the validity of that judgment; and we submit that he certainly should not be permitted to successfully assert its invalidity in this proceeding.

Appellant states that the Trial Magistrate Court of Prince Georges County, Maryland, is not a court of competent jurisdiction within the meaning of the "Virginia Motor Vehicle Safety Responsibility Act". He does not deny, however, that that court had the jurisdiction to try the offense of which he was convicted; but seeks to establish the want of jurisdiction because he was denied

due process. In other words, he says that the court has jurisdiction of the subject matter, but in this particular case has lost its jurisdiction. See again Vol. 6 of Michie's Digest of Virginia and West Virginia Reports, Sec. 357, reading in part as follows:

"And the inquiry is confined to whether the court had jurisdiction of the subject matter and cannot extend to the question whether it had jurisdiction in the particular case. Fisher v. Bassett, 9 Leigh 119; Cox v. Thomas, 9 Gratt. 323, 328; Hall v. Hall, 12 W. Va. 1, 3."

We submit that as there is nothing on the face of the record to indicate that the Maryland court does not have jurisdiction, the Appellant in this proceeding cannot have this Court pass upon the question that could have been rightfully passed upon by the courts having appellate procedure in the State of Maryland. There is nothing in the entire proceeding to indicate that the judgment of the Maryland Court is void.

Accepting everything that his counsel says happened in Maryland, such evidence would not be sufficient for any court to hold that the Maryland judgment was void. If the Magistrate's Court committed the errors he assigned, all these alleged errors (if they did, in fact, exist) could have been cured by appeal to the appropriate Maryland Court. There was no duty whatsoever on the part of the Circuit Court of Fairfax County to permit the Appellant to introduce this type of evidence -- and thereby act as an appellate court to review the alleged irregularities of the Maryland proceeding. The Circuit Court of Fairfax County examined the authenticated certificate of the conviction in Maryland and was satisfied that Scott was lawfully convicted; and under the express mandate of the Virginia statute, as well as under the terms of Article 4, Section 1, of the Constitution of the United States, which reads in part as follows:

"Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State.",

this judgment of conviction should be given full faith and credit; and the Commissioner was fully justified in his action of revoking the driving privileges of the Appellant. We submit that the Circuit Court of Fairfax County committed no error.

| | | |
|-------------------------|---|-------|
| D. Gardiner Tyler, Jr. | } | p. d. |
| Asst. Attorney General | | |
| J. A. Jamison, Attorney | | |

INDEX TO PETITION

Record No. 3691

| | Page |
|---------------------------|------|
| Statement of Case | 1* |
| Assignment of Error | 2* |
| Statements of Facts | 3* |
| Argument | 4* |
| Conclusion | 10* |
| Certificate | 11* |

Table of Authorities

| | |
|--|-----------------|
| Code Section 2154 (188) | 1* |
| Code Section 2154 (a21), Subsection "C" | 1* |
| United States Constitution, 14th Amendment, | |
| 2*, 7*, 8*, 9*, 10* | |
| Constitution of Virginia, Art. 1, Sec. 8..... | 2*, 4*, 8*, 10* |
| Constitution of Virginia, Art. 1, Sec. 11..... | 2*, 8*, 10* |
| <i>Barber v. State</i> , 62 A. (2d) 662 | 9* |
| <i>Betts v. Brady</i> , 316 U. S. 455, 86 L. Ed. 1595..... | 7* |
| <i>Bobo v. Comm.</i> , 187 Va. 386..... | 5* |
| <i>Brown v. Mississippi</i> , 297 U. S. 278, 80 L. Ed. 682..... | 8* |
| <i>Coates v. State</i> , 25 A. (2d) 676 | 9* |
| <i>Eagles v. U. S.</i> , 329 U. S. 304, 91 L. Ed. 308..... | 8* |
| <i>Gibbs v. Burke</i> , 93 L. Ed. (Avd.) 1343 | 7* |
| <i>Griffin v. Griffin</i> , 327 U. S. 220, 229, 90 L. Ed. 635, 640.... | 9* |
| <i>Hansbury v. Lee</i> , 311 U. S. 32, 85 L. Ed. 22..... | 8* |
| <i>Hilton v. Guyot</i> , 159 U. S. 113, 40 L. Ed. 95..... | 6* |
| <i>Huntington v. Atrill</i> , 146 U. S. 657, 36 L. Ed. 1123..... | 6* |
| <i>Johnson v. Zerbst</i> , 304 U. S. 458, 82 L. Ed. 1461..... | 8*, 7* |
| <i>Loucks v. Standard Oil Co.</i> , 224 N. Y. 99, 111, 120 N. E. | |
| 198 | 6* |
| <i>McNabb v. U. S.</i> , 318 U. S. 332, 87 L. Ed. 819..... | 7*, 8* |
| <i>Mooney v. Holoban</i> , 294 U. S. 103, 79 L. Ed. 791..... | 8* |
| <i>Raymond v. State</i> , 65 A. (2d) 285 | 9* |
| <i>Smith v. O'Grady</i> , 312 U. S. 329, 85 L. Ed. 859..... | 8* |
| <i>Thompson v. Whitman</i> , 18 Wall. 457, 21 L. Ed. 897..... | 7* |
| <i>Wetmore v. Karrick</i> , 205 U. S. 141, 51 L. Ed. 745..... | 9* |
| <i>Western Life Indemnity Co. v. Rupp</i> , 235 U. S. 261, 59 | |
| L. Ed. 220 | 9* |
| <i>Winston v. Comm.</i> , 188 Va. 386..... | 4*, 5*, 7*, 8* |

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 3691

WILLIAM B. SCOTT, Appellant,

versus

**COMMONWEALTH OF VIRGINIA, EX REL C. F. JOY-
NER, JR., COMMISSIONER OF MOTOR
VEHICLES, Appellee.**

PETITION.

*To the Honorable Chief Justice and Justices of the Supreme
Court of Appeals of Virginia:*

Your petitioner, William B. Scott, respectfully represents that he is aggrieved by a final judgment and order rendered in and by the Circuit Court of Fairfax County, Virginia, on the 7th day of October, 1949, in the cause as styled above, the same being an appeal to that Court as provided under Section 2154 (188) and Section 2154 (a21), Subsection "C", Michie's Code of Virginia of 1942, as amended. A duly certified copy of the record in said Court is herewith presented, the original exhibits being forwarded to the Clerk of this Court by the Clerk of the Circuit Court of Fairfax County, Virginia.

Your petitioner represents to this Honorable Court that he is entitled to a trial in this Court as a matter of right as provided in said Code Sections.

2*

*ASSIGNMENT OF ERROR.

1. That the trial court erred in admitting into evidence a certified copy of an alleged judgment or conviction of your petitioner in the Police Justice of the Peace Court of Laurel, Maryland, and further refusing to hear argument of counsel for your petitioner that such alleged judgment or conviction was not entitled to full faith and credit under the United States Constitution because your petitioner had been denied due process of law by the Maryland court.

2. That the trial court erred in sustaining an objection made by counsel for defendant in error when counsel for your petitioner attempted to argue certain points and authorities to the trial court, including decisions of the Supreme Court of Appeals of Virginia and the United States Supreme Court, in an effort to show that the Maryland judgment or conviction was not entitled to full faith and credit under the United States Constitution.

3. That the trial court violated the due process clause of the 14th Amendment of the United States Constitution, as well as Article 1, Sections 8 and 11, of the Constitution of Virginia, by denying your petitioner due process of law in refusing to hear argument of counsel for your petitioner regarding the invalidity of the Maryland judgment or conviction and by giving full faith and credit to the Maryland judgment or conviction.

3*

*STATEMENT OF FACTS.

Your petitioner, William B. Scott, was arrested in the township of Laurel, State of Maryland, on the 4th day of May, 1949, on a charge of operating a motor vehicle while under the influence of intoxicating liquor, among other things. Although plaintiff in error protested that he was not intoxicated, having consumed only one or two bottles of beer, he was, nevertheless, taken to the local jail and placed in a cell. He requested permission to call his family, which request was denied, and to have a medical examination by a physician in order to prove that he was not intoxicated in any degree, which request was also denied. Scott was not taken before a committing magistrate and no bond was set and, even more flagrant in nature, was held incommunicado for a period of approximately thirty-nine hours. Finally, on the 6th of May, 1949—two days later—he was able to reach his wife in Virginia by telephone, who immediately came to Laurel, Maryland, and arranged his release by the payment of \$135.10 as

"collateral". At this time, both the plaintiff in error and his wife were told by police officers that payment of the said sum of money would "square everything" and that nothing would happen to Scott's driving permit, which they returned to him together with other papers and personal property taken from him at the time of his arrest. On the 13th day of May, 1949, without any further notice to the plaintiff in error, a conviction was noted against him in the Police Justice 4* of the Peace Court at Laurel, Maryland, by Trial Justice Allen Bowie of that Court. It was not until the plaintiff in error received a communication from the Commissioner of Motor Vehicles of the Commonwealth of Virginia in regard to the revocation of his operator's license that your petitioner realized what had occurred. At that time, your petitioner retained counsel and instituted the action in the trial court, which resulted in the filing of this Petition in this Honorable Court.

ARGUMENT.

I. *Had the Maryland Judgment Been Rendered in Virginia, It Would Have Been Void.*

It is clear that a judgment of conviction based on the failure of the accused to appear at the trial, which failure was caused by the assurance of police officers to the accused that an election to forfeit collateral was the wiser course, obtained in Virginia in the circumstances here, would be held invalid by the Supreme Court of Appeals of Virginia as violative of Article 1, Section 8, of the Constitution of Virginia, *Winston v. Comm.*, 188 Va. 386. The *Winston* case is virtually on all fours with the instant case. To the extent that it is not, the case here is the stronger. In the *Winston* case, this Court held that unlawful detention for a period of "nearly five hours" after an arrest for driving under the influence of intoxicating liquor was sufficient to require the reversal of a judgment of conviction and the dismissal of the prosecution. 5* The Supreme Court of Appeals of Virginia, by Eggleston, J., said: " * * * where, as here, the effect of the failure of the arresting officer and the custodian of the arrested person to perform their respective duties is such as to deprive a person of the constitutional right to call for evidence in his favor, his subsequent conviction lacks the required due process of law and cannot stand."

In the instant case, as in the *Winston* case, the accused was arrested without a warrant on a charge of driving while under

the influence of intoxicating liquor. In the instant case, as in the *Winston* case, the accused was detained in jail without authority from any committing officer, and deprived of any opportunity to consult counsel, a physician, family or friends. In the instant case, unlike the *Winston* case, the accused was detained thirty-nine (39) hours, rather than the "nearly five hours". In the instant case, as in the *Winston* case, the accused was unlawfully deprived of the right to procure medical or other evidence in his favor. That he may not have been thereby prejudiced in so far as subsequent proceedings were concerned is immaterial. *Bobo v. Comm.*, 187 Va. 774. In the *Bobo* case, the Supreme Court, by Gregory, J., said: "Here it may be, according to the evidence, that a homicide was committed in cold blood, yet notwithstanding the enormity of the crime the prisoner, nevertheless, is entitled to the trial which the mandate of the Constitution *requires. We must not permit the doctrine of harmless error or the requirement that prejudice must be shown to over-balance those fundamental rights." (Italics supplied.) In any event, the same degree of prejudice is present in the instant case as in the *Winston* case.

It is respectfully submitted, therefore, that a conviction had in these circumstances in a Virginia court would not be a legal basis for the revocation of accused's operator's license.

II. *The Constitution of the United States Does Not Require That Full Faith and Credit Be Given Penal Judgments.*

Does the fact that this conviction was had in Maryland require a different result? The answer is clearly no. In no event does the full faith and credit clause of the Constitution of the United States require one state to give any faith and credit to the penal judgments of a sister state, *Huntington v. Attrill*, 146 U. S. 657, 36 L. Ed. 1123. Therefore, to the extent that Virginia or any other state gives full faith and credit to a penal judgment of a sister state, it does so *as a matter of choice*. In making its choice, it, the state, bases its decision on whether, in its view, the judgment is the result of a proceeding which squares with its conception of fundamental fairness and justice and sound policy. *Loucks v. Standard Oil Company*, 224 N. Y. 99, 111, 120 N. E. 198. Compare *Hilton v. Guyot*, 159 U. S. 113, 40 L. Ed. 95, which grounds the enforcement of foreign judgments on their essential fairness and reciprocity. As has been seen, the instant judgment does

not meet Virginia's test of fairness or justice *or sound
7* policy. Indeed, it so far departs from Virginia's stand-
ards that it would be unconstitutional if rendered in Vir-
ginia, *Winston v. Comm., supra*. It certainly cannot be main-
tained that the Virginia Legislature intended the provisions
of its statute here invoked to require the revocation of an
operator's license on the basis of such a conviction.

III. *The Maryland Judgment Is Not Entitled to Full Faith and Credit Because the Court Rendering It Denied Due Process of Law Under the 14th Amendment and Thereby Lost Jurisdiction.*

A. Even if the full faith and credit clause of the United
States Constitution were held to be applicable to the penal
judgments of a sister state, it would not be applicable in the
present circumstances. That clause does not foreclose an in-
quiry into the jurisdiction of the court rendering the judg-
ment for which full faith and credit is sought, *Thompson v.*
Whitman, 18 Wall. 457, 21 L. Ed 897 (1873); and a judgment
without jurisdiction of the court rendering it is not entitled
to any faith and credit, *Thompson v. Whitman, supra*.

B. The Maryland judgment was rendered without due
process of law under the 14th Amendment of the Constitution
of the United States because accused was not permitted to
procure counsel, *Johnson v. Zerbst*, 304 U. S. 458, 82 L. Ed.
1461 (1938); *Betts v. Brady*, 316 U. S. 455, 86 L. Ed. 1595;
Gibbs v. Burke, 93 L. Ed. (adv.) 1343; because accused was
held incommunicado for an unlawful period of time, as a re-
sult of which he was unable to gather evidence in his defense,
McNabb v. U. S., *318 U. S. 332, 87 L. Ed. 819; *Winston*
8* *v. Comm., supra*; and because he was tricked by the police
into not appearing at the trial on their false representa-
tion that he would not suffer a penalty other than the for-
feiture of the collateral, *Smith v. O'Grady*, 312 U. S. 329,
85 L. Ed. 859. Having been rendered without due process of
law, the judgment was beyond the jurisdiction of the court
rendering, *Johnson v. Zerbst, supra*; *Eagles v. U. S.*, 329 U. S.
304, 91 L. Ed. 308 (1946).

C. Being beyond the jurisdiction of the court, the judg-
ment is void for want of the essential elements of due pro-
cess, and the proceeding (can) be challenged in any appro-
priate manner, *Brown v. Mississippi*, 297 U. S. 278, 80 L. Ed.
682 (1936); *Mooney v. Holoban*, 294 U. S. 103, 79 L. Ed. 791
(1935). Attack by way of defense to the granting of full faith
and credit to such a judgment is certainly in an "appro-

priate manner". Moreover, were a court in Virginia to give full faith and credit to a judgment rendered in violation of due process of law; it would itself violate not only the due process clause of the 14th Amendment to the Constitution of the United States; but also Sections 8 and 11 of Article 1 of the Constitution of Virginia. Thus, in *Hansbury v. Lee*, 311 U. S. 32; 85 L. Ed. 22 (1940), the Supreme Court of the United States held, on a writ of *certiorari to the Supreme Court of Illinois*; that the latter's action in treating as *res adjudicata* a previous *judgment beyond the jurisdiction 9* of the rendering court was a denial of due process of law under the 14th Amendment of the United States Constitution. As the Supreme Court of the United States succinctly held in the case of *Griffin v. Griffin*, 327 U. S. 220, 229, 90 L. Ed. 635; 640: " * * * due process requires that no other jurisdiction shall give effect, even as a matter of comity; to a judgment elsewhere acquired without due process."

IV. *The Maryland Judgment Is Not Entitled to Full Faith and Credit Because It Is Void in Maryland.*

A. No judgment is entitled to any more faith and credit in a sister state than it is entitled to in the state that rendered it, *Wetmore v. Karrick*, 205 U. S. 141; 51 L. Ed. 745; *Western Life Indemnity Co. v. Rupp*, 235 U. S. 261; 59 L. Ed. 220.

B. The judgment in issue here is not entitled to any faith and credit in Maryland, the state which rendered it. Although, as far as can be ascertained, Maryland has no statute requiring the immediate commitment of one arrested from crime, the Maryland courts impose such a requirement. See *Barber v. State*, 62 A. (2d) 662 (1948). Furthermore, the Supreme Court of Maryland held as recently as this Spring that it is such a denial of constitutional rights for the police to refuse to permit persons under arrest to communicate with family or counsel and for the court to accept a plea of guilty in such circumstances that the judgment of conviction may be set aside on collateral attack, *Raymond v. State ex rel Sydlowski*, 65 A. (2d) 285 (1949), and see, also, *Coates v. State*, 25 A. (2d) 676 (1942).

10*

*CONCLUSION.

It is submitted that the trial court below should have refused the admission into evidence of the Maryland judgment or conviction until the jurisdiction of the Maryland court had been determined, since the jurisdiction of a foreign judg-

ment is always put into issue when it is offered into evidence. Further, it is submitted that the trial court should have permitted counsel for plaintiff in error to present points and authorities relative to the determination of the jurisdiction of the Maryland court; and that by so refusing to hear argument, together with points and authorities gleaned from decisions of the Supreme Court of Appeals of Virginia and the United States Supreme Court, the trial court violated the due process clause of the 14th Amendment to the United States Constitution, as well as Sections 8 and 11, Article 1, of the Constitution of Virginia. For the foregoing reasons, your petitioner respectfully prays that an appeal and *supersedeas* staying any action taken or about to be taken by the Commissioner of Motor Vehicles, or the Division of Motor Vehicles, Commonwealth of Virginia, pending final determination of this cause, may be awarded your petitioner from the judgment and order complained of. In conformity with Rule 9 of this Court, it is stated that plaintiff in error and defendants in error, respectively, who will be affected by a reversal hereof are William B. Scott, Petitioner, and C. F. Joyner, Jr., *Commissioner of Motor Vehicles, and the Division of Motor Vehicles, Commonwealth of Virginia.

Your petitioner does not desire an oral presentation of this Petition, the same being a formality. This Petition will be filed with the Clerk of the Supreme Court of Appeals of Virginia at Richmond, Virginia, December 7th, 1949, and a copy was mailed to counsel for defendant in error, Mr. D. Gardiner Tyler, Jr., Assistant Attorney General of the Commonwealth of Virginia, assigned to the Division of Motor Vehicles, who has represented the defendant in the lower court, on December 6th, 1949.

Petitioner states that bond in the sum of \$200.00 has been given in the lower court.

Respectfully,

WILLIAM B. SCOTT,
Plaintiff in Error.

By: WILLIAM C. NEMETH,
ROSWELL P. WALDO,
BRYCE REA, JR.,
Counsel.

CERTIFICATE.

I, William C. Nemeth, one of the undersigned, and attorney at law, duly qualified to practice in the Supreme *Court 12* of Appeals of Virginia, do certify that in my opinion there is error in the judgment and order of the Circuit Court of Fairfax County, Virginia, entered October 7, 1949, in the above-entitled cause, as complained of, for which the same should be reviewed.

This Petition is adopted as the opening brief.

WILLIAM C. NEMETH,
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BRYCE REA, JR.,
504 Radio Building,
Court House Square,
Arlington, Virginia,
Counsel for Plaintiff in Error.

Received December 7, 1949.

M. B. WATTS, Clerk.

Jan. 12, 1950. Appeal awarded by the court. No additional bond required.

M. B. W.

RECORD

VIRGINIA:

Pleas before the Honorable Paul E. Brown, Judge of the Circuit Court of Fairfax County, Virginia, at a Circuit Court held for said County, at the Courthouse thereof, on Thursday, the 3rd day of November, 1949.

William B. Scott, Petitioner,
versus

Commonwealth of Virginia, *ex rel* C. F. Joyner, Jr., Commissioner of Motor Vehicles, Respondent.

COMMONWEALTH CASE NO. 6947.

Be it remembered, that heretofore, to-wit, on the 19th day of July, 1949, came the Petitioner, by counsel, and filed in the Clerk's Office of said Court his Petition, in the words and figures following, to-wit:

page 2 } NOW COMES the petitioner, William B. Scott, by his attorney, William C. Nemeth, and petitions the above-styled Court pursuant to Section 2154 (188), and Section 2154 (A21), Code of the Commonwealth of Virginia, to effect an appeal from an order dated June 21, 1949, by the Division of Motor Vehicles, Commonwealth of Virginia, revoking the said petitioner's operators license in the Commonwealth of Virginia.

The said petitioner is a resident of the State of Virginia and is at the time of filing this petition living in Fairfax County, Virginia, his address being R. F. D. #3, Box 236, Vienna, Virginia, and the said petitioner hereby prays that this Honorable Court grant an appeal from said order of the Division of Motor Vehicles and that he be heard in accordance with the said Laws of Virginia; that testimony be taken and the facts of the case be examined as to whether the petitioner is entitled to an operators license or is subject to revocation or suspension of said operators license under provisions of the laws of Virginia; that this Honorable Court shall notify the Commissioner of Motor Vehicles, Richmond, Virginia, by giving the said Commissioner ten (10) days' written notice as provided by law; that this Honorable Court shall order the said Commissioner to stay any action taken or about to be taken in regard to revocation or suspension of the petitioner's operators license pending final decision of this Honorable Court in this matter.

(Signed) WILLIAM B. SCOTT,
Petitioner by Counsel.

Signed WILLIAM C. NEMETH,
Counsel for Petitioner.

*Does not want what he is
giving L. from.*

page 3 } And on the 19th day of July, 1949, an Order was
entered by the Court in the words and figures following, to-wit:

In Re Appeal of William B. Scott.

THIS DAY came William B. Scott by his attorney, William C. Nemeth, and filed his petition pursuant to Section 2154 (188) of the Code of Virginia, setting forth that he is a resident of Fairfax County, Virginia, and having filed said petition within thirty (30) days as provided by law for an appeal from an order of the Division of Motor Vehicles of the Commonwealth of Virginia dated June 21, 1949, and praying to be heard to determine the right of said revocation of his operator's license and praying for a trial by jury; and praying for this Court to notify the Commissioner of Motor Vehicles, Richmond, Virginia, within ten (10) days as provided by law; and further praying that this Court shall order the said Commissioner to stay any action in regard to the revocation or suspension of the petitioner's license pending the final decision of this matter.

UPON CONSIDERATION WHEREOF, and upon argument of counsel, it is adjudged, and ordered that the said petition of the petitioner, William B. Scott, be heard as provided by law and that the Clerk of the Circuit Court of Fairfax County, Virginia, is hereby ordered to notify the Commissioner of Motor Vehicles, in Richmond, Virginia, that a petition for an appeal from the order revoking the operator's license of the petitioner has been filed within thirty (30) days of the revocation as provided by law; that pending a final decision in this matter the said Commissioner of Motor Vehicles is hereby ordered to stay any action in regard to the revocation or suspension of the said petitioner's
page 4 } operators license; and that the matter is hereby
ordered to be heard on the 19th day of September, 1949, before this Court.

AND THIS CASE IS CONTINUED.

(Signed) PAUL E. BROWN, Judge.

page 5 } And on the 22nd day of July, 1949, a Motion to
Dismiss was filed in Open Court in the words and
figures following; to-wit:

Now comes the Commonwealth of Virginia, *ex rel* C. F. Joyner, Jr. Commissioner of Motor Vehicles, and moves this Honorable Court to vacate its order entered on or about July 19, 1949, in this matter, which said order stays the action of the Commissioner of the Division of Motor Vehicles in revoking the driving privileges of William B. Scott, and to dismiss this proceeding for the following reasons:

1. According to the Exhibits filed in said petition and in accordance with the records of the Division of Motor Vehicles, William Brooke Scott was convicted of driving a motor vehicle while intoxicated, in the Court of the Justice of the Peace at Laurel, Maryland, on May 13, 1949. That in accordance with the mandatory provisions of sections 16 and 61 of Chapter 384, Acts of 1944, section 2154 (a16) and (a61) of Michie's Code, it became the mandatory duty of the Commissioner of the Division of Motor Vehicles to revoke the driving privileges of said Scott for a period of one year.

2. That although the language in said Court order would imply that this proceeding was under the provisions of section 2154 (188) (which is section 19 of Chapter 385, Acts of 1932), as a matter of fact and law the proceeding is under the provisions of Chapter 384, Acts of 1944, as the action of the Commissioner—as shown on the Exhibit filed in this cause—was taken pursuant to that act (Chapter 384, Acts of 1944). Section 21 of Chapter 384, Acts of 1944, reads as follows:

page 6 } “(a) Any person aggrieved by an order or act of
the Commissioner requiring a suspension or revocation of his license or registration under the provisions of this act, may, within thirty days from the date of such order or act, file a petition in any court having criminal jurisdiction in the city, or county in which the petitioner resides for a review, but the commencement of such proceeding shall not suspend the order or act unless for good cause shown, a stay be allowed by the court pending final determination of the review.

“(b) No review shall lie in any case in which the revocation of the license or registration was mandatory except to determine the identity of the person concerned when the question of identity is in dispute.

“(c) From the final judgment of any such court, the person who petitioned the court for a review, shall have an appeal as of right to the Supreme Court of Appeals of Virginia.” (Chapter 469, Acts 1948.)

There is no review permitted in mandatory revocations such as this. If this proceeding were under the provisions of section 2154 (188) of Michie's Code, then the Court has failed to follow that section by setting the case for trial within ten days after notice to the Director (Commissioner).

3. Even under the provisions of section 2154 (188) of Michie's Code, Chapter 385 of the Acts of 1932, known as the Virginia Operators' and Chauffeurs' License Act, there is no appeal to the Courts permitted in mandatory revocation cases. In other words, section 2154 (188) applies only to discretionary revocations of operating privileges. In this connection, this was definitely decided in the case of *Law v. Commonwealth*, 171 Va. 449, and I quote from the headnotes in that case:

page 7 } “In the instant case, an action for relief from the revocation of an automobile operator's license, petitioner had been twice convicted of reckless driving within a year, and the Director of the Division of Motor Vehicles ordered that his license be revoked for a period of one year, pursuant to section 2154 (186) of the Code of 1936. Both the Director and the Trial Court refused to go into the merits of the convictions, being of opinion that the statute was mandatory. Petitioner contended that the Director arbitrarily denied him a hearing to which he was entitled.

Held: That there was no merit in petitioner's contention, since under section 2154 (186) there is no provision for a hearing at all after two convictions of reckless driving, and the trial court could not pass upon the judgments of the trial justices, as petitioner had not seen fit to exercise his right of appeal and so such judgments had become final.”

COMMONWEALTH OF VA.

(Signed) By: D. GARDINER TYLER,
Counsel.

page 8 } And on the 7th day of October, 1949, an Order was entered by the Court in the words and figures following, to-wit:

This day came the Commonwealth of Virginia, *ex rel* C. F. Joyner, Jr., Commissioner of Motor Vehicles, by counsel, and

filed a motion to vacate a certain order entered herein on July 19, 1949 and to dismiss this proceeding. Likewise came the petitioner, by counsel.

The same being considered by the Court, the Court is of the opinion that the revocation of the driving privileges of the petitioner herein was mandatory and, therefore, the Court had no authority under the provisions of Section 2154 (a21) of the Code to consider the petition and grant the relief prayed for therein.

It is, therefore, Adjudged and Ordered that the order entered in this case on July 19, 1949, staying the action of the Commissioner in revoking the driving privileges of the petitioner, be and the same is hereby vacated and annulled; and the proceeding herein is dismissed at the cost of the petitioner. To which action of the Court the Petitioner excepts and noted his intention of appealing said matter and bond is hereby fixed at \$200.00.

Enter:

(Signed) PAUL E. BROWN, Judge.

We Ask for this

D. GARDINER TYLER (Signed)
Counsel for the Commonwealth of Va.

October 7th, 1949.

page 9 } And on the 29th day of October, 1949, a Notice of
Presentation of Certificate of Exceptions was filed in
Open Court in the words and figures following, to-wit:

To: D. Gardiner Tyler, Jr.
Assistant Attorney General
Commonwealth of Virginia
Attorney for Respondent

PLEASE TAKE NOTICE that on Saturday, October 29, 1949, at 10:00 o'clock, A. M., or as soon thereafter as counsel may be heard, the undersigned will tender before the Circuit Court of Fairfax County, Virginia, in the Courtroom thereof, a certificate or bill of exceptions in the above-entitled cause, said certificate or bill to consist of certain exceptions made by counsel for the Petitioner to rulings of the Court as to admission of certain evidence and to the ruling of the

Court that the Court would not hear any evidence tending to show the guilt or innocence of the Petitioner, or that the Petitioner was denied due process of law, to which rulings Petitioner duly noted his exceptions.

Dated this 24th day of October, 1949.

WILLIAM B. SCOTT,
By Counsel.

Counsel for Petitioner:

WILLIAM C. NEMETH (Signed)
and
ROSWELL P. WALDO (Signed)

Legal and Timely service of the foregoing is hereby accepted and acknowledged.

D. GARDINER TYLER, JR. (Signed)
Counsel for Respondent.

page 10 { And on the 3rd day of November, 1949, an Order
was entered by the Court in the words and figures
following, to-wit:

This day came the petitioner, William B. Scott, by his counsel, pursuant to notice, service of which was accepted by counsel for the respondent, and asked for certain certificates of exceptions.

WHEREUPON, it is hereby ORDERED that the notice be filed as a part of the record in the cause and certificates of exceptions A, B, C and D tendered are granted as follows:

A. BE IT REMEMBERED that the arguments mentioned in an order entered on October 7, 1949, and filed with the Court and made a part of the record are identified as Exhibits.

I. Order of the Division of Motor Vehicles,
II. Certified copy of judgment or conviction entered in the Police Justice of the Peace court, Laurel, Maryland,

B. BE IT REMEMBERED that the argument and objection and the contention of counsel for petitioner in regard to the admission into evidence of a certified copy of an alleged

U. offer a Harper of sentence to detain.

W. B. Scott v. Commonwealth, ex rel C. F. Joyner, Jr. 15

judgment or conviction of petitioner in the Police Justice of the Peace Court, Laurel, Maryland, and certified to by Judge Allen Bowie, and the Commissioner of Motor Vehicles, State of Maryland, were that such foreign judgment or conviction was not entitled to full faith and credit under the United States Constitution because petitioner had been denied due process of law by the Maryland Court in that the petitioner was held for thirty-nine hours without arraignment, or the opportunity for petitioner to obtain a medical examination in order to present medical evidence in his behalf, or legal counsel, said Maryland Court thereby failing to
page 11 } have jurisdiction in the matter and such judgment
or conviction thereby being invalid and not entitled
to full faith and credit.

C. BE IT REMEMBERED that counsel for petitioner attempted to argue certain points and authorities to the Court, including United States Supreme Court decisions, as well as those of the Supreme Court of Appeals of Virginia, in an effort to establish that the Maryland judgment or conviction was not entitled to full faith and credit under the United States Constitution, but that the Court refused to hear argument upon objection of counsel for respondent, and after sustaining said objection, counsel for petitioner duly noted his exception thereto.

D. BE IT REMEMBERED that petitioner, by counsel, objected to the entry of the order dated October 7, 1949, on the grounds that said order denied the petitioner due process of law as guaranteed under Article 4, Section 1, United States Constitution, and Article 1, Section 11, Constitution of Virginia, and thereupon noted his intention to appeal to the Supreme Court of Appeals of Virginia.

(Signed) PAUL E. BROWN, Judge.

page 12 } And on the 16th day of November, 1949, a Notice
of Application for Transcript of Record was filed
in the Clerk's Office of the Court in the words and figures following, to-wit:

To: D. Gardiner Tyler, Jr.
Assistant Attorney General
Commonwealth of Virginia
Office of the Attorney General
Richmond, Virginia.

Take notice that on the 16th day of November, 1949, the undersigned will apply to the Clerk of the Circuit Court of Fairfax County, Virginia, for a transcript of the record in the case of William B. Scott *v.* Commonwealth of Virginia *ex rel* C. F. Joyner, Jr., Commissioner of Motor Vehicles, said transcript to consist of all pleadings, exhibits, memoranda and orders, together with any and all parts of the official record of the above-styled cause, specifically including the order of the Court entered on the 7th day of October, 1949; said transcript of said official record to be certified by the Clerk of the said Court as a true copy of the original record in the cause heretofore stated.

WILLIAM B. SCOTT,
By Counsel.

Counsel for Petitioner:

WILLIAM C. NEMETH (Signed)

Legal and timely service accepted and hereby acknowledged.

D. GARDINER TYLER, JR. (Signed)
Counsel for Respondent.

page 13 } I, Thomas P. Chapman, Jr., Clerk of the Circuit Court of the County of Fairfax, Virginia, do hereby certify that the foregoing is a true, accurate and complete transcript of the record in the case of William B. Scott, Petitioner, *versus* Commonwealth of Virginia, *ex rel* C. F. Joyner, Jr., Commissioner of Motor Vehicles, Respondent, Commonwealth Case No. 6947, in conformity with Sections 6339, 6340 and/or Section 6342 of the Code of Virginia.

I further certify that the notice required by said Section 6339 of the Code of Virginia was duly given by the Petitioner by acceptance of service of said notice by D. Gardiner Tyler, Jr., Attttorney for Respondent.

And I further certify that the bond in the amount of \$200.00 required by the order entered October 7, 1949, has been duly executed.

Given under my hand this 18th day of November, 1949.

THOMAS P. CHAPMAN, JR., Clerk.

A Copy—Teste:

M. B. WATTS, C. C.

INDEX TO RECORD

| | Page |
|---|------|
| Petition for Appeal | 1 |
| Record | 8 |
| Petition to Circuit Court | 8 |
| Order, July 19, 1949,—Staying Action | 10 |
| Motion to Dismiss | 11 |
| Order, October 7, 1949,—Complained of | 12 |
| Notice of Appeal | 13 |
| Certificates of Exception | 14 |
| Notice of Application for Transcript | 15 |
| Clerk's Certificate | 16 |