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Conflict of Laws—Taxation—Full Faith and Credit as Requiring a State to Enforce the Revenue Laws of Another State

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CONFLICT OF LAWS—TAXATION—FULL FAITH AND CREDIT AS REQUIRING A STATE TO ENFORCE THE REVENUE LAWS OF ANOTHER STATE—[Federal].—Suit was brought in the United States District Court for Pennsylvania by the State of New Jersey against a New Jersey corporation for corporate franchise taxes. *Held*, that the claim must be rejected, the court citing as authority, *Moore v. Mitchell*.¹

There has been no express holding by the Supreme Court of the United States on the question of whether or not one state must enforce the revenue laws of another state. There has been *dictum* rendered by the Supreme Court against such enforcement.² On the other hand, there was a very strong *dictum* in *Milwaukee County v. White*³ in favor of the extraterritorial enforceability of revenue laws.

Prior to the *Milwaukee County* case, it had been rather generally assumed that taxes were imposts collected for the support of the government and were not debts.⁴ The *Milwaukee County* case stated flatly, however, that "the obligation to pay taxes is not penal; it is a statutory liability, quasi-contractual in nature, enforceable in the civil courts by the common law action of debt or assumpsit."⁵ Nor can it be assumed that this was a mere whim of the Supreme Court of the United States in stating thus the nature of a tax claim; for the vote in the *Milwaukee County* Case was 7 to 2, only Justices Butler and McReynolds dissenting.

It would seem that of two sets of dictum, announced by the highest court in the land, the latest would be at least persuasive. But the District Court for Pennsylvania has not been of that mind, as is evidenced by the principal case.

There have been no other recent cases before the lower federal courts or the United States Supreme Court involving the specific problem. There have been few cases on the point in any court. Even in North Carolina, a state which expressed its willingness to enforce revenue laws of other states *ex comitate*, the first case on the point was also the last; it was rendered

1. *In re Pressed Steel Car Co. of New Jersey* (1937) 5 U. S. Law Week 115; *Moore v. Mitchell* (1930) 281 U. S. 18, 50 S. Ct. 175, 74 L. ed. 673.

2. *Moore v. Mitchell*, *supra*.

3. (1935) 296 U. S. 268, 275, 56 S. Ct. 229, 233, 80 L. ed. 220, 226.

4. *Land County v. Oregon* (1870) 74 U. S. 71, 19 L. ed. 101; *Merriweather v. Garnett* (1880) 102 U. S. 472, 26 L. ed. 197; *New Jersey v. Anderson* (1906) 203 U. S. 483, 27 S. Ct. 137, 51 L. ed. 921; *Richards v. Commissioners* (1894) 40 Neb. 45, 58 N. W. 594; *State v. C. & N. Ry. Co.* (1907) 128 Wis. 449, 108 N. W. 594; *Daniels v. Nelson* (1891) 41 Vt. 161, 98 Am. Dec. 577.

The dogmatic rule that one state does not enforce the penal or revenue laws of another state did not originate in cases involving the enforcement of foreign revenue laws, but had its inception in cases raising the question whether a contract which did not comply with the revenue laws where the contract was made was enforceable in the courts of the forum. *Ludlow v. Van Rensselaer* (N. Y. 1883) 1 Johns 93.

Most of the state courts that have passed upon the question of the enforceability of foreign revenue laws have expressed views similar to that of the dictum in *Mitchell v. Moore*; *Henry v. Sargeant* (1847) 13 N. H. 321, 40 Am. Dec. 146; *Colorado v. Harbeck* (1922) 232 N. Y. 71, 133 N. E. 357.

5. (1935) 296 U. S. 268, 275, 56 S. Ct. 229, 233, 80 L. ed. 220, 226.

33 years ago.⁶ In New York, where the privilege of recovering taxes has been extended to foreign states by statute,⁷ the courts are still citing *Colorado v. Harbeck*⁸ and announcing that "the policy of this state denies access to its courts for this purpose."⁹

It is submitted that despite the dogmatic language of the American Law Institute¹⁰ and of a text writer,¹¹ there is a fighting chance for a courageous tax collector who is willing to cast his lot with those who think that the *Milwaukee County* dictum foreshadows a future Supreme Court decision requiring extraterritorial enforcement of state revenue laws. The present state of the authorities was perhaps best summed up by Mr. Justice Stone in the *Milwaukee County* case when he said that it remains an open question in this court¹² whether one state must enforce the revenue laws of another.

F. S.

CRIMINAL LAW—HABITUAL CRIMINALS—EFFECT OF PARDONED OFFENSE—[California].—Defendant was convicted of grand theft in California and with two prior convictions of felonies in Texas, was sentenced to life imprisonment under the California Habitual Criminal Act. The defendant had been granted a pardon for these prior offenses in Texas. Did these pardons relieve him from the increased punishment prescribed for habitual criminals? *Held*, The California statute is general in nature and therefore is all inclusive. Since there is no special provision excluding persons who were pardoned after conviction, such persons are necessarily included in the general provisions of the statute.²

6. *Holshouser v. Gold Hill Copper Co.* (1905) 138 N. C. 248, 50 S. E. 650, 70 L. R. A. 183.

7. N. Y. Laws (1932) ch. 333.

8. (1922) 232 N. Y. 71, 133 N. E. 357.

9. *In re Cornell's Estate* (1933) 149 Misc. 553, 267 N. Y. S. 649, 652. See also *Moscow Fire Ins. Co. v. Trust Co.* (1937) 161 Misc. 903, 294 N. Y. S. 648, 673.

10. Restatement, *Conflicts* (1934) sec. 610: "No action can be maintained on a right created by the law of a foreign state as a method of furthering its own governmental interests." This is declared by comment (c) to refer to claims for taxes. Restatement, *Conflicts* (1934) sec. 443 declares: "A valid foreign judgment for the payment of money which has been obtained in favor of a state, a state agency, or a private person, on a cause of action created by the laws of the foreign state as a method of furthering its own governmental interests will not be enforced." Comment (b) states that the enforcement of such a judgment is not required by the full faith and credit clause. But cf. *Milwaukee County v. White* (1935) 296 U. S. 268, 275, 56 S. Ct. 229, 233, 80 L. ed. 220, 226.

11. "No court will give effect to the fiscal law of another state." Stumberg, *Conflict of Laws* (1937) 153.

12. (1935) 296 U. S. 268, 275, 56 S. Ct. 229, 233, 80 L. ed. 220, 226.

1. Cal. Penal Code (1931) sec. 644.

2. *People v. Biggs* (Cal. 1937) 71 P. (2d) 215.