Constitutional Law: Full Faith and Credit: Enforcing Tax Claim in Foreign Jurisdiction

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NOTE

CONSTITUTIONAL LAW—FULL FAITH AND CREDIT—ENFORCING TAX CLAIM IN FOREIGN JURISDICTION.—It has been decided by the Supreme Court of the United States that a valid tax judgment rendered against a taxpayer in one state is entitled to full faith and credit in other states.1 Comment on that decision has been favorable.2 But, feeling that the decision has not gone far enough, the same critics have proposed this question: Can one state recover in the courts of another state upon a tax claim not reduced to judgment?

If the full faith and credit clause3 extends to a tax judgment, does it likewise cover a mere statutory tax assessment, assuming that such assessment is made by due process of law? The constitution provides that “Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state.” It has been held that the phrase “public acts” includes at least the statutes of the several states.4 Perhaps upon reading the provision one might conclude that it means what it says and that it applies wherever one of the parties to the controversy sets up a foreign statute either to prove his case or his defense. But just as limitations of construction have been placed on the full faith and credit clause in relation to foreign judgments, so must limitations be made to apply to foreign statutes. To do otherwise would make a foreign statute more powerful than the law of the forum. Nevertheless, no definite line of demarcation has been drawn, although there are cases which throw light on the problem. Presumably the most important consideration is what is to be done where the public policy of the forum conflicts with the policy of foreign statutes.

In Converse v. Hamilton5 a Minnesota receiver of a Minnesota corporation sued in Wisconsin to enforce an assessment of stockholders authorized by the Minnesota statutes and levied by an order of a Minnesota court in a suit to which the Wisconsin defendants were not parties. The Wisconsin court dismissed the case on the ground that to allow the action to be maintained would be contrary to the settled public policy of the state. The Supreme Court reversed the decision on the ground that not only was full faith and credit refused to a Minnesota judgment, but also because it was refused to a Minnesota statute. Since the Wisconsin defendants were in no way involved in the Minnesota action or decree, the basis of the Supreme Court’s decision must have been founded on the obligation created by the Minnesota statute.

2 Hazelwood, The Full Faith and Credit Clause as Applied to Enforcement of Tax Judgments (1934) 19 MARG. L. REV. 10; Note (1937) 23 A. B. A. J. 121. Mr. Hazelwood was one of the attorneys for Milwaukee County in the White case.
3 U. S. Const. Art. IV, § 1.
5 244 U.S. 243, 32 Sup. Ct. 415, 56 L.ed. 749 (1912).
this case Wisconsin policy was not a valid reason for dismissing the action.

In *Bradford Electric Co. v. Clapper* Mrs. Clapper brought an action for the unlawful death of her husband against his employer. The accident occurred in New Hampshire, but the contract of employment was made under the laws of Vermont where both parties resided. The judgment of the New Hampshire court was for the plaintiff under New Hampshire law. The defendant contending that the law of the place of the contract should be applied appealed to the United States Supreme Court. In the opinion reversing the decision of the New Hampshire court, the Supreme Court said that the “power of Vermont to effect legal consequences by legislation is not limited strictly to occurrences within its borders.” The court continued to say that a plaintiff suing in one state on a cause of action based on a statute of another state might be denied relief because the enforcement of the right conferred would be obnoxious to the public policy of the forum, that is, prejudicial to the interests of its citizens, but that in this case the interests of the citizens of New Hampshire did not enter. The court refused to give an opinion concerning what would happen if one of the parties had been a citizen of New Hampshire.

In another case the court affirmed the decision of the California court to apply its own law. There the facts were the same as those in the Clapper case except that the action was brought where the contract of employment was made rather than where the accident happened. After holding that there was sufficient public interest to allow the court to apply its own law, the Supreme Court in an opinion written by Justice Stone laid down a norm by which the full faith and credit clause is to be applied. Where two statutes conflict—the statute of the forum and the foreign statute—“the conflict is to be resolved not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight.” Justice Stone argued in his opinion that this was not a reversal of the Clapper case, but rather that they were both decided on the same principle, that is, that in the formal case the governmental interest of the foreign state outweighed the interest of the state of the forum.

How then, do these decisions effect our specific problem? It is reasonable to assume that if the norm above stated shall be applied to a case where there is no statute in the forum to conflict with the foreign statute and where the court in which the action is brought has only the duty to protect the rights of that one citizen who is the defendant in the action, then the action shall come within the full faith and credit clause and the foreign state shall be able to recover, through the aid of the forum, a tax assessment levied by it under the authority

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*6 286 U.S. 145, 52 Sup. Ct. 571, 76 L.ed. 1026 (1931).*


*8 The plaintiffs were citizens of California and it was argued that if they were unable to recover in California they would be precluded from recovery since it was financially impossible to go to Alaska to bring action. As a result they would become public charges in California. The court thought this to be a very real public interest.*
of its own statute. Surely the governmental interest of the plaintiff state is greater than the paternally protective interest of the state of the forum.

But the comment of Judge Learned Hand is still to be considered. The case is almost directly in point with the problem being considered here. It was appealed to the Supreme Court but was affirmed on another ground entirely. The court expressly refused to discuss the problem here. In the circuit court of appeals it was stated that taxes are imposts collected for the support of the government by virtue of its sovereign power, that no contractual or quasi-contractual obligation to pay arises and therefore a tax can in no way be termed a debt. The Supreme Court expressly repudiates this contention when it says:—

"... still the obligation to pay taxes is not penal. It is a statutory liability, quasi-contractual in nature, enforceable, if there is no conclusive statutory remedy, in the civil courts by the common law action of debt or indebitatus assumpsit." If the obligation is one of a kind that could have been brought at common law within one of the nine common law actions, then there should be no necessity under our codified forms of pleading and practice to first obtain a judgment in a local court before attempting to recover in a foreign court. It is as much a debt before the judgment as after and as such should be recognized in the foreign courts.

Judge Hand also argued that it is "repugnant to the principles of private international law" for one state to act as a collector of taxes for another state. As one writer said, such a consideration does have great weight as between independent nations, but as between states of our union it is much less potent. If a court by the authority of the White case must give effect to a foreign judgment based on a tax claim, it certainly should give effect to the claim itself since it is then in its power to test the validity of such claim. As the court said:—"In the circumstances here disclosed no state can be said to have a legitimate policy against payment of its neighbors' taxes, the obligation of which has been judicially established by courts to whose judgments in practically every other instance it must give full faith and credit." How much less reason would there be for such policy if the court can scrutinize the obligation and determine its validity for itself. "The essential nature and real foundation of a cause of action are not changed by recovering judgment upon it...".

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11 Note (1937) 23 A. B. A. J. 121.