Volume 23 | Number 2 | Article 8

1947

Comment - The Right to Maintain Action in Another State to Collect or Enforce a Tax

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COMMENT

The Right to Maintain Action in Another State to Collect or Enfore a Tax.

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The state of Oklahoma brought an action in the St. Louis Circuit Court (Missouri) for the collection of an income tax obligation incurred by defendants while they were residents of the state of Oklahoma. The defendants filed a general demurred which the circuit court sustained. Plaintiff then refused to plead further and judgment of dismissal was entered. On appeal by the plaintiff, the St. Louis Court of Appeals reversed the judgment and held that the action could be brought by the state of Oklahoma. *State of Oklahoma ex. rel. Tax Commissioner vs. Rodgers,* et al., 193 SW (2d) 919 (Mo.) (1946).

The rule has long been established both in this country and in England that the courts of one sovereign will not enforce the revenue laws of another. Restatement, *Conflict of Laws* (1934) ss. 443, 610; 3 Beale, *The Conflict of Laws* (1935), ss. 610.1, 610.2. The underlying principle supporting this rule was first announced in early English decisions. The earliest case to lay down the rule was *Boucher v. Lawson,* Cases Temp. Hardwicke 85, 95 Eng. Reprint 53 (1734), in which the court enforced a contract to deliver gold from a foreign port, holding that the courts of England would not enforce a statute of the foreign state making such a contract to export gold illegal.

In the United States the rule was first adopted in the case of *Ludlow Trustees v. Van Rensellaer,* 1 Johns 94 (N. Y. 1806). The court there held that a note made in France could be sued on in the New York courts even though the stamp tax required by a French statute had not been paid. *James v. Catherwood,* 3 Dow. & Ry. 190 (1823), a later English case on a similar note, adopted the same rule.

The only question involved in these early decisions was whether or not a contract which evaded a foreign revenue law was enforceable in the courts of another soverign state. The rule as applied to this type of case has received more recent support in *Gulledge Bros. Lumber Co. v. Wenatchee Land Co.,* 122 Minn. 266, 142 N.W. 305, 46 L.R.A. (N.S.) 697 (1913). There the Minnesota court held that a Washington corporation, which had not paid its annual franchise tax, could maintain an action in the Minnesota courts even though, under the laws of the state of Washington, a corporation could not maintain an action unless it had paid its franchise tax.

It will be seen that the cases to first announce the rule did not actually determine whether or not it would be against the policy of the sovereign to enforce a foreign revenue law. They merely decided that such a revenue law would not be enforced when it affected the commercial contracts of its citizens. The primary basis for the holdings seemed to be a desire to promote commercial convenience.

Since then the rule has been expanded until the courts have almost lost sight of the underlying basis of the early decisions. In *Maryland v. Turner,* 75 Misc. 9, 132 N. Y. S. 173 (1911) the question of whether or not a state could enforce a valid tax levied by it in the courts of another state was first passed upon. The court there refused to enforce a personal property tax assessed by the state of Maryland. The decision was based on the rule as laid down by the early decisions, but in its reasoning the court construed it more as a rule of public policy than as a rule of commercial convenience. Several later New York cases have stated the rule and applied it to other situations. The court, in *State of Colorado v. Harbeck,* 232 N.Y. 71, 133 N.E. 357 (1921), refused to enforce a Colorado transfer tax on the estate of a Colorado resident who had died in New York. *In re Estate of Bliss,* 121 Misc. 773, 202 *N.Y.S.* 185 (1923) and *In re Estate of Martin,* 136 Misc. 51, 240 N.Y.S. 393 (1930), were cases in which the courts refused to the foreign states the right to collect in the New York courts valid inheritance taxes imposed by them.

The federal courts sitting in New York have followed the same principle. In *New York Trust Co. v. Island Oil & Transport Corporation et al.,* 11 F 2d 698 (1926), the court refused to require the New York receiver of a Virginia corporation to pay a franchise tax imposed by the state of Virginia. Another federal court sitting in New York followed the rule in *Moore v. Mitchell,* 30 F. 2d 600 (1929). The court there stated that, "The effort to collect a tax (in New York) for a political subdivision of Indiana is repugnant to the settled principles of private international law, which preclude one state from acting as a collector of taxes for a sister state, and from enforcing its penal or revenue laws as such." This case was later affirmed by the United States Supreme Court on the ground that the plaintiff lacked capacity to sue. 281 U. S. 18, 50 S. Ct. 175, 74 L.Ed. 673 (1930).

It is interesting to note that the only cases directly in point on this question, prior to the instant case, arose in the courts of the state of New York or in the federal courts within that state. Of these cases only *Maryland v. Turner, supra,* holds directly on the point. *Moore v. Mitchell, supra,* and *Colorado v. Harbeck, supra,* both refused to enforce foreign revenue laws, but in both there was additional reason for the court's refusal, the courts holding that the foreign taxing district had not jurisdiction to impose the tax in question. In *New York Trust Co. v. Island Oil & Transport Corporation, supra,* the court refused to enforce a foreign revenue law, but apparently based its conclusion on the basis that the tax was illegally assessed.

The United States Supreme Court gave the first indication that the rule might be relaxed in the future in the case of *Milwaukee County v. M. E. White Co.,* 296 U.S. 268, 56 S.Ct. 229, 80 L.Ed. 220 (1935). The court there held that a judgment for a tax recovered in the courts of the taxing state cannot be denied full faith and credit by another state simply because it is for a tax. The court stated that the question of whether or not the revenue statutes themselves should be enforced in a foreign state remained an open question.

In jurisdictions other than New York there have been indications that perhaps a more lenient rule will be applied. In *J. A. Holshouser Co. v. Gold Hill Cooper Mining Co.,* 138 N.C. 248, 50 S.E. 650, 70 L.R.A. 183, (1905) the North Carolina court allowed the state of New Jersey to file a claim against an insolvent corporation for an unpaid franchise tax. Jurisdiction was taken by the court in the case of *Henry v. Sargent,* 13 NH. 321, 40 Am. Dec. 146 (1843), on the ground that the action was not an attempt to enforce a foreign revenue law, but the opinion contained dicta to the effect that the rule that one state will not enforce the revenue laws of another is no longer binding on that court.

The recent cases of *Bowles v. Barde Steel Co.* 164 P. 2d 692 (Ore. 1945) and *Lapinski v. Copacina,* 131 Conn. 134, 38 A. 2d 592 (1944), indicate that the rule cannot be applied to federal revenue statutes. These cases held that the rule that one sovereign will not enforce the penal laws of another did not apply to an action to recover a penalty under the Emergeny Price Control Act. It was indicated that the same rule would follow as to revenue laws, since both are based on the same principles of public policy, and no state may invoke a state public policy to defeat a valid federal statute if the action is within the ordinary jurisdiction of the state court.

The foundation for the principle against enforcing foreign revenue laws was stated by Judge Learned Hand in his concurring opinion in *Moore v. Mitchell, supra,* as follows: "To pass upon the provisions for the public order of another state is, or at any rate should be, beyond the powers of a court; it involves the relations between the states themselves, with which courts are incompetent to deal, and which are entrusted to other authorities. It may commit the domestic state to a position which would seriously embarrass its neighbors. Revenue laws fall within the same reasoning; they affect a state in matters as vital to its existence as its criminal law."

On the other hand, as pointed out in 46 *Harv. L. Rev.* 193, the increasing uniformity of state tax laws has made the interpretation of foreign laws less difficult. Thus, the rule is not so necessary today as it may have been in the past, for decisions in such cases are no longer so apt to lead to embarrassment between the states.

The case of *State of Oklahoma ex rel Okla. Tax Commissioner v. Rodgers et al,* here under discussion, is the first affirmatively and unequivocally to adopt the view that one state should enforce the revenue laws of another. The case is an indication that perhaps in the future other courts will also reject the old rule; but the weight of authority as it now stands still supports the earlier doctrine.