

### **Conflict of Laws--Revenue Law--Action on Tax Claim by Municipal Corporation of Another State (Wayne County [Michigan] v. American Steel Export Co., 277 App. Div. 585 (1st Dep't 1950))**

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It is by utilization of the above-mentioned rules of waiver that the two reported cases find a basis for their decisions. The courts are reluctant to interfere with an arbitration proceeding and will not vacate an award unless there is shown a ground as set forth specifically in Section 1462 of the New York Civil Practice Act.<sup>20</sup> Moreover, if none is forthcoming, the award is considered impregnable.<sup>21</sup>

Since arbitration has been accepted by businessmen as a practical device to settle their mercantile differences, it is submitted that both reported decisions are convincing and in accord with the purposes of arbitration. The court, appreciating the real significance of arbitration, refused to allow the plaintiff's claim of a legal technicality in the *Amtorg* case. One of the many beneficent features of arbitration is the settlement of controversies unencumbered by legal technicalities. On the other hand, while in the *Amtorg* case there was no real question as to the plaintiff's prior knowledge of the conflict of interest, in the *Atlantic Rayon* case it could not be said that an issue of fact did not exist as to a waiver by the petitioner or partiality of the arbitrator and therefore the court was correct in remanding the case to determine the issues of fact involved.

From these two decisions it can be observed that while the courts will take cognizance of the spirit of arbitration and thus help keep it simple and free from the many technicalities which confront and retard judicial litigation, it will insist in a proper case that the notion of justice and fair play be adhered to in all arbitration proceedings.



CONFLICT OF LAWS—REVENUE LAW—ACTION ON TAX CLAIM BY MUNICIPAL CORPORATION OF ANOTHER STATE.—In an action by a foreign municipal corporation to recover delinquent taxes against the defendant as owner of personal property located in that foreign municipality, a motion to dismiss on the ground that the court lacked jurisdiction of the subject of the action was granted. The New York courts as a matter of state policy do not lend themselves to the enforcement of the revenue laws of another state. *Wayne County [Michigan] v. American Steel Export Co.*, 277 App. Div. 585, 101 N. Y. S. 2d 522 (1st Dep't 1950).

That portion of the law commonly referred to as "Conflict of Laws" or "Private International Law" determines whether in a particular legal situation the courts of the forum shall take cognizance of

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*see* Matter of Newburger v. Rose, 228 App. Div. 526, 528, 240 N. Y. Supp. 436, 438, 439 (1st Dep't), *aff'd without opinion*, 254 N. Y. 546, 173 N. E. 859 (1930).

<sup>20</sup> Goff and Sons, Inc. v. Rheinauer, 199 App. Div. 617, 192 N. Y. Supp. 92 (1st Dep't 1922).

<sup>21</sup> Pine Street Realty Co. v. Controulos, 233 App. Div. 404, 253 N. Y. Supp. 174 (1st Dep't 1931).

laws and rights accruing in or by virtue of a foreign sovereignty.<sup>1</sup> Even though it is universally reiterated that no law or statute has any force or effect beyond the limits of the sovereignty from which the authority to enact laws has stemmed,<sup>2</sup> rights arising by virtue of that foreign law are recognized and effectuated within certain limits by the forum.<sup>3</sup> Those limits are said to be prescribed and contained in an enlightened sense of courtesy predicated upon mutual respect, enlightened self-interest, and common convenience, generally described as comity.<sup>4</sup> Whenever, therefore, any set of circumstances presents itself encompassing some ingredient extraneous to this concept of comity, the courts consistently decline to assume jurisdiction.<sup>5</sup> One such instance has been referred to as that ". . . well-settled principle of private international law which precludes one state from acting as a collector of taxes for a sister state and from enforcing its penal or revenue laws as such. The rule is universally recognized that the revenue laws of one state have no force in another."<sup>6</sup>

The initial formulation of the principle is to be attributed to Lord Hardwicke in 1734,<sup>7</sup> thereafter stated as a crystallized rule of law by Lord Mansfield both in 1775<sup>8</sup> and 1779.<sup>9</sup> It is to be noted that what was declared in these cases to be the rule as regards the recognition of foreign revenue laws was pure *obiter dictum*. In none of them was an attempt made to collect a tax due to a foreign state; but in each case the question was whether an agreement entered into either to evade, or which did not comply with, the revenue laws of the *locus contractus* was to be enforced by the English courts.<sup>10</sup> In enforcing these contracts and thereby disregarding the foreign revenue laws, the English tribunals were undoubtedly motivated by the strong commercial rivalries and international suspicions then ex-

<sup>1</sup> *Hilton v. Guyot*, 159 U. S. 113, 163 (1895); I BEALE, *THE CONFLICT OF LAWS* § 1.1 (1935); GOODRICH, *CONFLICT OF LAWS* § 1 (3d ed. 1949); *RESTATEMENT, CONFLICT OF LAWS* § 1(2) (1934).

<sup>2</sup> *Blanchard v. Russell*, 13 Mass. 1 (1816); *Loucks v. Standard Oil Co. of New York*, 224 N. Y. 99, 120 N. E. 198 (1918); *Union Securities Co. v. Adams*, 33 Wyo. 45, 236 Pac. 513 (1925).

<sup>3</sup> *Young v. Masci*, 289 U. S. 253 (1933); *Loucks v. Standard Oil Co. of New York*, 224 N. Y. 99, 120 N. E. 198 (1918).

<sup>4</sup> *Franzen v. Zimmer*, 90 Hun 103, 35 N. Y. Supp. 612 (Sup. Ct. 1895); *Myatt v. Ponca City Land and Improvement Co.*, 14 Okla. 189, 78 Pac. 185 (1903); *McGill v. Brewer et ux*, 132 Ore. 422, 285 Pac. 208 (1930); *Snyder v. Yates*, 112 Tenn. 309, 79 S. W. 796 (1904).

<sup>5</sup> *Mertz v. Mertz*, 271 N. Y. 466, 3 N. E. 2d 597 (1936); see *Herzog v Stern*, 264 N. Y. 379, 384, 191 N. E. 23, 25 (1934).

<sup>6</sup> *Colorado v. Harbeck*, 232 N. Y. 71, 85, 133 N. E. 357, 360 (1921). The Supreme Court of the United States has not yet decided the point; it has, however, held that a judgment based on a tax claim must be recognized by all the sister states under Article IV, Section 1, of the Federal Constitution. *Milwaukee County v. White Company*, 296 U. S. 268 (1935).

<sup>7</sup> *Boucher v. Lawson*, 1 Cas. t. Hard. 85, 95 Eng. Rep. 53 (K. B. 1734).

<sup>8</sup> *Holman v. Johnson*, 1 Comp. 341, 98 Eng. Rep. 1120 (K. B. 1775).

<sup>9</sup> *Planche v. Fletcher*, 1 Dougl. 251, 99 Eng. Rep. 164 (K. B. 1779).

<sup>10</sup> *Sharpe v. Taylor*, 2 Phil. 801, 41 Eng. Rep. 1153 (Ch. 1849).

tant between the nations of Europe.<sup>11</sup> Although these English decisions were not in point, and were predicated upon a commercial rivalry not at all prevalent among the states of this country, their *dicta* has evolved into a settled rule of law, the apparent premise for which seems absent.

At times the courts have considered revenue laws as penal in character,<sup>12</sup> and for that reason refused to effectuate them.<sup>13</sup> But it seems that in no sense could penal laws be adequately considered as analogous to revenue laws, since the former seeks vindication of a public wrong,<sup>14</sup> while the latter is merely definitive of the extent of a private citizen's pecuniary obligation to the state.<sup>15</sup>

A New York court premised the rule on the Federal Constitution which confines the taxing power of a state to persons and property within its jurisdiction.<sup>16</sup> The apparent fallacy to this thought is to be found in the failure to recognize the rule so well emphasized in all Conflict of Law problems. That is, that no state enforces any law of any other state *as such*, but merely takes cognizance of rights accruing under those laws. The fundamental purpose of the union of the forty-eight states was to abolish any suspicions and rivalries which could seriously impair the independent functioning of each state.<sup>17</sup> The fundamental rule is that vested rights be everywhere enforced.<sup>18</sup> Why draw an exception with regard to revenue laws? Perhaps the answer may be found in the theory, truistic in nature, which connotes that no court will assume jurisdiction of a cause of action which might be considered an unwarranted interference with the prerogatives of a foreign state.<sup>19</sup> This seems highly

<sup>11</sup> See Note, 165 A. L. R. 796 (1946).

<sup>12</sup> See *Wisconsin v. Pelican Insurance Co.*, 127 U. S. 265, 290 (1888); *Moore v. Mitchell*, 30 F. 2d 600, 604 (2d Cir. 1930).

<sup>13</sup> *Maryland v. Turner*, 75 Misc. 9, 132 N. Y. Supp. 173 (Sup. Ct. 1911). "The courts of no country execute the penal laws of another." *The Antelope*, 10 Wheat. 66, 123 (U. S. 1825). It has been stated that "the reasons given to prevent the extrastate enforcement of taxes due are often the same reasons that prevent the enforcement of claims based upon foreign confiscatory decrees. . . . The power of exclusion . . . does not seem justified in the taxation cases." RE, FOREIGN CONFISCATIONS IN ANGLO-AMERICAN LAW 15 (1951).

<sup>14</sup> *Huntington v. Attrill*, 146 U. S. 657 (1892); *Loucks v. Standard Oil Co. of New York*, 224 N. Y. 99, 120 N. E. 198 (1918).

<sup>15</sup> *State ex rel. Oklahoma Tax Commission v. Rodgers*, 238 Mo. App. 1115, 193 S. W. 2d 919 (1946). It would be well to note that a tax is not a *debt* within the meaning of such word as commonly used. "Taxes do not rest upon contract, express or implied. . . . They are forced contributions, and in no way dependent upon the will . . . of the persons taxed. . . ." *City of Rochester v. Bloss*, 185 N. Y. 42, 47, 77 N. E. 794, 795 (1906).

<sup>16</sup> *Colorado v. Harbeck*, 232 N. Y. 71, 133 N. E. 357 (1921).

<sup>17</sup> "We the People . . . in order to form a more perfect Union . . . ." PREAMBLE TO THE U. S. CONST.

<sup>18</sup> *Loucks v. Standard Oil Co. of New York*, 224 N. Y. 99, 120 N. E. 198 (1918).

<sup>19</sup> Still another ground is found in the RESTATEMENT, CONFLICT OF LAWS § 610 (1934), "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."

illusory as the foreign state is the motivating party requesting relief. Recognizing the obvious illusory premises upon which the rule under discussion has been predicated, a recent Missouri decision has discarded it as fallacious.<sup>20</sup> The only sound basis upon which the rule might be predicated is that concept which sanctions a court's declination to assume jurisdiction of certain subjects on the grounds of public policy.<sup>21</sup> The enforcement of rights accruing under the laws of a sister state is not contrary to public policy, unless to do so would be manifestly injurious to the public interest or shocking to morals or contrary to fundamental principles of justice or deep-rooted traditions.<sup>22</sup> The substance of public policy is to be found in a state's constitution, its laws, and judicial decisions.<sup>23</sup>

In New York the leading case on the subject is *Colorado v. Harbeck*,<sup>24</sup> wherein it was held, *on any one of four grounds*,<sup>25</sup> that a succession tax could not be collected by the state of Colorado from the legatees of a decedent domiciled in that state. Four lower court decisions, citing the *Harbeck* case as authority, refused to take cognizance of foreign tax measures;<sup>26</sup> but two other opinions seem to have deviated from the principle.<sup>27</sup> And one legislative enactment might be construed to indicate that in particular cases enforcement of foreign revenue laws would not be contrary to the policy of this state.<sup>28</sup>

There is one extremely sound reason why, at least the New York courts, should adhere to the principle under discussion. "... New York is a natural place to which to send securities and valuable property . . . whether innocently or for the express purpose of tax evasion. The burden on New York courts and New York taxpayers paying for the courts might become considerable if tax collecting suits by other states were freely allowed there. . . ." <sup>29</sup> Since "... prac-

<sup>20</sup> *State ex rel. Oklahoma Tax Commission v. Rodgers*, 238 Mo. App. 1115, 193 S. W. 2d 919 (1946).

<sup>21</sup> *Mertz v. Mertz*, 271 N. Y. 466, 3 N. E. 2d 597 (1936).

<sup>22</sup> *Shannon v. Irving Trust Co.*, 275 N. Y. 95, 9 N. E. 2d 792 (1937).

<sup>23</sup> *Moscow Fire Ins. Co. of Moscow, Russia v. Bank of New York and Trust Co.*, 161 Misc. 903, 294 N. Y. Supp. 648 (Sup. Ct. 1937).

<sup>24</sup> 232 N. Y. 71, 133 N. E. 357 (1921).

<sup>25</sup> The conclusion could have been predicated upon any of the following grounds: (1) Colorado did not have constitutional authority to levy the tax. (2) The statutory method provided by Colorado to collect the tax was exclusive. (3) The statute did not authorize a suit outside Colorado to recover the tax. (4) One state will not act as the tax collector of another state.

<sup>26</sup> *Wayne County [Michigan] v. American Steel Export Co.*, 277 App. Div. 585, 101 N. Y. S. 2d 522 (1st Dep't 1950); *In re Martin*, 136 Misc. 51, 240 N. Y. Supp. 393 (Surr. Ct. 1930); *In re Bliss*, 121 Misc. 773, 202 N. Y. Supp. 185 (Surr. Ct. 1923); *Maryland v. Turner*, 75 Misc. 9, 132 N. Y. Supp. 173 (Sup. Ct. 1911).

<sup>27</sup> *In re Hollins*, 79 Misc. 200, 139 N. Y. Supp. 713 (Surr. Ct. 1913); *cf. Goodrich v. Rochester Trust and Safe Deposit Co.*, 173 App. Div. 577, 160 N. Y. Supp. 454 (4th Dep't 1916).

<sup>28</sup> N. Y. TAX LAW § 248p. The theory of this statute is reciprocity.

<sup>29</sup> Leflar, *Extrastate Enforcement of Penal and Governmental Claims*, 36 HARV. L. REV. 193, 219 (1932).

tically every judicial report of attempted extraterritorial collection of taxes in the United States has come from the state and federal courts of New York. . . ,”<sup>30</sup> the *public interest* might well be safeguarded by precluding enforcement of foreign tax measures. Thus, public policy alone should be considered as the preclusionary element against effectuating foreign tax claims.

But complete evasion by some inevitably increases the burden of others. The ultimate solution, it is submitted, should be delegated to the Commission on Uniform State Laws for the purpose of improving an undiversified code for the enforcement by each state of the revenue laws of foreign states, the result of which may well be reciprocal inter-state legislation.<sup>31</sup> The problem as regards foreign countries should be solved by resort to international conventions.



CONSTITUTIONAL LAW — FEINBERG LAW — DISMISSAL OF TEACHERS.—In three separate actions relief was sought to declare Section 3022 of the Education Law enacted in 1949, commonly known as the Feinberg Law, unconstitutional and to enjoin the Board of Regents of the State of New York from enforcing its provisions. Appellants contend that the Feinberg Law is incompatible with the freedoms guaranteed by the First Amendment to the Federal Constitution and by Section 8 of Article I of the State Constitution, that the Feinberg Law is a bill of attainder and that, as such, it violates Section 10 of Article I of the Federal Constitution, and that the statute is unconstitutionally vague and lacking in procedural due process. *Held*, the Feinberg Law is a valid exercise of the police power of the State, is not an arbitrary or unreasonable restraint on civil liberties, has none of the characteristics of a bill of attainder, is sufficiently clear to satisfy the requirements of procedural due process, and is therefore constitutionally unobjectionable. *Thompson v. Wallin*, *Lederman v. Board of Education*, *Matter of L'Hommedieu*, 301 N. Y. 476, 95 N. E. 2d 806 (1950).

The preamble<sup>1</sup> to the Feinberg Law extensively states the need

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<sup>30</sup> *Ibid.*

<sup>31</sup> But conventions consume energy, time and money. The most facile and plausible method whereby every state could collect its tax claims, would be to reduce that claim to a judgment. See note 6 *supra*.

<sup>1</sup> Laws of N. Y. 1949, c. 360, § 1. “The legislature hereby finds and declares that there is common report that members of subversive groups, and particularly of the communist party and certain of its affiliated organizations, have infiltrated into public employment in the public schools of the state. This has occurred and continues despite the existence of statutes designed to prevent the appointment to or the retention in employment in public office and particularly in the public schools of the state of members of any organization which teaches or advocates that the government of the United States or of any state or of any political subdivision thereof shall be overthrown by force or vio-