Michigan Law Review

Volume 61 | Issue 2

1962

Conflict of Laws-Full Faith and Credit-Extraterritorial Enforcement of State Revenue Law

Edwin A. Howe Jr.
University of Michigan Law School

CONFLICT OF LAWS—FULL FAITH AND CREDIT—EXTRATERRITORIAL ENFORCEMENT OF STATE REVENUE LAWS—As the operator of a parking lot within plaintiff's city limits, defendant was subject to a ten percent city tax on his gross receipts. He failed to report the whole of his receipts on his monthly tax returns, and plaintiff, the City of Philadelphia, duly notified him of a five thousand dollar deficiency. Defendant had a statu-

tory right to petition for administrative review of the assessment within sixty days, failing which the liability would become fixed and no longer subject to review or appeal. Rather than appealing, defendant removed himself and his assets to New York, thus preventing plaintiff from obtaining a Pennsylvania judgment against him. Plaintiff then sued defendant in a New York court to collect the tax deficiency allegedly due. The trial court dismissed the action on grounds of want of jurisdiction of the subject matter and failure to state a cause of action, and the appellate division affirmed, two judges dissenting. On appeal to the New York Court of Appeals, *held*, judgment affirmed, one judge dissenting. Neither full faith and credit nor comity nor public policy requires a state court to entertain an action to enforce a tax liability imposed under a foreign state's revenue laws unless that liability has been reduced to judgment.[1] *City of Philadelphia v. Cohen*, 184 N.E.2d 167, 230 N.Y.S.2d 188 (1962).

It has been settled since 1935 that the full faith and credit clause of the United States Constitution[2] requires state courts to entertain suits to enforce and collect foreign tax judgments,[3] but the Court has yet to extend this rule to non-judgment tax liabilities. To do so would be to reject the principle that a state court will not recognize or enforce a sister state's revenue laws. This principle first appeared, in an international law context, in dicta of Lord Mansfield spoken, without citation of authority, in cases in which actions to enforce contracts were defended in part upon the ground that the contracts had been made in violation of a foreign nation's revenue laws.[4] The "rule" attached itself to international law and was subsequently incorporated into the American law of conflicts, where it came to be regarded as an exception to the general principles of full faith and credit.[5] Since neither of Mansfield's decisions involved a suit to enforce a foreign tax law, the readiness with which non-recognition of

1 While the principal case was pending, the New York legislature enacted a statute which directed the New York courts to entertain tax collection suits brought by any foreign state which extended the same comity to New York. N.Y. TAX LAWS §§ 901-03 (effective April 19, 1962). Desmond, C.J., speaking for the majority, held that this statute was inapplicable to the principal case since Pennsylvania had no such statute. Principal case, 184 N.E.2d at 170, 230 N.Y.S.2d at 192.

2 "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof." U.S. CONST. art. IV, § 1.

The implementing statute passed by Congress pursuant to the power granted it by the full faith and credit clause is found in 28 U.S.C. §§ 1738-39 (1958).

3 See Milwaukee County v. M. E. White Co., 296 U.S. 268 (1935).

4 Planché v. Fletcher, 1 Dougl. 251, 253, 99 Eng. Rep. 164, 165 (K.B. 1779) (dictum); Holman v. Johnson, 1 Cowp. 341, 343, 98 Eng. Rep. 1120, 1121 (K.B. 1775) (dictum). Professor Beale, among others, has attributed the origination of this dictum to Lord Hardwicke in Boucher v. Lawson, Cas. t. Hard. 85, 95 Eng. Rep. 53 (K.B. 1734). See 3 BEALE, CONFLICT OF LAWS 1633 (1935). But Lord Hardwicke made no such statement in *Boucher*, which in fact dealt with a Portuguese statute prohibiting the exportation of gold.

5 See RESTATEMENT, CONFLICT OF LAWS §§ 443, 610 (1934).

foreign revenue laws was accepted as part of American jurisprudence[6] is surprising. The transformation of the Mansfield dicta into a rule of law was no doubt aided by the curious historic association of taxes with penalties[7]—which are an exception to the full faith and credit clause and to which comity is virtually never extended by a foreign state.[8]

Several distinct theories have been advanced in support of the practice of refusing to entertain suits brought to collect taxes imposed under foreign states' revenue statutes.[9] It has been suggested that a state has a duty to shield its citizen from the tax claims of foreign states.[10] More persuasive to contemporary minds is the argument that taxation, like penalization, represents a peculiarly intimate aspect of the relationship between the plaintiff state[11] and its citizens and that the intrusion of the forum state's courts into matters regarding this relationship would cause "embarrassment" to the foreign state.[12] A corollary to this argument is that controversies with respect to entertainment of actions on tax liabilities owed to foreign states should not be resolved by the courts without express mandate from the legislatures of the states involved.[13] The most convincing theory sustaining the non-entertainment rule is that the obligation to pay taxes is not contractual, but purely statutory;[14] and that the power to tax, born of the legislative fiat of the state as is the power to punish, depends solely on

6 The rule was first stated by an American court in Henry v. Sargeant, 13 N.H. 321, 332 (1843) (dictum). The widespread acceptance of the rule is illustrated by the American Law Institute's adoption of it in 1934. RESTATEMENT, CONFLICT OF LAWS §§ 443, 610 (1934).

7 See, *e.g.*, principal case, 184 N.E.2d at 168, 230 N.Y.S.2d at 190; GOODRICH, CONFLICT OF LAWS 163 (3d ed. 1949). The line between taxes and penalties is indeed often indistinct. See Bailey v. Drexel Furniture Co. (Child Labor Tax case), 259 U.S. 20 (1922); Wisconsin v. Pelican Ins. Co., 127 U.S. 265 (1888).

Further confusion may have resulted from the historic classification of actions as either (1) public and penal, or else (2) private and compensatory. *E.g.*, Huntington v. Attrill, 146 U.S. 657, 667 (1892) (dictum). Since taxes must be categorized as "public," the false conclusion follows that they must also be penal.

8 Wisconsin v. Pelican Ins. Co., *supra* note 7; The Antelope, 23 U.S. (10 Wheat.) 66, 123 (1825).

9 The rule that a court must in all circumstances refuse to recognize foreign revenue statutes or to entertain foreign tax suits will hereinafter sometimes be referred to as the "non-entertainment rule."

10 Maryland v. Turner, 75 Misc. 9, 132 N.Y. Supp. 173 (Sup. Ct. 1911). The *Turner* court, apparently, would apply the rule no matter what the circumstances of a particular case.

11 Or, of course, a subdivision of a state.

12 Moore v. Mitchell, 30 F.2d 600, 604 (2d Cir. 1929) (concurring opinion of L. Hand, J.), *aff'd on another ground*, 281 U.S. 18 (1930); principal case, 184 N.E.2d at 169, 230 N.Y.S.2d at 191.

13 Moore v. Mitchell, *supra* note 12, at 604 (concurring opinion of L. Hand, J.); City of Detroit v. Proctor, 44 Del. 193, 61 A.2d 412 (Super. Ct. 1948) (dictum). Probably a sufficient "mandate" is provided by a reciprocal-comity statute such as that enacted by the New York legislature while the principal case was pending.

14 City of Rochester v. Bloss, 185 N.Y. 42, 77 N.E. 794 (1906). *But see* Milwaukee County v. M. E. White Co., 296 U.S. 268, 271 (1935) (dictum): "[T]he obligation to pay taxes . . . is a statutory liability, *quasi*-contractual in nature, enforcible, if there is no exclusive statutory remedy, in the civil courts by the common law action of debt or *indebitatus assumpsit*."

the force which the state, as sovereign, is capable of bringing to bear upon a private individual. But the force of the sovereign state cannot lawfully be extended beyond its borders; therefore, the proponents of this theory conclude, no enforceable obligation to pay taxes can exist outside the jurisdiction of that state.[15]

The non-entertainment rule also finds support in certain practical considerations. The assumption of jurisdiction over foreign states' tax suits might bring about some increase in the work-load of every court,[16] though it is suspected that, if the non-entertainment rule were universally rejected, the delinquent taxpayer who has departed the state to which he owes taxes would in most cases be willing to make an out-of-court settlement with that state. A second problem is that judges of the forum state might encounter difficulties in interpreting the intricacies of foreign tax laws; but such difficulties would be an inadequate excuse for refusal to recognize the law of a sister state. A more compelling consideration is the plight of an estate left by a decedent who had substantial holdings situated in a state other than that in which he was domiciled; each of the states may attempt to impose an inheritance tax on those holdings.[17] The forum state's refusal to recognize the claims of foreign states, thereby preserving some of the estate for the heirs, is a convenient solution to an otherwise troublesome problem.[18] However, the non-entertainment rule's function in protecting a harassed taxpayer, as distinguished from its function in shielding a tax evader, is for the most part limited to instances of multiple claims for inheritance tax.

While the non-entertainment rule was long regarded as prevailing in this country, opposition to it is growing. Almost sixty years ago, it was held that the annual franchise tax levied by the chartering state will be accepted as a claim against the assets of a corporation in receivership.[19] Such cases, however, are inadequate authority to support a holding contrary to that of the principal case, which includes none of the consensual or contractual overtones implicit in a corporate charter.

15 Colorado v. Harbeck, 232 N.Y. 71, 82, 133 N.E. 357, 359 (1921) (dictum). The *Harbeck* theory is evidently akin to the concept that tax suits, like criminal actions, are "local" and therefore cannot be entertained outside the jurisdiction of the sovereign imposing the tax. Municipal Council of Sydney v. Bull, [1909] 1 K.B. 7.

16 It has been suggested that no such augmentation of the dockets would occur, since so few cases of this nature have been before appellate courts. Comment, 47 MICH. L. REV. 796, 799 (1949). However, it is likely that more states would have brought such actions if they had not felt the weight of authority pressing against their chances of success.

17 See, *e.g.*, Colorado v. Harbeck, 232 N.Y. 71, 133 N.E. 357 (1921); *In re* Martin's Estate, 136 Misc. 51, 240 N.Y. Supp. 393 (Surr. Ct. 1930), *aff'd*, 255 N.Y. 359, 174 N.E. 753 (1931); *In re* Bliss' Estate, 121 Misc. 773, 202 N.Y. Supp. 185 (Surr. Ct. 1923).

18 See generally Jackson, *Full Faith and Credit—The Lawyer's Clause of the Constitution*, 45 COLUM. L. REV. 1, 27-28 (1945).

19 Holshouser v. Copper Co., 138 N.C. 248, 50 S.E. 650 (1905); Standard Embossing Plate Mfg. Co. v. American Salpa Corp., 113 N.J. Eq. 468, 167 Atl. 755 (1933). Neither case mentions comity or full faith and credit in dealing with the foreign state's claim to be a creditor.

A second approach to the dilution of the non-entertainment rule was presented in *City of New York v. Shapiro*,[20] where an administrative tax determination, which had become "finally and irrevocably" fixed because of the taxpayer's failure to apply for administrative review, was held to constitute an "administrative judgment" entitled to full faith and credit on the authority of *Magnolia Petroleum Co. v. Hunt*.[21] This view, adopted by the dissenting opinion in the principal case,[22] has several practical advantages. Since the "judgment" is conclusive of the merits, the courts of the forum state need not deal with foreign tax laws, determine the proper amount of tax due, or decide the factual question of the defendant's liability for the tax. The *Magnolia Petroleum* decision, however, is of uncertain precedental authority for the holding of the *Shapiro* court or for the conclusions of the dissent in the principal case—not on the basis of any single, striking difference, but due to the cumulative effect of several more finely-wrought distinctions, no one of which may in itself be sufficient. First, the rule implicit in *Magnolia Petroleum* has been limited to cases in which the administrative determination was of a finality comparable to that of the award in that decision, where the statute provided that the administrative award was res judicata.[23] Philadelphia's ordinance,[24] as construed by the Pennsylvania courts,[25] on the other hand, provides only that an unappealed assessment shall not be subject to review at the instance of the taxpayer. The cause of action, then, is not merged in a "judgment," since the city can still sue on the original cause of action if a bookkeeping error resulting in underassessment should be discovered.[26] Secondly, *Magnolia Petroleum* involved a workmen's compensation statute, which provides, essentially, an administrative remedy as a substitute for a judicial remedy; thus, a workmen's compensation award might well be considered an administrative judgment entitled to the full faith and credit accorded all non-penal foreign judgments. But an administrative tax determination, however conclusive of the merits, is not intended as a substitute for a judicial judgment. Thirdly, there may be justification in distinguishing a workmen's compensation award from a tax assessment with reference not only to the nature of the determination involved but also to the character of the parties concerned. The policy

20 129 F. Supp. 149 (D. Mass. 1954).

21 320 U.S. 430 (1943).

22 But the dissent expressly points out that full faith and credit should be given only to an "administrative judgment," not to a simple tax assessment. Principal case, 184 N.E.2d at 170, 230 N.Y.S.2d at 192. The *Shapiro* court seems to have limited its holding similarly. See City of New York v. Shapiro, 129 F. Supp. 149, 155 (D. Mass. 1954) (*semble*).

23 Industrial Comm'n v. McCartin, 330 U.S. 622 (1947).

24 PHILADELPHIA, PA., CODE OF GEN. ORDINANCES § 19-1702 (1956).

25 City of Philadelphia v. Sam Bobman Dep't Store Co., 189 Pa. Super. 72, 149 A.2d 518 (1959).

26 One wonders if the city might not have the same privilege under the New York City ordinance, as well, despite the greater finality of its language.

underlying a workmen's compensation award is to make reparation as between private individuals for a personal injury and may well have an effect upon a court altogether different from that of the objective of a tax assessment, by which a state confers on itself a right against an individual. Lastly, *Magnolia Petroleum* held only that the administrative determination involved in that case constituted a bar to a subsequent suit on the same cause of action in a sister state; the case is silent on the question of whether the award would be entitled to full faith and credit in an action brought in a foreign state to collect the amount owing pursuant to the administrative determination, which was the sort of action involved in *Shapiro* and the principal case.

Another major objection to the approach of the *Shapiro* case may be directed at the implications of its policy. It seems a shortsighted policy to make the extraterritorial collectibility of a tax assessment pivot on so frail a factor as the happenstance that the taxing state has a law which renders final an uncontested administrative tax determination. A more satisfactory approach would be to put aside such legalisms and reject totally the non-entertainment rule, as did a Missouri court in adjudicating and enforcing a foreign income tax liability in the leading case of *Oklahoma ex rel. Oklahoma Tax Comm'n v. Rodgers.*[27] Several other states have followed Missouri's lead.[28] The Missouri court advanced no strict legal theory in support of its holding, but, rather, after answering at length many of the arguments on which the non-entertainment rule depends, the court decided the case solely on grounds of public policy. The policy underlying any rule with respect to the enforcement of foreign non-judgment tax liabilities is of primary importance. The most obvious result of the application of the non-entertainment rule is to provide a haven for the person who has fled his state, willfully to evade a lawfully imposed tax,[29] a result which does not rest upon a signally wholesome policy. Moreover, the delinquent's default increases the burden on the remainder of plaintiff's taxpayers.[30]

In the face of these considerations, it has been argued that, in entertaining a suit to collect a foreign tax assessment, the courts of the forum state would cause "embarrassment" by prying into the relations of a foreign state with the latter's citizens. But the foreign state has in fact requested enforcement, which it would hardly do if it feared that a trial would expose any "dirty linen" in its tax laws. Nor would the forum state's courts' interpretation of the foreign state's tax law be binding in future intrastate controversies between the foreign state and its citizens. The "embarrass-

27 238 Mo. App. 1115, 193 S.W.2d 919 (1946).

28 Oklahoma *ex rel.* Oklahoma Tax Comm'n v. Neely, 225 Ark. 230, 282 S.W.2d 150 (1955); City of Detroit v. Gould, 12 Ill. 2d 297, 146 N.E.2d 57 (1957); Ohio *ex rel.* Duffy v. Arnett, 314 Ky. 403, 234 S.W.2d 722 (1950).

29 The lawfulness of the tax assessment must, of course, be assumed; if the defendant had a valid defense, he would have remained behind to present it.

30 GOODRICH, *op. cit. supra* note 7, at 164-65.

ment" concept appears to have been derived largely from the legacy of international law to the American law of conflicts and from hollow analogies between international and interstate relations.[31] The entry of a nation's courts into the allegedly internal affairs of another nation might well cause uneasiness in the diplomatic relations between the two countries, but the same rationale is not readily applicable to relations between states of a federation.

It has been said that a second beneficial result of the non-entertainment rule is that it protects estates from impoverishment through the imposition of multiple inheritance tax claims, though this result is largely limited to inheritance tax cases where the identity of the state of domicile is not in doubt. But the same result, if desired, may be achieved in many of these cases upon a due process theory; since such taxes are often imposed by states when they have no jurisdiction over the heirs, executors, or estate, the imposition of these taxes would contravene the fourteenth amendment.[32] Furthermore, after a state has disavowed the non-entertainment rule—the effect of which rule is to bar, absolutely, the recognition of foreign revenue laws—the state's courts can still exercise discretion as to what kinds of foreign tax suits they will entertain.[33]

Thus, most of the reasons offered in support of the non-entertainment rule may be dismissed as unnecessary, inapposite, or ungrounded in fact. But the argument that the obligation to pay taxes to the sovereign is purely statutory and therefore does not exist in a foreign jurisdiction cannot be so dismissed, even though its appeal is more to the intuition than to a sense of logic—as is the case with so many facets of the concept of jurisdiction. It is unavailing to argue that, since it has been held that full faith and credit must be given to foreign statutes creating rights in the fields of torts, contracts, and corporate regulation by the chartering state, it necessarily follows that foreign revenue statutes are entitled to full faith and credit.[34] Wrongful death statutes and statutes dealing with contract law both confer rights on private individuals, while revenue statutes confer rights on the state. Corporate regulation statutes, while they confer rights on the state, are so bound up with the features of consent and contract implicit in a corporate charter as to be clearly distinguishable from revenue statutes, which, in the theory underlying the non-entertainment rule, have no contractual or consensual foundations.

The conclusion to be drawn from the foregoing analysis must be that

31 See Moore v. Mitchell, 30 F.2d 600, 604 (2d Cir. 1929) (concurring opinion of L. Hand, J.); Boucher v. Lawson, Cas. t. Hard. 85, 95 Eng. Rep. 53 (K.B. 1734). See generally opinion of Anderson, J., in Oklahoma *ex rel.* Oklahoma Tax Comm'n v. Rodgers, 238 Mo. App. 1115, 1128, 193 S.W.2d 919, 927 (1946).

32 Treichler v. Wisconsin, 338 U.S. 251 (1949); Moore v. Mitchell, *supra* note 31; Colorado v. Harbeck, 232 N.Y. 71, 133 N.E. 357 (1921).

33 See California *ex rel.* Houser v. St. Louis Union Trust Co., 260 S.W.2d 821 (Mo. Ct. App. 1953).

34 See Comment, *supra* note 16, at 799-800.

sound public policy demands the rejection of the non-entertainment rule.[35] But the principal argument supporting the rule is apparently unassailable—either by logic, for it is alogical, or by practical considerations, for, dealing as it does in terms of sovereignty and jurisdiction, it implicitly purports to be above mere practicality. Twenty-five years ago, one could have cited the Supreme Court's dictum that tax liabilities are quasi-contractual[36] as overruling, in effect, the theory behind the non-entertainment rule. But the characterization of the taxpayer's obligation as purely statutory is a matter of state law, and, since *Erie R.R. v. Tompkins*,[37] the Supreme Court has been held to have no authority to overturn a state law except where it is contended that that law is contrary to the dictates of the federal Constitution. However, when a state court holds, as did the court in the principal case, that the full faith and credit clause does not require recognition of a foreign state's statute, that holding raises a constitutional question, which confers appellate jurisdiction of the case on the Supreme Court. It is by no means certain that the Court would in fact set aside a holding such as that in the principal case on the ground of contravention of the full faith and credit clause.[38] The literal language of that clause and of its implementing statute would seem clearly enough to require a state court to enforce a sister state's revenue statute, but that language is much obscured by the gloss of Supreme Court interpretation. The Court has heretofore held that full faith and credit must be accorded numerous classes of statutes, judgments, and administrative determinations; among these are classes the nature of which may indicate that the Court is ready to declare that revenue statutes, and the administrative tax determinations rendered thereunder, are entitled to full faith and credit in the courts of foreign states.[39] But, on several relatively recent occasions,

[35] For many years, law review articles, comments, and notes have arrived at this conclusion with unanimity. *E.g.*, Jackson, *supra* note 18, at 15; Leflar, *Extrastate Enforcement of Penal and Governmental Claims*, 46 HARV. L. REV. 193, 215-21 (1932); Comment, 28 CALIF. L. REV. 507 (1940); Comment, 47 MICH. L. REV. 796 (1949); 18 U. CINC. L. REV. 498 (1949); 29 COLUM. L. REV. 782 (1929); 40 VA. L. REV. 213 (1954).

In 1948, the American Law Institute abandoned its former position that tax liabilities may not be enforced in a foreign court and stated that, if it had to take one position over the other, it would follow Oklahoma *ex rel.* Oklahoma Tax Comm'n v. Rodgers, 238 Mo. App. 1115, 193 S.W.2d 919 (1946). RESTATEMENT, CONFLICT OF LAWS, Explanatory Notes § 610, at 175 (Supp. 1948).

[36] Milwaukee County v. M. E. White Co., 296 U.S. 268, 271 (1935) (dictum), quoted *supra* note 14.

[37] 304 U.S. 64 (1938).

[38] The Supreme Court has at least twice expressly declined to pass on this question. Milwaukee County v. M. E. White Co., 296 U.S. 268 (1935); Moore v. Mitchell, 281 U.S. 18 (1930). *Cf.* Broderick v. Rosner, 294 U.S. 629 (1935).

[39] Each of the following decisions is distinguishable from the principal case, but, taken together, they provide indicia of a gradual tendency of conceptual liberalization which the Court might conceivably follow so as to extend the operation of the full faith and credit clause to cases involving foreign revenue statutes. Hughes v. Fetter, 341 U.S. 609 (1951) (wrongful death statute); Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943) (workmen's compensation award); Milwaukee County v. M. E. White Co., *supra* note 38 (tax judgment); Broderick v. Rosner, *supra* note 38 (statute assessing

the Court, moved by reason or policy, has restricted the operation of the full faith and credit clause.[40] The most important limitation with respect to foreign taxes is that full faith and credit need not be given to a statute that is "obnoxious" to the policy of the forum state.[41] This principle might well persuade the Court not to abrogate the non-entertainment rule.[42] In short, confident prediction of the Court's decision in such a case is impossible. Congressional action, too, in regard to the enforcement of foreign revenue laws, may well be within the purview of the language of the full faith and credit clause[43] but is certainly not to be expected, inasmuch as Congress has enacted but a single statute[44] pursuant to the clause since the ratification of the Constitution.

It should by no means be inferred from the foregoing that the abrogation of the non-entertainment rule can be brought about only by the exercise of federal power. In fact, the states have developed what is thus far the most important and effective measure leading to the eventual demise of the rule. While the principal case was pending, New York enacted a reciprocal-comity statute with respect to taxes, thus becoming the twenty-eighth state to have adopted such a law.[45] In 1949 only seven states had enacted such statutes, in 1946 one, and before 1939 none.[46] Each of the twenty-eight states has thus realized that to cling tenaciously to the small perquisite of sovereignty represented by the non-entertainment rule is actually to defeat self-interest and to undermine wholesome public policy. Now that over half the states—including New York, so long the fortress of non-entertainment—have adopted these statutes, it seems likely that the others, if only for the sake of fiscal equilibrium, must shortly follow. The fact that a majority of the states is aware of the problem posed by the non-entertainment rule and is actively dealing with it suggests that it is unnecessary for Congress or the Supreme Court to take action in this area.

corporate stockholders); Bradford Elec. Light Co. v. Clapper, 286 U.S. 145 (1932) (workmen's compensation statute); Converse v. Hamilton, 224 U.S. 243 (1912) (statute assessing corporate stockholders); Fauntleroy v. Lum, 210 U.S. 230 (1908) (judgment enforcing gambling debt); Northern Pac. R.R. v. Babcock, 154 U.S. 190 (1894) (wrongful death statute; on grounds of comity, not full faith and credit).

40 Industrial Comm'n v. McCartin, 330 U.S. 622 (1947); Pink v. A.A.A. Highway Express, Inc., 314 U.S. 201 (1941); Pacific Employers Ins. Co. v. Industrial Acc. Comm'n, 306 U.S. 493 (1939); Alaska Packers Ass'n v. Industrial Acc. Comm'n, 294 U.S. 532 (1935).

41 Pacific Employers Ins. Co. v. Industrial Acc. Comm'n, *supra* note 40; Alaska Packers Ass'n v. Industrial Acc. Comm'n, *supra* note 40.

42 It has been suggested, however, that the full faith and credit clause gives the Court far more power than it has seen fit to use. The same authors, of course, urge its use. Corwin, *The "Full Faith and Credit" Clause*, 81 U. PA. L. REV. 371 (1933); Jackson, *supra* note 18, at 12-13; Page, *Full Faith and Credit: The Discarded Constitutional Provision*, 1948 WIS. L. REV. 265, 302-03.

43 Professor Corwin contends that the clause granted Congress, not the Court, the greater power, a fuller exercise of which he advocates. Corwin, *supra* note 42, at 387-89.

44 28 U.S.C. §§ 1738-39 (1958).

45 Principal case, 184 N.E.2d at 170, 230 N.Y.S.2d at 192.

46 Roesken, *Out-of-State Collection*, 27 TAXES 955, 956 (1949). In addition, one state has had a general comity statute.

The federal government, however broad its powers, ought not to force upon the states a solution which they are working out for themselves.

Edwin A. Howe, Jr.