Maurer School of Law: Indiana University
Digital Repository @ Maurer Law

Indiana Law Journal

Volume 5 | Issue 9 Article 4

6-1930

Courts-Extra Territorial Importance of Officers-Revenue Laws

Follow this and additional works at: https://www.repository.law.indiana.edu/ilj

Part of the Courts Commons

Recommended Citation
(1930) "Courts-Extra Territorial Importance of Officers-Revenue Laws," *Indiana Law Journal*: Vol. 5 : Iss. 9 , Article 4.
Available at: https://www.repository.law.indiana.edu/ilj/vol5/iss9/4

This Note is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.

JEROME HALL LAW LIBRARY
INDIANA UNIVERSITY
Maurer School of Law
Bloomington

RECENT CASE NOTES

COURTS—EXTRA-TERRITORIAL IMPORTANCE OF OFFICERS—REVENUE LAWS—Testator was a resident of Grant County, Indiana. He owned intangibles on which there had been no return, assessment or payment of taxes. After his death the county treasurer brought this suit to collect the back taxes, pursuant to Acts 1927, p. 141, in the federal court of New York against the executor, appointed there. *Held:* Judgment for defendant affirmed, for lack of legal capacity in the treasurer to sue. *Moore v. Mitchell*, Supreme Court of the United States, Feb. 24, 1930, 50 S. Ct. 175.

The court said the federal court in New York "exercises a jurisdiction that is independent of and under a sovereignty that is different from that of Indiana . . . And so far as concerns petitioner's capacity to sue therein, that court is not to be distinguished from the courts of the state of New York." As an original proposition it would seem possible that the federal courts might have been open to all within the United States just as are state county courts to appointees in other counties of the state. Yet the court is well supported in authority for the proposition above. *Grant v. Leach*, 280 U. S. 351, 50 S. Ct. 107; *Pennoyer v. Neff*, 95 U. S. 714; *Hale v. Allison*, 188 U. S. 56, 23 S. Ct. 244.

The court said further: "Petitioner claims only by virtue of his office. Indiana is powerless to give any force or effect beyond her own limits to the act of 1927 purporting to authorize this suit or to the other statutes empowering and prescribing the duties of its officers in respect of the levy and collection of taxes. And as Indiana laws are the sole source of petitioner's authority, it follows he had none in New York."

The court said the treasurer as an Indiana officer was under the same extra-territorial importance as are executors, administrators, or chancery receivers without title, appointed under the laws and by the courts of that state, and for the same reason. The substantial reason for the doctrine of extra-territorial importance seems to be to protect local persons who may have extended credit to the insolvent in reliance on his local assets, by giving them a preference in the distribution of those assets. The courts consider that to effect such preference distribution should be by an officer under the control of local courts. *Great Western Mining Co. v. Hams*, 198 U. S. 561; *Sands v. Greeley & Co.*, 80 Fed. 195. The reason as to executors and administrators seems essentially the same—that the property of the decedent shall, before distribution, be subject to payment of such claims as (local) creditors may present: to be effected by the same device as in case of receiverships, viz., administration under the control of local courts. Goodrich, Conflict of Laws, 412, 413. If these are the real reasons for the rule forbidding domiciliary executors and receivers to sue in a foreign state, one might wonder how it can be said they apply in case of suit by a taxing officer outside the state of his appointment. The court then says that the view it has taken of the case makes it unnecessary to express an opinion on the question whether a federal court in one state will enforce the revenue laws of another state.

On the last point the decided cases seem uniform that a claim for taxes arising in one state is not enforcible by action in the courts of another state. *Colo. v. Harbeck,* 232 N. Y. 71, 133 N. E. 357; *Maryland v. Turner,* 132 N. Y. S. 173; *Sydney v. Bull,* (1909) 1 K. B. 7. The reason for this result seems fundamentally the same as that for the doctrine of extra-territorial importance—that one state is not interested in enforcing the public law of another.

Yet it should be noted that the doctrine of extra-territorial importance (although well supported by the authorities cited by the court, Mechem, Public Offices and Officers, Sec. 508; *McCullough v. Scott,* 182 N. C. 865, 109 S. E. 789; *Kerr v. Moon,* 9 Wheaton 565; *Vaughan v. Northup,* 15 Petersal; *Dixon's Executors v. Ramsey's Executors,* 3 Cranch, 319; and others *Johnson v. Powers,* 139 U. S. 156, 11 S. Ct. 525;) has been whittled down by exceptions. "Statutes are numerous allowing foreign representatives to sue locally under such conditions as the legislature sees fit to impose." Goodrich, Conflict of Laws, 410. Some states by statute make the same exception for receivers. *Ibid.* 439. Further it has been held that a foreign receiver may prove a claim in bankruptcy, *Ex parte Norwood,* Fed. Case No. 10,364; and in any case his incapacity to represent the insolvent seems subject to waiver by the opposing litigant. *Great Western Tel. Co. v. Purdy,* 162 U. S. 329. A state receiver may enforce a stockholder's individual liability outside the appointing state, if expressly so authorized by statute. *Bernheimer v. Converse,* 206 U. S. 516. An editor in 43 Harvard L. R. 805 commenting on these cases says: "The result of these decisions seems to be the establishment of an arbitrary limitation upon the doctrine of extra-territorial importance." The editor seems to regret the general application of the doctrine of extra-territorial importance at least so far as receivers are concerned, and concludes that "the national scope of federal sovereignty makes unnecessary a continuance of this unsatisfactory state of law."

If there is reason for making such exceptions to the doctrine of extra-territorial importance as are outlined above it is submitted that an exception might as logically be made in favor of a state officer such as the plaintiff in this case. The question would then still remain whether the foreign state could refuse to enforce the obligation of the tax as a penal obligation. On this point there seems to be no declaration by the supreme court. 30 F. (2nd) 600. "It is not so clear that the obligation to pay a tax is a penal obligation in the same sense in which that term is used in many of the newer cases, especially *Huntington v. Attrill,* 146 U. S. 657, 13 S. Ct. 224." Goodrich, Conflict of Laws, 116. Learned Hand argues in this same case in 30 F. (2nd) 600 that the obligation is penal and should not therefore be enforced.

J. V. H.