COMMENTS

CONFLICT OF LAWS—TAXATION—EXTRATERRITORIAL ENFORCEMENT OF REVENUE LAWS

California v. St. Louis Union Trust Co., 248 S.W.2d 592 (Mo. 1952), 260 S.W.2d 821 (Mo. App. 1953), 348 U.S. 932 (1955)

In 1936 Mary Agnes Rogers executed a trust indenture in St. Louis by which she transferred the major part of her property to the St. Louis Union Trust Company as trustee and named herself recipient of the net trust income for life. Subsequently, Miss Rogers moved to California where she died in 1945. The State of California assessed an inheritance tax of $6,230.96 on the Rogers estate.[1] Because the estate's assets located in California were insufficient to cover the tax assessment,[2] California brought suit in Missouri against the trustee, St. Louis Union Trust Company, to collect the deficiency.

At trial in the Circuit Court of St. Louis County the plaintiff relied on the Missouri case of *State ex rel. Oklahoma Tax Commission v. Rodgers*[3] in which the St. Louis Court of Appeals departed from the general rule that the courts of one state will not enforce the revenue laws of another state[4] and thereby permitted Oklahoma to collect an income tax assessed under Oklahoma law.[5] In the principal case the trial court followed the *Rodgers* decision and allowed recovery by California. The defendant appealed to the Supreme Court of Missouri on the ground that the plaintiff's use in Missouri of the California assessment proceeding as evidence to prove its case "was without due process of law."[6] The Supreme Court of Missouri, relying on *St. Louis v. Butler Co.*,[7] ruled that the constitutional question had not been properly raised. In the *Butler Co.* case it was held that in order to properly present a constitutional question a party must raise the point with particularity at the first possible moment and must continue to raise the question at every succeeding opportunity. In the principal case the defendant failed to meet this requirement because its answer to the plaintiff's petition failed to mention specifically how the use of

1. The net taxable estate was $98,152.27. All but $537.37 of this consisted of the trust corpus under the 1936 trust indenture. Brief for Petitioner, p. 18, California v. St. Louis Union Trust Co., 348 U.S. 932 (1955).
2. See note 1 *supra*.
3. 238 Mo. App. 1115, 193 S.W.2d 919 (1946).
4. Moore v. Mitchell, 30 F.2d 600 (2d Cir. 1929); Colorado v. Harbeck, 232 N.Y. 71, 133 N.E. 357 (1921); *In re* Bliss' Estate, 121 Misc. 773, 202 N.Y. Supp. 185 (Surr. Ct. 1923); GOODRICH, CONFLICTS OF LAW 165 (3d ed. 1949).
5. OKLA. STAT. ANN. tit. 68, §§ 1464, 1483 (1941).
6. California v. St. Louis Union Trust Co., 248 S.W.2d 592, 594 (Mo. 1952).
7. 358 Mo. 1221, 219 S.W.2d 372 (1949).

the California proceeding as evidence in Missouri violated the defendant's constitutional rights, and also failed to specify what section of what constitution, state or federal, had been violated.[8] The case was therefore transferred to the St. Louis Court of Appeals for disposition on matters other than the constitutional question.

The St. Louis Court of Appeals reversed the judgment which had been entered for the plaintiff by the trial court.[9] This decision was based on the theory that the inheritance tax statute on which California was proceeding did not create a transitory cause of action but provided a remedy which could be pursued only in a specific court in California—the probate court of the county in which the decedent was domiciled at the time of her death.[10]

The basis of the court's decision—that California law created an intransitory cause of action—is open to question. The inheritance tax provision would appear to be nothing more than a venue laying provision similar to other provisions existing in California and other states which lay venue for all causes of action whether they sound in tort, contract, or any other type of action.[11] This conclusion is fortified by the fact that California had at the time the suit was instituted a statute authorizing the Attorney General of California to bring suit in other states for all taxes due the State of California.[12] While this

8. California v. St. Louis Union Trust Co., 248 S.W.2d 592, 595 (Mo. 1952).

9. California v. St. Louis Union Trust Co., 260 S.W.2d 821 (Mo. App. 1953).

10. See CAL. REV. AND TAX. CODE ANN. § 14652 (1952). The St. Louis Court of Appeals also placed some reliance on two workmen's compensation cases: Mosely v. Empire Gas & Fuel Co., 313 Mo. 225, 281 S.W. 762 (1926), and Davis v. P. E. Harris & Co., 25 Wash. 2d 664, 171 P.2d 1016 (1946). These cases should not have been controlling. The statutes involved in both cases specifically disallowed the bringing of suit in a foreign jurisdiction. In the principal case, the statute merely stated affirmatively where suit was to be brought; it did not specifically state that the inheritance tax could not be enforced in another jurisdiction.

11. See, *e.g.*, CAL. CODE OF CIV. PROC. § 395 (1953). In Ohio v. Arnett, 314 Ky. 403, 234 S.W.2d 722 (1950), the only case adhering to the *Rodgers* decision, *supra* note 3, the defendant contended that the Ohio statute under which suit was brought created an intransitory cause of action. The Ohio statute set up a number of procedural provisions impliedly to be followed in Ohio before unpaid premiums for workmen's compensation could be collected. OHIO GEN. CODE ANN. § 1465-75 (1940). The Kentucky court rejected the contention that the statute was intransitory, stating at pp. 724, 725:

> A statutory cause of action which is otherwise transitory should not be construed as local merely because of accompanying procedural provisions intended to be applicable only to the courts of the state creating the cause of action, where the remedy is not an unusual one or one not uncommon to the law of the forum.

It would appear that the Missouri appellate court should have been willing to give deference to this persuasive reasoning and to enforce the California inheritance tax statutes since they are very similar to the Missouri provisions on inheritance tax collection. *Compare* CAL. REV. AND TAX. CODE ANN. §§ 14501-14654 (1952), *with* MO. REV. STAT. §§ 145.150-145.180 (1949). The defendant admitted this similarity before the United States Supreme Court. Brief for Respondent, pp. 28, 29, California v. St. Louis Union Trust Co., 348 U.S. 932 (1955).

12. CAL. POLITICAL CODE § 3671(e) (1944) (now CAL. REV. AND TAX. CODE ANN. §§ 31, 14350 and 16123.5 (Supp. 1953)).

statute is in a different section of the California Code than the section containing the inheritance tax provisions, it would nevertheless seem to be applicable since all California statutes, regardless of their location in the code, are to be construed together.[13]

The plaintiff in the principal case, after failing to obtain from the St. Louis Court of Appeals a rehearing or a transfer to the Supreme Court of Missouri, filed an application in the Supreme Court of Missouri for a transfer from the court of appeals.[14] When this application was denied,[15] California successfully sought certiorari from the United States Supreme Court.[16]

It would appear that the plaintiff had several substantive issues to hurdle before it could win a favorable decision from the United States Supreme Court. The first obstacle was one of proof by California that its inheritance tax statutes, contrary to the opinion of the court of appeals, did create a transitory cause of action. Even assuming this obstacle could be overcome,[17] there remained the contention, relied on most strongly by the plaintiff in its argument before the Supreme Court,[18] that the construction by the Missouri court that the tax statutes were intransitory constituted a denial of full faith and credit to the foreign statutes here involved. The Court has held that the full faith and credit provision of the Constitution requires only that the courts of one state *attempt* to give the same effect to a statute of another state that the other state gives to that statute.[19] The Court cannot examine every construction given by one state to the law of another; to do so would be to enlarge the Court's jurisdiction beyond all reason.[20] Thus, as long as a state court attempts to give effect to the law of another state no federal question of full faith and credit is raised. The usual situation in which the full faith and credit issue is

13. *In re* Porterfield, 28 Cal. 2d 91, 100, 168 P.2d 706, 712 (1946); Guardianship of Thrasher, 105 Cal. App. 2d 768, 776, 234 P.2d 230, 235 (1951). The court of appeals seemed to place some weight on the fact that a recent amendment to the California statutes removes the authority of the Attorney General to bring suit in other jurisdictions to enforce inheritance tax liability. California v. St. Louis Union Trust Co., 260 S.W.2d 821, 832, 833 (Mo. App. 1953). This factor would seem unimportant, however, since the amendment does not retract the power of the state to sue extraterritorially for inheritance taxes due the state, but merely changes the person to whom power is given to sue for the tax. The Controller of California, and not the Attorney General, is now designated as the official to bring suit in other states to collect inheritance taxes. CAL. REV. AND TAX. CODE ANN. § 14350 (Supp. 1953).

14. Transcript of Record, pp. 151-156, California v. St. Louis Union Trust Co., 348 U.S. 932 (1955).

15. *Id.* at 157.

16. California v. St. Louis Union Trust Co., 348 U.S. 808 (1954).

17. See text supported by notes 11-13 *supra.*

18. Letter from Walter H. Miller, Sr., Inheritance Tax Attorney for the State of California, to the *Washington University Law Quarterly*, March 24, 1955.

19. Allen v. Alleghany Co., 196 U.S. 458 (1905); Finney v. Guy, 189 U.S. 335 (1903); Glenn v. Garth, 147 U.S. 360 (1893).

20. See Glenn v. Garth, 147 U.S. 360, 368 (1893).

presented occurs, not when a state court has attempted to give effect to another state's statute, but when, because of the state's public policy, a court intentionally gives no effect at all to the statute of a foreign jurisdiction.[21]

The defendant in the principal case argued before the United States Supreme Court that the Missouri court of appeals attempted to give the effect to the California statutes that the California legislature intended them to have, and that therefore there was no federal question raised.[22] The principal case, however, would appear to be more closely analogous to the usual situation in which the full faith and credit issue is presented than to the cases cited by the defendant. In those cases relied on by the defendant, a lower court did at least *attempt* to give substantive effect to a foreign statute.[23] In the principal case, the court of appeals made no attempt whatsoever to give effect to the substantive provisions of the California inheritance tax law; the same is true of the lower court in the usual full faith and credit case. Thus, in both the principal case and the usual full faith and credit situation the basic question is the same: Should the lower court have attempted to give substantive effect to a particular foreign statute? The only important distinction between the two cases is that the consideration involved in deciding the basic question is of a different nature: In the usual full faith and credit case it must be determined whether primary weight should be given to state public policy or to the constitutional requirement that one state enforce the laws of another state; in the principal case it must be determined whether the statute involved created a transitory or intransitory cause of action. The fact that the consideration in the principal case is of a different nature than in the usual full faith and credit situation would not seem to be a compelling distinction—the basic question is still the same. It should also be noted that in making an inquiry into the transitory nature of a cause of action the Supreme Court would not be on new ground since it has made that inquiry previously in at least two cases.[24] In addition, the cases

21. See, *e.g.*, First National Bank of Chicago v. United Air Lines, Inc., 342 U.S. 396 (1952); Bradford Electric Co. v. Clapper, 286 U.S. 145 (1932).

22. Brief for Respondent, pp. 14-18, California v. St. Louis Union Trust Co., 348 U.S. 932 (1955).

23. The cases relied on by the defendant were: Louisville & Nashville R.R. v. Melton, 218 U.S. 36 (1910); Allen v. Alleghany Co., 196 U.S. 458 (1905); Finney v. Guy, 189 U.S. 335 (1903); Banholzer v. New York Life Ins. Co., 178 U.S. 402 (1900); Glenn v. Garth, 147 U.S. 360 (1893). Brief for Respondent, pp. 14-18, California v. St. Louis Union Trust Co., 348 U.S. 932 (1955).

24. Tennessee Coal, Iron & Railroad Co. v. George, 233 U.S. 354 (1914); Atchison, Topeka & Santa Fe Ry. v. Sowers, 213 U.S. 55 (1909). These cases are distinguishable, however, from the principal case. In both cases, one state had created a statutory cause of action which specifically provided that suit had to be brought within the jurisdiction. Suit was brought in a foreign court which intentionally overlooked the statutory procedural limitation and gave effect to the substantive provisions. The Supreme Court of the United States affirmed both decisions. The distinguishing feature is that in those cases the Supreme

relied on by the defendant stressed the fact that the Court would be flooded with litigation if it assumed jurisdiction;[25] this reason is not applicable to the principal case since the situation presented is exceedingly rare.[26]

If it were accepted that the California inheritance tax statutes created a transitory cause of action and also that a federal question of full faith and credit was before the Court, there would seem to be little to prevent a holding that the St. Louis Court of Appeals failed to give full faith and credit to the California statutes. Even if a state court need not give full faith and credit to a foreign revenue statute if enforcement of it countervenes state public policy,[27] still in the principal case the Missouri appellate court explicitly accepted the position of the *Rodgers* case that Missouri public policy does not oppose the enforcement of foreign revenue laws.[28] It would seem, therefore, that the Supreme Court would have been justified in holding that Missouri must give full faith and credit to the California inheritance tax statutes.[29]

But no decision on the merits of the principal case was ever handed down by the Supreme Court. During oral argument before the Court, the Supreme Court Judges subjected counsel for the plaintiff to vigorous questioning to determine whether California had preserved the constitutional question in the lower courts, and at the conclusion of argument, Chief Justice Warren requested counsel for the defendant to submit an additional memorandum on the question.[30] The Monday following oral argument, after the memorandum had been filed, certiorari was dismissed as improvidently granted.[31] There can be no

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Court *affirmed* a state court decision *overlooking* the procedural limitation, while in the principal case, the Court was requested to *overrule* a state court decision allegedly *giving effect* to the procedural limitation.

25. See Glenn v. Garth, 147 U.S. 360, 368 (1893).

26. Even if the line of cases relied on by the defendant should be considered indistinguishable from the principal case, it would seem that the Supreme Court could have found for the plaintiff on the basis that the decision of the lower court was clearly in error in determining the effect of the California statute. See Eastern Building and Loan Ass'n v. Williamson, 189 U.S. 122 (1903).

27. See note 29 *infra*. For a case in which state public policy overrode the full faith and credit provision, see Alaska Packers Ass'n v. Industrial Accident Commission of California, 294 U.S. 532, 546-550 (1935).

28. See text supported by notes 3-5 *supra*.

29. See Order of United Commercial Travelers of America v. Wolfe, 331 U.S. 586, 624, 625 (1947). The Supreme Court has never decided the blanket proposition that one state must give full faith and credit to the revenue laws of another state, and the generally accepted rule is that a state need not enforce another state's revenue laws. See note 4 *supra*. This issue, however, was not argued before the Court in the principal case, nor was it urged in the lower courts.

30. Letter from Walter H. Miller, Sr., Inheritance Tax Attorney for the State of California, to the *Washington University Law Quarterly*, March 24, 1955.

31. California v. St. Louis Union Trust Co., 348 U.S. 932 (1955). Dismissal of certiorari as improvidently granted is a comparatively rare decision. Such a

doubt that certiorari was dismissed because the plaintiff, in its unsuccessful application to the Supreme Court of Missouri for a transfer from the St. Louis Court of Appeals,[32] failed even to mention the constitutional question.[33] Thus, according to *St. Louis v. Butler Co.*,[34] the same case on which the plaintiff previously had successfully relied before the Supreme Court of Missouri,[35] the plaintiff had waived the constitutional question, and it is clear that the question could not be reasserted in the United States Supreme Court.[36]

The principal case was unusual from the time of its inception until its anti-climactic dismissal. Whether a similar case will ever arise again in the Missouri courts or elsewhere is uncertain; however, the Controller of the State of California has indicated that he will raise the question again if the opportunity presents itself.[37] The ironic twist to the proceedings is that the plaintiff finally lost its case on the same technical ground on which it had been temporarily victorious[38] —failure by a party to preserve a constitutional question throughout the proceedings.

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dismissal is usually based on a finding by the Court during oral argument or upon further study that the basis upon which certiorari was granted does not exist. STERN AND GRESSMAN, SUPREME COURT PRACTICE 158, 159 (2d. ed. 1954). For a listing of all the cases in which this action was taken prior to 1952, see Justice Frankfurter's separate opinion in United States v. Shannon, 342 U.S. 288, 297 n.3 (1952).

32. See text supported by note 14 *supra*.

33. The theory of the application was that the St. Louis Court of Appeals decision involved a question of importance and general interest. Transcript of Record, pp. 154-156, California v. St. Louis Union Trust Co., 348 U.S. 932 (1955). Walter H. Miller, Sr., Inheritance Tax Attorney for the State of California in a letter to the *Washington University Law Quarterly*, March 24, 1955, expressed the belief that this unquestionably was the basis of the Supreme Court decision and that the decision was clearly correct. Local counsel had raised the constitutional question in the application to the St. Louis Court of Appeals for rehearing and for transfer to the Supreme Court of Missouri, but failed to raise the question in the application to the Supreme Court of Missouri for transfer from the St. Louis Court of Appeals. Transcript of Record, pp. 151, 152, 154-156, California v. St. Louis Union Trust Co., 348 U.S. 932 (1955).

34. 358 Mo. 1221, 219 S.W.2d 372 (1949).

35. See text supported by note 7 *supra*.

36. Parker v. Illinois, 333 U.S. 571 (1947).

37. Letter from Walter H. Miller, Sr., Inheritance Tax Attorney for the State of California, to the *Washington University Law Quarterly*, March 24, 1955.

38. See text supported by notes 7, 8 *supra*.