

allowed to recover on either a direct or indirect quasi-contractual theory. But most courts hold that mere "constructive" notice to the creditor is not sufficient to prevent his recovery and have granted quasi-contractual recovery even where a reasonable inquiry by the creditor would have divulged the extent of the trustee's powers. *Thomas v. Provident Life and Trust Co.*, 138 Fed. 348 (1905); *Fansher v. People's Trust and Savings Bank*, 204 Iowa 449, 215 N.W. 498 (1927); *In re Pumfrey*, 22 Ch. D. 255 (1882). However, Massachusetts courts, anxious to penalize participation in breaches of trusts (3 Bogert, *Trusts and Trustees* § 725 (1935)) have uniformly denied the creditor recovery where he knew he was dealing with a trustee and where the trustee knew that he was exceeding his powers. *Tuttle v. First Nat. Bank of Greenfield*, 187 Mass. 533, 73 N.E. 560 (1905); *Hines v. Levers and Sargent Co.*, 226 Mass. 214, 115 N.E. 252 (1917); *Donnelly v. Alden*, 229 Mass. 109, 118 N.E. 298 (1918).

In the instant case, the court followed the Massachusetts rule, found constructive notice to the creditor and therefore denied recovery. This result seems unjust. Although the contracting trustee failed to obtain the signature or assent of his co-trustee to the particular contract, the co-trustee had authorized the construction of the apartment building which was the purpose of the trust. If the contracting trustee's failure to stipulate against personal liability in the contract was a breach of trust, it at least gave the trust estate additional protection and was therefore evidence of good faith. Apparently then, the contracting trustee acted in good faith and might have been entitled to reimbursement from the trust estate had he paid the plaintiff. See *Rathbun v. Colton*, 15 Pick. (Mass.) 471 (1834). It would seem that the creditor should not be held to a more rigorous standard of good faith than that required for the trustee. The cases cited above, where the trustee acted in bad faith, were clearly distinguishable. The result seems more harsh in the light of the fact that this was a business trust. It is likely that the trust instrument contained the usual provision for liability of the trust estate. See 6 Bogert, *Trusts and Trustees* §§ 1101, 1104 (1935); Fletcher, *Corporation Forms*, Form 2220 (1928). A few courts have held that where, as in the usual business trust, the instrument provides that the trust estate shall be liable for claims of creditors and where the estate has benefited from the creditors' performance, the creditor has a direct right against the trust estate even upon an *ultra vires* contract. *Gisborn v. Charter Oak Ins. Co.*, 142 U.S. 326 (1892); *Roberts v. Hale*, 124 Iowa 296, 99 N.W. 1075 (1904); see *Willis v. Sharp*, 113 N.Y. 586, 21 N.E. 705 (1889); *Mathews v. Stephenson*, 6 Pa. 496 (1847); *Laible v. Ferry*, 32 N.J. Eq. 791 (1880); Restatement, *Trusts* § 270, comment *a* (1935). Such cases involve application to the business trust of a rule developed by many courts in cases of corporations. See Carpenter, *Should the Doctrine of Ultra Vires Be Discarded?*, 33 Yale L. J. 49, 55 (1923).

Conflict of Laws—Enforcement of Tax Judgments of Sister States in Federal Courts—[United States].—The defendant, an Illinois corporation, was granted a license to do business in Wisconsin. After carrying on a profitable business in Milwaukee, it withdrew its business and all of its property from the state, leaving unpaid a state income tax levied on its Wisconsin business. Thereafter, suit was brought by Milwaukee County on behalf of itself and the state, in a Wisconsin state court, to recover the tax due. Personal service was obtained on the defendant in Wisconsin. A default judgment was rendered against the defendant for \$52,165.84. There being no

property of the defendant in Wisconsin, suit was commenced on this judgment in a federal court in Illinois. The suit was dismissed. On appeal, the Circuit Court of Appeals certified to the United States Supreme Court the following question: "Should a United States District Court in and for the State of Illinois . . . entertain jurisdiction of an action . . . based on a valid judgment . . . rendered by a court of competent jurisdiction in the state of Wisconsin . . . predicated upon an income tax due from the defendant to the state of Wisconsin?" *Held* (two justices dissenting), the question was answered "yes." *Milwaukee County v. M. E. White Co.*, 56 Sup. Ct. 229 (1935).

The decision establishes as a conflict of laws rule in the federal courts that judgments for taxes of sister states should be enforced. The court held that such judgments are "suits of a civil nature" and within the original jurisdiction of the federal courts (36 Stat. 1091 (1911); 28 U.S.C.A. § 41(1) (1927)), and as a matter of comity should be enforced by the federal courts. The court justified this result on the ground that the obligation to pay taxes is not penal, but is quasi-contractual in nature. This repudiates the orthodox view that a tax is an enforced contribution or impost levied by the authority of the state, and is not a debt or quasi-contractual liability. *Moore v. Mitchell*, 30 F. (2d) 600 (C.C.A. 2d 1929), *aff'd* on another ground, 281 U.S. 18 (1930); *Colorado v. Harbeck*, 232 N.Y. 71, 133 N.E. 357 (1921); *Marion County v. Woodburn Mercantile Co.*, 60 Ore. 367, 119 Pac. 487 (1911); *cf. Dewey v. Des Moines*, 173 U.S. 193 (1899). The latter view, in the past, has led courts to ignore obvious distinctions between foreign revenue laws, and foreign penal laws, and to refuse the enforcement of obligations arising under either. *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265 (1888); *Maryland v. Turner*, 132 N.Y.S. 173, 75 Misc. 9 (1911); *Colorado v. Harbeck*, 232 N.Y. 71, 133 N.E. 357 (1921). The refusal was justified on the grounds that such litigation would congest the local courts, run counter to the public policy of the forum, and might lead to embarrassing relations between states. *Moore v. Mitchell*, 30 F. (2d) 600, 604 (C.C.A. 2d 1929) (concurring opinion); Leflar, *Extrastate Enforcement of Penal and Governmental Claims*, 46 Harv. L. Rev. 193, 219 (1932).

While the question certified required the court to determine only the correct conflict of laws rule for the federal courts as to tax judgments of sister states, the language of the court indicates that when a state has reduced its claim to a valid judgment, that judgment is entitled to full faith and credit. U.S. Const., art. IV, § 1; Act of May 26, 1790, c. 11; 28 U.S.C.A. § 687 (1928). The full faith and credit clause is binding upon both federal and state courts. *Bradford Electric Light Co. v. Clapper*, 286 U.S. 145 (1932). The view is in accord with the pronounced tendency of the court to broaden the scope of the full faith and credit clause by insisting that a cause of action and the judgment upon it are not the same types of obligation. Whether this is a fairly recent tendency, having its beginning in *Fauntleroy v. Lum*, 210 U.S. 230 (1908), or is merely the rearticulation of an early policy of the court (*Hampton v. M'Connel*, 3 Wheat. (U.S.) 234 (1818)) which temporarily lost favor in *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265 (1888) is not now important. Certainly, in recent years, with but few exceptions, full faith and credit has been required for all valid judgments. *Roche v. McDonald*, 275 U.S. 449 (1928); *Kenney v. Supreme Lodge*, 252 U.S. 411 (1920); *Fauntleroy v. Lum*, 210 U.S. 230 (1908). In the only decision found with facts similar to those in the principal case, a state court held the foreign judgment entitled to full faith and credit. *New York v. Coe Mfg. Co.*, 112 N.J.L. 536, 172 Atl. 198 (1934); see Hazelwood, *Full Faith*

and Credit Clause as Applied to Enforcement of Tax Judgments, 19 *Marquette L. Rev.* 10 (1934); 49 *Harv. L. Rev.* (1936). There has been a similar tendency to include the statutes of sister states within the scope of the clause. *Converse v. Hamilton*, 224 U.S. 243 (1912); *Bradford Electric Light Co. v. Clapper*, 286 U.S. 145 (1932); *Broderick v. Rosner*, 294 U.S. 629 (1935). And thus, while the court still asserts that the full faith and credit clause is not all inclusive, and that local public policy will control the enforcement of foreign liabilities in proper cases, the room for the exercise of such a policy has been constantly decreased. If in the future full faith and credit will be required for tax statutes, the extrastate collection of taxes will be greatly facilitated for it is difficult, if not impossible, to get a personal judgment for a tax, whereas it is relatively simple to bring a suit in a foreign court on the statute itself, or on an administrative officer's assessment. See 29 *Col. L. Rev.* 782 (1929). Finally, the court may have intended to establish as a conflict of laws rule for the federal courts that tax statutes of sister states should be given recognition. The language of the decision which defined a tax obligation as quasi-contractual, not penal, would lead to this result, for under existing conflict of laws rules foreign statutes are recognized which are the basis for "contractual" liability. *Flash v. Conn.*, 109 U.S. 371 (1883) (stockholder's liability); *Farr v. Briggs*, 72 *Vt.* 225, 47 *Atl.* 793 (1900) (director's liability to creditors). See *Holshouser Co. v. Gold Hill Copper Co.*, 138 *N.C.* 248, 50 *S.E.* 650 (1905).

Conflict of Laws—Gold Clauses—Applicability of Congressional Legislation to Obligations Owed in the United States by Foreign Debtors—[New York].—The plaintiff, a corporation of the Republic of Colombia, purchased bearer bonds issued by the defendant bank of Finland. The bonds were issued in New York on July 1, 1924, and contained a promise to pay "in gold coin of the United States of America of the standard of weight and fineness as it existed on July 1, 1924." The principal and interest were payable in New York or other specified places in the United States. The defendant called the bonds for payment, pursuant to its option, on July 1, 1934, and tendered payment of the face amount in dollars. The plaintiff brought this action to recover the full value of the gold equivalent as of July 1, 1924, in the present depreciated dollars. *Held*, the plaintiff could recover only the face amount of the obligations in dollars, with the interest due at the redemption date. *Compania de Inversiones Internacionales v. Industrial Mortgage Bank of Finland*, 269 *N.Y.* 22, 198 *N.E.* 617 (1935); *cert. denied*, 56 *Sup. Ct.* 443 (1936).

Since the obligations embodied in these bonds were issued and primarily payable in New York, both the validity and the performance of them should be governed by the law of the United States. *Benton v. Safe Deposit Bank*, 255 *N.Y.* 260, 174 *N.E.* 648 (1931); *Wilson v. Lewiston Mill Co.*, 150 *N.Y.* 314, 44 *N.E.* 959 (1896); *Grand v. Livingston*, 4 *App. Div.* 589, 55 *N.Y.S.* 236 (1896), *aff'd* 158 *N.Y.* 688, 53 *N.E.* 1125 (1899); *Restatement, Conflict of Laws* §§ 166, 332(f), 346, 358 (1934); *cf.* the French and German rules of conflict of laws considered in Goodbar, "Dollar Bond" Indentures of French and German Corporations, 13 *B. U. L. Rev.* 22 (1933). A joint resolution of Congress of June 5, 1933, declares every provision in any obligation theretofore or thereafter entered into providing for payment in gold coin or in gold value, to be against public policy and that every obligation shall be discharged by payment in legal tender, dollar for dollar. 48 *U.S. Stat.* 113 (1933), 31 *U.S.C.A.* §§ 462, 463 (1935).