

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).

The terms of this statute, as the court held on the instant case, did not except the obligations of foreign debtors. See *International Trustee for the Protection of Bondholders Aktiengesellschaft v. The King*, 52 Times L. R. 82 (1935), noted in 84 U. of Pa. L. Rev. 543 (1936); Nussbaum, Comparative and International Aspects of American Gold Clause Abrogation, 44 Yale L. J. 53, 77 (1934). Whether, nevertheless, the resolution should be construed to make such an exception should depend on the objective of the statute and the constitutionality of its application to obligations of foreign debtors. Either foreign or domestic creditors of foreign debtors may raise constitutional objections. *Lem Moon Sing v. U.S.*, 158 U.S. 538 (1895). The resolution was apparently motivated by the policy of protecting persons who will receive payment of debts due them in depreciated dollars from being obliged to pay their creditors the equivalent of the gold value of undepreciated dollars. This policy does not apply to persons the greater part of whose incomes are not affected by dollar devaluation, i.e., to persons domiciled abroad. A further purpose of the resolution was to facilitate the measures already undertaken by the government to demobilize gold and to maintain a uniform currency. See 48 U.S. Stat. 2 (1933), 12 U.S.C.A. § 248(n) (1935); 48 U.S. Stat. 51, 31 U.S.C.A. 821 (1935). To the extent that gold clauses require actual payment in gold they run against the present embargo on gold. If a debtor were compelled to pay in gold in the United States, therefore, the requirements would clearly violate the statute, regardless of the debtor's domicile. *Norman v. B. & O. R. Co.*, 294 U.S. 240, 313 (1935).

A gold clause might be literally interpreted as a promise to pay in gold coin and thus as a guard against future disparity in purchasing value of two types of legal tender similar to the disparity existing in the United States at the time of the *Legal Tender Cases*, 79 U.S. 457 (1870). Reduction of value of paper money would not affect the worth of the obligation because a "gold coin" clause designates and restricts payment to that type of legal tender. *Bronson v. Rodes*, 74 U.S. 229 (1868); see Nebolsine, The Gold Clause in Private Contracts, 42 Yale L. J. 1051, 1064 ff. (1933). Some English cases have adopted this "gold coin" interpretation for similar contracts. *In re Société Intercommunale Belge d'Electricité*, [1933] Ch. 684, 708, rev'd sub. nom. *Feist v. Société Intercommunale Belge d'Electricité*, [1934] A. C. 161; *International Trustee for the Protection of Bondholders Aktiengesellschaft v. The King*, 52 Times L. R. 82, 85 (1935); cf. *Perry v. U.S.*, 294 U.S. 330 (1935), discussed in Hart, The Gold Clause in United States Bonds, 48 Harv. L. Rev. 1057 (1935). As all clauses construed in this manner, whether in the obligations of foreign or domestic debtors, would contravene the regulations established by Congress to control gold, their abrogation was within the purpose of the resolution. This interference was the reason recognized by the Supreme Court for holding the abrogation constitutional as to gold coin clauses in obligations of domestic debtors. *Norman v. B. & O. R. Co.*, 294 U.S. 240, 313 (1935); see *Ling Su Fan v. U.S.*, 218 U.S. 302 (1910); and see the state cases avoiding such clauses as a consequence of the Legal Tender Acts of 1862 and 1863. *Howe v. Nickerson*, 96 Mass. 400 (1867). For the same reason abrogation of gold coin clauses would seem to be constitutional as to foreign debtors. Accordingly the obligor may satisfy such obligations by paying the nominal amount in other legal tender as provided in the resolution. 48 U.S. Stat. 113 (1933), 31 U.S.C.A. § 463 (1935).

However, the more usual interpretation of gold clauses as "gold value" clauses, has been adopted by the United States Supreme Court. *Norman v. B. & O. R. Co.*, 294 U.S. 240, 302 (1935); see *Feist v. Société Intercommunale Belge d'Electricité*, L.R. [1934]

A. C. 161. A "gold value" clause embodies an alternative obligation to pay legal tender in amount equivalent to the value, determined at the date of payment, of the gold coins of the stipulated weight and fineness. Nussbaum, Comparative and International Aspects of American Gold Clause Abrogation, 44 Yale L. J. 53, 55 (1934); Post and Willard, The Power of Congress to Nullify Gold Clauses, 46 Harv. L. Rev. 1225, 1242 (1933). The resolution is not unconstitutional when applied to "gold value" clauses in the obligations of domestic debtors because the judgment of Congress that such clauses constitute an interference with the proper exercise of its monetary powers is not arbitrary or capricious under the circumstances. *Norman v. B. & O. R. Co.*, 294 U.S. 240, 315 (1935). Without this legislation, the burden resting on obligors would be so substantially increased on devaluation of the dollar without corresponding inflation of income, that devaluation would be inexpedient. 2 U. of Chi. L. Rev. 138, 143 (1934); cf. Pennock, The Private Bond Case as a Postponement of the Real Issue, 84 U. of Pa. L. Rev. 194, 200 ff. (1935). But devaluation of the dollar does not affect the income of foreigners; preserving the gold value of debts owed by them does not interfere with control over gold. Abrogation of gold value clauses in their obligations cannot be said to further the purpose of the resolution. Therefore the abrogation would not be necessary and proper to an exercise of the power to regulate the currency. To exempt domestic creditors of foreign debtors from the operation of the resolution and not foreign creditors of domestic debtors, might, however, be impolitic from the standpoint of diplomatic relations.

Conflict of Laws—Heart-Balm Suits—Enforcement of Foreign Actions in Federal Courts When Prohibited by State Statutes—[Federal].—A resident of New Jersey sued a resident of New York for alienation of affections. The suit was brought in a federal district court in New York on the ground of diversity of citizenship. The complaint failed to state whether the wrong was committed in New Jersey or New York. The defendant moved to dismiss, contending that the suit was barred by a statute of New York (N.Y.L. 1935, c. 263, § 61a-61h) which (1) abolished the so-called heart-balm suits, (2) declared expressly their abolition to be necessary in the public interest, (3) threatened with criminal punishment any attempt to bring any such suit, on either a domestic or foreign cause of action. *Held*, motion to dismiss denied. It remained open to the plaintiff to prove that the cause of action arose in New Jersey. *Wawrzyn v. Rosenberg*, 12 F. Supp. 548 (D.C. N.Y. 1935).

The scope of litigation which may be brought before the federal courts cannot be affected except by Congress. *Hoover v. Crawford County*, 39 Fed. 7 (C.C. Ark. 1889); *City of St. Charles v. Stookey*, 154 Fed. 772 (C.C.A. 8th 1907). Hence, state statutes cannot prohibit parties from invoking the federal courts. *Chicot County v. Sherwood*, 148 U.S. 529 (1893); *Terral v. Burke Construction Co.*, 257 U.S. 529 (1922); *International Paper Co. v. Burrill*, 260 Fed. 664 (D.C. Mass. 1919). It seems, therefore, that bringing a heart-balm suit in a federal court cannot be punished under a statute of the type of the New York statute set out above. The fact, however, that the federal court cannot be barred by state law from entertaining a certain class of litigation, does not answer the problem of how the suit must be decided by the federal court. Under the Rules of Decision Act (Act of Sept. 24, 1789, c. 20, § 34; 28 U.S.C.A. § 725 (1928)) the federal court, on principle, has to apply the substantive law of the state where it happens to sit. *Bucher v. Cheshire R. Co.*, 125 U.S. 555 (1888); *Paterlini v. Memorial Hospital*