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. *Wawrzin 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*

Ass'n, 247 Fed. 639 (C.C.A. 3d 1918). Thus, it appears that where a state, by a valid statute has abolished heart-balm suits, the federal court has to decide against the plaintiff whenever the cause of action arose in the state where the court sits. *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907); *Bank of Richmond v. Bank of Goldsboro*, 3 F. (2d) 970 (C.C.A. 4th 1925).

Where the statute, like that of New York, not only changes the domestic law as to heart-balm suits but also declares it to be against public policy that a plaintiff should succeed in such a case, even when his claim is founded on acts committed outside the state, the problem arises whether the Rules of Decision Act binds the federal courts to follow such a conflict of laws provision laid down by the state within which the court is sitting. The federal courts usually regard conflict of laws problems as involving matters of general jurisprudence which they can decide independently of the local state rules. *Evey v. Mexican Cent. Ry. Co.*, 81 Fed. 294 (C.C.A. 5th 1897); *Dygert v. Vermont Loan Co.*, 94 Fed. 913 (C.C.A. 9th 1899); *Citizens' Nat'l Bank of Orange v. Waugh*, 78 F. (2d) 325 (C.C.A. 4th 1935). This result is usually justified as an extension of the exception to the Rules of Decision Act which was first laid down in *Swift v. Tyson*, 16 Pet. (U.S.) 1 (1842), that in matters of general commercial law federal courts may follow their own rules. But this doctrine has not been applied where the state law is an express statute, provided such statute is constitutionally valid. However, it is still possible that the federal courts will extend the exception to all conflict of laws cases, and thus take such cases entirely out of the Rules of Decision Act. See *Western Union v. Brown*, 234 U.S. 542 (1914). Further, by the terms of the act, the federal courts need not follow the local state laws if they are contrary to the United States Constitution. And it might reasonably be argued that a statute prohibiting any recovery upon a foreign common law right of action is a denial of due process. *Home Ins. Co. v. Dick*, 281 U.S. 397 (1930); see *Aetna Life Ins. Co. v. Dunken*, 266 U.S. 389 (1924).

Even aside from the Rules of Decision Act, a state statute prohibiting recovery on foreign causes of action might be held invalid on constitutional grounds. The Supreme Court has shown a pronounced tendency to restrict the application of local law in conflict of laws cases. The federal courts have followed local statutes in deciding foreign causes of action when the statute only altered somewhat the remedy given by the foreign law, and where the federal courts decided that the local statute was applicable under generally accepted conflict of laws rules. *Townsend v. Jemison*, 9 How. (U.S.) 406 (1850) (statute of limitation); *Union Trust Co. v. Grosman*, 245 U.S. 412 (1918) (capacity to contract); *Nelson v. Bank of Killingley*, 69 Fed. 798 (C.C.A. 8th 1895) (admissibility of evidence). But states have not been allowed to alter remedies on foreign causes of action when to do so would be contrary to the federal court's notion of the correct conflict of laws rule and thus be a denial of due process. *Aetna Life Ins. Co. v. Dunken*, 266 U.S. 389 (1924); *Western Union v. Brown*, 234 U.S. 542 (1914); with which compare *Bradford Electric Light Co. v. Clapper*, 286 U.S. 145 (1932). On the same general ground a statute which denies all recovery on a foreign right of action may be declared unconstitutional even though, if valid, it would be applicable as a matter of conflict of laws. *Home Ins. Co. v. Dick*, 281 U.S. 397 (1930); *Bond v. Hume*, 243 U.S. 15 (1917) (*semble*); Ross, Has the Conflict of Laws Become a Branch of Constitutional Law?, 15 Minn. L. Rev. 161 (1931). Further, where the foreign cause of action is founded on a statute, the local statute denying recovery may be

declared unconstitutional as a denial of full faith and credit. *Broderick v. Rosner*, 294 U.S. 629 (1935); *Converse v. Hamilton*, 224 U.S. 243 (1912); *cf. Gallagher v. Florida East Coast Ry. Co.*, 196 Fed. 1000 (D.C. N.Y. 1912). The soundness of these decisions largely depends upon the acceptance of the theory that the respective plaintiffs had a "vested property right" in the cause of action which arose in the foreign state. *Ormsby v. Chase*, 290 U.S. 387 (1933); *Bradford Electric Light Co. v. Clapper*, 286 U.S. 145 (1932); Dodd, The Power of the Supreme Court to Review State Decisions in the Field of Conflict of Laws, 39 Harv. L. Rev. 533 (1926); but see *Guinness v. Miller*, 291 Fed. 769 (D.C. N.Y. 1923); *The James McGee*, 300 Fed. 93 (D.C. N.Y. 1924); *Herzog v. Stern*, 264 N.Y. 379, 191 N.E. 23 (1934), *cert.* denied, 293 U.S. 597 (1934). This theory has been criticized. Lorenzen, Tort Liability and the Conflict of Laws, 47 L. Q. Rev. 483 (1931); Cook, The Logical and Legal Bases of the Conflict of Laws, 33 Yale L. J. 457 (1924).

Constitutional Law—Ability of Citizen to Object to Legislation of His Own State as Violating Privilege of Citizens of United States—[United States].—The Vermont Income and Franchise Tax Act of 1931 (Vermont Pub. L. 1933 § 872 *et seq.*) levied a tax on income received on account of ownership or use of or interest in any interest bearing security. Exempted, *inter alia*, was "interest on money loaned within the state" at not more than 5 per cent per annum. The plaintiff, a resident of Vermont, received as income interest on money loaned outside the state, and upon assessment according to the above provision, instituted statutory proceedings attacking the constitutionality of the tax. The Vermont Supreme Court upheld the tax; on appeal, *held*, (Stone, Cardozo, and Brandeis, JJ. dissenting to this part) the exemption of interest on money loaned within the state both violates the equal protection of the laws clause and denies the plaintiff one of the privileges guaranteed him as a citizen of the United States by the privileges or immunities clause of the Fourteenth Amendment. *Colgate v. Harvey*, 56 Sup. Ct. 252 (1935).

The court interpreted the phrase "money loaned within the state" to require that the actual transaction be conducted while both contracting parties were in the state. Thus, the majority argued, since the exemption would apply as well where the money was thereafter invested outside the state, the place of making the loan became the criterion and this was an arbitrary standard forbidden by the equal protection of the laws clause. The court stated however that had the statute required that this money be invested in property having its situs within the state, the exemption might have been held valid on the ground that it increased the taxable wealth of the state. *Klein v. Board of Supervisors*, 282 U.S. 19 (1930). If this were a permissible end, the fact that a negligible amount of money thus loaned would not be invested within the state would be insufficient to defeat the exemption. *Beers v. Glynn*, 211 U.S. 477 (1909); *Salomon v. State Tax Comm.*, 278 U.S. 484 (1929). And it might well have been argued that most of the money thus loaned would be invested within the state. But even assuming that the exemption was not reasonably calculated to achieve the increase of the state's taxable wealth, this seems an inadequate basis for concluding that another permissible end may not reasonably be conceived, or that the exemption was not intended to achieve this other object. *Tax Comm. v. Jackson*, 283 U.S. 527 (1931); *cf.* 36 Col. L. Rev. 283, 287 (1936); 49 Harv. L. Rev. 631 (1936). Although the majority avoided this conclusion by relying on the alternative approach of the privileges or immunities