It is well understood that payment by carriers to shippers under the guise of settling claims for loss and damage may in effect constitute discrimination that the Act was intended to prevent. But it is not suggested how opportunity for collusion in respect of such matters would be lessened by abolishing counterclaims in cases such as this. Collusion and fraud may be practiced in the defense and settlement of separate actions brought on such claims as well as when the same matters are put forward as offsets or counterclaims.

The Act ought not to be construed to put aside state laws and long established practice in respect of pleading unless the intention of Congress so to do is plain. There appears no reasonable probability that the relegation of shippers to separate actions for the enforcement of their claims for loss or damage would operate more effectively to enforce the purpose of Congress to prevent discrimination. There is no substantial ground upon which the Act may be given the construction for which the carrier contends.

The question is answered

No.

MOORE, TREASURER OF GRANT COUNTY, INDIANA, *v.* MITCHELL, ET AL., EXECUTORS.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 79. Argued January 14, 1930.—Decided February 24, 1930.

A state tax officer, claiming only by virtue of his office and authorized only by the laws of his State, has no legal capacity to sue, for the collection of taxes due to his State, in a federal court in another State. P. 23.

30 F. (2d) 600, affirmed.

CERTIORARI, 279 U. S. 834, to review a judgment of the Circuit Court of Appeals which affirmed a judgment of

the District Court, 28 F. (2d) 997, dismissing the complaint in an action to recover delinquent taxes.

Mr. Henry M. Dowling, with whom *Mr. Russell H. Robbins* was on the brief, for petitioner.

Transitory causes of action of a civil nature are enforcible in the courts of another jurisdiction, in absence of an adverse public policy of such jurisdiction.

The exception against penal liabilities should not be extended to include civil liabilities arising under revenue laws.

Distinguishing: *Colorado* v. *Harbeck,* 232 N. Y. 71; *Municipal Council of Sydney* v. *Bull,* (1909) 1 K. B. 7; *Gulledge Bros. Lumber Co.* v. *Wenatchee Land Co.,* 122 Minn. 266; *Attorney General for Canada* v. *William Schulze & Co.,* 9 Scots Law Times (1901–1902) 4; *Wisconsin* v. *Pelican Ins. Co.,* 127 U. S. 265, 291; *Boston & M. R. Co.* v. *Hurd,* 108 Fed. 116; *Malloy* v. *American Hide & Leather Co.,* 148 Fed. 482.

Since the federal courts enforce revenue laws of the States in which they sit, it follows that they should equally enforce revenue laws of other States. *Tennessee* v. *Whitworth,* 117 U. S. 129; *Supervisors* v. *Rogers,* 7 Wall. 175, 180; *In re Stutsman County,* 88 Fed. 337; *Bristol* v. *Washington County,* 177 U. S. 133.

Under section 64a of the Bankruptcy Law, state taxes have been allowed and paid in districts located outside the taxing State; the federal courts refusing to confine the statute to local taxes only. *In re United Five and Ten Cent Store, Inc.,* 242 Fed. 1005; *In re Thermiodyne Radio Corp.,* 26 F. (2d) 716.

Refusal to enforce revenue laws extraterritorially has its origin in conditions of commercial rivalry between nations. The reasons underlying such refusal are wholly inapplicable as between the nation and its constituent States. 29 Columbia L. Rev., No. 6, 782; *Henry* v. *Sargeant,* 13 N. H. 321.

Personal property taxes, under the laws of Indiana, were due and became the personal obligation of taxpayers in each year, whether or not the amount thereof had been fixed by assessment.

The conception of tax liability entertained by the federal courts and by the courts of Indiana differs from the conception entertained by certain of the state courts. Under the former conception, at least, no principle of law prevents suit in a jurisdiction extraneous to the taxing jurisdiction.

In Indiana these taxes are debts. *Mullikin* v. *Reeves,* 71 Ind. 281, 284; *Funk* v. *State,* 166 Ind. 455, 457; *Darnell* v. *State,* 174 Ind. 143; *Prudential Casualty Co.* v. *State,* 194 Ind. 542.

The federal rule is illustrated in *Billings* v. *United States,* 232 U. S. 261, where the tax was federal; but the reasoning applies equally to suits for state taxes. The nature of the obligation is determined primarily by the enacting State. See also *United States* v. *Chamberlin,* 219 U. S. 250.

Extraterritorial imposition of tax liability must be distinguished from extraterritorial enforcement of such liability. The latter is constitutionally unobjectionable.

Mr. Louis Connick, with whom *Messrs. Graham Sumner, Whitney North Seymour* and *Francis H. Horan* were on the brief, for respondents.

The American authorities in both federal and state courts universally recognize the principle of private international law which forbids the enforcement by one sovereign of the revenue laws of another. *Meriwether* v. *Garrett,* 102 U. S. 472, 513–514; *Wisconsin* v. *Pelican Insurance Co.,* 127 U. S. 265, 290; *Ashley* v. *Ryan,* 153 U. S. 436; *New York Trust Company* v. *Island Oil & Transport Corp.,* 11 F. (2d) 698; *Colorado* v. *Harbeck,* 232 N. Y. 71; *In re Bliss,* 121 Misc. 773; *Maryland* v. *Turner,* 75 Misc.

9; *Heine* v. *Levee Commissioners,* 86 U. S. 655; *Rees* v. *City of Watertown,* 86 U. S. 107; *Arkansas* v. *Bowen,* 20 App. D. C. 291; *Henry* v. *Sargeant,* 13 N. H. 321, 332.

The English decisions without exception recognize the same rule. *In re Visser* (1928), 1 Ch. 878; *Municipal Council* of *Sydney* v. *Bull,* (1909), 1 K. B. 7; *Attorney General for Canada* v. *William Schulze & Co.,* 9 Scots Law Times Rep. 4 (1901); *City of Regina* v. *McVey,* 23 Ont. W. N. 32; *Holman* v. *Johnson,* 1 Cowp. 341 (1775); *The Emperor of Austria* v. *Day and Kossuth* (1861), 3 De Gex, F. & J., 217, 241–242; *Huntington* v. *Attrill* (1893), A. C. 150; *Cotton* v. *Rex,* L. R. 1914, A. C. 176; *Indian & Gen. Investment Trust* v. *Borax Consolidated, Ltd.* (1920), 1 K. B. 539, 550.

Adoption of a contrary rule would flood the federal courts with actions by taxing authorities whose neglect and delinquency could not otherwise be repaired. If the federal court in New York were required to take jurisdiction it would also result in an intolerable uncertainty in the administration of estates in New York and States following the rule announced in New York.

While the function of the federal court sitting in New York has perhaps not been defined for all purposes, the origin of the federal judicial system suggests that that court was designed to be an impartial tribunal, free from local prejudice against citizens from other States, administering the law of New York as conceived by the federal courts sitting in New York insofar as the Constitution and statutes of the United States do not require a different law to be administered. If the federal court sitting in New York has any duty to co-operate, or if there is any federal policy indicating that it should co-operate with the States, it would seem reasonable that, in the absence of controlling federal law to the contrary, the federal court sitting in New York should first concern itself with co-operation with the State in which it sits.

A fundamental distinction exists between the duties and powers of a federal court in the taxing State and one sitting elsewhere.

It seems plain that the attempt to assess taxes in this case did not result in an imposition of a valid tax liability. This was the view taken by two of the judges in the Circuit Court of Appeals, but it is unnecessary at this time to determine that question unless this Court feels that the rule of international law applied in the courts below should be abrogated.

This action is and remains an action to collect taxes alleged to be due to the plaintiff in his official capacity. It is necessarily, therefore, an attempt to enforce a revenue law against persons and property which were not within the State of Indiana at the time of the alleged assessment.

MR. JUSTICE BUTLER delivered the opinion of the Court.

Petitioner is the county treasurer of Grant county, Indiana. Respondents are the executors named in the will of Richard Edwards Breed, appointed by the Surrogate's Court in the county and State of New York and there engaged in the administration of his estate. Petitioner as such treasurer brought this suit in the United States District Court for the Southern District of New York to recover $958,516.22 claimed as delinquent taxes. The respondents moved to dismiss on the grounds that the complaint failed to state a cause of action, that the court had no jurisdiction of the subject matter, and that petitioner had not legal capacity to sue. The court declined jurisdiction and entered a decree dismissing the complaint. 28 F. (2d) 997. The Circuit Court of Appeals affirmed. 30 F. (2d) 600.

From 1884 until his death on October 14, 1926, the testator was a resident and citizen of Grant county, Indi-

ana. During the last 24 years of that period he owned stock of corporations and other intangible property in respect of which there had been no return, assessment or payment of taxes. After testator's death the county auditor, acting, as it is alleged, under authority of the statutes of Indiana, ascertained the value in each year of the omitted property, assessed taxes thereon for state, county, city, and township purposes and charged the same against such property and the executors. By the statutes of Indiana (§ 14,299, Burns' Statutes, 1926,) it is made the duty of the treasurer of each county to collect the taxes imposed therein for county, city and other purposes. By § 1, c. 54, Session Laws of 1927, county treasurers are authorized "to institute and prosecute to final judgment and execution, all suits and proceedings necessary for the collection of delinquent taxes owing by any person residing outside of the State of Indiana or by his legal representatives . . . " The recovery here sought is for Grant county, the city of Marion and the other political subdivisions therein of which the testator was a resident during the years for which such assessments were made.

The first question for consideration is whether petitioner had authority to bring this suit.

The United States District Court in New York exercises a jurisdiction that is independent of and under a sovereignty that is different from that of Indiana. *Grant* v. *Leach & Company,* 280 U. S. 351. *Pennoyer* v. *Neff,* 95 U. S. 714, 732. 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. *Hale* v. *Allinson,* 188 U. S. 56, 68.

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 that he had none in New York. Mechem, Public Offices and Officers, § 508. *State* v. *Scott,* 182 N. C. 865, 873. He is the mere arm of the State for the collection of taxes for some of its subdivisions and has no better standing to bring suits in courts outside Indiana than have executors, administrators, or chancery receivers without title, appointed under the laws and by the courts of that State. It is well understood that they are without authority, in their official capacity, to sue as of right in the federal courts in other States. From the earliest time, federal courts in one State have declined to take jurisdiction of suits by executors and administrators appointed in another State. *Dixon's Executors* v. *Ramsay's Executors,* 3 Cranch 319, 323. *Kerr* v. *Moon,* 9 Wheat. 565, 571. *Vaughan* v. *Northup,* 15 Pet. 1, 5. And since the decision of this Court in *Booth* v. *Clark,* 17 How. 322, it has been the practice in federal courts to limit such receivers to suits in the jurisdiction in which they are appointed. *Great Western Mining Co.* v. *Harris,* 198 U. S. 561, 578. *Converse* v. *Hamilton,* 224 U. S. 243, 257. *Sterrett* v. *Second National Bank,* 248 U. S. 73, 76. The reasons on which rests this long established practice in respect of executors, administrators and such receivers apply with full force here. We conclude that petitioner lacked legal capacity to sue.

It is not necessary to express any opinion upon the question considered below, whether a federal court in one State will enforce the revenue laws of another State.

Decree affirmed.