MEMORIAL

Judge Charles Bechhoefer

(1864 – 1932)

Ramsey County Bar Association

March 26, 1932

With additional remarks by
Philip Gilbert
and
Judge Gustavus Loevinger

JUDGE CHARLES BECHHOEFER

Mr. Philip Gilbert: If the Court please, I want to thank the Court and Judge O'Brien, for giving me the opportunity to say a few words at this time in memory of Judge Bechhoefer, who has been, I might say, my lifelong friend.

I first became acquainted with him at Ann Arbor, Michigan, very nearly fifty years ago, in the fall of 1883, when he and myself and some 150 others, ambitious young men, appeared there for the purpose of enrolling in the law department of Michigan University and becoming lawyers. The law course in those days was short, only two years. The class graduated in 1885, and shortly thereafter Judge Bechhoefer came to this city, and in 1886 I came to St. Paul on the suggestion of Judge Bechhoefer and Judge Cant, and Mr. Brigham, formerly a partner of Judge Cant, in Duluth. Upon coming here, Judge Bechhoefer and I chummed together until I was married some three years afterwards. Of course, I have known him closely and intimately since, and from the knowledge acquired from that close friendship, I wish to say a few words about the character of Judge Bechhoefer as I have seen him during that time, — rather, pertaining to his character as a man, which would have been useful to him in any occupation besides the law, and from my long acquaintance with him his character, I think, was somewhat exceptional. The fact that it was free from any of the vices which most people have. He was studious and diligent in study, and very clean, in his intellect and moral thoughts and actions, pleasant and friendly with his acquaintances and with anyone whom he met, trying to avoid quarrels and disputes with people who were not specially friendly to him, and extremely industrious perhaps too much so.

Now that he is gone, I, with his other friends and family, miss him very much. Sometimes the feeling comes over me of sorrow and sadness and regret that he is gone, but then again I feel that, instead of being sorry because of his death, I ought to feel joyful and glad that I had the privilege of knowing a man of his character and worth. I think I shall always think of him in that way.

JUDGE CHARLES BECHHOEFER.

Born at Woodbury, Bedford County, Pennsylvania, January 1, 1864, Educated in the School at Woodbury and graduating from the Nigh School of Altoona, Pennsylvania. In the fall of 1863 enrolled in the Law Department of the University of Michigan. Graduated from the University of Michigan Law Department in the spring of 1885, and was admitted to practice in Michigan.

To him, as to others of his classmates (including Judge William A. Cant of the U. S. District Court; Judge Frank H. Cutting, now deceased; Judge of the Municipal Court of Duluth; Senator Frank E. Putnam of Blue Earth City, and some ten to twelve others, most of them now deceased), Minnesota appeared to be a most favorable jurisdiction in which to win fame and fortune in the practice of law. For himself, young Bechhoefer, then not yet twenty-three years of age, selected St. Paul as the most desirable location for the beginning of his professional and business life. Arriving in St. Paul July 4th, of 1885, he proceeded as was the custom in those days, to look for a position as clerk and student in a law office. It was his good fortune to secure a position with the firm of John B. and W. H. Sanborn, one of the prominent law firms of this Northwestern Country. He was admitted to practice in the courts of Minnesota at a Special Term of the District Court of Ramsey County, on July 25, 1885, on motion of J. N. Granger and remained with the firm of John B. and W. H. Sanborn for about two years, then entered upon the practice of law by himself, specializing in real estate and probate law and laws on taxation. He continued in his individual and independent practice until January 23rd, 1923, when Governor Preuss appointed him Judge of the District Court of the Second Judicial District to fill the vacancy caused by the death of Judge Charles C. Haupt. Thereafter the people of Ramsey County registered their confidence in, and approval of his administration of his office by twice electing him to succeed himse1f.

He was married at Holidaysburg, Pennsylvania, on April 28th, 1892 to Miss Helen Go1dman, and to them were born two children: Bernhard G., now a member of the firm of O'Brien, Horn & Stringer, lawyers of St.

Paul, and a member of the Ramsey County Bar Association, and a daughter, Jeanette, who died April l3th, 1920.

He1en G. Bechhoefer died October 24th, 1917, and on November 8th, 1924, Judge Bechhoefer married her sister, Miss Caroline Goldman, who survives him.

Always interested in the business and civic affairs of the community, he served as a member of the Charter Commission for some years prior to his elevation to the Bench. He also was a member of the Minnesota Historical Society, a member, and for many years, (but not at the time of his death) an officer of Mt. Zion Congregation, a Charter and Life Member of the St Paul Institute, and a member of the Minnesota and Athletic Clubs.

Judge Bechhoefer was extremely active in civic and philanthropic matters, and his kindness and humaneness endeared him to all who knew him. While on the Bench he decided several extremely important cases involving taxation problems, most noteworthy of which was *Farmers Loan and Trust Company v State of Minnesota*, reported in 280 U. S Rep. 204.* the decision of the United States Supreme Court in this case and in subsequent decisions based an the precedent set by this case has revolutionized state inheritance taxation in the United States by practically eliminating multiple inheritance taxation.

On March 10, 1931, he resigned from his Judicial Office because of the illness from which be never recovered, and which caused his death at his home, 982 Summit Avenue, St Paul, January 25, 1932 Funeral services conducted by Rabbi Margolis were held at his residence January 27th, 1932, and interment was at Mt. Zion Cemetery.

Fittingly expressing his own opinion and the opinion of all who were acquainted with Judge Bechhoefer's life and work, Rabbi Margolis in his address said:

> **"The test of a man's character is found in the zeal and earnestness with which be enters into the work that is his master passion. To**

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* **MLHP: the case is posted below at 7-15.**

Charles Beohhoefer the law was his master passion. He gave much of his life to the study of the law, to an understanding of its implications and ramifications, to its wise interpretation and proper administration. To him the law was the symbol of an orderly, secure and happy society. He recognized the fact that upon the custodians and the interpreters of the law rested a grave responsibility for the security and happiness of mankind. Thus, be was constantly adding to his storehouse of legal knowledge; he was continuously improving himself in the knowledge of the law; and he was also adding to the sum total of legal interpretations and commentaries."

Honorable James E. Markham, Deputy Attorney General of Minnesota, a member of this Committee and necessarily absent from the State, has written to express his high regard for the character and services of Judge Bechhoefer.

THOMAS D. O'BRIEN

JOHN E. STRUEB
ALF E. BOYESON
PHILIP GILBERT
Committee.

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Memorial presented by Judge Gustavus Loevinger, March 26, 1932, in honor of Hon. Charles Bechhoefer, deceased.

The Honorable Charles Bechhoefer for nearly a half century was a member of the bar of this county and for more than eight years a judge of this court. During that time he enhanced substantially the reputation of this bar for a high standard of professional skill and conduct and

augmented the just fame of this court for learning, industry and integrity. His success was not merely the flowering of brilliant natural endowments, not merely the gradual accretion resulting from painstaking devotion to the minutia of legal practice but the reward of a profound study of the law for many years and an appreciation of both its weakness and its strength. During his long career he initiated mach remedial legislation to improve the administration of the law and to minimize its uncertainties. His thoroughness is illustrated admirably by his habit, for many years, of visiting regularly the office of the Clerk of the Supreme Court on Friday morning to read the decisions then made public, in order that he might have the latest authoritative statements of the law in this state. As a Judge, he fortified his decisions with scholarly and learned memoranda, yet he was never a mere scholiast or legal pedant. Back of every legal right, he saw the human wrong to be remedied.

My own recollections of him go back a full quarter of a century. He was then already a leading lawyer with many demands upon his time and energy. Still, he was not too busy to encourage and help young attorneys. He delighted in talking with newcomers in the profession and in welcoming them not only to his office but to his home. If in later years, particularly after he became a Judge, he seemed exacting at times, it was because of his impatience with what he considered professional slovenliness and his desire to promote legal precision. But, however exacting he may have at times seemed to members of this bar, he was far more exacting toward himself. He was his own task-master, and a severe one.

But no man can live unto the law alone. Nor did Judge Bechhoefer. He realized that in the syllogism of life the law is only one of many premises leading men toward a more orderly existence. Although the law was his favorite topic of conversation, he was always well versed in current events and in political and. economic affairs. He read widely and understandingly. Unusually he had strong convictions and took pleasure in expounding them. Never an extremist or propagandist, he did not hesitate to voice vigorously his likes or dislikes, even when more moderation might have been to his advantage.

His was the life, intellectual. His was the life of a devotee of the law. His

was the life of a citizen interested in public affairs. His was a life receptive to the culture about him. His was a life rich in content and fruitful in public service. But his deepest interests were ever the law—its problems arising out of the infinite complications of society, its principles grounded in the eternal quest for justice and its practical application to the supreme task of melting the truth from the raw ore of human controversy.

In his death this court and this bar lost an esteemed and distinguished member—in his profession, a man of skill and integrity; in his community, a man of character and usefulness. ⌂

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FARMERS LOAN & TRUST CO. v. STATE OF MINNESOTA
280 U.S. 204 (1930)

No. 26.

Argued Oct. 30, 1929.
Decided Jan. 6, 1930.

APPEAL FROM THE SUPREME COURT OF MINNESOTA

Syllabus

1. The maxim *mobilia sequuntur personam* applies to negotiable bonds and certificates of indebtedness issued by a state or her municipality, as to ordinary choses in action, and they have situs for taxation—in this case, a testamentary transfer tax at the domicile of their owner. 280 U. S. at 209.

2. When negotiable bonds and certificates of indebtedness issued by a state or her municipality and not used in business in that state are owned at the time of his death by a person domiciled in another state in which they are kept, an attempt of the state in which they were issued to tax their transfer by inheritance is repugnant to the Fourteenth Amendment. Blackstone v. Miller, 188 U. S. 189, overruled. 280 U. S. at 209.

3. Existing conditions imperatively demand protection of choses in action against multiplied taxation, whether following misapplication of some legal fiction or

conflicting theories concerning the sovereign's right to exact contributions. 280 U. S. at 212.

4. Taxation is an intensely practical matter, and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences. Id. [205]

5. The Court can find no sufficient reason for saying that intangible property is not entitled to enjoy an immunity from being taxed at more than one place similar to that accorded to tangible property. 280 U. S. at 212.

6. This case does not present the question whether choses in action that have acquired a situs for taxation other than at the domicile of their owner through having become integral parts of some local business may be taxed a second time at his domicile. 280 U. S. at 213.

176 Minn. 634 reversed.

Appeal from a judgment of the Supreme Court of Minnesota upholding an inheritance tax. *See also* 175 Minn. 310; *id.* 314. [208]

Messrs. Cleon Headly and George W. Morgan, both of St. Paul, Minn., for appellant.

Mr. G. A. Youngquist, of Washington, D. C., for appellee.

Mr. Justice McREYNOLDS delivered the opinion of the Court.

Henry R. Taylor, while domiciled and residing in New York, died testate, December 4, 1925. He had long owned and kept within that state negotiable bonds and certificates of indebtedness issued by the state of Minnesota and the cities of Minneapolis and St. worth above $300,000. Some of these were registered, others were payable to bearer. None had any connection with business carried on by or for the decedent in Minnesota. All passed under his will, which was probated in New York. There also his estate was administered and a tax exacted upon the testamentary transfer.

Minnesota assessed an inheritance tax upon the same transfer. Her Supreme Court approved this and upheld the validity of the authorizing statute. The executor-appellant-claims that, so construed and applied, that enactment conflicts with the Fourteenth Amendment.

When this cause first came before the Supreme Court of Minnesota, it held negotiable public obligations were something more than mere evidences of debt and, like tangibles, taxable only at the place where found, regardless of the owner's domicile. It accordingly denied the power of that state to tax the testamentary transfer. After *Blodgett v. Silberman*, 277 U.S. 1 , 48 S. Ct. 410, upon a rehearing, considering that

cause along with *Blackstone v. Miller*, 188 U.S. 189 , 23 S. Ct. 277, it felt obliged to treat the bonds and certificates like ordinary choses in action and to uphold the assessment.

Registration of certain of the bonds we regard as an immaterial circumstance. So did the court below. Counsel do not maintain otherwise. [209] Under *Blodgett v. Silberman* the obligations here involved were rightly regarded as if ordinary choses in action. The maxim *mobilia sequuntur personam* applied and gave them situs for taxation in New York- the owner's domicile. The testamentary transfer was properly taxed there. This is not controverted.

But it is said the obligations were debts of Minnesota and her corporations, subject to her control; that her laws gave them validity, protected them, and provided means for enforcing payment. Accordingly, counsel argue that they had situs for taxation purposes in that state and maintain the validity of the challenged assessment.

***Blackstone v. Miller*, *supra*, and certain approving opinions, lend support to the doctrine that ordinarily choses in action are subject to taxation both at the debtor's domicile and at the domicile of the creditor; that two states may tax on different and more or less inconsistent principles the same testamentary transfer of such property without conflict with the Fourteenth Amendment. The inevitable tendency of that view is to disturb good relations among the states and produce the kind of discontent expected to subside after establishment of the Union. *The Federalist*, No. VII. The practical effect of it has been bad; perhaps two-thirds of the states have endeavored to avoid the evil by resort to reciprocal exemption laws. It has been stoutly assailed on principle. Having reconsidered the supporting arguments in the light of our more recent opinions, we are compelled to declare it untenable. *Blackstone v. Miller* no longer can be regarded as a correct exposition of existing law; and to prevent misunderstanding it is definitely overruled.**

Four different views concerning the situs for taxation of negotiable public obligations have been advanced. One fixes this at the domicile of the owner; another at the debtor's domicile; a third at the place where the in-[210]-struments are found-physically present; and the fourth within the jurisdiction where the owner has caused them to become integral parts of a localized business. It each state can adopt any one of these and tax accordingly, obviously, the same bonds may be declared present for taxation in two, or three, or four places at the same moment. Such a startling possibility suggests a wrong premise.

In this Court the presently approved doctrine is that no state may tax anything not within her jurisdiction without violating the Fourteenth Amendment. *State Tax on Foreign-Held Bonds*, 15 Wall. 300; *Union Refrig. Transit Co. v. Kentucky*, 199 U.S. 194, 26 S. Ct. 36, 39, 4 Ann. Cas. 493; *Safe Deposit & Trust Co. v. Virginia* (November 25, 1929) 280 U.S. 83, 50 S. Ct. 59. Also no state can tax the testamentary transfer of property wholly beyond her power, *Rhode Island Trust Co. v.*

***Doughton*, 270 U. S. 69, 46 S. Ct. 256, 43 A. L. R. 1374, or impose death duties reckoned upon the value of tangibles permanently located outside her limits. *Frick v. Pennsylvania*, 268 U. S. 473, 45 S. Ct. 603, 42 A. L. R. 316. These principles became definitely settled subsequent to *Blackstone v. Miller* and are out of harmony with the reasoning advanced to support the conclusion there announced.**

At this time it cannot be assumed that tangible chattels permanently located within another state may be treated as part of the universal succession and taken into account when estimating the succession tax laid at the decedent's domicile. Frick v. Pennsylvania is to the contrary.

Nor is it permissible broadly to say that, notwithstanding the Fourteenth Amendment, two states have power to tax the same personalty on different and inconsistent principles or that a state always may tax according to the fiction that in successions after death *mobilia sequuntur personam* and domicile govern the whole. Upon *Refrig. Transit Co. v. Kentucky*, *supra*; Rhode *Island Trust Co. v. Doughton*, *supra*; and *Safe Deposit & Trust Co. v. Virginia*, *supra*, stand in opposition. [211] *Southern Pacific Co. v. Kentucky*, 222 U.S. 63, 32 S. Ct. 13, indicates plainly enough that the right of one state to tax may depend somewhat upon the power of another so to do. And *Coe v. Errol*, 116 U.S. 517, 524 , 6 S. Ct. 475, 477, though frequently cited to support the general affirmation that nothing in the Fourteenth Amendment prohibits double taxation, does not go so far. It affirmed the rather obvious proposition that the mere fact of taxation of tangibles by one state is not enough to exclude the right of another to tax them.

> **'If the owner of personal property within a state resides in another state, which taxes him for that property as part of his general estate attached to his person, this action of the latter state does not in the least affect the right of the state in which the property is situated to tax it also. ... The fact, therefore, that the owners of the logs in question were taxed for their value in Maine as a part of their general stock in trade, if such fact were proved, could have no influence in the decision of the case, and may be laid out of view.'**

If Maine undertook to tax logs permanently located in another state, she transcended her legitimate powers. *Union Refrig. Transit Co. v. Kentucky*, *supra*. Of course, such action could not affect New Hampshire's rights in respect of property localized within her limits.

While debts have no actual territorial situs, we have ruled that a state may properly apply the rule *mobilia sequuntur personam* and treat them as localized at the creditor's domicile for taxation purposes. Tangibles with permanent situs therein, and their testamentary transfer, may be taxed only by the state where they are found. And, we think, the general reasons declared sufficient to inhibit taxation of them by two states apply under present circumstances with no less force to intangibles with taxable situs imposed by due application of the legal fiction. Primitive conditions have

passed; business is [212] now transacted on a national scale. A very large part of the country's wealth is invested in negotiable securities whose protection against discrimination, unjust and oppressive taxation, is matter of the greatest moment. Twenty-four years ago *Union Refrig. Transit Co. v. Kentucky*, *supra*, declared: 'In view of the enormous increase of such property (tangible personalty) since the introduction of railways and the growth of manufactures, the tendency has been in recent years to treat it as having a situs of its own for the purpose of taxation, and correlatively to exempt it at the domicile of the owner. And, certainly, existing conditions no less imperatively demand protection of choses in action against multiplied taxation whether following misapplication of some legal fiction or conflicting theories concerning the sovereign's right to exact contributions. For many years the trend of decisions here has been in that direction.

Taxation is an intensely practical matter, and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences. We have determined that in general intangibles may be properly taxed at the domicile reason for saying that they at the domicile of their owner, and we can are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles. The difference between the two things, although obvious enough, seems insufficient to justify the harsh and oppressive discrimination against intangibles contended for on behalf of Minnesota.

Cleveland, Painesville & Ashtabula Railroad Co. v. Pennsylvania State Tax on Foreign-Held Bonds **Case, 15 Wall. 300, 320, distinctly held that the state was without power to tax the owner of bonds of a domestic railroad corporation made and payable outside her limits when issued to and held by citizens and residents of another state. Through Mr. Justice Field the Court there said: [213] 'But debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property of the debtors, is simply to misuse terms. All the property there can be in the nature of things, in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicil, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations in numerous adjudications, but no number of authorities and no forms of expression could add anything to its obvious truth, which is recognized upon its simple statement.'**

If the situs of the bonds for taxation had been at the debtor's domicile-Pennsylvania-the challenged effort to tax could not have interfered unduly with the debtor's contract to pay interest.

***New Orleans v. Stemple*, 175 U.S. 309 , 20 S. Ct. 110; *Bristol v. Washington County*, 177 U.S. 133 , 20 S. Ct. 585; *Liverpool, etc., Ins. Co. v. Board of Assessors for the Parish of Orleans*, 221 U.S. 346 , 31 S. Ct. 550, L. R. A. 1915 C,**

903, recognize the principle that choses in action may acquire a situs for taxation other than at the domicile of their owner, if they have become integral parts of some local business. The present record gives no occasion for us to inquire whether such securities can be taxed a second time at the owner's domicile.

The bonds and certificates of the decedent had acquired permanent situs for taxation in New York; their testamentary transfer was properly taxable there, but not in Minnesota.

The judgment appealed from must be reversed. The cause will be remanded for further proceedings not inconsistent with this opinion.

Reversed. [214]

Mr. Justice STONE (concurring).

I concur in the result. Whether or not control over a debt at the domicile of the debtor gives jurisdiction to tax the debt, *Liverpool & London & Globe Insurance Co. v. Board of Assessors*, 221 U.S. 346, 354 , 31 S. Ct. 550, L. R. A. 1915C, 903, we are not here concerned with a property tax, but with an excise or privilege tax imposed on the transfer of an intangible, see *Stebbins v. Riley*, 268 U.S. 137 , 45 S. Ct. 424, 44 A. L. R. 1454; *Saltonstall v. Saltonstall*, 276 U.S. 260 , 48 S. Ct. 225, and to sustain a privilege tax the privilege must be enjoyed in the state imposing it, *Provident Savings Association v. Kentucky*, 239 U.S. 103 , 36 S. Ct. 34, L. R. A. 1916C, 572. It is enough, I think, to uphold the present decision that the transfer was effected in New York by one domiciled there and is controlled by its law.

Even though the contract transferred was called into existence of the laws of Minnesota, its obligation cannot be constitutionally impaired or withdrawn from the protection which those laws gave it at its inception. See *Provident Savings Association v. Kentucky*, 239 U.S. 103, 113 , 36 S. Ct. 34, L. R. A. 1916C, 572; *Bedford v. Eastern Building & Loan Association*, 181 U.S. 227 , 21 S. Ct. 597. And, while the creditor may rely on Minnesota law to enforce the debt, that may be equally true of the law of any other state where the debtor or his property may be found. So far as the transfer, as distinguished from the contract itself, is concerned, it is New York law and not that of Minnesota which, by generally accepted rules, it applied there and receives recognition elsewhere. See *Bullen v. Wisconsin*, 240 U.S. 625, 631 , 36 S. Ct. 473; *Russell v. Grigsby* (C. C. A.) 168 F. 577; *Lee v. Abdy*, 17 Q. B. Div. 309; *Miller v. Campbell*, 140 N. Y. 457, 460, 35 N. E. 651; *Spencer v. Myers*, 150 N. Y. 269, 44 N. E. 942, 34 L. R. A. 175, 55 Am. St. Rep. 675. Once the bonds had passed beyond the state and were acquired by an owner domiciled elsewhere, the law of Minnesota neither protected, nor could it withhold the power of transfer or prescribe its terms. [215] In the light of these considerations, granting that the continued existence of the contract rested in part on the law of Minnesota, the relation of that law to the transfer in New York, both in point of theory and in every

practical aspect, appears to me to be too attenuated to constitute any reasonable basis for deeming the transfer to be within the taxing jurisdiction of Minnesota.

As the present is not a tax on the debt, but only on the transfer of it, neither the analogies drawn from the law of property taxes nor the attempt to solve the present problem by ascribing to a legal relationship unconnected with any physical thing, a fictitious situs, can, I think, carry us very far toward a solution. Nor does it seem that the invocation of the Fourteenth Amendment to relieve from the burdens of double taxation, as such, promises more.

Hitherto the fact that taxation is 'double' has not been deemed to affect its constitutionality, and there are, I think, too many situations in which a single economic interest may have such legal relationships with different taxing jurisdictions as to justify its taxation in both to admit of our laying down any constitutional principle broadly prohibiting taxation merely because it is double, at least until that characterization is more precisely defined.

It seems to me to be unnecessary and undesirable to lay down any doctrine whose extent and content are so dubious. Whether it is far reaching enough to overturn those cases which, in circumstances differing somewhat from the present, have been regarded as permitting taxation in more than one state, reaching the same economic interest, is so uncertain as to suggest doubts as to its trustworthiness and utility as a principle of judicial decision. See *Wheeler v. Sohmer*, 233 U.S. 434 , 34 S. Ct. 607, and *Blodgett v. Silberman*, 277 U.S. 1 , 48 S. Ct. 410; *Scottish Union & National* [216] *Ins. Co. v. Bowland*, 196 U.S. 611, 620 , 25 S. Ct. 345; *Rogers v. Hennepin County*, 240 U.S. 184, 191 , 36 S. Ct. 265; *New Orleans v. Stemple*, 175 U.S. 309 , 20 S. Ct. 110; *Metropolitan Life Ins. Co. v. New Orleans*, 205 U.S. 395 , 27 S. Ct. 499; *Bristol v. Washington County*, 177 U.S. 133 , 20 S. Ct. 585; *Kirtland v. Hotchkiss*, 100 U.S. 491 , and *Savings Society v. Multnomah County*, 169 U.S. 421 , 18 S. Ct. 392; *Union Transit Co. v. Kentucky*, 199 U.S. 194, 205 , 26 S. Ct. 36, 4 Ann. Cas. 493; *Tappan v. Merchants' National Bank*, 19 Wall. 490, 499; *Corry v. Baltimore*, 196 U.S. 466 , 25 S. Ct. 297, and *Hawley v. Malden*, 232 U.S. 1, 12 , 34 S. Ct. 201, Ann. Cas. 1916C, 842; *Blackstone v. Miller*, 188 U.S. 189 , 23 S. Ct. 277 (so far as it relates to the transfer tax on a bank account in the state of the bank); and *Fidelity & Columbia Trust Co. v. Louisville*, 245 U.S. 54, 58 , 38 S. Ct. 40, L. R. A. 1918C, 124; *Bullen v. Wisconsin*, 240 U.S. 625, 631 , 36 S. Ct. 473.

Mr. Justice HOLMES.

This is a proceeding for the determination of a tax alleged to be due to the State of Minnesota but objected to by the appellant as contrary to the Fourteenth Amendment of the Constitution of the United States. The tax is imposed in respect of the transfer by will of bonds and certificates of indebtedness of the State of Minnesota and bonds of two cities of that State. The testator died domiciled in New York and the bonds were there at the time of his death. The Supreme Court of the State upheld the tax, 176 Minn. 634, 222 N. W. 528, and the executor appeals.

It is not disputed that the transfer was taxable in New York, but there is no constitutional objection to the same transaction being taxed by two States, if the laws of both have to be invoked in order to give it effect. It may be assumed that the transfer considered by itself alone depends on the law of New York, but if he law of Minnesota is necessary to the existence of anything beyond a piece of paper to be transferred then Minnesota may demand payment for a privilege that could not exist without its help. It seems to me that the law of Minnesota is a [217] present force necessary to the existence of the obligation, and that therefore, however contrary it may be to enlightened policy, the tax is good.

No one would doubt that the law of Minnesota was necessary to call the obligation into existence. Other States do not attempt to determine the legal consequences of acts done outside of their jurisdiction, and therefore whether certain acts done in Minnesota constitute a contract or not depends on the law of Minnesota alone. I think the same thing is true of the continuance of the obligation to the present time. It seems to me that it is the law of Minnesota alone that keeps the debt alive. Obviously at the beginning that law could have provided that the debt should be extinguished by the death of the creditor or by such other event as that law might point out. It gave the debt its duration. The continued operation of that law keeps the debt alive. Not to go too far into the field of speculation but confining the discussion to cities of the State and the State itself, the continued existence of the cities and the readiness of the State to keep its promises depend upon the will of the State. If there were no Constitution the State might abolish the debt by its fiat. The only effect of the Constitution is that the law that originally gave the bonds continuance remains in force unchanged. But it is still the law of that State and no other. When such obligation are enforced by suit in another State it is on the footing of recognition, not of creation, *Deutsche Bank Filiale Nurnberg v. Humphrey*, 272 U.S. 517, 519 , 47 S. Ct. 166. Another State, if it is civilized, does not undertake to say to the debtor now that we have caught you we will force an obligation upon you whether you still are bound by the law of your own State or not. I believe this to be the vital point. Unless I am wrong the debt, wherever enforced, is enforced only because it is recognized as such by the law that created it and keeps it still a debt. No doubt sometimes obligations are enforced elsewhere when [218] the statute of limitations has run at home. But such decisions when defensible stand on the ground that the limitation is only procedural and does not extinguish the duty. If the statute extinguishes the debt by lapse of time no foreign jurisdiction that intelligently understood its function would attempt to make the debtor pay.

I will not repeat what I said the other day in *Safe Deposit & Trust Co. of Baltimore v. Virginia* (November 25, 1929), concerning the attempt to draw conclusions from the supposed situs of a debt. The right to tax exists in this case because the party needs the help of Minnesota to acquire a right, and that State can demand a quid pro quo in return. *Southern Pacific Co. v. Kentucky*, 222 U.S. 63, 68 , 32 S. Ct. 13; *Union Refrigerator Transit Co. v. Kentucky*, 199 U.S. 194, 206 , 26 S. Ct. 36, 4 Ann. Cas. 493.

I do not dwell on the practical necessity of resorting to the State in order to secure payment of state or municipal bonds. Even if the creditor had a complete and adequate remedy elsewhere, I still should think that a correct decision of the case must rest on whether I am right or not about the theoretical cal dependence of the continued existence of the bonds upon Minnesota law.

***Blackstone v. Miller*, 188 U. S. 189, 23 S. Ct. 277, supports my conclusions and I do not think that it should be overruled. A good deal has to be read into the Fourteenth Amendment to give it any bearing upon this case. The Amendment does not condemn everything that we may think undesirable on economic or social grounds.**

Mr. Justice BRANDEIS agrees with this opinion.

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