

**GREGORIO SARASOLA, PLAINTIFF AND APPELLANT, VS.
WENCESLAO TRINIDAD, COLLECTOR OF INTERNAL REVENUE OF
THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLEE.**

G.R. No. L-14595. October 11, 1919

Ponente: MALCOLM, J.

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MALCOLM, J.:

The complaint in this case was filed in the Court of First Instance of Manila for the purpose of having an injunction issue to restrain the defendant, the Collector of Internal Revenue, from the alleged illegal collection of taxes in the amount of ₱11,739.29. The defendant interposed a demurrer to the complaint, based on two grounds, namely: (1) that the court had no jurisdiction of the subject-matter of the action because of the provisions of section 1578 of the Administrative Code of 1917; and (2) that the facts stated in the complaint did not entitle the plaintiff to the relief demanded. The Honorable James A. Ostrand, Judge of First Instance, sustained the demurrer, holding that "In the opinion, of the court, the case is still controlled by the decision of the Supreme Court in the case of Churchill and Tait vs. Rafferty (32 Phil., 580). The fact that section 1579 of the Administrative Code of 1917 disallows interest on the internal revenue taxes recovered back is hardly sufficient to vary the rule." It is from the final order dismissing the complaint, without special finding as to costs, that the plaintiff appeals to this court.

As will be noted, the trial judge was induced to take such action by reason of his understanding of the decision of this court in the case of Churchill and Tait vs. Rafferty (*supra*, appeal dismissed in the United States Supreme Court [1918], 248 U. S., 555), in which the plaintiffs likewise endeavored, unsuccessfully to have the defendant Collector of Internal Revenue enjoined from collecting and enforcing against the plaintiffs an internal revenue tax on bill boards. Both counsel for appellant and appellee herein seem to find comfort in this decision. Instead, however, of devoting our time to a fine analysis of this decision with the object of ascertaining if it is still controlling, it would seem preferable to place it to one side for the nonce and to proceed independently thereof to settle the instant issues.

Appellant formal specifications of error are epitomized in three points: "1. The statute is a mere expression of the equity rule and does not close the door of equity where there is no adequate remedy at law; 2. The equitable jurisdiction to issue writs where the legal remedy is inadequate is crystallized and cannot be abbreviated by local statute; 3. The legal remedy is grossly inadequate and the injury irreparable and the writ should issue." The Attorney-General, in his brief for the appellee, says that a resolution of the three errors assigned by appellant depends upon the answer to the question, "Is the legal provision prohibiting the courts from granting an injunction to restrain the collection of internal revenue taxes constitutional?" Whether, therefore, we agree with the Attorney-General in his bold assertion relative to the issue being the constitutionality of sections 1578 and 1579 of the Administrative Code of 1917, or whether we consider the more subtle argument of the learned counsel for appellant which seems merely to squint at this question, it is necessary to have before us the pertinent provisions of Philippine law.

Sections 1578 and 1579 of the Administrative Code of 1917 read as follows:

"Sec. 1578. Injunction not available to restrain collection of tax.—No court shall have authority to grant an injunction to restrain the collection of any internal-revenue tax. "Sec. 1579. Recovery of tax paid under protest.—When the validity of any tax is questioned, or its amount disputed, or other question raised as to liability therefor, the person against whom or against whose property the same is sought to be enforced shall pay the tax under instant protest, or upon protest within ten days, and shall thereupon request the decision of the Collector of Internal Revenue. If the decision of the Collector of Internal Revenue is adverse, or if no decision is made by him within six months from the date when his decision was requested, the taxpayer may proceed, at any time within two years after the payment of the tax, to bring an action against the Collector of Internal Revenue for the recovery without interest of the sum alleged to have been illegally collected, the process to be served upon him, upon the provincial treasurer, or upon the officer collecting the tax."

These portions of our tax laws, leaving out of notice the two words "without interest," are in no way different from American tax laws. The antecedents of sections 1578 and 1579 of the existing Administrative Code are the Administrative Code of 1916, the Internal Revenue Law of 1914 (Act No. 2339), and the Internal Revenue Law of 1904 (Act No. 1189). Section 1578 of the Administrative Code and its corresponding sections in previous Philippine laws, found its particular inspiration in a similar provision in the Act of Congress of March 2, 1867. (14 Stat. at L., 475; sec. 3224, U. S. Rev. Stat.) Again expressly leaving out of our present consideration the phrase "without interest," a vast array of interpretative jurisprudence which culminates in, the decision in *Churchill and Tait vs. Rafferty*, *supra*, would leave no room for doubt that such legislation is constitutional. The point, however, to keep sharply before us is, that until the enactment of the Administrative Code of 1917, no law of the Philippine Legislature or Commission had contained a provision permitting the recovery of taxes "without interest," and no provision essentially the same can be found in the statutes of the United States or of the several States.

Before we recur to our precise question, a good background for this decision might well concern the more general subject of the remedies of the taxpayer. The broad principle is that every taxpayer has a right to a remedy for any actual wrong he may have suffered in the collection of taxes. Usually a party will find a plain and sufficient remedy for the injuries complained of, or threatened, in the courts of law; in such instances, equity will not take jurisdiction. "Presumptively," Judge Cooley says, "the remedy at law is adequate." (Cooley on Taxation, 3J Ed., Vol. 2, pp. 1377, 1412, 1415.) Where, as in the Philippines, the taxpayer is permitted to pay the amount demanded of him under protest and then maintain an action at law to recover back the whole amount paid or so much of it as was illegally exacted, this is ordinarily regarded as an adequate remedy. Thus, the Legislature of the State of Tennessee enacted a statute not greatly different from the Philippine statute, with the exception that the words, "without interest," were not included, and the United States Supreme Court in discussing the law said: "This remedy is simple and effective. * * * It is a wise and reasonable precaution for the security of the government. No government could exist that permitted its collection to be delayed by every litigious man or every embarrassed man, to whom delay was more important than the payment of costs." (*State of Tennessee vs. Sneed* [1877], 6 Otto, 69. See also 37 Cyc, 1267, 1268.) Again in the case of *Snyder vs. Marks* ([1883], 109 U. S., 185) the sole object of the suit was to restrain the collection of a tax which was assessed under the United States Internal Revenue Laws. The court said: "The remedy of a suit to recover back the tax after it is paid, is provided by statute, and a suit to restrain its collection is forbidden. The remedy so given is exclusive, and no other remedy can be substituted for it."

An exceptional circumstance which serves to take cases out of the general rule comes under the head of irreparable injury. In a decision of the United States Supreme Court in which this was explained (*Dows vs. The City of Chicago* [1871], 11 Wall., 108) it was remarked that there can be no case of equitable cognizance "where

there is a plain and adequate remedy at law. And except where the special circumstances which we have mentioned exist, the party of whom an illegal tax is collected has ordinarily ample remedy, either by action against the officer making the collection or the body to whom the tax is paid." Accordingly, it was held that since the plaintiff had his action after the tax was paid "against the officer or the city to recover back the money," a bill in equity to restrain the collection of a tax would not be sustained. If the ground alleged is alone that the tax was illegal, this is not sufficient for the maintenance of an injunction. (*Dows vs. The City of Chicago*, supra; *Shelton vs. Platt* [1891], 139 U. S., 591, reviewing previous decisions; *Nye Jenks & Co. vs. Town of Washburn* [1903], 125 Fed., 817; *Churchill and Tait vs. Rafferty*, supra, followed approvingly in *Young vs. Rafferty* [1916], 33 Phil., 556, 563.)

While we have these decisions in mind, it might be well to recall that in one way or another, the whole question harks back to the legality of sections 1578 and 1579 of the Administrative Code. But in addition, according to the averments of the plaintiff's complaint which are provisionally admitted by the demurrer of the defendant, the plaintiff's claim is, that he was not engaged in the business of a commission merchant in the city of Manila, and so was not liable to the payment of a tax as such, and that he is without means of complying with the demand of the defendant under protest or otherwise. Such, likewise, was one of three grounds which were suggested as giving equitable jurisdiction to the Supreme Court of the State of Michigan. Regarding it, Judge Cooley said:

"The force of the third contention must rest in the fact that enforcing the tax may in some cases compel the suspension of business, because it is more than the person taxed can afford to pay. But if this consideration is sufficient to justify the transfer of a controversy from a court of law to a court of equity, then every controversy where money is demanded may be made the subject of equitable cognizance. To enforce against a dealer a promissory note may in some cases as effectually break up his business as to collect from him a tax of equal amount. This is not what is known to the law as irreparable injury. The courts have never recognized the consequences of the mere enforcement of a money demand as falling within that category." (*Youngblood vs. Sexton* [1875], 32 Mich., 406.)

No one could very convincingly argue against the force of these leading cases. Not neglecting, therefore, to remember their importance, the precise and narrower question is suggested—Did the addition of the words "without interest" in the statute so deprive an aggrieved taxpayer of his adequate remedy at law as to justify judicial interference? In two recent decisions of this court, interest on judgments for the recovery of taxes was allowed, but without deciding this precise question. Thus, in *Viuda e Hijos de Pedro P. Roxas vs. Rafferty* ([1918], 37 Phil., 957), it was said that whether interest could be adjudged a taxpayer against the United States, a State of the American Union, or the Government of the Philippine Islands, was beside the question. And in *Hongkong & Shanghai Banking Corporation vs. Rafferty* ([1918], 39 Phil., 145), it was said that whether interest may be recovered under section 1579 of the Administrative Code, is left for decision when a case arises after the Code became effective. As the point can no longer be evaded, we shall proceed to resolve it, and in so doing can find no better approach than that to be found in the right to interest.

It is well settled both on principle and authority that interest is not to be awarded against a sovereign government, as the United States or a State, unless its consent has been manifested by an Act of its Legislature or by a lawful contract of its executive officers. If there be doubt upon the subject, that doubt must be resolved in favor of the State. In *Gosman's Case* ([1881], L. R. 17 Ch. Div., 771) Sir George Jessel, Master of the Rolls, speaking for the Court of Appeals, summed up the Law of England in this concise statement: "There is no ground for charging the Crown with interest. Interest is only payable by statute or by contract." In *Attorney-General vs. Cape Fear Navigation Co.* ([1843], 37 N. C., 444) Chief Justice Ruffin laid down as undoubted law that "the State never pays interest unless she expressly engages to do so." Judge Cooley says that "The recovery (in tax suits) must be limited to the money received. * * * Interest is recoverable only when expressly allowed by statute." (2 Cooley on

Taxation, 3d Ed., p. 1510; Savings and Loan Society vs. San Francisco [1901], 131 Cal., 356.) In United States vs. Sherman ([1878], 98 U. S., 465) the court, in considering a law relating to suits against revenue officers providing for recovery of the amount payable out of the treasury, held that the amount recoverable did not include interest upon the judgment. Justice Strong, delivering the opinion of the court, in part said:

"When the obligation arises, it is an obligation to pay the amount recovered; that is, the amount for which judgment has been given. The act of Congress says not a word about interest. Judgments, it is true, are by the law of South Carolina, as well as by Federal legislation, declared to bear interest. Such legislation, however, has no application to the government. And the interest is no part of the amount recovered. It accrues only after the recovery has been had. Moreover, whenever interest is allowed either by statute or by common law, except in cases where there has been a contract to pay interest, it is allowed for delay or default of the debtor. But delay or default cannot be attributed to the government. It is presumed to be always ready to pay what it owes. (See also U. S. vs. Bayard [1888], 127 U. S., 251; U. S. vs. North Carolina [1890], 136 U. S., 211; Board of County Commissioners, vs. Kaul [1908], 17 L. R. A. [N. S.], 552.)"

As this is the main rule, the converse proposition must be equally true, that taxes only draw interest as do sums of money when expressly authorized. A corollary to the principle is also self-evident, that interest cannot be recovered on an abatement unless the statute provides for it. (1 Cooley on Taxation, 3d Ed., p. 20; 2 Cooley on Taxation, 3d Ed., p. 1392; City of Lowell vs. County Commissioners of Middlesex [1862], 3 Allen [Mass.], 550.) The only contrary dictum is to the effect that where an illegal tax has been collected, the citizen who has paid and is obliged to bring suit against the collector is entitled to interest from the time of the illegal exaction. (Erskine vs. Van Arsdale [1872], 15 Wall., 75; National Home vs. Parrish [1913], 229 U. S., 494; Matter of O'Berry [1904], 179 N. Y., 285.) The distinction undoubtedly arises through the fiction that the suit is against the collector and not against the State, although the judgment is not to be paid by the collector but directly from the treasury.

It has been urged that since interest is in the nature of damages, it is proper for allowance. While this may be true in the general run of cases, it is not necessary true when the sovereign power is concerned. The state is not amenable to judgments for damages or costs without its consent, (Hongkong & Shanghai Banking Corporation vs. Rafferty, supra, citing numerous decisions.) In Morley vs. Lakeshore & Michigan Southern Railway Co. ([1892], 146 U. S., 162, followed recently in Missouri & Arkansas Lumber & Mining Co. vs. Greenwood District of Sebastian County, Arkansas [1919], U. S. Sup. Cfc. Adv. Op., April 1, 1919, p. 239), the United States Supreme Court had under consideration a state statute which reduced the rate of interest upon civil judgments obtained within the courts of the state. The court said:

"After the cause of action, whether a tort or a broken contract, not itself prescribing interest till payment, shall have been merged into a judgment, whether interest shall accrue upon the judgment is a matter not of contract between the parties, but of legislative discretion, which is free, so far as the Constitution of the United States is concerned, to provide for interest as a penalty or liquidated damages for the nonpayment of the judgment, or not to do so. When such provision is made by statute, the owner of the judgment is, of course, entitled to the interest so prescribed until payment is received, or until the State shall, in the exercise of its discretion, declare that such interest shall be changed or cease to accrue. Should the statutory damages for nonpayment of a judgment be determined by a State, either in whole or in part, the owner of a judgment will be entitled to receive and have a vested right in the damages which shall have accrued up to the date of the legislative change; but after that time his rights as to interest as damages are, as when he first obtained his judgment, just what the legislature chooses to declare. He has no contract whatever on the subject with the defendant in the judgment, and his right is to receive, and the defendant's, obligation is to pay, as damages, just what the State chooses to prescribe. * * *

"If it be true, as we have endeavored to show, that interest allowed for nonpayment of judgments is in the nature of statutory damages, and if the plaintiff in the present case has received all such damages which

accrued while his judgment remained unpaid, there is no change or withdrawal of remedy. His right was to collect such damages as the State, in its discretion, provided should be paid by defendants who should fail to promptly pay judgments which should be entered against them, and such right has not been destroyed or interfered with by legislation. The discretion exercised by the legislature in prescribing what, if any, damages shall be paid by way of compensation for delay in the payment of judgments is based on reasons of public policy, and is altogether outside the sphere of private contracts."

Our statute, it will be remembered, not only does not authorize interest but negatives the payment of interest. While, therefore, coming under the purview of the general principle pertaining to legislative discretion, it also avoids any trouble to be found in those decisions which allow interest without any express provision on the subject, because the statute provides that interest shall not be allowed. From whatever direction we look at the subject, therefore, we reach either the conclusion that the law is valid, or that the plaintiff has not proven such a case of irreparable injury as would warrant the issuance of the extraordinary writ of injunction.

The reason for what superficially seems to be a harsh ruling goes back to the fundamental conception of the nature of taxation. It is but a truism to restate that taxation is an attribute of sovereignty. It is the strongest of all the powers of government. It involves, as Chief Justice Marshall in his historical statement said, the power to destroy. (*McCulloch vs. Maryland* [1819], 4 Wheat., 316; *Loan Association vs. Topeka* [1875], 20 Wall., 655.) "The right of taxation where it exists," the court said in *Austin vs. Aldermen* ([1868], 7 Wall., 694), "is necessarily unlimited in its nature. It carries with it inherently the power to embarrass and destroy."

Public policy decrees that, since upon the prompt collection of revenue there depends the very existence of government itself, whatever determination shall be arrived at by the Legislature should not be interfered with, unless there be a clear violation of some constitutional inhibition. As said in *Dows vs. The City of Chicago*, *supra*, "It is upon taxation that the several states chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of government, and thereby cause serious detriment to the public." Or as said in *Snyder vs. Marks*, *supra*, "The system prescribed by the United States in regard to both customs duties and internal revenue taxes, of stringent measures, not judicial, to collect them, with appeals to specified tribunals and suits to recover back moneys illegally exacted, was a system of corrective justice, intended to be complete and enacted under the right belonging to the Government, to prescribe the conditions on which it would subject itself to the judgment of the courts in the collection of its revenues." Or as said in *Tennessee vs. Sneed*, *supra*, "The Government may fix the conditions upon which it will consent to litigate the validity of its original taxes." Or as said in a New York case, "The power of taxation being legislative, all the incidents are within the control of the Legislature." (*Genet vs. City of Brooklyn* [1885], 99 N. Y., 296.) Or as said by Chief Justice Marshall in *McCulloch vs. Maryland*, *supra*, "The people of a state give to their government a right of taxing themselves and their property, and as the exigencies of the Government cannot be limited, they prescribe no limit to the exercise of this right, resting confidently on the interest of the legislator and on the influence of the constituents over their representatives, to guard themselves against its abuse." (See to the same effect the Philippine cases of *De Villata vs. Stanley* [1915], 32 Phil., 541; and *Churchill and Tait vs. Concepcion* [1916], 34 Phil., 969.)

Applying these well-known principles to the case at bar, it would seem that the legislature has considered that a law providing for the payment of a tax with a right to bring a suit before a tribunal to recover back the same without interest is a full and adequate remedy for the aggrieved taxpayer. The disallowance of interest in such case, like the other steps prescribed as conditional to recovery, has been made one of the conditions which the lawmakers have seen fit to attach to the remedy provided. As the Legislature in the exercise of its wide

discretionary power, has deemed the remedy provided in section 1579 of the Administrative Code to be an adequate mode of testing the validity of an internal revenue tax and has willed that such a remedy shall be exclusive, the courts not only owe it to a coordinate branch of the government to respect the opinion thus announced, but have no right to interfere with the enforcement of such a law.

The last remaining point touches upon the possibility that section 1579 of the Administrative Code, in conjunction with the following section, has served to diminish the jurisdiction of the courts and, in pursuance of well-known principles, is thus invalid. Section 9 of the Philippine Bill and section 26 of the Jones Law, the first the Act of Congress of July 1, 1902, and the second the Act of Congress of August 29, 1916, have provided "That the Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law. * * *" The Supreme Court of the Philippines, in interpreting these provisions, has reached the conclusion that they had the effect of taking one or more Acts of the Philippine Commission and Legislature out of the field of ordinary legislation and making of them in effect basic laws. In other words, it was held that the Legislature could add to but could not diminish the jurisdiction of the courts. (*Barrameda vs. Moir* [1913], 25 Phil., 44.) But any argument predicated upon such a proposition must necessarily assume that the Philippine courts have had the power to restrain by injunction the collection of taxes. And since, with or without a law, the Philippine courts would not have presumed to issue an injunction to restrain the collection of a tax, the prohibition expressed in the law has had no other effect than to confirm a universal principle. This was expressly decided in the case of *Churchill and Tait vs. Rafferty*, *supra*, and has since then not been open to discussion.

To conclude—in answer to the argument made by appellant, we can say that sections 1578 and 1579 of the Administrative Code establish an adequate remedy at law and that we are not convinced that the enforcement of the tax will produce irreparable injury, and, in answer to the argument of appellee, that sections 1578 and 1579 of the Administrative Code of 1917 are valid. The result is, thus, to affirm the final order appealed from. Costs shall be taxed against the appellant. So ordered.

Arellano, C.J., Torres, Araullo, Street, and Avanceña, JJ., concur.

DISSENTING

JOHNSON, J.,

I cannot agree with my associates, neither in the argument nor conclusion as far as they affect the questions involved and hereby reserve the right to write a dissenting opinion in which I shall give my reasons for my nonconformity. Order affirmed.

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