

YU CONG ENG ET AL., PETITIONERS, VS. W. TRINIDAD, COLLECTOR OF INTERNAL REVENUE, ET AL., RESPONDENTS.*G.R. No. L-20479. February 06, 1925*

Ponente: MALCOLM, J.

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The issue in these proceedings is the validity of Act No. 2972 of the Philippine Legislature, popularly known as the Chinese Bookkeeping Law. It is a question of paramount importance which the record shows, has been laid before this court following the failure of diplomatic negotiations and executive pressure to secure from the local law-making body either the repeal of the law or a modification of its provisions. It is, moreover, a question which, extensive argument and original investigation disclose, stands in the shadowland betwixt constitutionality and unconstitutionality, to the solution of which we propose to give careful consideration.

The petitioners are Chinese merchants claiming to represent themselves and all other persons similarly situated and affected, particularly twelve thousand Chinese merchants. The respondents, against whom the petition for prohibition and injunction is directed, are the Collector of Internal Revenue, the Fiscal of the City of Manila, and Honorable Pedro Conception, Judge of First Instance of Manila. The allegations of the petition center on the unconstitutionality of Act No. 2972 above-mentioned.

To the petition (later amended), a demurrer was interposed by the respondents which met squarely the main issue of constitutionality, while raising, in addition, the preliminary question of jurisdiction. Following oral argument, the court overruled respondents' demurrer and required them to answer. To respondents' answer to the amended petition, petitioners presented a demurrer.

In order that the court might be assisted by having before it all possible facts and circumstances which might aid it in arriving at a correct conclusion, the parties were permitted to offer evidence to substantiate their claims. Nearly one thousand pages of testimony, more or less relevant to the issue, have resulted. While all of this testimony has been gone over with painstaking care, it is not feasible for the court to encumber the decision with rulings on the multitudinous objections which have perfunctorily been raised before the commissioner.

Before passing to our principal task, it is necessary to say something about the preliminary point of jurisdiction argued by counsel, relating to the propriety of the constitutional question being decided in original proceedings in prohibition.

The Supreme Court is granted both concurrent jurisdiction in prohibition with Courts of First Instance over inferior tribunals or persons, and original jurisdiction over Courts of First Instance when such courts are exercising functions without or in excess of their jurisdiction. (Code of Civil Procedure, sec. 516.) It is a jurisdiction, however, which must be exercised circumspectly, for otherwise, the court would usurp the powers of judges of First Instance. The law having given to judges of First Instance jurisdiction to try criminal cases, the appellate court should not meddle with the initiation or trial of such cases, except for good reasons, and should not permit the substitution of extraordinary proceedings for appeal.

As before held by this court, and by the Federal courts, equity has power, to be exercised in proper cases, to restrain criminal prosecutions under unconstitutional statutes, and to grant preliminary injunctions where the constitutionality of a given penal law is doubtful and fairly debatable, and permanent injunctions where the laws are held invalid. The remedy by injunction to restrain the enforcement of unconstitutional statutes or abuse of authority under a valid statute, seems to be limited to cases where property rights are threatened with irreparable injury or where persons would be subjected to a multiplicity of suits.

A more complicated question arises, with reference to what stage of a threatened criminal prosecution, an accused person shall have the right to test the validity of a criminal statute by means of original proceedings presented in the appellate court. We believe the correct principle was announced in *Cadwallader-Gibson Lumber Co. vs. Del Rosario* ([1913], 26 Phil., 192). In other words, as a general rule, the question of constitutionality must be raised in the lower court and that court must be given an opportunity to pass upon the question before it may be presented to the appellate court for resolution. Yet occasionally, under a recently enacted statute affecting numerous persons and extensive property rights, liable to give rise to a multiplicity of actions and numerous prosecutions, it is proper, right at the threshold of a prosecution, to have the validity of a given law determined in the interest of the accused and of the public, so as to permit of the orderly administration of justice. (Ex parte *Young* [1908], 209 U. S., 123; *Truax vs. Raich* [1915], 239 U. S., 33; *Wilson vs. New and Ferris* [1917], 243 CJ. S., 332; *Hammer vs. Dagenhart* [1918], 247 U. S., 251; *International News Service vs. Associated Press* [1918], 248 U. S., 215; *C. A. Weed & Co. vs. Lockwood* [1920], 255 U. S., 104; *Terrace vs. Thompson* [1923], 263 U. S., 197; *Young vs. Rafferty* [1916], 33 Phil., 556; *Kwong Sing vs. City of Manila* [1920], 41 Phil, 103; *Dimayuga and Pajardo vs. Fernandez* [1922], 43 Phil., 304; and *Fleischmann, Injunctions Restraining" Prosecution Under Unconstitutional Statutes*, 9 American Bar Associations Journal, March, 1923, p. 169.)

Inasmuch as the property and personal rights of nearly twelve thousand merchants are affected by these proceedings, and inasmuch as Act No. 2972 is a new law not yet interpreted by the courts, in the interest of the public welfare and for the advancement of public policy, we have determined to overrule the defense of want of jurisdiction in order that we may decide the main issue. We have here an extraordinary situation which calls for a relaxation of the general rule.

We come then to take up the question of the validity of Act No. 2972. Said Act reads as follows:

"No. 2972.—AN ACT TO PROVIDE IN WHAT LANGUAGE ACCOUNT BOOKS SHALL BE KEPT, AND TO ESTABLISH PENALTIES FOR ITS VIOLATION.

"Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

"Section 1. It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect.

"Sec. 2. Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos, or by imprisonment for not more than two years or both.

"Sec. 3. This Act shall take effect on November first, nineteen hundred and twenty-one.

"Approved, February 21, 1921."

Subsequently, pursuant to the provisions of Act No. 2998, Act No. 2972 was made to take effect on January 1, 1923. But due to the unavailing efforts of the Secretary of War, the present Governor-General, and the Chinese Community to have Act No. 2972 repealed, so counsel for the petitioners intimates, its enforcement was

suspended until the adjournment of the Legislature in February, 1923.

On March 2, 1923, the agents of the Bureau of Internal Revenue, in the exercise of their legitimate functions, inspected the books of account of the Chinese merchant Yu Cong Eng. Upon finding that said books were not kept in accordance with their understanding of the provisions of Act No. 2972, they took possession of the merchant's books and referred the matter to the city fiscal of Manila for appropriate action.

The city fiscal, considering that Yu Cong Eng had committed a violation of the law, on March 7, 1923, caused an information to be filed, subscribed, and sworn to before Judge of First Instance Concepcion, thereby giving rise to criminal case No. 25551 of the Court of First Instance of Manila. This information alleged in substance that the accused merchant had kept his books of account "only in Chinese, instead of keeping or causing them to be kept in English, Spanish, or any local dialect, thus rendering it difficult for the agents and authorized representatives of the Government of the Philippine Islands and of the City of Manila, to examine and inspect the aforementioned books of account, thereby preventing and hindering the investigation and determination of all the amount that said accused was, is, or will be under obligation to pay for licenses, permits, and taxes." A warrant of arrest was issued by the Judge of First Instance before whom the information was filed, and in compliance therewith, the accused merchant, now become the instant petitioner, was arrested.

The antecedents of these proceedings, therefore, do not affect directly any other person except the petitioner Yu Cong Eng who says that he neither reads, writes, nor understands the English or Spanish language or any local dialect, although inferentially affecting all other merchants in a like situation.

To properly appreciate the situation, we must go back a little further into the history of the case and must have before us the applicable provisions of Philippine law.

The sales tax has been in force in the Philippines for a number of years. Our law provides for privilege taxes to be levied on certain businesses and occupations. These percentage taxes on business are payable at the end of each calendar quarter in the amount lawfully due on the business transacted during the past quarter. It is made the duty, of every person conducting a business subject to such tax, within the same period as is allowed for the payment of the quarterly installments of the fixed taxes without penalty, to make a true and complete return of the amount of the receipts or earnings of his business during the preceding quarter and pay the tax due thereon. All merchants not specifically exempted must pay a tax of one and one-half per cent on, the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of or consigned. (Administrative Code, sees. 1453 et seq.; Act No. 3065.)

The income tax has also been established here for sometime, first pursuant to an Act of Congress and later pursuant to an Act of the Philippine Legislature (Act No. 2833, as amended by Act No. 2926). The customary returns are required from individuals and corporations. The tax is computed and the assessments are made by the Collector of Internal Revenue and his agents.

The sales tax and the income tax furnish a substantial part of the revenue. Roughly speaking, about P10,000,000 from the sales tax and about P2,000,000 from the income tax are secured annually. (Exhibit 13.) Any appreciable leaks in these sources of governmental revenue would be highly undesirable.

At the time the Internal Revenue Law of the Philippine Islands was originally enacted, the Spanish Code of Commerce was in force, and this Code still remains the centerpiece of our commercial system, although considerably battered by amendatory laws. The Code of Commerce provides that merchants shall keep: (1) A book of inventories and balances; (2) a daybook; (3) a ledger; (4) a copying book for letters and telegrams; and (5)

the other books required by special laws. These books are supposed to be presented by merchants to a justice of the peace for authentication. Merchants may furthermore keep other books that they consider advisable, according to the system of bookkeeping adopted. (Code of Commerce, arts. 33 et seq.; Administrative Code, sec. 214; Blanco, Derecho Mercantil, Tomo 1, pp. 561, 562.)

The Spanish Code of Commerce, it is thus seen, is silent as are all the codes which follow the French system, regarding the language in which books of account must be kept.

Under the provisions of the Code of Commerce and of the Internal Revenue Law, the Collector of Internal Revenue had authority "to require the keeping of a daily record of sales. No one could say with any certainty what the amount of the tax would be without such data." (Young vs. Rafferty, supra.) The Collector of Internal Revenue was also granted the power to make regulations prescribing the manner in which the proper books, invoices, and other papers shall be kept, and entries therein made by the persons subject to the merchant's tax. (Act No. 2339, sees. 5, 6 [j]; Administrative Code, sec. 1424 [j].)

Taking advantage of his supposed authority, pursuant to the above cited provisions of law, the Collector of Internal Revenue issued a circular letter on October 8, 1914, approved by the Secretary of Finance and Justice, requiring every merchant and manufacturer with certain specified exceptions, who was subject to the merchant's tax, to keep a record of their daily sales either in the English or the Spanish language. The validity of this regulation was challenged in the case of Young vs. Rafferty, supra. The defense of the Collector of Internal Revenue was that the regulation issued by him had for its object the protection of the Government and to prevent the non-payment of the merchant's and percentage taxes. Following trial in the lower court and appeal, the Supreme Court held that sections 5 and 6 of Act No. 2339 did not empower the Collector of Internal Revenue to designate the language in which the entries in such books are made by merchants subject to the percentage tax. Omitting portions of the opinion handed down by Mr. Justice Trent, some of which will be noticed in other connections, it is only necessary for us to quote the portion which deals with the subject at hand, namely:

"It is also urged that the regulation is designed to protect the Government against evasion of the percentage tax. If it be necessary to impose such a burden upon so large a number of the business community in order that the Government may protect itself from such losses, we apprehend that it was never intended that the initiative should be taken by the Collector of Internal Revenue. The condition complained of by the Collector has confronted the Government ever since the present system of internal revenue taxes was inaugurated in 1904. It is not for the administrative head of a Government bureau to say that such an obstacle to the collection of taxes shall be removed by imposing burdens not specifically authorized in the law itself.

"In view of the fact that a particular language is not essential to the recording of the information desired by the Collector and the enforcement of the objectionable provisions of his circular would be a very important step in the solution of the language problem in this country, amounting, we believe, to a question of public policy which should not be dictated by any administrative authority, we must conclude that the Collector has exceeded his authority in this particular. In reaching this conclusion, we have carefully avoided using any language which would indicate our views upon the plaintiffs' second proposition to the effect that if the regulation were an Act of the Legislature itself, it would be invalid as being in conflict with the paramount law of the land and treaties regulating certain relations with foreigners." (Italics ours.)

Mr. Justice Carson, in a concurring opinion of some importance as will hereafter be emphasized, said:

"I concur, on the ground that under the order of the Collector, if strictly enforced, the tens of thousand of merchants, petty storekeepers and others affected by its terms, both native and foreign, who have no adequate knowledge of either English or Spanish, would be required in effect not only to keep a record of the results of their business transactions in English or Spanish, but also to conduct such transactions in one or other of those languages.

"I do not question the authority, of the Collector to prescribe rules for the keeping of such records or transcripts of records of the results of mercantile transactions as may be reasonably necessary in order to eliminate fraud or concealment, and to expedite the labors of those charged with the collection of taxes; but I do not think that he has any authority to require the keeping of the original record of the vast number of these transactions in a tongue unknown to the parties; and I think furthermore that his authority to prescribe regulations intended to expedite the collection of taxes of this nature, is necessarily limited to the promulgation of regulations reasonably necessary to that end."

As will at once be noticed, the Supreme Court limited its decision to the annulment of the circular of the Collector of Internal Revenue. It left for the Legislature to determine if a law on the subject should be enacted, without expressing any opinion as to the validity of such a law.

Following some agitation on the subject, the then Governor-General, in a message to the Legislature on October 16, 1920, recommended for consideration "Legislation as already approved by the Senate should require that all business houses keep their books in English or Spanish, or in any one of the local Philippine dialects, in order to avoid wholesale frauds upon the public revenues;" The bill was presented in the House of Representatives by Representative Urgello with the following explanatory note:

"As all of the merchants doing business in the Philippines are not of the same nationality, some of them keep their books of account in their native language. The examination of these books by the agents of the Government for their proper verification, is made with some difficulty, inasmuch as in many cases it requires the help of a translator which constitutes an expense to the public treasury.

"Uniformity and facility in the examination and investigation of these books require that the same be kept by the merchants, whether individuals or corporations, in English or Spanish.

"This is the object of the attached bill."

After the Philippine Legislature had passed Act No. 2972, the present Governor-General in a message asked for either the repeal or a modification of the law. Hearings before committees of the Legislature were permitted. According to the report prepared and submitted by the Chairman of the Committee on Revision of Laws of the House of Representatives, which we feel at liberty to take into consideration, at the hearing before this committee the representatives of the Chinese community advocated the repeal of Act No. 2972, but this was strongly opposed by the representatives of the Bureau of Audits, and the Bureau of Internal Revenue. The representative of the Bureau of Internal Revenue, Mr. Posadas, "gave repeated assurances before the Committee that due to the unintelligibility of the books of Chinese merchants, because of the language in which the same was written, the public treasury was being defrauded annually in several millions of pesos, and that in order to protect the Government it is necessary to uphold Act No. 2972." (Exhibit 3.) Eventually, the Philippine Legislature, with the exception that it postponed the taking effect of the law, refused otherwise to modify it.

There has next followed the instant proceedings, by means of which an expression of opinion is sought to settle the conflict of views as to the constitutionality of Act No. 2972. The law is attacked by the petitioners as in violation of treaty and constitutional rights of Chinese merchants, domiciled in the Philippine Islands. It is contended with marked earnestness, that the law is unreasonable and oppressive in nature, and repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States and of the corresponding provisions of the Jones Law, the Act of Congress of August 29, 1916, guaranteeing to all persons the equal protection of the laws. The law is defended by the city fiscal of Manila as a proper and reasonable exercise of the police power of the Philippine Government, and of its power of taxation.

Four questions suggest themselves for discussion. What would be the probable effect, if Act No. 2972 was put in

operation? What was the purpose of the Legislature in enacting Act No. 2972? What are the respective legal rights of the Chinese and of the Government? What is a logical construction of Act No. 2972? In connection with the first question, it is, of course, undeniable that we cannot declare a legislative Act void because it conflicts with our opinion of what is just or expedient. Nevertheless, the effects and consequences enter with more or less force into consideration, whenever the validity of any law is in issue. (See 2 Lewis' Sutherland Statutory Construction, pp. 908 et seq.)

The pleadings, the evidence, and the decision in *Young vs. Rafferty*, supra, disclose with regard to the mercantile life of the Philippines, the following facts:

There are approximately 85,000 merchants of all nationalities in the Philippines, to whom Act No. 2972 applies. Of this number, 71,000 are Filipinos who may use their own dialects, unless they prefer English or Spanish. Approximately 1,500 are American, British, or Spanish subjects, who are permitted to use their native languages. Possibly 500 are of foreign nationalities most of whom know the English or Spanish, language. Of the remainder, between 10,000 and 12,000 are Chinese. The aggregate commercial business transacted by the Chinese merchants represents about sixty per cent of the total business done by all the merchants in the Philippine Islands. According to Mr. H. B. Pond, vice-president and general manager of the Pacific Commercial Company, the Chinese "are the principal distributing factors in the Philippine Islands of imported goods, and the principal gatherers of goods for exportation in the more remote places," and if the Chinese were driven out of business, "there would be no other system of distribution available throughout the Islands." It is further claimed, on the one hand, that not to exceed one per cent of the Chinese merchants in the Philippine Islands understand English, Spanish, or a local dialect sufficiently well to be able to keep or revise their own books of account in any one of these languages, and that not to exceed ten per cent have even a working knowledge of either English, Spanish, or a local dialect, and on the other hand, that at least two-thirds of the Chinese businessmen can easily comply with the law.

Counsel for the petitioners is sponsor for the sweeping statement that "the enforcement of Act 2972 would probably cause more damage and less good than any other law which has been enacted in the world." This strong stand is to a certain extent corroborated by resolutions adopted and signed by the principal business houses in the City of Manila and by a number of chambers of commerce (Exhibits C, D, E, F, G, H, I, and J, attached to the petition); by the vigorous protest of the Chinese foreign office (Exhibit K) ; by the opinions expressed by high officials in the War Department "that the law is fundamentally unwise" (Exhibit L), and "is obstructive of good understanding with our neighbours" (Exhibit M); and by the testimony of a large number of Chinese merchants and of other well qualified persons to the effect that sufficient bookkeepers are not available, that it would not be possible for many Chinese merchants, especially the smaller ones, to comply with the law, and that if the Chinese merchants were compelled to keep their books in any language other than the Chinese language, it would bring serious embarrassment to the great majority and might even drive many of them out of business.

Mr. Dee C. Chuan, the President of the China Banking Corporation and of the Chinese Chamber of Commerce, and Honorable Chow Kwo Hsien, Chinese Consul General for the Philippine Islands, testified that they, in collaboration with Chinese merchants, had conducted an investigation from which they made the following estimate of the distribution of sales among the Chinese:

Of the wholesale merchants, 50 had an average amount of sales of over P1,000,000; 150, over P500,000; 400, over P100,000, and 2,735, over P40,000. Of the 8,445 retail merchants, the average amount of sales was P5,446.40. Basing their calculations on the above, it was found that the annual net income of the 8,445 Chinese retail merchants would not exceed P600 each, and of 2,000 of the 3,335 wholesale merchants, not to exceed P1,000. (Exhibit G.) The same investigation disclosed that not to exceed 12 Chinese firms are actually keeping their books in a language other than Chinese. The Chinese Consul General further testified that from his inquiries,

he had found that the great majority of the Chinese merchants are utterly unable to comply with Act No. 2972.

Mr. William T. Nolting, President of the Bank of the Philippine Islands and formerly Collector of Internal Revenue, testified to the following salient facts: 1. Not over one per cent of the Chinese merchants are qualified to transact their business in English, Spanish, or a native dialect; 2. It would be impossible to obtain accountants to assist them in keeping their books in English, Spanish, or a local dialect, although this deficiency might be overcome in the future; 3. If the merchant is unable to understand his accounts and cannot impose extreme confidence in his bookkeeper, he is in a precarious position at all times; 4. An attempt to enforce Act No. 2972 would not facilitate the collection of taxes from the Chinese merchants but on the other hand might prove prejudicial both to the interests of the Government and of the Chinese; 5. When he was in charge of the Bureau of Internal Revenue, he never experienced any difficulty in finding and employing a sufficient number of competent and honest Chinese accountants to make the necessary inspections of the books of Chinese merchants; 6. The honesty of Chinese merchants in making the declarations of their sales compares favorably with other nationalities in that respect; and 7. To permit the Chinese merchants to keep two sets of books, one in Chinese and the other in English, Spanish, or some local dialect, would be a most dangerous practice because entries might be made in one set that would not be made in the other.

The reply of the fiscal is to the effect that the oppressiveness of the law has been considerably exaggerated, that it applies as well to Japanese and other foreign merchants who do not complain, that only a relatively small per cent of the Chinese merchants seek to obstruct the enforcement of the law, that bookkeepers are available if the Chinese wish to employ them, and that the new law will facilitate governmental inspection of merchants' books. Numerous witnesses have been called and numerous documents have been offered to substantiate the stand taken by the Government. We will here notice only an indorsement by Wenceslao Trinidad, former Collector of Internal Revenue, and the testimony of Juan Posadas, the present Collector of Internal Revenue.

Former Collector Trinidad, in a communication addressed to the Secretary to the Governor-General on September 22, 1921, said:

"During the year 1920, internal revenue tax receipts were issued to 95,363 merchants and manufacturers, 183 printers and publishers, 10,424 common carriers, 10,967 contractors and warehousemen, 58,942 peddlers of merchandise and 1,001 brokers. All of the abovementioned persons are required to pay percentage taxes on their gross sales or receipts. On account of the nature of this tax, these persons are required to keep books of accounts wherein they can enter the amounts of business done by them.

"This Bureau has no statistics to show the number of Chinese engaged in different businesses subject to percentage taxes but it is safe to say that they represent fully sixty per cent of the numbers stated above. All of these Chinese merchants keep their accounts in Chinese, with the exception of a very few large business houses which keep two sets of books of accounts, one in Chinese and the other in Spanish. There are also other businessmen who do not keep their books of accounts either in English or Spanish. These are Germans, Japanese, Syrians and Hindus. Their number cannot be ascertained due to the lack of statistics but there are many of them in the Islands, especially the Japanese.

"The Bureau of Internal Revenue had up to this time employed 17 Chinese accountants, two Hindus and one Japanese. All of these accountants have been separated from the service with the exception of four Chinese accountants who are at present still employed in the Bureau. Out of the seventeen Chinese accountants employed, five were discharged for graft, seven resigned or were forced to resign for either unsatisfactory services rendered or for suspicion of graft, and one deceased. In spite of this number of accountants employed, only very little number of Chinese books have been investigated and audited, and in the majority of them under-declarations of sales or receipts have been found.

"There are also a number of Chinese who are not subject to percentage taxes, but who have books of accounts

that need to be audited for income-tax purposes.

"It can be seen from the foregoing statements that the law requiring merchants to keep their books in English, Spanish or any of the local dialects, is necessary in order to protect the revenues of the Government."

Collector Juan Posadas, in reply to questions, and corroborated by other witnesses, made among others the following interesting statements:

"Mr. FELIX. If the books of account, not only of the Chinese merchants but of the other foreign merchants, were kept in their own languages and not in English, Spanish, or some local dialect, would it be possible to have the books of accounts of these merchants audited by the agents or employees of the Bureau of Internal Revenue? * * *—Mr. POSADAS. It would be impossible, unless our office had a personnel sufficiently numerous and competent to make the audits of the books of account in the different languages in which they were kept.

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"Mr. FELIX. Has the Bureau of Internal Revenue that sufficient and competent personnel to audit the books of account of merchants who do not keep their books in Spanish, English, or some local dialect?—Mr. POSADAS. No, sir, we have only an insignificant number of Chinese accountants to make examinations of the books of the Chinese merchants.

* * * * *

"Mr. FELIX. If the Bureau of Internal Revenue were not able—as according to you it is not able—to examine properly the books of accounts of merchants Who do not keep their books in English, Spanish, or some local dialect, may the case arise wherein those merchants who do not keep their books in the languages permitted by Act No. 2972 would fail to pay the full amount of taxes due to the internal revenue, even though they were acting in good faith? * * *—Mr. POSADAS. Yes, sir, because judging from the audits even of those books of account which are intelligible to the office personnel, the office has found many differences, or items not declared for the purpose of taxation.

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"Mr. FELIX. Do you know how many returns of merchants were examined in 1922 by the Chinese accountants of the income tax division of your Bureau? * * *—Mr. POSADAS. During that year, the Chinese accountants in the income tax division inspected 477 returns of Chinese.

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"Mr. FELIX. Do you know whether there were any underdeclarations in those cases, that were inspected that you have referred to? * * *—Mr. POSADAS. In the comparison of these returns with the books of account of the interested parties, differences were found which amount to more than P600,000 which was not declared.

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"Mr. GIBBS. And, therefore, assuming that it would be possible to employ a sufficient number of competent Chinese inspectors of books of account, there would be no advantage in the enforcement of Act No. 2972 except in so far as it might aid the directors of the Bureau and the chiefs of division in making the inspections incident to deciding disputes between the inspectors and the merchants that you have mentioned? Mr. POSADAS. The advantage of the Accounting Law, which compels merchants to keep their books in English, Spanish, or some local dialect, lies precisely in the fact that it would facilitate the inspection of these books of account by the employees of the Bureau of Internal Revenue, and enable them to check up the taxes which have been paid by the merchants and ascertain whether or not they agree with the transactions actually had. This work is at present being done so far as concerns the merchants who keep their books in languages

comprehensible to the Bureau, and to a certain extent it means that these merchants are penalized. On the other hand, it has been almost impossible to do this with regard to those merchants who keep their books entirely in languages not comprehensible to the office, and the net result therefore is that while we can collect differences in taxes due from part of the merchants, it is almost impossible to do so with regard to the other part.

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"Mr. GIBBS. But supposing that you had also Chinese accountants competent to act as supervising agents in the provinces, then what advantage would there be in enforcing Act No. 2972?—Mr. POSADAS. The advantage would consist precisely in the fact that we would avoid the duplication of personnel, because otherwise we would have to duplicate the personnel in each district by employing Filipinos and Chinese.

"Mr. GIBBS. Could you not easily put in a Chinese district inspector and a Filipino district inspector, leaving it to the Chinese district inspector to inspect the books of the Chinese and to the Filipino district inspector the books of the Filipinos and others?—Mr. POSADAS. It is physically impossible to employ Chinese supervisors, in view of the fact that up to this time I have never known of a Chinese who has qualified himself in the civil service to occupy the position.

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"Mr. GIBBS. Is it not true, Mr. Posadas, that the practice of inspecting the books of account of the Chinese by means of Chinese accountants has been followed by the Bureau of Internal Revenue in the Philippines for the past twenty years or more?—Mr. POSADAS. To judge from the results of the inspections made by my Bureau during my incumbency therein, I am led to believe that the inspections which were formerly made were superficial, in view of the fact that the Bureau during these latter years, has discovered large differences which were never declared for the purposes of taxation.

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"Mr. GIBBS. Let's put the question in another form, Mr. Posadas: Is it not a fact that the only possible benefit which the Bureau of Internal Revenue would derive from the enforcement of Act No. 2972 would be in so far as it might assist the Bureau in checking up the information required by its regulations?—Mr. POSADAS. Yes, sir, and to determine whether any items subject to taxation had been omitted.

"Mr. GIBBS. Another question, Mr. Posadas: Don't you think that by means of Chinese accountants, much more satisfactory information could be obtained from books properly kept in Chinese than from books kept abominably in English or Spanish?—Mr. POSADAS. Even though the books which are kept in a language other than Chinese were abominably kept, as long as they contain the entries of all the transactions carried out by a merchant or by a person subject to taxation, it would always be better than a book which is incomprehensible to the administrators of the Bureau."

Some slight consideration of the language question in general and of the language question in the Philippines in particular, will assist us in determining if the effect of enforcing Act No. 2972 will cause as much hardship and will be so oppressive on one particular nationality as to nullify the law, or whether the judiciary can constitutionally enforce the law.

Language is the medium by which thoughts are conveyed from one person to another. The law before us recognizes as permissible mediums for business and taxation purposes, English—the language of the people of the British Empire and the Republic of the United States; Spanish—the language of the people of Spain; and local dialects—the language of the home in the Philippines. Of these native dialects, as disclosed in a statement prepared by Dr. T. H. Pardo de Tavera, Director of the Philippine Library and Museum, there are a grand total of eighty-seven, six with extensive literature, and the others with little or no literature. (Exhibit P.) The law fails to take cognizance of the Chinese language, one of the oldest and one of the most extensively used languages in the

world.

The Philippine Organic Act, the Act of Congress of August 29, 1916, recognizes for electoral purposes, "Spanish, English, or a native language." (Sec. 15.) It enumerates as a qualification for an elective member of the Senate and the House of the Philippine Legislature, ability "to read and write either the English or Spanish language." (Sees. 13, 14.) The Municipal Law requires as a qualification for an elective municipal officer, ability to read and write intelligently either Spanish, English, or the local dialect. (Administrative Code, sec. 2174.) The official language of the courts and their records is at present either English or Spanish, although in practice, Spanish is used more extensively in the lower courts, and English in the appellate court. (Code of Civil Procedure, sec. 12, as amended by Act No. 2830.) The official language of the legislative branch of the Government is either English or Spanish, although in practice Spanish is more extensively used, while exactly the reverse is true of the executive branch of the Government. In compliance with the President's Instructions to the Commission of April 7, 1900, full opportunity has been given to all the people of the Islands to acquire the use of the English language, with the result that English is made the basis of public and private school instruction. (Administrative Code, sec. 922.) In the customs service, the law provides that the cargo manifest and each copy thereof shall be accompanied by a translation into English, if originally written in a language other than English. (Administrative Code, sec. 1226.)

The above brief description of the language situation at least discloses some of the difficulties which have beset the attempt to hasten the adoption of a common language in the Philippines. Yet it is evident, that the Filipino people have cheerfully imposed upon themselves the burden of acquiring one or more languages other than their native languages and have now, through their elective representatives, sought to require conformity with governmental policy by a large class of foreign residents.

In the United States during the months immediately following the conclusion of the World War, a number of States passed statutes in substantially the same form forbidding the teaching of any modern language except English, to children below the eighth grade in any school. The United States Supreme Court held the statutes unconstitutional on account of having no reasonable relation to some purpose within the competency of the State to effect, and on account of violating the constitutional guarantee of liberty in the Federal Constitution. "The protection of the Constitution extends to all," it was said,— "to those who speak other languages as well as to those born with English on the tongue." (Meyer vs. Nebraska, Bartels vs. Iowa, Pohl vs. Ohio, Nebraska District of Evangelical Lutheran Synod vs. McKelvie [1923], 262 U. S., 390, 404; XII Michigan Law Review, Jan., 1924, p. 248.) In other countries, however, notably in the Republics in the Americas, which have had their institutional law greatly influenced by the United States Constitution, laws are on the statute books which permit only Spanish to be used in commercial transactions. This is the system found in Bolivia, Chile, Colombia, Ecuador, Guatemala, Honduras, Mexico, Salvador, Uruguay, and Venezuela. (Commercial Laws of the World, vols. 1, 2, 3, 5, 6, 10, and 20; Manzano, Bonilla y Minana, Codigos de Comercio, Tomos II y III; Wheless, Compendium of the Laws of Mexico, vol. I; Exhibit 12.)

The purpose of the Legislature in enacting Act No. 2972 is disclosed by the decision of this court in *Young vs. Rafferty*, supra, by the messages of the Governor-General, by the hearings before the committees of the Philippine Legislature, and by other sources. All these indicate that the Act is a fiscal measure intended to facilitate the work of the government agents and to prevent fraud in the returns of merchants, in conformity with the sales tax and the income tax. For instance, in the decision in *Young vs. Rafferty*, supra, it was stated: "* * * It need hardly be said that the record which merchants are required to keep of their daily sales under the provisions of the circular letter of the Collector set out in the complaint is simplicity itself, and that it will, if honestly and faithfully kept, enable the Government to collect the percentage tax exactly due it. * * *"

Conceded that the Chinese handle sixty per cent of the aggregate business of the Philippines, approximate

equality in taxation demands that they pay something like the same proportion in taxes for the support of the State.

In enacting Act No. 2972, the Philippine Legislature did so pursuant to the wide authority which is delegated to it by Organic law. The Organic Act, the Act of Congress of August 29, 1916, provides "That general legislative power, except as otherwise herein provided, is hereby granted the Philippine Legislature, authorized by this Act." (Secs., 8, 12.)

The police power exists in the Philippine Islands in about the same form and to the same extent as in a State of the American Union. Under the general police power, persons and property in the Philippines have been subjected to various kinds of restrictions and burdens, in order to secure the general health, comfort, and prosperity of all. As indicated by a quotation of petitioners, the police power is not limited to regulations necessary for the preservation of good order or the public health and safety, but the prevention of fraud, cheating, and imposition is equally within its scope.

The rule to follow in the application of the police power is that announced in the leading case of *Lawton vs. Steele* ([1894], 152 U. S., 133), oft quoted with approval by our Supreme Court, namely:

"* * * Large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests. To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. * * *" (See further, *U. S. vs. Toribio* [1910], 15 Phil, 85; *Case vs. Board of Health and Heiser* [1913], 24 Phil, 250; *U. S. vs. Gomez Jesus* [1915], 31 Phil., 218; *Churchill and Tait vs. Rafferty* [1915], 32 Phil., 580; and *Rubi vs. Provincial Board of Mindoro* [1919], 39 Phil., 660.)

The power of taxation is, likewise, in the Philippines as in the United States, the strongest of all the powers of government, practically absolute and unlimited. The familiar maxim early announced by Mr. Chief Justice Marshall for the United States Supreme Court and since frequently invoked by the courts is that "the power to tax involves the power to destroy." (*M'Culloch vs. Maryland* [1819], 4 Wheat., 316.) It is a legislative power. All its incidents are within the control of the Legislature. It is the Legislature which must determine questions of state necessarily involved in ordering a tax, which must make all the necessary rules and regulations which are to be observed in order to produce the desired results, and which must decide upon the agencies by means of which collections shall be made. (1 *Cooley on Taxation*, pp. 7, 43, 46, 54; *Cowles vs. Brittain* [1822], 2 Hawks, 204; *Genet vs. City of Brooklyn* [1885], 99 N. Y., 296; *Felsenheld vs. U. S.* [1902], 186 U. S., 126; *Munoz & Co. vs. Hord* [1909], 12 Phil., 624.)

It is equally manifest that the power to tax is not judicial power and that a strong case is required for the judiciary to declare a law relating to taxation invalid. If, of course, so great an abuse is manifest as to destroy natural and fundamental rights, it is the duty of the judiciary to hold such an Act unconstitutional. Nevertheless, certain of the limitations are such that they must address themselves exclusively to the legislative department, and be subject only to review by the people who elect the members of this department.

To use the language of Judge Cooley:

"In order to bring taxation imposed by a state, or under its authority, within the scope of the provision of the fourteenth amendment which prohibits the deprivation of property without due process of law, the case should be so clearly and palpably an illegal encroachment upon private rights as to leave no doubt that such taxation

by its necessary operation is really spoliation under the power to tax. * * * The inhibition of the amendment was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation * * * In the construction of the revenue laws, special consideration is of course to be had of the purpose for which they are enacted. That purpose is to supply the government with a revenue. But in the proceedings to obtain this it is also intended that no unnecessary injury shall be inflicted upon the individual taxed. While this is secondary to the main object—the impelling occasion of the law—it is none the less a sacred duty. Care is taken in constitutions to insert provisions to secure the citizen against injustice in taxation, and all legislative action is entitled to the presumption that this has been intended. * * *

(1 Cooley on Taxation, pp. 55, 56, 75, 452.)

The petitioners are Chinese subjects. The treaty rights accorded the Chinese are those of the most favored nation. Their constitutional rights are those accorded all aliens, which means that the life, liberty, or property of these persons cannot be taken without due process of law, and that they are entitled to the equal protection of the laws, without regard to their race. (Yick Wo vs. Hopkins [1885], 118 U. S., 356; Kwong Sing vs. City of Manila, supra.) Our Code of Commerce and our Corporation Law permit foreigners, and companies created in a foreign country, to engage in commerce in the Philippine Islands. (Code of Commerce, art. 15; Act No. 1459, sec. 73.) The rights of these Chinese aliens are not less than the rights of American and Philippine citizens. Nor more.

Six decisions bearing particularly on the rights of the Chinese, three coming from the United States Supreme Court, two from the Supreme Court of the Philippine Islands, and one from the Supreme Court of Hawaii have at least persuasive application to the instant proceedings. Two of the decisions of the United States Supreme Court that we have in mind, *Barbier vs. Connolly* ([1884], 113 U. S., 27) and *Yick Wo vs. Hopkins* ([1885], 118 U. S., 356), are so well known as merely to require citation, while a recent series of cases on the language question have already been mentioned. We only stop to quote one significant sentence taken from Mr. Justice Field's opinion, pertaining to the Fourteenth Amendment to the United States Constitution, in the first cited case, namely:

"* * * Class legislation, discriminating against some and favoring others, is prohibited; but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the Amendment."

The case of *Young vs. Rafferty*, supra, of Philippine origin we have heretofore noticed. But later in point of time, a question was raised in the Philippine courts relative to the power of the Municipal Board of the City of Manila to enact Ordinance No. 532, requiring receipts in duplicate in English and Spanish duly signed, showing the kind and number of articles delivered by laundries and dyeing and cleaning establishments. (*Kwong Sing vs. City of Manila*, supra.) It was held that as said ordinance was neither oppressive, nor unequal, nor unjust, it was valid. It was said:

"The purpose of the municipal authorities in adopting the ordinance is fairly evident. Ordinance No. 532 was enacted, it is said, to avoid disputes between laundrymen and their patrons and to protect customers of laundries who are not able to decipher Chinese characters from being defrauded. The object of the ordinance was, accordingly, the promotion of peace and good order and the prevention of fraud, deceit, cheating, and imposition. The convenience of the public would also presumably be served in a community where there is a Babel of tongues by having receipts made out in the two official languages. Reasonable restraints of a lawful business for such purposes are permissible under the police power. The legislative body is the best judge of whether or not the means adopted are adequate to accomplish the ends in view.

* * * * *

"Our view, after most thoughtful consideration, is, that the ordinance invades no fundamental right, and impairs no personal privilege. Under the guise of police regulation, an attempt is not made to violate personal or property rights. The ordinance is neither discriminatory nor unreasonable in its operation. It applies to all

public laundries without distinction, whether they belong to Americans, Filipinos, Chinese, or any other nationality. All, without exception, and each and everyone of them without distinction, must comply with the ordinance. There is no privilege, no discrimination, no distinction. Equally and uniformly the ordinance applies to all engaged in the laundry business, and, as nearly as may be, the same burdens are cast upon them.

* * * * *

"There is no analogy between the instant case and the former one of *Young vs. Rafferty* ([1916], 33 Phil., 556). The holding there was that the Internal Revenue Law did not empower the Collector of Internal Revenue to designate the language in which the entries in books shall be made by merchants subject to the percentage tax. * * * There, the action was taken by means of administrative regulation; here, by legislative enactment. There, authority was rested on specific delegated powers; here, on both specific power and the all-pervading police power. There, governmental convenience was the aim; here, the public welfare. We are convinced that the same justices who participated in the decision in *Young vs. Rafferty* (supra) would now agree with the conclusion toward which we are tending."

The case most directly in line with the facts before us, is that of the *King vs. Lau Kiu* ([1888], 7 Hawaii, 489), decided by the Supreme Court of the Hawaiian Islands during the period of the monarchical regime in those Islands. An Act of the Hawaiian Legislature prescribed, that no wholesale or retail license should be granted to any person except upon the express condition that the licensee shall at all times keep full, true, and correct books of account of all business transacted by him in connection with such license, in the English, Hawaiian, or some European language. It was contended among other things that this was legislation against one certain class of subjects in the Kingdom, to wit, against such subjects (and particularly the Chinese) as do not speak or write the Hawaiian, English, or any European language, and was not applicable to all citizens alike. It was held by the Supreme Court that this Act was contrary to articles 1 and 14 of the Constitution, which secure to all persons the enjoyment of life and liberty and the right of acquiring, possessing, and protecting property according to law. It was held, further, that the Act could not be sustained as an exercise of the police power of the state, as it had no relation to the health, comfort, safety, or welfare of the public.

The presumption is always in favor of constitutionality. As the United States Supreme Court in a case of Philippine origin said: "* * * The function of the legislature is primary, its exercise fortified by presumption of right and legality, and is not to be interfered with lightly, nor by any judicial conception of its wisdom or propriety. * * *" (*Weems vs. United States* [1910], 217 U. S., 349.) This presumption is especially strong in the case of statutes enacted to promote a public purpose, such as statutes relating to taxation. To doubt is to sustain.

Only the other day, the United States Supreme Court, speaking through Mr. Justice Sutherland, said:

"The judicial duty of passing upon the constitutionality of an act of Congress is one of great gravity and delicacy. The statute here in question has successfully borne the scrutiny of the legislative branch of the government, which, by enacting it, has affirmed its validity; and that determination must be given great weight. This court, by an unbroken line of decisions from Chief Justice Marshall to the present day, has steadily adhered to the rule that every possible presumption is in favor of the validity of an act of Congress until overcome beyond rational doubt. But if, by clear and indubitable demonstration, a statute be opposed to the Constitution, we have no choice but to say so. * * *" (*Adkins vs. Children's Hospital of the District of Columbia* [1923], 261 U. S., 525; 67 Law. ed., 785.)

That the Supreme Court of the Philippine Islands has consistently followed these rules is disclosed by the few laws held invalid. During the twenty-three years of the Supreme Court's existence, it has never held invalid one complete law, while portions of laws have been nullified on but few occasions. (*Casanovas vs. Hord* [1907], 8 Phil., 125; *Omo vs. Insular Government* [1908], 11 Phil., 67; *Weigall vs. Morgan Shuster* [1908], 11 Phil., 340; *Barrameda vs. Moir* [1913], 25 Phil., 44; *McGirr vs. Hamilton and Abreu* [1915], 30 Phil., 563; *Central Capiz vs.*

Ramirez [1920], 40 Phil., 883; Concepcion vs. Paredes [1921], 42 Phil., 599; McDaniel vs. Apacible and Cuisia [1922], 44 Phil., 248.)

It may be said to be an elementary, a fundamental, and a universal rule of construction, applied when considering constitutional questions, that when a law is susceptible of two constructions one of which will maintain and the other destroy it, the courts will always adopt the former. Whenever a law can be so construed as to uphold it, it will be so construed although the construction which is adopted does not appear to be as natural as another construction. But where the meaning of the Act is plain, words cannot be read into it or out of it in order to save the law. (1 Lewis' Sutherland Statutory Construction, pp. 135, 136; Cooley's Constitutional Limitations, 184; 6 R. C. L., 78.)

In the early case of *United States vs. Coombs* ([1838], 12 Peters, 72), Mr. Justice Story, speaking for the United States Supreme Court, said:

"Before we proceed to the direct consideration of the true import and interpretation of this section, it seems highly important, if not indispensable, to say a few words as to the constitutional authority of Congress to pass the same. For if, upon a just interpretation of the terms thereof, Congress have exceeded their constitutional authority, it will become our duty to say so, and to certify our opinion on the points submitted to us in favor of the defendant. On the other hand, if the section admits of two interpretations, each of which is within the constitutional authority of Congress, that ought to be adopted which best conforms to the terms and the objects manifested in the enactment, and the mischiefs which it was intended to remedy. And again, if the section admits of two interpretations, one of which brings it within, and the other presses it beyond the constitutional authority of Congress, it will become our duty to adopt the former construction; because a presumption never ought to be indulged that Congress meant to exercise or usurp any constitutional authority, unless that conclusion is forced upon the court by language altogether unambiguous. * * *"

In the later case of *Board of Supervisors of Grenada County vs. Brown* ([1884], 112 U. S., 261), Mr. Justice Harlan, speaking for the United States Supreme Court, said:

"It certainly cannot be said that a different construction is required by the obvious import of the words of the statute. But if there were room for two constructions, both equally obvious and reasonable, the court must, in deference to the Legislature of the State, assume that it did not overlook the provisions of the Constitution and designed the Act of 1871 to take effect. Our duty, therefore, is to adopt that construction which, without doing violence to the fair meaning of the words used, brings the statute into harmony with the provisions of the Constitution. Cooley Constitutional Law, 184-5; *Newland vs. Marsh*, 19 111., 384; *People vs. Supervisors*, 17 N. Y., 241; *Colwell vs. Water Power Co.*, 4 C. E. Green (19 N. J. Eq.), 249. And such is the rule recognized by the Supreme Court of Mississippi in *Marshall vs. Grimes*, 41 Miss., 81, in which it was said: 'General words in the Act should not be so construed as to give an effect to it beyond the legislative power, and thereby render the Act unconstitutional. But, if possible, a construction should be given to it that will render it free from constitutional objection; and the presumption must be that the Legislature intended to grant such rights as are legitimately within its power.' Again, in *Sykes vs. Mayor*, 55 Mississippi, 143: 'It ought never to be assumed that the lawmaking department of the government intended to usurp or assume power prohibited to it. And such construction, if the words will admit of it, ought to be put on its legislation as will make it consistent with the supreme law.'"

Identical canons of statutory construction have often been invoked in the Philippines to enable the courts to avoid declaring a law unconstitutional. For instance, the decision in the well known case of *In re Guariña* ([1913], 24 Phil., 37, 46), citing *Black on Interpretation of Laws*, pp. 87, 93, and 94, is authority for this statement of the rule: "It is the duty of the courts in construing a statute enacted by the Philippine Commission (Legislature), not to give it a construction which would be repugnant to an Act of Congress, if the language of the statute is fairly susceptible of another construction not in conflict with the higher law; and in doing so, contentions touching the

apparent intention of the legislator will be disregarded which would lead to the conclusion that the Commission intended to enact a law in violation of an Act of Congress." Not long since, this court, in the case of *Fuentes vs. Director of Prisons*, No. 22449,[1] saved Act No. 3104 relating to the death penalty, from a fate similar to its subject by refusing to give a literal meaning to the phraseology of the law.

We have been enveigled into a much more elaborate discussion of this case than is at all essential, for two reasons: Firstly, because of the earnestness of counsel who have impressed on the court with marked ability the merits of their respective cases and the dangers which lurk in a contrary holding; and secondly, because of the effectiveness of the background as indicative of executive purpose and legislative intent. Speaking frankly, however, a majority of the court has all the time had a well defined opinion which we will now state. We come to the last question suggested, a construction of Act No. 2972 which allows the court legally to approve it.

A literal application of the law would make it unlawful for any Chinese merchant to keep his account books in any language other than English, Spanish, or a local dialect. The petitioners say the law is susceptible of that interpretation. But such interpretation might, and probably would, cause us to hold the law unconstitutional.

A second interpretation is that the Chinese merchant, while permitted to keep his books of account in Chinese, must also keep another set of books in either English, Spanish, or a native dialect. The respondents claim the law is susceptible of such construction. It occurs to us, however, that this construction might prove as unsatisfactory as the first. Fraud is possible in any language. An approximation to governmental convenience and an approximation to equality in taxation is the most which may be expected.

A third construction which is permissible in view of the history of the legislation and the wording of the statute, is, that the law only intended to require the keeping of such books as were necessary in order to facilitate governmental inspection for tax purposes. It has not escaped our notice that the law does not specify what books shall be kept. It is stated by competent witnesses that a cash book, a journal, and a ledger are indispensable books of account for an efficient system of accounting, and that, in the smaller shops, even simpler entries showing merely the daily record of sales and record of purchases of merchandise would be sufficient. The keeping of records of sales, and possibly further records of purchases, in English, Spanish, or a native dialect, and the filling out of the necessary forms would serve the purpose of the Government while not being oppressive. Actually, notations in English, Spanish, or a dialect of all sales in sales books, and of data in other specified forms are insisted upon by the Bureau of Internal Revenue, although as appears from Exhibit 2, it is doubtful if all Chinese merchants have complied with these regulations. The faithful observance of such rules by the Chinese is not far removed from the offer of cooperation oft made for them by the petitioners or the "translation of the account books" oft mentioned and explained by the respondents.

The law, in speaking of any person, company, partnership, or corporation, makes use of the expression "its account books." Does the phrase "its account books" mean that all the account books of the person, company, partnership, or corporation must be kept exclusively in English, Spanish, or any local dialect? The petitioners argue that the law has this meaning. Or does the phrase "its account books" mean that the persons, company, partnership, or corporation shall keep duplicate sets of account books, one set in Chinese and the other a translation into English, Spanish, or any local dialect? Counsel for the respondents urge this construction of the law upon the court. Or does the phrase "its account books" mean that the person, company, partnership, or corporation must keep such account books as are necessary for taxation purposes? This latter interpretation occurs to us as a reasonable one and as best safeguarding the rights of the accused. And lastly, what effect has Act No. 2972 had upon the provisions of the Code of Commerce on the subject of merchants? Has the Act repealed or modified any article of the Code of Commerce?

The interrogatories above made at least lead to the deduction that the law is more or less ambiguous and that it will bear two or more constructions.

Let us repeat: Act No. 2972 is a fiscal measure. It should be so construed if possible as to effectuate legislative intent, as collected from the occasion for the law, the circumstance under which it was enacted, the mischief to be remedied, and the policy which dictated its passage. It should be so construed if possible as to avoid conflict with the constitution, although such construction may not be the most obvious or natural one. Giving, therefore, to the law a meaning which will carry out the main governmental purpose and which will permit us to sanction its constitutionality, it seeks to prohibit not only the Chinese but all merchants of whatever nationality from making entries in the books of account or forms subject to inspection for taxation purposes in any other language than either the English or Spanish language or a local dialect, although permitting all merchants to execute their commercial transactions or operations in any language or dialect they may prefer, and although permitting them to keep such other books of account as their personal convenience may dictate and in a language which will come most easily to them. We would go so far as to hold that circular No. 467 of the Bureau of Internal Revenue which this court once held beyond the power of the Collector of Internal Revenue to promulgate, and any other reasonable regulation of a similar nature, as within the power of the Philippine Legislature to sanction and entirely enforceable.

To any possible plaint by the Government, that this is tantamount to "judicial legislation," we would say: It is not "judicial legislation" as this phrase is commonly used in the spirit of antagonistic fault finding. No words are written into the law. No words are taken out of the law. It is merely a practical judicial construction of a law where the validity of this law is in issue, which gives to the law a meaning accomplishing everything needed by the Government for tax purposes, without being unduly oppressive on the individual, and which permits the courts to uphold the law.

To the petitioners, who by our decision do not obtain all they may wish, we append this word of advice: Under such a construction as is above indicated, the Chinese will not be singled out as a special subject for discriminating and hostile legislation. There will be no arbitrary deprivation of liberty or arbitrary spoliation of property. There will be no unjust and illegal discrimination between persons in similar circumstances. The law will prove oppressive to the extent that all tax laws are oppressive, but not oppressive to the extent of confiscation. The means to accomplish a necessary interference with private business are no more oppressive upon individuals than is necessary to maintain the State. The law is not intended for the convenience of the trader or the protection of the creditors, but has relation to the public welfare, to the power of taxation, to the right of the government to exist. The Chinese must bear their just proportion of the tax burden, however unwelcome it may be, without flinching.

A faint effort has been made by the petitioners to have the court declare Act No. 2972 void because the subject thereof is not expressed in its title. But legislation should not be embarrassed by such strict construction as is urged by counsel. No distinguishable variance between the title of the law and the body of the law can be discovered after microscopic examination. The law is brief in its terms, and neither the Legislature nor the public need be misled by the title. (*Government of the Philippine Islands vs. Municipality of Binalonan and Roman Catholic Bishop of Nueva Segovia* [1915], 32 Phil., 634.)

We construe Act No. 2972 as meaning that any person, company, partnership, or corporation, engaged in commerce, industry, or any other activity for the purpose of profit in the Philippine Islands, shall keep its account books, consisting of sales books and other records and returns required for taxation purposes by regulations of the Bureau of Internal Revenue, in effect when this action was begun, in English, Spanish, or a local dialect. Agreeable to such construction, we hold Act No. 2972 valid and constitutional.

The temporary injunction heretofore issued is dissolved although under the construction given to the law it may well be doubted if the Government will care to proceed with the criminal prosecution. If the Government should not dismiss the information, this question may be raised by demurrer in the lower court.

Petition denied without costs.

Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.

Johnson, Acting Chief Justice, did not take part.

[1] 46 Phil., 22.

DISSENTING

STREET, J.:

The Act which has been assailed in this case looks innocent enough on its face but when examined in connection with conditions among those for whom it was prescribed, compliance is found to be impossible, or supposing that the Act could be complied with, the loss resulting to thousands of Chinese merchants would be so disproportionate to any possible good to be attained, that the enforcement of the law would amount to a denial of liberty and equal protection of the law to the persons adversely affected.

It is unnecessary for me to enlarge upon the destructive effects of the law as a ground for declaring it invalid, for it is admitted in the majority opinion that if Act No. 2972 is taken to mean what it says, it must be considered a dead letter. But after admitting this much, the court, in its extreme reluctance to declare the entire statute void, addresses itself to the problem of limiting its effect by what I consider to be an illegitimate process of judicial amendment under the guise of interpretation. The first section of the Act, as thus amended by the Supreme Court, reads as follows:

"It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books, (consisting of sales books and other records and returns required for taxation purposes by regulations of the Bureau of Internal Revenue, in effect when this action was begun) in any language other than English, Spanish or any local dialect."

The new matter which I have here inserted in parenthesis is taken verbatim from the dispositive part of the decision and defines precisely the extent to which the court has decided to allow the Act to operate. Where are the rules of interpretation by which this matter can be deduced from the language of the Act? The opinion of the court supplies no answer. Of course if the Legislature had confined the Act to giving the Collector of Internal Revenue a power to prescribe forms and require data convenient for the assessment of taxes, the law would not have been subject to criticism; but how can an intention to legislate in this form be deduced from the proposition, so entirely distinct, contained in the Act, that it shall be unlawful for a merchant to keep his account books in other languages than those mentioned? That the court is here exercising the mere role of a legislator is very obvious, for who can say that the Philippine Legislature, conscious of the ineffectiveness of the law as written, would have willed that the power granted to the Collector should take the precise form and extent now allowed by the court? In assuming the functions of a legislature we are entering upon a sea that has not been charted for the guidance of courts, and if this decision should prove fruitful as a precedent we shall find ourselves free in the future to wander pretty much

at will through legislative Acts.

The precise rule applicable to this case is stated in *Meyer vs. Nebraska* (262 U. S., 390; 67 Law. ed., 1042), where the Supreme Court of the United States, speaking through Mr. Justice McReynolds, declared that the liberty secured by the constitutional provision under discussion may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.

The decision of the Supreme Court of Hawaii in *King vs. Lau Kiu* (7 Hawaiian Rep., 489), declaring invalid a statute almost exactly like that involved in this action is also suggestive, as reflecting judicial sense in a community containing a large element of Chinese population.

It is my opinion that Act No. 2972 of the Philippine Legislature is wholly void, and the injunction should have been made perpetual. In addition to smashing the law the court should have removed the debris.

DISSENTING

JOHNS, J.:

With all due respect to the well written, exhaustive majority opinion, the only question involved is the meaning and construction which should be placed upon Act No. 2972, which is entitled "An Act to provide in what language account books shall be kept, and to establish penalties for its violation."

"Section 1. It shall be unlawful for any person, company, partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect.

"Sec. 2. Any person violating the provisions of this Act shall, upon conviction, be punished by a fine of not more than ten thousand pesos, or by imprisonment for not more than two years or both."

It will be noted that section 1 makes it unlawful for any of the persons specified "to keep its account books in any language other than English, Spanish or any local dialect." Section 2 provides that any person violating the provisions of section 1 shall be punished by a fine of not more than P10,000 or by imprisonment for not more than two years or both. In other words, you have a law prohibiting the doing of certain things and providing a punishment for its violation. Hence, the statute in question is a criminal law, and must be construed as such.

Sutherland on Statutory Construction is recognized as standard authority all over the world, and portions of it are quoted with approval in the majority opinion.

In his second edition, section 531, the author says:

"What statutes are penal.—Among penal laws which must be strictly construed, those most obviously included are all such acts as in terms impose a fine or corporal punishment under sentence in state prosecutions, or forfeitures to the state as a punitive consequence of violating laws made for preservation of the peace and good order of society."

The majority opinion frankly says:

"A literal application of the law would make it unlawful for any Chinese merchant to keep his account books in any language other than English, Spanish, or a local dialect. The petitioners say the law is susceptible of that

interpretation. But such interpretation might, and probably would, cause us to hold the law unconstitutional."

In section 363, Sutherland on Statutory Construction, it is said.

"* * * If a statute is plain, certain and unambiguous, so that no doubt arises from its own terms as to its scope and meaning, a bare reading suffices; then interpretation is needless."

"Sec. 366. * * * We are not at liberty to imagine an intent and bind the letter of the act to that intent; much less can we indulge in the license of striking out and inserting, and remodeling, with the view of making the letter express an intent which the statute in its native form does not evidence. Every construction, therefore, is vicious which requires great changes in the letter of the statute, and, of the several constructions, that is to be preferred which introduces the most general and uniform remedy.

"* * * No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute.

"The legislature must be understood to mean what it has plainly expressed, and this excludes construction. The legislative intent being plainly expressed, so that the act read by itself, or in connection with other statutes pertaining to the same subject, is clear, certain and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms. * * * If a legislative enactment violates no constitutional provision or principle, it must be deemed its own sufficient and conclusive evidence of the justice, propriety and policy of its passage. Courts have, then, no power to set it aside, or evade its operation by forced and unreasonable construction. If it has been passed improvidently, the responsibility is with the legislature and not with the courts."

"Sec. 520. Strict construction of penal statutes.—The penal law is intended to regulate the conduct of people of all grades of intelligence within the scope of responsibility. It is therefore essential to its justice and humanity that it be expressed in language which they can easily comprehend; that it be held obligatory only in the sense in which all can and will understand it. And this consideration presses with increasing weight according to the severity of the penalty. Hence every provision affecting any element of a criminal offense involving life or liberty is subject to the strictest interpretation; and every provision intended for the benefit of the accused, for the same humane reason, receives the most favorable construction. The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislature, not in the judicial department. It is the legislature, not the court, which is to define a crime and ordain its punishment. * * * The case must be a very strong one indeed which would justify a court in departing from the plain meaning of the words, especially in a penal act, in search of an intention which the words themselves did not suggest. * * *

"* * * 'The established rule is,' says the court in *Ex parte Bailey*, 'that a penal law must be construed strictly, and according to its letter. Nothing is to be regarded as included within them that is not within their letter as well as their spirit; nothing that is not clearly and intelligibly described in the very words of the statute, as well as manifestly intended by the legislature. * * *'

"Sec. 521. A penal statute cannot be extended by implication or construction. It cannot be made to embrace cases not within the letter, though within the reason and policy, of the law."

Applying such rules of construction to Act No. 2972, how, where or in what manner is the language of Act No. 2972 ambiguous, indefinite or uncertain? Every word of it is intelligent English. Where is there any doubt or uncertainty as to the meaning of any word in the act? As the majority opinion states, if the language used in the act means what it says, it must be construed as unconstitutional. For such reason, the majority opinion holds that the act should not be construed to mean what it says, but that it should be construed to mean what it is claimed the legislature intended it should mean. If the language in the act was indefinite, uncertain or ambiguous that position

would be tenable.

Numerous decisions are cited in the majority opinion, all of which are good law, but only two of them are in point upon the main question here involved, and both of them are squarely against the law as laid down in the majority opinion. In legal effect, that opinion holds that Act No. 2972, in its existing form, and as it was enacted by the Legislature, is unconstitutional and void. It then proceeds to reconstruct, change and modify the law, and then holds that the law, as reconstructed and modified is constitutional. No law is cited which authorizes this or any other court to reconstruct or modify the plain, simple language of a legislative act, for the simple reason that no such a law will ever be found. But, as Sutherland says, where, as in the instant case, the language is clear and explicit, it must be construed to mean what it says.

On legal principle, the case of *Meyer vs. Nebraska*, decided by the Supreme Court of the United States at the October term, 1922 (67 Law. ed., 1042), cited in the majority opinion, is square in point. The Legislature of Nebraska passed a law entitled "An Act Relating to the Teaching of Foreign Languages in the State of Nebraska," section 1 of which is as follows:

"No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language.

"Sec. 2. Languages, other than the English language, may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the country superintendent of the county in which the child resides.

"Sec. 3. Any person who violates any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a fine of not less than twenty-five (\$25) dollars, nor more than one hundred (\$100) dollars or be confined in the county jail for any period not exceeding thirty days for each offense."

That court held the act unconstitutional and void under the Fourteenth Amendment. Notice the similarity of the legal questions involved. Also notice that section 2 of that Act provides that English language may be taught after the pupils have passed the eighth grade. In the instant law, there is no exception whatever. That law was held void by the highest court of the land whose decisions this court should follow and respect. By comparison of the two laws, it will be noted that there is much stronger reason for holding the law unconstitutional in the instant case than in the case of *Meyer vs. Nebraska*. It will also be noted that the Supreme Court of the United States squarely met and decided the constitutionality of the law.

The Legislature of the Hawaiian Kingdom enacted a law section 1 of which is as follows:

"That from and after the first day of October next, no wholesale or retail license shall be granted to any person except upon the express condition that such licensee shall at all times keep full, true and correct books of account of all business transacted by him in connection with such licensed business, which books of account shall be kept in the English, Hawaiian or some European language." And the Supreme Court of Hawaii, in 7 Hawaiian Reports, 489, held that the law was unconstitutional and void.

Compare the language used in the Nebraska Act and the Hawaiian Act with that of Act No. 2972. In each case, it is plain, clear and simple, and there is no doubt as to what the legislature intended. In the Nebraska case, there was no attempt made by the Supreme Court of the United States to reconstruct, change or modify the law as it was enacted by the legislature. The same thing is true in the Hawaiian case.

You will look in vain to find a decision of the Supreme Court of the United States where that court has ever reconstructed or modified the plain, clear, simple language of a legislative act, for the purpose of holding it

constitutional. We frankly concede that, for taxation purposes, the legislature has the power to enact a law requiring that a record of all sales and purchases should be kept in a given language, and to specify and define how and in what manner such record should be kept, and that such a law would be valid. But we are not dealing with the question of what the legislature can do. The question involved here is what the legislature has done. Both in the title and the body of the act, the legislature has said that it shall be unlawful for any person, firm or corporation engaged in certain lines of business to keep its account books in any language other than English, Spanish or any local dialect, and has expressly imposed a penalty for a violation of the act. There are no exceptions or limitations in the language, and it is not confined or limited to any specific purpose. It is broad and general and applies to any and all account books which may be kept or used in connection with the business.

The majority opinion holds that the law should be construed to read that account books, for taxation purposes only, shall be kept in either English, Spanish or any local dialect. With all due respect to the majority opinion, that is the very highest type of judicial legislation. If the act is to be so construed, then the law itself should specify and define what books are required to be kept, for taxation purposes, and how they should be kept, or it should delegate that power to the tax officials.

Assuming, as the majority opinion does, that Act No. 2972 should read that account books, for taxation purposes, should be kept in either English, Spanish or any local dialect, the act does not specify or define what books shall be kept or how and in what manner they shall be kept. Neither does it delegate that power to anyone else. In its effort in trying to get out of one hole and make a void law a valid law, the majority opinion runs into another hole, which is equally fatal to the law. If, as it holds, Act No. 2972 should be construed to mean that account books, for taxation purposes only, should be kept in either English, Spanish or some local dialect, and the law does not specify what books shall be kept or how and in what manner they shall be kept and that power is not delegated to anyone else, how can the law be enforced? Under such a construction, if a defendant should be charged with a violation of the law, what law has he violated, and upon what legal principle could a conviction be sustained? Upon that point, the law as drafted by the legislature is definite and certain. In legal effect, it provides that all account books for any and all purposes shall be kept in either English, Spanish or some local dialect. The law as reconstructed by the majority opinion would be that such account books are to be confined and limited to account books for taxation purposes. Yet, the law does not specify what books shall be kept for that purpose, or how or in what manner they shall be kept, or what the entries shall contain. Neither is that power delegated. In the absence of such provisions, how could anyone be convicted of a violation of the law? For what crime could he be charged and what would be his offense?

Apparently, the majority opinion realizes the legal effect of its reconstruction of the law, for on page 36 (p. 420, *supra*), the opinion says:

" * * * it seeks to prohibit not only the Chinese but all merchants of whatever nationality from making entries in the books of account or forms subject to inspection for taxation purposes in any other language than either the English or Spanish language or a local dialect, * * *."

And on page 37 (p. 420, *supra*), it says:

"* * * we would go so far as to hold that circular No. 467 of the Bureau of Internal Revenue which this court once held beyond the power of the Collector of Internal Revenue to promulgate, and any other reasonable regulation of a similar nature, as within the power of the Philippine Legislature to sanction and entirely enforceable."

But it will be noted that Act No. 2972 does not say anything about "entries in the books of account or forms subject to inspection for taxation purposes." Neither does it say anything about "circular No. 467 or any other

reasonable regulation of a similar nature." Neither is there any delegation of power to anyone. Hence, it must follow that until such time as the law is amended by the legislature covering those points, it cannot be enforced. The act in question is in no way connected with, and does not in any manner refer to, the "Code of Commerce."

Act No. 2972 is entitled "An Act to provide in what language account books shall be kept, and to establish penalties for its violation," and section 1 provides that it shall be unlawful for certain persons "to keep its account books in any language other than English, Spanish or any local dialect." The act is complete within itself and is separate and distinct from, and makes no reference whatever to, any other act.

The Code of Commerce is entitled "Merchants and Commerce in General," and deals with commercial bodies and commercial transactions.

If, as the majority opinion holds, Act No. 2972 should read "account books for taxation purposes," then Act No. 2972 should be confined and limited to questions of taxation, which are entirely separate and distinct from "merchants and commerce in general." We have yet to learn that legally speaking, questions of commerce and commercial transactions are synonymous with questions of taxation.

It is said that this court has never declared an act of the legislature unconstitutional. Assuming that to be true, it is no argument for or against the constitutionality of any law. On legal principle, Act No. 2972 was declared unconstitutional by the Supreme Court of the United States; an example which it would be well for this court to follow. However grave the responsibility may be, if a given law is unconstitutional, under our oath of office, it is our duty to so declare it.

We repeat that no law is cited in the majority opinion and that none will ever be found which holds the law in question to be constitutional. The majority opinion violates every rule above quoted of Sutherland on Statutory Construction.

For such reasons, I vigorously dissent.

Plaintiffs should have the writ prayed for in their petition.

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