

GREGORIO PERFECTO, PLAINTIFF AND APPELLEE, VS. BIBIANO L. MEER, COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. L-2348. February 27, 1950

Ponente: BENGZON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9ba9886f406f/>

BENGZON, J.:

In April, 1947 the Collector of Internal Revenue required Mr. Justice Gregorio Perfecto to pay income tax upon his salary as member of this Court during the year 1946. After paying the amount (P802), he instituted this action in the Manila court of first instance contending that the assessment was illegal, his salary not being taxable for the reason that imposition of taxes thereon would reduce it in violation of the Constitution.

The Manila judge upheld his contention, and required the refund of the amount collected. The defendant appealed.

The death of Mr. Justice Perfecto has freed us from the embarrassment of passing upon the claim of a colleague. Still, as the outcome indirectly affects all the members of the Court, consideration of the matter is not without its vexing feature. Yet adjudication may not be declined, because, (a) we are not legally disqualified; (b) jurisdiction may not be renounced, as it is the defendant who appeals to this Court, and there is no other tribunal to which the controversy may be referred; (c) supreme courts in the United States have decided similar disputes relating to themselves; (d) the question touches all the members of the judiciary from top to bottom; and (e) the issue involves the rights of other constitutional officers whose compensation is equally protected by the Constitution, for instance, the President, the Auditor-General and the members of the Commission on Elections. Anyway the subject has been thoroughly discussed in many American lawsuits and opinions, and we shall hardly do nothing more than to borrow therefrom and to compare their conclusions to local conditions. There shall be little occasion to formulate new propositions, for the situation is not unprecedented.

Our Constitution provides in its Article VIII, section 9, that the members of the Supreme Court and all judges of inferior courts "shall receive such compensation as may be fixed by law, which shall not be diminished during their continuance in office". It also provides that "until Congress shall provide otherwise, the Chief Justice of the Supreme Court shall receive an annual compensation of sixteen thousand pesos, and each Associate Justice, fifteen thousand pesos". When in 1945 Mr. Justice Perfecto assumed office, Congress had not "provided otherwise", by fixing a different salary for associate justices. He received salary at the rate provided by the Constitution, i. e., fifteen thousand pesos a year.

Now, does the imposition of an income tax upon this salary in 1946 amount to a diminution thereof?

A note found at page 534 of volume 11 of the American Law Reports answers the question in the affirmative. It says:

"Where the Constitution of a state provides that the salaries of its judicial officers shall not be diminished during their continuance in office, it has been held that the state legislature cannot impose a tax upon the

compensation paid to the judges of its court. *New Orleans vs. Lea* (1359) 14 La. Ann. 194; Opinion of Attorney-General of N. C. (1856) 48 N. C. (3 Jones, L.) Appx. 1; *Re Taxation of Salaries of Judges* (1902) 131 N. C. 692, 42 S. E. 970; *Com. ex rel. Hepburn vs. Mann* (1843) 5 Watts & S. (Pa.) 403 (but see to the contrary the earlier and much criticized case of *Northumberland County vs. Chapman* (1829) 2 Rawle (Pa.) 73)" [*].

A different rule prevails in Wisconsin, according to the same annotation. Another state holding the contrary view is Missouri.

The Constitution of the United States, like ours, forbids the diminution of the compensation of Judges of the Supreme Court and of inferior courts. The Federal Government has an income tax law. Does it embrace the salaries of federal judges? In answering this question, we should consider four periods:

First period. No attempt was made to tax the compensation of Federal judges up to 1862.[1]

Second period. 1862-1918. In July, 1862 a statute was passed subjecting the salaries of "civil officers of the United States" to an income tax of three per cent. Revenue officers construed it as including the compensation of all judges; but Chief Justice Taney, speaking for the judiciary, wrote to the Secretary of the Treasury a letter of protest saying, among other things:

"The act in question, as you interpret it, diminishes the compensation of every judge 3 per cent, and if it can be diminished to that extent by the name of a tax, it may? in the same way, be reduced from time to time, at the pleasure of the legislature.

"The judiciary is one of the three great departments of the government, created and established by the Constitution. Its duties and powers are specifically set forth, and are of a character that requires it to be perfectly independent of the two other departments, and in order to place it beyond the reach and above even the suspicion of any such influence, the power to reduce their compensation is expressly withheld from Congress, and excepted from their powers of legislation.

"Language could not be more plain than that used in the Constitution. It is, moreover, one of its most important and essential provisions. For the articles which limit the powers of the legislative and executive branches of the government, and those which provide safeguards for the protection of the citizen in his person and property, would be of little value without a judiciary to uphold and maintain them, which was free from every influence, direct or indirect, that might by possibility in times of political excitement warp their judgments.

"Upon these grounds I regard an act of Congress retaining in the Treasury a portion of the compensation of the judges, as unconstitutional and void"[2].

The protest was unheeded, although it apparently bore the approval of the whole Supreme Court, that ordered it printed among its records. But in 1869 Attorney-General Hoar upon the request of the Secretary of the Treasury rendered an opinion agreeing with the Chief Justice. The collection of the tax was; consequently, discontinued and the amounts theretofore received, were all refunded. For half a century thereafter judges' salaries were not taxed as income.[3]

Third period. 1919-1936. The Federal Income Tax Act of February 24, 1919 expressly provided that taxable income shall include "the compensation of the judges of the Supreme Court and inferior courts of the United States". Under such Act, Walter Evans, United States judge since 1899, paid income tax on his salary; and maintaining that the impost reduced his compensation, he sued to recover the money he had delivered under protest. He was upheld in 1920 by the Supreme Court in an epoch-making decision [*], explaining the purpose, history and meaning of the Constitutional provision forbidding impairment of judicial salaries and the effect of an income tax upon the salary of a judge.

"With what purpose does the Constitution provide that the compensation of the judges 'shall not be diminished during their continuance in office'? Is it primarily to benefit the judges, or rather to promote the public weal by giving them that independence which makes for an impartial and courageous discharge of the judicial function? Does the provision merely forbid direct diminution, such as expressly reducing the compensation from a greater to a less sum per year, and thereby leave the way open for indirect, yet effective, diminution, such as withholding or calling back a part as a tax on the whole? Or does it mean that the judge shall have a sure and continuing right to the compensation, whereon he confidently may rely for his support during his continuance in office, so that he need have no apprehension lest his situation in this regard may be changed to his disadvantage?

"The Constitution was framed on the fundamental theory that a larger measure of liberty and justice would be assured by vesting the three great powers—the legislative, the executive, and the judicial—in separate departments, each relatively independent of the others; and it was recognized that without this independence—if it was not made both real and enduring—the separation would fail of its purpose. All agreed that restraints and checks must be imposed to secure the requisite measure of independence; for otherwise the legislative department, inherently the strongest, might encroach on or even come to dominate the others, and the judicial, naturally the weakest, might be dwarfed or swayed by the other two, especially by the legislative.

"The particular need for making the judiciary independent was elaborately pointed out by Alexander Hamilton in the Federalist, No. 78, from which we excerpt the following:

* * * * *

"At a later period John Marshall, whose rich experience as lawyer, legislator, and chief justice enabled him to speak as no one else could, tersely said (Debates Va. Gov. 1829-1831, pp. 616, 619): * * * Our courts are the balance wheel of our whole constitutional system; and ours is the only constitutional system so balanced and controlled. Other constitutional systems lack complete poise and certainty of operation because they lack the support and interpretation of authoritative, undisputable courts of law. It is clear beyond all need of exposition that for the definite maintenance of constitutional understandings it is indispensable, alike for the preservation of the liberty of the individual and for the preservation of the integrity of the powers of the government, that there should be some nonpolitical forum in which those understandings can be impartially debated and determined. That forum our courts supply. There the individual may assert his rights; there the government must accept definition of its authority. There the individual may challenge the legality of governmental action and have it adjudged by the test of fundamental principles, and that test the government must abide; there the government can check the too aggressive self-assertion of the individual and establish its power upon lines which all can comprehend and heed. The constitutional powers of the courts constitute the ultimate safeguard alike of individual privilege and of governmental prerogative. It is in this sense that our judiciary is the balance wheel of our entire system; it is meant to maintain that nice adjustment between individual rights and governmental powers which constitutes political liberty'. Constitutional Government in the United States, pp. 17, 142.

"Conscious of the nature and scope of the power being vested in the national courts, recognizing that they would be charged with responsibilities more delicate and important than any ever before confided to judicial tribunals, and appreciating that they were to be, in the words of George Washington, 'the keystone of our political fabric', the convention with unusual accord incorporated in the Constitution the provision that the judges 'shall hold their offices during good behavior, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office'. Can there be any doubt that the two things thus coupled in place—the clause in respect of tenure during good behavior and that in respect of an undiminishable compensation—were equally coupled in purpose? And is it not plain that their purpose was to invest the judges with an independence in keeping with the delicacy and importance of their task, and with the imperative need for its impartial and fearless performance? Mr. Hamilton said in explanation and support of the provision (Federalist, No. 79): 'Next to permanency in office, nothing can contribute more to the

independence of the judges than a fixed provision for their support In the general course of human nature, a power over a man's subsistence amounts to a power over his will. . . .

* * * * *

"These considerations make it very plain, as we think, that the primary purpose of the prohibition against diminution was not to benefit the judges, but, like the clause in respect of tenure, to attract good and competent men to the bench, and to promote that independence of action and judgment which is essential to the maintenance of the guaranties, limitations, and pervading principles of the Constitution, and to the administration of justice without respect to persons, and with equal concern for the poor and the rich.

* * * * *

"But it is urged that what the plaintiff was made to pay back was an income tax, and that a like tax was exacted of others engaged in private employment.

"If the tax in respect of his compensation be prohibited, it can find no justification in the taxation of other income as to which there is no prohibition; for, of course, doing what the Constitution permits gives no license to do what it prohibits.

"The prohibition is general, contains no excepting words, and appears to be directed against all diminution, whether for one purpose or another; and the reasons for its adoption, as publicly assigned at the time and commonly accepted ever since, make with impelling force for the conclusion that the fathers of the Constitution intended to prohibit diminution by taxation as well as otherwise, that they regarded the independence of the judges as of far greater importance than any revenue that could come from taxing their salaries." (American Law Reports, Annotated, Vol. 11, pp. 522-25; *Evans vs. Gore*, supra.)

In September 1, 1919, Samuel J. Graham assumed office as judge of the United States court of claims. His salary was taxed by virtue of the same income tax of February 24, 1919. At the time he qualified, a statute fixed his salary at \$7,500. He filed action for reimbursement, submitting the same theory on which *Evans v. Gore* had been decided. The Supreme Court of the United States in 1925 reaffirmed that decision. It overruled the distinction offered by Solicitor-General Beck that Judge Graham took office after the income tax had been levied on judicial salaries, (*Evans* qualified before), and that Congress had power "to impose taxes which should apply to the salaries of Federal judges appointed after the enactment of the taxing statute". (The law had made no distinction as to judges appointed before or after its passage).

Fourth period. 1939 — Foiled in their previous attempts, the Revenue men persisted, and succeeded in inserting in the United States Revenue Act of June, 1932 the modified proviso that "gross income" on which taxes were payable included the compensation "of judges of courts of the United States taking office after June 6, 1932". Joseph W. Woodrough qualified as United States circuit judge on May 1, 1933. His salary as judge was taxed, and before the Supreme Court of the United States the issue of decrease of remuneration again came up. That court, however, ruled against him, declaring (in 1939) that Congress had the power to adopt the law. It said:

"The question immediately before us is whether Congress exceeded its constitutional power in providing that United States judges appointed after the Revenue Act of 1932 shall not enjoy immunity from the incidences of taxation to which everyone else within the defined classes of income is subjected. Thereby, of course, Congress has committed itself to the position that a non-discriminatory tax laid generally on net income is not, when applied to the income of a federal judge, a diminution of his salary within the prohibition of Article 3, Sec. 1 of the Constitution. To suggest that it makes inroads upon the independence of judges who took office after Congress had thus charged them with the common duties of citizenship, by making them bear their aliquot share of the cost of maintaining the Government, is to trivialize the great historic experience on which the framers based the safeguards of Article 3, Sec. 1. To subject them to a general tax is merely to recognize that judges are also citizens, and that their particular function in government does not generate an immunity

from sharing with their fellow citizens the material burden of the government whose Constitution and laws they are charged with administering". (O'Malley vs Woodrough, 59 S. Ct. 838, 122 A. L. R. 1379).

Now, the case for the defendant-appellant Collector of Internal Revenue is premised mainly on this decision [(Note A)]. He claims it holds "that federal judges are subject to the payment of income taxes without violating the constitutional prohibition against the reduction of their salaries during their continuance in office", and that it "is a complete repudiation of the ratio decidendi of Evans vs. Gore". To grasp the full import of the O'Malley precedent, we should bear in mind that:

- It does not entirely overturn Miles vs. Graham. "To the extent that what the Court now says is inconsistent with what was said in Miles vs. Graham, the latter can not survive", Justice Frankfurter announced.
- It does not expressly touch nor amend the doctrine in Evans vs. Gore, although it indicates that the Congressional Act in dispute avoided in part the consequences of that case.

Carefully analyzing the three cases (Evans, Miles and O'Malley) and piecing them together, the logical conclusion may be reached that although Congress may validly declare by law that salaries of judges appointed thereafter shall be taxed as income (O'Malley vs. Woodrough) it may not tax the salaries of those judges already in office at the time of such declaration because such taxation would diminish their salaries (Evans vs. Gore; Miles vs. Graham). In this manner the rationalizing principle that will harmonize the allegedly discordant decisions may be condensed.

By the way, Justice Frankfurter, writing the O'Malley decision, says the Evans precedent met with disfavor from legal scholarship opinion. Examining the issues of Harvard Law Review at the time of Evans vs. Gore (Frankfurter is a Harvard graduate and professor), we found that such school publication criticized it. Believing this to be the "inarticulate consideration that may have influenced the grounds on which the case went off"[4], we looked into the criticism, and discovered that it was predicated on the proposition that the 16th Amendment empowered Congress "to collect taxes on incomes from whatever source derived" admitting of no exception. Said the Harvard Law Journal:

"In the recent case of Evans vs. Gore the Supreme-Court of the United States decided that by taxing the salary of a federal judge as a part of his income, Congress was in effect reducing his salary and thus violating Art. III, sec. 1, of the Constitution. Admitting for the present purpose that such a tax really is a reduction of salary, even so it would seem that the words of the amendment giving power to tax 'incomes, from whatever source derived', are sufficiently strong to overrule pro tanto the provisions of Art. III, sec. 1. But, two years ago, the court had already suggested that the amendment in no way extended the subjects open to federal taxation. The decision in Evans v. Gore affirms that view, and virtually strikes from the amendment the words 'from whatever source derived'." (Harvard Law Review, Vol. 34, P. 70).

The United States Court's shift of position[5] might be attributed to the above detraction which, without appearing on the surface, led to Frankfurter's sweeping expression about judges being also citizens liable to income tax. But it must be remembered that that undisclosed factor—the 16th Amendment—has no counterpart in the Philippine legal system. Our Constitution does not repeat it. Wherefore, as the underlying influence and the unuttered reason has no validity in this jurisdiction, the broad generalization loses much of its force.

"Anyhow the O'Malley case declares no more than that Congress may validly enact a law taxing the salaries of judges appointed after its passage. Here in the Philippines no such law has been approved.

Besides, it is markworthy that, as Judge Woodrough had qualified after the express legislative declaration taxing salaries, he could not very well complain. The United States Supreme Court probably had in mind what in other cases was maintained, namely, that the tax levied on the salary, in effect decreased the emoluments of the office

and, therefore, the judge qualified with such reduced emoluments [6].

The O'Malley ruling does not cover the situation in which judges already in office are made to pay tax by executive interpretation, without express legislative declaration. That state of affairs is controlled by the administrative and judicial standards herein-before described in the "second period" of the Federal Government, namely, the views of Chief Justice Taney and of Attorney-General Hoar and the constant practice from 1869 to 1938, i. e., when the Income Tax Law merely taxes "income" in general, it does not include salaries of judges protected from diminution.

In this connection the respondent would make capital of the circumstance that the Act of 1932, upheld in the O'Malley case, has subsequently been amended by making it applicable even to judges who took office before 1932. This shows, the appellant argues, that Congress interprets the O'Malley ruling to permit legislative taxation of the salary of judges whether appointed before the tax or after. The answer to this is that the Federal Supreme Court expressly withheld opinion on that amendment in the O'Malley case. Which is significant. Anyway, and again, there is here no congressional directive taxing judges' salaries.

Wherefore, unless and until our Legislature approves an amendment to the Income Tax Law expressly taxing "the salaries of judges thereafter appointed", the O'Malley case is not relevant. As in the United States during the second period, we must hold that salaries of judges are not included in the word "income" taxed by the Income Tax Law. Two paramount circumstances may additionally be indicated to wit: First, when the Income Tax Law was first applied to the Philippines in 1913, the taxable "income" did not include salaries of judicial officers when these are protected from diminution. That was the prevailing official belief in the United States, which must be deemed to have been transplanted here [7]; and second, when the Philippine Constitutional Convention approved (in 1935) the prohibition against diminution of the judges' compensation, the Federal principle was known that income tax on judicial salaries really impairs them. *Evans v. Gore* and *Miles vs. Graham* were then outstanding doctrines; and the inference is not illogical that in restraining the impairment of judicial compensation the Fathers of the Constitution intended to preclude taxation of the same [8].

It seems that prior to the O'Malley decision the Philippine Government did not collect income tax on salaries of judges. This may be gleaned from General Circular No. 449 of the Department of Finance dated March 4, 1940, which says in part:

* * * * *

"The question of whether or not the salaries of judges should be taken into account in computing additional residence taxes is closely linked with the liability of judges to income tax on their salaries, in fact, whatever resolution is adopted with respect to either of said taxes must necessarily be followed with respect to the other. The opinion of the Supreme Court of the United States in the case of *O'Malley vs. Woodrough*, 59 S. Ct. 838, to which the attention of this Department has been drawn, appears to have enunciated a new doctrine regarding the liability of judges to income tax upon their salaries. In view of the fact that the question is of great significance, the matter was taken up in the Council of State, and the Honorable, the Secretary of Justice was requested to give an opinion on whether or not, having in mind the said decision of the Supreme Court of the United States in the case of *O'Malley vs. Woodrough*, there is justification in reversing our present ruling to the effect that judges are not liable to tax on their salaries. After going over the opinion of the court in the said case, the Honorable, the Secretary of Justice, stated that although the ruling of the Supreme Court of the United States is not binding in the Philippines, the doctrine therein enunciated has resolved the issue of the taxability of judges' salaries into a question of policy. Forwith, His Excellency, the President decided that the best policy to adopt would be to collect income and additional residence taxes from the President of the Philippines, the members of the Judiciary, and the Auditor General, and the undersigned was authorized to act accordingly.

"In view of the foregoing, income and additional residence taxes should be levied on the salaries received by the President of the Philippines, members of the judiciary, and the Auditor General during the calendar year 1939 and thereafter, * * * * *". (Italics ours)

Of course, the Secretary of Justice correctly opined that the O'Malley decision "resolved the issue of taxability of judges' salaries into a question of policy." But that policy must be enunciated by Congressional enactment, as was done in the O'Malley case, not by Executive fiat or interpretation.

This is not proclaiming a general tax immunity for men on the Bench. These pay taxes. Upon buying gasoline, or cars or other commodities, they pay the corresponding duties. Owning real property, they pay taxes thereon. And on incomes other than their judicial salary, assessments are levied. It is only when the tax is charged directly on their salary and the effect of the tax is to diminish their official stipend—that the taxation must be resisted as an infringement of the fundamental charter.

Judges would indeed be hapless guardians of the Constitution if they did not perceive and block encroachments upon their prerogatives in whatever form. The undiminishable character of judicial salaries is not a mere privilege of judges—personal and therefore waivable—but a basic limitation upon legislative or executive action imposed in the public interest (Evans vs. Gore).

Indeed the exemption of the judicial salary from reduction by taxation is not really a gratuity or privilege. Let the highest court of Maryland speak:

"The exemption of the judicial compensation from reduction is not in any true sense a gratuity, privilege or exemption. It is essentially and primarily compensation based upon valuable consideration. The covenant on the part of the government is a guaranty whose fulfillment is as much a part of the consideration agreed as is the money salary. The undertaking has its own particular value to the citizens in securing the independence of the judiciary in crises; and in the establishment of the compensation upon a permanent foundation whereby judicial preferment may be prudently accepted by those who are qualified by talent, knowledge, integrity and capacity, but are not possessed of such a private fortune as to make an assured salary an object of personal concern. On the other hand, the members of the judiciary relinquish their position at the bar, with all its professional emoluments, sever their connection with their clients, and dedicate themselves exclusively to the discharge of the onerous duties of their high office. So, it is irrefutable that the guaranty against a reduction of salary by the imposition of a tax is not an exemption from taxation in the sense of freedom from a burden or service to which others are liable. The exemption for a public purpose or a valid consideration is merely a nominal exemption, since the valid and full consideration or the public purpose promoted is received in the place of the tax. Theory and Practice of Taxation (1900), D. A. Wells, p. 541." (Gordy vs. Dennis (Md.) 1939, 5 Atl. Rep. 2d Series, p. 80).

It is hard to see, appellant asserts, how the imposition of the income tax may imperil the independence of the judicial department. The danger may be demonstrated. Suppose there is power to tax the salary of judges, and the judiciary incurs the displeasure of the Legislature and the Executive. In retaliation the income tax law is amended so as to levy a 30 per cent tax on all salaries of government officials on the level of judges. This naturally reduces the salary of the judges by 30 per cent, but they may not grumble because the tax is general on all receiving the same amount of earnings, and affects the Executive and the Legislative branches in equal measure. However, means are provided thereafter in other laws, for the increase of salaries of the Executive and the Legislative branches, or their perquisites such as allowances, per diems, quarters, etc. that actually compensate for the 30% reduction on their salaries. Result: Judges' compensation is thereby diminished during their incumbency, thanks to the income tax law. Consequence: Judges must "toe the line", or else. Second consequence: Some few judges might falter; the great majority will not. But knowing the frailty of human nature, and this chink in the judicial armor, will the parties losing their cases against the Executive or the Congress believe that the judicature has not

yielded to their pressure?

Respondent asserts in argumentation that by executive order the President has subjected his salary to the income tax law. In our opinion this shows obviously that, without such voluntary act of the President, his salary would not be taxable, because of constitutional protection against diminution. To argue from this executive gesture that the judiciary could, and should act in like manner is to assume that, in the matter of compensation and power and need of security, the judiciary is on a par with the Executive. Such assumption, certainly, ignores the prevailing state of affairs.

The judgment will be affirmed. So ordered.

Moran, C. J., Pablo, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

Ozaeta, J., see dissenting opinion.

Paras, J., concurs in the dissenting opinion of Justice Ozaeta.

[*] Evans vs. Gore, 253 U. S. 245 and Gordy vs. Dennis, 5 Atl. (2d) 69 hold identical view.

[1] Evans vs. Gore, 253 U. S. 245, 64 L. ed. 887.

[2] 157 U. S. 701, Evans vs. Gore, supra.

[3] See Evans vs. Gore, supra.

[*] Evans vs. Gore, supra.

[(Note A)] The defendant also relies on the dissenting opinion of Mr. Justice Holmes in Evans vs. Gore, supra, forgetting that subsequently Justice Holmes did not dissent in Miles vs. Graham, and apparently accepted Evans vs. Gore as authority in writing his opinion in Gillespie vs. Oklahoma, 257 U. S. 501, 66 Law ed. 338. This remark applies to Taylor vs. Gehner (1931), No. 45 S. W. (2d) 59, which merely echoes Holmes dissent.

State vs. Nygaard, 159, Wisc. 369 and the decisions of English courts invoked by appellant, are refuted or distinguished in Gordy vs. Dennis, 5 Atl. (2d) 68, known to him since he invokes the minority opinion therein.

[4] Frankfurter, The Administrative Side of Chief Justice Hughes, Harvard Law Review, November 1949.

[5] It was a coincidence that the dissenters (Holmes and Brandeis) were Harvard men like Frankfurter. It is not unlikely that the Harvard professor and admirer of Justice Holmes (whose biography he wrote in 1938) noted and unconsciously absorbed the dissent.

[6] Baker vs. C. I. R. 149 Fed. (2d) 342.

[7] It requires a very clear case to justify changing the construction of a constitutional provision which has been acquiesced in for so long a period as fifty years. (State vs. Frear 138 Wisc. 536, 120 N. W. 216. See also Hill vs. Tohill, 225 Ill. 384, 80 NE, 253.)

[8] On persuasive weight of contemporary construction of constitutional provision, see generally Cooley, Constitutional Limitation (8th Ed.) Vol. I, pp. 144 et seq.

DISSENTING OPINION

OZAETA, J.:

It is indeed embarrassing that this case was initiated by a member of this court upon which devolves the duty to decide it finally. The question of whether the salaries of the judges, the members of the Commission on Elections, the Auditor General, and the President of the Philippines are immune from taxation, might have been raised by any interested party other than a justice of the Supreme Court with less embarrassment to the latter.

The question is simple and not difficult of solution. We shall state our opinion as concisely as possible.

The first income tax law of the Philippines was Act No. 2833, which was approved on March 7, 1919, to take effect on January 1, 1920. Section 1 (a) of said Act provided:

"There shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources by every individual, a citizen or resident of the Philippine Islands, a tax of two per centum upon such income . . ." (Italics ours.)

Section 2 (a) of said Act provided:

"Subject only to such exemptions and deductions as are hereinafter allowed , the taxable net income of a person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains, profits, and income derived from any source whatever." (Italics ours.)

That income tax law; has been amended several times, specially as to the rates of the tax, but the above-quoted provisions (except as to the rate) have been preserved intact in the subsequent Acts. The present income tax law is Title II of the National Internal Revenue Code, Commonwealth Act No. 466, sections 21, 26, and 29 of which incorporate the texts of the above-quoted provisions of the original Act in exactly the same language. There can be no dispute whatsoever that judges (who are individuals) and their salaries (which are income) are as clearly comprehended within the above-quoted provisions of the law as if they were specifically mentioned therein; and in fact all judges had been and were paying income tax on their salaries when the Constitution of the Philippines was discussed and approved by the Constitutional Convention and when it was submitted to the people for confirmation in the plebiscite of May 14, 1935.

Now, the Constitution provides that the members of the Supreme Court and all judges of inferior courts "shall receive such compensation as may be fixed by law, which shall not be diminished during their continuance in office." (Section 9, Article VIII; italics ours.)[a]

The simple question is: In approving the provisions against the diminution of the compensation of judges and other specified officers during their continuance in office, did the framers of the Constitution intend to nullify the then existing income tax law insofar as it ; imposed a tax on the salaries of said-officers? If they did not, then the income tax law, which has been incorporated in the present National Internal Revenue Code, remains in force in its entirety and said officers cannot claim exemption therefrom on their salaries.

Section 2 of Article XVI of the Constitution provides that all laws of the Philippine Islands shall remain operative, unless inconsistent with this Constitution, until amended, altered, modified, or repealed by the Congress of the Philippines.

In resolving the question at bar, we must take into consideration the following well-settled rules:

"A constitution shall be held to be prepared and adopted in reference to existing statutory laws, upon the provisions of which in detail it must depend to be set in practical operation' (People vs. Potter, 47 N.T. 375; People vs. Draper, 15 N.Y. 537; Cass vs. Dillon, 2 Ohio St. 607; People vs. New York, 25 Wend. (N.Y. 22).\" (Barry vs. Traux, 3 A. & E. Ann. Cas. 191, 193.)

"Courts are bound to presume that the people adopting a constitution are familiar with the previous and existing laws upon the subjects to which its provisions relate, and upon which they express their judgment and

opinion in its adoption (Baltimore vs. State, 15 Md. 376, 480, 74 Am. Dec. 572; State vs. Mace, 5 Md. 337; Bandel vs. Isaac, 13 Md. 202; Manly vs. State, 7 Md. 135; Hamilton vs. St. Louis County Ct., 15 Mo. 5; People vs. Gies, 25 Mich. 83; Servis vs. Beatty, 32 Miss. 52; Pope vs. Phifer, 3 Heisk. (Tenn.) 686; People vs. Harding, 53 Mich. 48, 51 Am. Rep. 95; Creve Coeur Lake Ice Co. vs. Tamm, 138 Mo. 385, 39 S.W. Rep. 791)."(Idem.)

"A constitutional provision must be presumed to have been, framed and adopted in the light and understanding of prior and existing laws and with reference to them. Constitutions, like statutes, are properly to be expounded in the light of conditions existing at the time of their adoption, the general spirit of the times, and the prevailing sentiments among the people. Reference may be made to the historical facts relating to the original or political institutions of the community or to prior well-known practices and usages." (11 Am. Jur., Constitutional Law, 676-678.)

The salaries provided in the Constitution for the Chief Justice and each Associate Justice, respectively, of the Supreme Court were[^] the same salaries which they were receiving at the time the Constitution was framed and adopted and on which they were paying income tax under the existing income tax law. It seems clear to us that for them to receive the same salaries, subject to the same tax, after the adoption of the Constitution as before does not involve any diminution at all. The fact that the plaintiff was not a member of the Court when the Constitution took effect, makes no difference. The salaries of justices and judges were subject to income tax when he was appointed in the early part of 1945. In fact he must have declared and paid income tax on his salary for 1945—he claimed exemption only beginning 1946. It seems, likewise, clear that when the framers of the Constitution fixed those salaries, they must have taken into consideration that the recipients were paying income tax thereon. There was no necessity to provide expressly that said salaries shall be subject to income tax because they knew that the existing law already so provided. On the other hand, if exemption I from any tax on said salaries had been intended, it would have been necessary specifically to so provide, instead of merely saying that the compensation as fixed "shall not be diminished during their continuance in office."

In the light of the antecedents, the prohibition against diminution cannot be interpreted to include or refer to general taxation but to a law by which said salaries may be fixed. The sentence in question reads: "They shall receive such compensation as may be fixed by law, which shall not be diminished during their continuance in office." The next sentence reads: "Until the Congress shall provide otherwise, the Chief Justice of the Supreme Court shall receive an annual compensation of sixteen thousand pesos, and each Associate Justice, Fifteen thousand pesos." It is plain that the Constitution authorizes the Congress to pass a law fixing another rate of compensation, but that such rate must be higher than that which the justices receive at the time of its enactment or, if lower, it must not affect those justices already in office. In other words, Congress may approve a law increasing the salaries of the justices effective at any time, but it cannot approve a law decreasing their salaries unless such law is made effective only as to justices appointed after its approval.

It would indeed be a strained and unreasonable construction of the prohibition against diminution to read into it an exemption from taxation. There is no justification for the belief or assumption that the framers of the Constitution intended to exempt the salaries of said officers from taxes. They knew that it was and is the unavoidable duty of every citizen to bear his aliquot share of the cost of maintaining the Government; that taxes are the very blood that sustains the life of the Government. To make all citizens share the burden of taxation equitably, the Constitution expressly provides that "the rule of taxation shall be uniform." (Section 22 [1], Article VI.) We think it would be a contravention of this provision to read into the prohibition against diminution of the salaries of the judges and other specified officers, an exemption from taxes on their salaries. How could the rule of income taxation be uniform if it should not be applied to a group of citizens in the same situation as other income earners? It is to us inconceivable that the framers ever intended to relieve certain officers of the Government from sharing with their

fellow citizens the material burden of the Government—to exempt their salaries from taxes. Moreover, the Constitution itself specifies what properties are exempt from taxes, namely: "Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes." (Section 22 [3], Article VI.) The omission of the salaries in question from this enumeration is in itself an eloquent manifestation of intention to continue the imposition of taxes thereon as provided in the existing law. *Inclusio unius est exclusio alterius*.

We have thus far read and construed the pertinent portions of our own Constitution and income tax law in the light of the antecedent circumstances, and of the Operative factors which prevailed at the time our Constitution was framed, independently of the construction now prevailing in the United States of similar provisions of the federal Constitution in relation to the present federal income tax law, under which the justices of the Supreme Court and the federal judges are now, and since the case of *O'Malley vs. Woodrough* was decided on May 22, 1939, have been, paying income tax on their salaries. Were this a majority opinion, we could end here with the consequent reversal of the judgment appealed from. But ours is a voice in the wilderness, and we may permit ourselves to utter it with more vehemence and emphasis so that future players on this stage perchance may hear and heed it. Who knows? The Gospel itself was a voice in the wilderness at the time it was uttered.

We have to comment on Anglo-American precedents since the majority decision from which we dissent is based on some of them. Indeed, the majority say they "hardly do nothing more than to borrow therefrom and to compare their conclusions to local conditions," which we shall presently show did not obtain in the United States at the time the federal and state Constitutions were adopted. We shall further show that in any event what they now borrow is not usable because it has long been withdrawn from circulation.

When the American Constitution was framed and adopted, there was no income tax law in the United States. To this circumstance may be attributed the claim made by some federal judges headed by Chief Justice Taney, when under the Act of Congress of July 1, 1862, their salaries were subjected to an income tax, that such tax was a diminution of their salaries and therefore prohibited by the Constitution. Chief Justice Taney's claim and his protest against the tax were not heeded, but no federal judge deemed it proper to sue the Collector of Internal Revenue to recover the taxes they continued to pay under protest for several years. In 1869 the Secretary of the Treasury referred the question to Attorney General Hoar, and that officer rendered an opinion in substantial accord with Chief Justice Taney's protest, and also advised that the tax on the President's compensation was likewise invalid. No judicial pronouncement, however, was made of such invalidity until June 1, 1920, when the case of *Evans vs. Gore* (253 U.S. 245, 64 L. ed. 887) was decided upon the suit of District Judge Walter Evans, who challenged the constitutionality of section 213 of the Act of February 24, 1919, which required the computation of incomes for the purpose of taxation to embrace all gains, profits, income, and the like, "including in the case of the President of the United States, the judges of the Supreme and inferior courts of the United States, [and others] . . . the compensation received as such." The Supreme Court of the United States, speaking thru Mr. Justice Van Devanter, sustained the suit with the dissent of Justices Holmes and Brandeis. The doctrine of *Evans vs. Gore* holding in effect that an income tax on a judge's salary is a diminution thereof prohibited by the Constitution, was reaffirmed in 1925 in *Miles vs. Graham*, 69 L. ed. 1067.

In 1939, however, the case of *O'Malley vs. Woodrough* (59 S. Ct. 838, 122 A. L. R. 1379) was brought up to test the validity of section 22 of the Revenue Act of June 6, 1932, which included in the "gross income," on the basis of which taxes were to be paid, the compensation of "judges of courts of the United States taking office after June 6, 1932." And in that case the Supreme Court of the United States, with only one dissent (that of Justice Butler), abandoned the doctrine of *Evans vs. Gore* and *Miles vs. Graham* by holding:

"To subject them [the judges] to a general tax is merely to recognize that judges are also citizens, and that their

particular function in ; government does not generate an immunity from sharing with their fellow citizens the material burden of the government whose Constitution and laws they are charged with administering."

The decision also says:

"To suggest that it [the law in question] makes inroads upon the independence of judges who took office after Congress had thus charged them with the common duties of citizenship, by making them bear their aliquot share of the cost of maintaining the Government, is to trivialize the great historic experience on which the framers based the safeguards of Article 3, section 1."

Commenting on the above-quoted portions of the latest decision of the Supreme Court of the United States on the subject, Prof. William Bennett Munro, in his book, *The Government of the United States*, which is used as a text in various universities, says:

". . . All of which seems to be common i sense, for surely the framers of the Constitution, in seeking to prevent a resentful Congress from ever cutting a judge's salary, did not intend to relieve all federal judges from the general obligations of citizenship. As for the President, he has never raised the issue; every occupant of the White House since 1913 has paid his income tax without protest." (Pages 371-372.)

We emphasize that the doctrine of *Evans vs. Gore* and *Miles vs. Graham* is no longer operative, and that all United States judges, including those who took office before June 6, 1932, are subject to and pay income tax on their salaries; for after the submission of *O'Malley vs. Woodrough* for decision the Congress of the United States, by section 3 of the Public Salary Act of 1939, amended section 22 (a) of the Revenue Act of June 6, 1932, so as to make it applicable to "judges of courts of the United States who took office on or before June 6, 1932." And the validity of that Act, in force for more than a decade, has not been challenged.

Our colleagues import and transplant here the dead limbs of *Evans vs. Gore* and *Miles vs. Graham* and attempt to revive and nurture them with painstaking analyses and diagnoses that they had not suffered a fatal blow from *O'Malley vs. Woodrough*. We refuse to join this heroic attempt because we believe it is futile.

They disregard the actual damage and minimize it, by trying to discover the process by which it was inflicted and the motivations that led to the infliction. They say that the chief axe-wielder, Justice Frankfurter, was a Harvard graduate and professor and that the Harvard Law Journal had criticized *Evans vs. Gore*; that the dissenters in said case (Holmes and Brandeis) were Harvard men like Frankfurter; and that they believe this to be the "inarticulate consideration that may have influenced the grounds on which the case [*O'Malley vs. Woodrough*] went off." This argument is not valid, in our humble belief. It was not only the Harvard Law Journal that had criticized *Evans vs. Gore*. Justice Frankfurter and his colleagues said that the decision in that case "met with wide and steadily growing disfavor from legal scholarship and professional opinion," and they cited the following: Clark, *Further Limitations Upon Federal Income Taxation*, 30 Yale L. J. 75; Corwin, *Constitutional Law in 1919-1920*, 15 Am. Pol. Sci. Rev. 635, 641-644; Fellman, *Diminution of Judicial Salaries*, 24 Iowa L. Rev. 89; Lowndes, *Taxing Income of Federal Judiciary*, 19 Va. L. Rev. 153; Powell, *Constitutional Law in 1919-1920*, 19 Mich. L. Rev. 117, 118; Powell, *The Sixteenth Amendment and Income from State Securities*, National Income Tax Magazine (July, 1923), 5, 6; 20 Columbia L. Rev. 794; 43 Harvard L. Rev. 318; 20 Ill. L. Rev. 376; 45 Law Quarterly Rev. 291; 7 Va. L. Rev. 69; 3 University of Chicago L. Rev. 141. Justice Frankfurter and his colleagues also said that "*Evans vs. Gore* itself was rejected by most of the courts before whom the matter came after that decision." Is not the intention to throw *Evans vs. Gore* into the graveyard of abandoned , cases manifest from all this and from the holding that judges are also citizens, liable to pay income tax on their salaries?

The majority say that "unless and until our legislature approves an amendment to the income tax law; expressly taxing 'the salaries of judges thereafter appointed,' the *O'Malley* case is not relevant." We have shown that our

income tax law taxes the salaries of judges, as clearly as if they are specifically mentioned therein, and that said law took effect long before the adoption of the Constitution and long before the plaintiff was appointed.

We agree that the purpose of the constitutional provision against diminution of the salaries of judges during their continuance in office is to safeguard the independence of the Judicial Department. But we disagree that to subject the salaries of judges to a general income tax law; applicable to all income earners would in any way affect their independence. Our own experience since the income tax law went into effect in 1920 is the best refutation of such assumption.

The majority give an example by which the independence of judges may be imperiled thru the imposition of a tax on their salaries. They say: Suppose there is power to tax the salaries of judges and the judiciary incurs the displeasure of the Legislature and the Executive. In retaliation the income tax law is amended so as to levy a 30 per cent tax on all salaries of government officials on the level of judges, and by means of another law the salaries of the executive and the legislative branches are increased to compensate for the 30 per cent reduction on their salaries. To this we reply that if such a vindictive measure is ever resorted to (which we cannot imagine), we shall be the first ones to vote to strike it down, as a palpable violation of the Constitution. There is no parity between such hypothetical law and the general income tax law invoked by the defendant in this case. We believe that an income tax law applicable only against the salaries of judges and not against those of all other income earners may be successfully assailed as being in contravention not only of the provision against diminution of the salaries of judges but also of the uniformity of the rule of taxation as well as of the equal protection clause of the Constitution. So the danger apprehended by the majority is not real but purely imaginary.

We vote for the reversal of the judgment appealed from and the dismissal of plaintiff's complaint.

[a] The Constitution also provides that the President shall "receive a compensation to be ascertained by law which shall be neither increased nor diminished during the period for which he shall have been elected" (section 9, Article VII); that the Auditor General "shall receive an annual compensation to be fixed by law which shall not be diminished during his continuance in office" (section 1, Article XI) ; and that the salaries of the chairman and the members of the Commission on Elections "shall be neither increased nor diminished during their term of office" (section 1, Article X).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.