

FRANCIS A. CHURCHILL AND STEWART TAIT, PLAINTIFFS AND APPELLEES, VS. JAMES J. RAFFERTY, COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT,*G.R. No. 10572. December 21, 1915*

Ponente: TRENT, J.

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The judgment appealed from in this case perpetually restrains and prohibits the defendant and his deputies from collecting and enforcing against the plaintiffs and their property the annual tax mentioned and described in subsection (6) of section 100 of Act No. 2339, effective July 1, 1914, and from destroying or removing any sign, signboard, or billboard, the property of the plaintiffs, for the sole reason that such sign, signboard, or billboard is, or may be, offensive to the sight; and decrees the cancellation of the bond given by the plaintiffs to secure the issuance of the preliminary injunction granted soon after the commencement of this action.

This case divides itself into two parts and gives rise to two main questions; (1) that relating to the power of the court to restrain by injunction the collection of the tax complained of, and (2) that relating to the validity of those provisions of subsection (b) of section 100 of Act No. 2339, conferring power upon the Collector of Internal Revenue to remove any sign, signboard, or billboard upon the ground that the same is offensive to the sight or is otherwise a nuisance.

The first question is one of jurisdiction and is of vital importance to the Government. The sections of Act No. 2339, which bear directly upon the subject, are 139 and 140. The first expressly forbids the use of an injunction to stay the collection of any internal revenue tax; the second provides a remedy for any wrong in connection with such taxes, and this remedy was intended to be exclusive, thereby precluding the remedy by injunction, which remedy is claimed to be constitutional. The two sections, then, involve the right of a dissatisfied taxpayer to use an exceptional remedy to test the validity of any tax or to determine any other question connected therewith, and the question whether the remedy by injunction is exceptional.

Preventive remedies of the courts are extraordinary and are not the usual remedies. The origin and history of the writ of injunction show that it has always been regarded as an extraordinary, preventive remedy, as distinguished from the common course of the law to redress evils after they have been consummated. No injunction issues as of course, but is granted only upon the oath of a party and when there is no adequate remedy at law. The Government does, by sections 139 and 140, take away the preventive remedy of injunction, if it ever existed, and leaves the taxpayer, in a contest with it, to the same ordinary remedial actions which prevail between citizen and citizen. The Attorney-General, on behalf of the defendant, contends that there is no provisions of the paramount law which prohibits such a course. While, on the other hand, counsel for plaintiffs urge that the two sections are unconstitutional because (a) they attempt to deprive aggrieved taxpayers of all substantial remedy for the protection of their property, thereby, in effect, depriving them of their property without due process of law; and (b) they attempt to diminish the jurisdiction of the courts, as conferred upon them by Acts Nos. 136 and 190,

which jurisdiction was ratified and confirmed by the Act of Congress of July 1, 1902. In the first place, it has been suggested that section 139 does not apply to the tax in question because the section, in speaking of a "tax," means only legal taxes; and that an illegal tax (the one complained of) is not a tax, and, therefore, does not fall within the inhibition of the section, and may be restrained by injunction. There is no force in this suggestion. The inhibition applies to all internal revenue taxes imposed, or authorized to be imposed, by Act No. 2339. (*Snyder vs. Marks*, 109 U. S., 189.) And, furthermore, the mere fact that a tax is illegal, or that the law, by virtue of which it is imposed, is unconstitutional, does not authorize a court of equity to restrain its collection by injunction. There must be a further showing that there are special circumstances which bring the case under some well recognized head of equity jurisprudence, such as that irreparable injury, multiplicity of suits, or a cloud upon title to real estate will result, and also that there is, as we have indicated, no adequate remedy at law. This is the settled law in the United States, even in the absence of statutory enactments such as sections 139 and 140. (*Hannewinkle vs. Mayor, etc., of Georgetown*, 82 U. S., 547; *Indiana Mfg. Co. vs. Koehne*, 188 U. S., 681; *Ohio Tax Cases*, 232 U. S., 576, 687; *Pittsburgh C. C. & St. L. R. Co. vs. Board of Public Works*, 172 U. S., 82; *Shelton vs. Platt*, 139 U. S., 591; *State Railroad Tax Cases*, 92 U. S., 575.) Therefore, this branch of the case must be controlled by sections 139 and 140, unless the same be held unconstitutional, and consequently, null and void.

"The right and power of judicial tribunals to declare whether enactments of the legislature exceed the constitutional limitations and are invalid has always been considered a grave responsibility, as well as a solemn duty. The courts invariably give the most careful consideration to questions involving the interpretation and application of the Constitution, and approach constitutional questions with great deliberation, exercising their power in this respect with the greatest possible caution and even reluctance; and they should never declare a statute void, unless its invalidity is, in their judgment, beyond reasonable doubt. To justify a court in pronouncing a legislative act unconstitutional, or a provision of a state constitution to be in contravention of the Constitution of the United States, the case must be so clear as to be free from doubt, and the conflict of the statute with the constitution must be irreconcilable, because it is but a decent respect to the wisdom, the integrity, and the patriotism of the legislative body by which any law is passed to presume in favor of its validity until the contrary is shown beyond reasonable doubt. Therefore, in no doubtful case will the judiciary pronounce a legislative act to be contrary to the constitution. To doubt the constitutionality of a law is to resolve the doubt in favor of its validity." (6 *Ruling Case Law*, sees. 71, 72, and 73, and cases cited therein.)

It is also the settled law in the United States that "due process of law-" does not always require, in respect to the Government, the same process that is required between citizens, though it generally implies and includes regular allegations, opportunity to answer, and a trial according to some well settled course of judicial proceedings. The case with which we are dealing is in point. A citizen's property, both real and personal, may be taken, and usually is taken, by the government in payment of its taxes without any judicial proceedings whatever. In this country, as well as in the United States, the officer charged with the collection of taxes is authorized to seize and sell the property of delinquent taxpayers without applying to the courts for assistance, and the constitutionality of the law authorizing this procedure never has been seriously questioned. (*City of Philadelphia vs. [Diehl] The Collector*, 6 Wall., 720; *Nicholl vs. U. S.*, 7 Wall., 122, and cases cited.) This must necessarily be the course, because it is upon taxation that the Government chiefly relies to obtain the means to carry on its operations, and it is of the utmost importance that the modes adopted to enforce the collection of the taxes levied should be summary and interfered with as little as possible. No government could exist if every litigious man were permitted to delay the collection of its taxes. This principle of public policy must be constantly borne in mind in determining cases such as the one under consideration. With these principles to guide us, we will proceed to inquire whether there is any merit in the two propositions insisted upon by counsel for the plaintiffs. Section 5 of the Philippine Bill provides: "That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the law."

The origin and history of these provisions are well-known. They are found in substance in the Constitution of the United States and in that of every state in the Union.

Section 3224 of the Revised Statutes of the United States, effective since 1867, provides that: "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court."

Section 139, with which we have been dealing, reads: "No court shall have authority to grant an injunction "to restrain the collection of any internal-revenue tax."

A comparison of these two sections show that they are essentially the same. Both expressly prohibit the restraining of taxes by injunction. If the Supreme Court of the United States has clearly and definitely held that the provisions of section 3224 do not violate the "due process of law" and "equal protection of the law" clauses in the Constitution, we would be going too far to hold that section 139 violates those same provisions in the Philippine Bill. That the Supreme Court of the United States has so held, cannot be doubted.

In *Cheatham vs. United States* (92 U. S., 85, 89) which involved the validity of an income tax levied by an act of Congress prior to the one in issue in the case of *Pollock vs. Farmers' Loan & Trust Co.* (157 U. S., 429) the court, through Mr. Justice Miller, said: "If there existed in the courts, state or National, any general power of impeding or controlling the collection of taxes, or relieving the hardship incident to taxation, the very existence of the government might be placed in the power of a hostile judiciary. (*Daws vs. The City of Chicago*, 11 Wall., 108.) While a free course of remonstrance and appeal is allowed within the departments before the money is finally exacted, the General Government has wisely made the payment of the tax claimed, whether of customs or of internal revenue, a condition precedent to a resort to the courts by the party against whom the tax is assessed. In the internal revenue branch it has further prescribed that no such suit shall be brought until the remedy by appeal has been tried; and, if brought after this, it must be within six months after the decision on the appeal. We regard this as a condition on which alone the government consents to litigate the lawfulness of the original tax. It is not a hard condition. Few governments have conceded such a right on any condition. If the compliance with this condition requires the party aggrieved to pay the money, he must do it."

Again, in *State Railroad Tax Cases* (92 U. S., 575, 613), the court said: "That there might be no misunderstanding of the universality of this principle, it was expressly enacted, in 1867, that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court (Rev. Stat., sec. 3224.) And though this was intended to apply alone to taxes levied by the United States, it shows the sense of Congress of the evils to be feared if courts of justice could, in any case, interfere with the process of collecting taxes on which the government depends for its continued existence. It is a wise policy. It is founded in the simple philosophy derived from the experience of ages, that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment; and to do this successfully, other instrumentalities and other modes of procedure are necessary, than those which belong to courts of justice."

And again, in *Snyder vs. Marks* (109 U. S., 189), the court said: "The remedy of a suit to recover back the tax after it is paid is provided by statute, and a suit to restrain its collection is forbidden. The remedy so given is exclusive, and no other remedy can be substituted for it. Such has been the current of decisions in the Circuit Courts of the United States, and we are satisfied it is a correct view of the law."

In the consideration of the plaintiffs' second proposition, we will attempt to show (1) that the Philippine courts never have had, since the American occupation, the power to restrain by injunction the collection of any tax imposed by the Insular Government for its own purpose and benefit, and (2) that assuming that our courts had or have such power, this power has not been diminished or curtailed by sections 139 and 140.

We will first review briefly the former and present systems of taxation. Upon the American occupation of the Philippines, there was found a fairly complete system of taxation. This system was continued in force by the military authorities, with but few changes, until the Civil Government assumed charge of the subject. The principal sources of revenue under the Spanish regime were derived from customs receipts, the so-called industrial taxes, the urbana taxes, the stamp tax, the personal cedula tax, and the sale of the public domain. The industrial and urbana taxes constituted practically an income tax of some 5 per cent on the net income of persons engaged in industrial and commercial pursuits and on the income of owners of improved city property. The sale of stamped paper and adhesive stamps, which the law required to be used, constituted the stamp tax. The cedula tax was a graduated tax, ranging from nothing up to P37.50. The revenue derived from the sale of the public domain was not considered a tax. The American authorities at once abolished the cedula tax, but later restored it in a modified form, charging for each cedula twenty centavos, an amount which was supposed to be just sufficient to cover the cost of issuance. The urbana tax was abolished by Act No. 223, effective September 6, 1901.

The "Municipal Code" (Act No. 82) and the Provincial Government Act (No. 83), both enacted in 1901, authorize municipal councils and provincial boards to impose an ad valorem tax on real estate. The Municipal Code did not apply to the city of Manila. This city was given a special charter (Act No. 183), effective August 30, 1901. Under this charter the Municipal Board of Manila is authorized and empowered to impose taxes upon real estate and, like municipal councils, to license and regulate certain occupations. Customs matters were completely reorganized by Act No. 355, effective at the port of Manila on February 7, 1902, and at other ports in the Philippine Islands the day after the receipt of a certified copy of the Act. The Internal Revenue Law of 1904 (Act No. 1189), repealed all existing laws, ordinances, etc., imposing taxes upon the persons, objects, or occupations taxed under that act, and all industrial taxes and stamp taxes imposed under the Spanish regime were eliminated, but the industrial tax was continued in force until January 1, 1905. This Internal Revenue Law did not take away from municipal councils, provincial boards, and the Municipal Board of the city of Manila the power to impose taxes upon real estate. This Act (No. 1189), with its amendments, was repealed by Act No. 2339, an act "revising and consolidating the laws relative to internal revenue."

Section 84 of Act No. 82 provides that "No court shall entertain any suit assailing the validity of a tax assessed under this act until the taxpayer shall have paid, under protest, the taxes assessed against him, * * *."

This inhibition was inserted in section 17 of Act No. 83 and applies to taxes imposed by provincial boards. The inhibition was not inserted in the Manila Charter until the passage of Act No. 1793, effective October 12, 1907. Act No. 355 expressly makes the payment of the exactions claimed a condition precedent to a resort to the courts by dissatisfied importers. Section 52 of Act No. 1189 provides "That no courts shall have authority to grant an injunction restraining the collection of any taxes imposed by virtue of the provisions of this Act, but the remedy of the taxpayer who claims that he is unjustly assessed or taxed shall be by payment under protest of the sum claimed from him by the Collector of Internal Revenue and by action to recover back the sum claimed to have been illegally collected."

Sections 139 and 140 of Act No. 2339 contain, as we have indicated, the same prohibition and remedy. The result is that the courts have been expressly forbidden, in every act creating or imposing taxes or imposts enacted by the legislative body of the Philippines since the American occupation, to entertain any suit assailing the validity of any tax or impost thus imposed until the tax shall have been paid under protest. The only taxes which have not been brought within the express inhibition were those included in that part of the old Spanish system which completely disappeared on or before January 1, 1905, and possibly the old customs duties which disappeared in February, 1902.

Section 56 of the Organic Act (No. 136), effective June 16, 1901, provides that "Courts of First Instance shall

have original jurisdiction:

* * * * *

"2. In all civil actions which involve the * * * legality of any tax, impost, or assessment, * * *.

"7. Said courts and their judges, or any of them, shall have power to issue writs of injunction, mandamus, certiorary, prohibition, quo warranto, and habeas corpus in their respective provinces and districts, in the manner provided in the Code of Civil Procedure."

The provisions of the Code of Civil Procedure (Act No. 190), effective October 1, 1901, which deals with the subject of injunctions, are sections 162 to 172, inclusive. Injunctions, as here defined, are of two kinds; preliminary and final. The former may be granted at any time after the commencement of the action and before final judgment, and the latter at the termination of the trial as the relief or part of the relief prayed for (sec 162). Any judge of the Supreme Court may grant a preliminary injunction in any action pending in that court or in any Court of First Instance. A preliminary injunction may also be granted by a judge of the Court of First Instance in actions pending in his district in which he has original jurisdiction (sec. 163). But such injunctions may be granted only when the complaint shows facts entitling the plaintiff to the relief demanded (sec. 166), and before a final or permanent injunction can be granted, it must appear upon the trial of the action that the plaintiff is entitled to have commission or continuance of the acts complained of perpetually restrained (sec. 171). These provisions authorize the institution in Courts of First Instance of what are known as "injunction suits," the sole object of which is to obtain the issuance of a final injunction. They also authorize the granting of injunctions as aiders in ordinary civil actions. Aye have defined in *Devesa vs. Arbes* (13 Phil Rep., 273), an injunction to be "A 'special remedy' adopted in that code (Act 190) from American practice, and originally borrowed from English legal procedure, which was there issued by the authority and under the seal of a court of equity, and limited, as in other cases where equitable relief is sought, to those cases where there is no 'plain, adequate, and complete remedy at law,' which will not be granted while the rights between the parties are undetermined, except in extraordinary cases where material and irreparable injury will be done,' which cannot be compensated in damages * * *."

By paragraph 2 of section 56 of Act No. 136, supra, and the provisions of the various subsequent Acts heretofore mentioned, the Insular Government has consented to litigate with aggrieved persons the validity of any original tax or impost imposed by it on condition that this be done in ordinary civil actions after the taxes or exactions shall have been paid. But it is said that paragraph 2 confers original jurisdiction upon Courts of First Instance to hear and determine "all civil actions" which involve the validity of any tax, impost or assessment, and that if the all-inclusive words "all" and "any" be given their natural and unrestricted meaning, no action wherein that question is involved can arise over which such courts do not have jurisdiction. (*Barrameda vs. Moir*, 25 Phil. Rep., 44.) This is true. But the term "civil actions" had its well defined meaning at the time the paragraph was enacted. The same legislative body which enacted paragraph 2 on June 16, 1901, had, just a few months prior to that time, defined the only kind of action in which the legality of any tax imposed by it might be assailed. (Sec. 84, Act 82, enacted January 31, 1901, and sec. 17, Act No. 83, enacted February 6, 1901.) That kind of action being payment of the tax under protest and an ordinary suit to recover and no other, there can be no doubt that Courts of First Instance have jurisdiction over all such actions. The subsequent legislation on the same subject shows clearly that the Commission, in enacting paragraph 2, supra, did not intend to change or modify in any way section 84 of Act No. 82 and section 17 of Act No. 83, but, on the contrary, it was intended that "civil actions," mentioned in said paragraph, should be understood to mean, in so far as testing the legality of taxes were concerned, only those of the kind and character provided for in the two sections above mentioned. It is also urged that the power to restrain by injunction the collection of taxes or imposts is conferred upon Courts of First Instance by paragraph 7 of section 56, supra. This paragraph does empower those courts to grant injunctions, both

preliminary and final, in any civil action pending in their districts, provided always, that the complaint shows facts entitling the plaintiff to the relief demanded. Injunction suits, such as the one at bar, are "civil actions," but of a special or extraordinary character. It cannot be said that the Commission intended to give a broader or different meaning to the word "action," used in Chapter 9 of the Code of Civil Procedure in connection with injunctions, than it gave to the same word found in paragraph 2 of section 56 of the Organic Act. The Insular Government, in exercising the power conferred upon it by the Congress of the United States, has declared that the citizens and residents of this country shall pay certain specified taxes and imposts. The power to tax necessarily carries with it the power to collect the taxes. This being true, the weight of authority supports the proposition that the Government may fix the conditions upon which it will consent to litigate the validity of its original taxes. (Tennessee vs. Sneed, 96 U. S., 69.)

We must, therefore, conclude that paragraphs 2 and 7 of section 56 of Act No. 136, construed in the light of the prior and subsequent legislation to which we have referred, and the legislative and judicial history of the same subject in the United States with which the Commission was familiar, do not empower Courts of First Instance to interfere by injunction with the collection of the taxes in question in this case.

If we are in error as to the scope of paragraphs 2 and 7, supra, and the Commission did intend to confer the power upon the courts to restrain the collection of taxes, it does not necessarily follow that this power or jurisdiction has been taken away by section 139 of Act No. 2339, for the reason that all agree that an injunction will not issue in any case if there is an adequate remedy at law. The very nature of the writ itself prevents its issuance under such circumstances. Legislation forbidding the issuing of injunctions in such cases is unnecessary. So the only question to be here determined is whether the remedy provided for in section 140 of Act No. 2339 is adequate. If it is, the writs which form the basis of this appeal should not have been issued. If this is the correct view, the authority to issue injunctions will not have been taken away by section 139, but rendered inoperative only by reason of an adequate remedy having been made available.

The legislative body of the Philippine Islands has declared from the beginning (Act No. 82) that payment under protest and suit to recover is an adequate remedy to test the legality of any tax or impost, and that this remedy is exclusive. Can we say that the remedy is not adequate or that it is not exclusive; or both? The plaintiffs in the case at bar are the first, in so far as we are aware, to question either the adequacy or exclusiveness of this remedy. We will refer to a few cases in the United States where statutes similar to sections 139 and 140 have been construed and applied.

In May, 1874, one Bloomstein presented a petition to the circuit court, sitting in Nashville, Tennessee, stating that his real and personal property had been assessed for state taxes in the year 1872 to the amount of \$132.60; that he tendered to the collector this amount in "funds receivable by law for such purposes;" and that the collector refused to receive the same. He prayed for an alternative writ of mandamus to compel the collector to receive the bills in payment for such taxes, or to show cause to the contrary. To this petition the collector, in his answer, set up the defense that the petitioner's suit was expressly prohibited by the Act of the General Assembly of the State of Tennessee, passed in 1873. The petition was dismissed and the relief prayed for refused. An appeal to the supreme court of the State resulted in the affirmance of the judgment of the lower court. The case was then carried to the Supreme Court of the United States (Tennessee vs. Sneed, 96 U. S., 69), where the judgment was again affirmed.

The two sections of the Act of [March 21,] 1873, drawn in question in that case, read as follows:

"1. That in all cases in which an officer, charged by law with the collection of revenue due the State, shall institute any proceeding, or take any steps for the collection of the same, alleged or claimed to be due by said officer from any citizen, the party against whom the proceeding or step is taken shall, if he conceives the same to be unjust or illegal, or against any statute or clause of the Constitution of the State, pay the same under

protest; and, upon his making said payment, the officer or collector shall pay such revenue into the State Treasury, giving notice at the time of payment to the Comptroller that the same was paid under protest; and the party paying said revenue may, at any time within thirty days after making said payment, and not longer thereafter, sue the said officer having collected said sum, for the recovery thereof. And the same may be tried in any court having the jurisdiction of the amount and parties; and, if it be determined that the same was wrongfully collected, as not being due from said party to the State, for any reason going to the merits of the same, then the court trying the case may certify of record that the same was wrongfully paid and ought to be refunded; and thereupon the Comptroller shall issue his warrant for the same, which shall be paid in preference to other claims on the Treasury.

"2. That there shall be no other remedy, in any case of the collection of revenue, or attempt to collect revenue illegally, or attempt to collect revenue in funds only receivable by said officer under the law, the same being other or different funds than such as the tax payer may tender, or claim the right to pay, than that above provided; and no writ for the prevention of the collection of any revenue claimed, or to hinder or delay the collection of the same, shall in anywise issue, either injunction, supersedeas, prohibition, or any other writ or process whatever; but in all cases in which, for any reason, any person shall claim that the tax so collected was wrongfully or illegally collected, the remedy for said party shall be as above provided, and in no other manner."

In discussing the adequacy of the remedy provided by the Tennessee Legislature, as above set forth, the Supreme Court of the United States, in the case just cited, said: "This remedy is simple and effective. A suit at law to recover money unlawfully exacted is as speedy, as easily tried, and less complicated than a proceeding by mandamus. * * * In revenue cases, whether arising upon its (United States) Internal Revenue Laws or those providing for the collection of duties upon foreign imports, it (United States) adopts the rule prescribed by the State of Tennessee. It requires the contestant to pay the amount as fixed by the Government, and gives him power to sue the collector, and in such suit to test the legality of the tax. There is nothing illegal or even harsh in this. It is a wise and reasonable precaution for the security of the Government."

Thomas C. Platt commenced an action in the Circuit Court of the United States for the Eastern District of Tennessee to restrain the collection of a license tax from the company which he represented. The defense was that sections 1 and 2 of the Act of 1873, *supra*, prohibited the bringing of that suit. This case also reached the Supreme Court of the United States. (*Shelton vs. Platt*, 139 U. S., 591.) In speaking of the inhibitory provisions of sections 1 and 2 of the Act of 1873, the court said: "This Act has been sanctioned and applied by the Courts of Tennessee. (*Nashville vs. Smith*, 86 Tenn., 213; *Louisville & N. R. Co. vs. State*, 8 Heisk., 663, 804.) It is, as counsel observe, similar to the Act of Congress forbidding suit for the purpose of restraining the assessment or collection of taxes under the Internal Revenue Laws, in respect to which this court held that the remedy by suit to recover back the tax after payment, provided for by the Statute, was exclusive. (*Snyder vs. Marks*, 109 U. S., 189 [27:901]; 14 Stat., 152, 475.) Legislation of this character has been called for by the embarrassments resulting from the improvident employment of the writ of injunction in arresting the collection of the public revenue; and, even in its absence, the strong arm of the court of chancery ought not to be interposed in that direction except where resort to that court is grounded upon the settled principles which govern its jurisdiction."

In *Louisville & N. R. R. Co. vs. State* (8 Heisk. [64 Tenn.J, 663, 804), cited by the Supreme Court of the United States in *Shelton vs. Platt*, *supra*, the court said: "It was urged that this statute (sections 1 and 2 of the Act of 1873, *supra*) is unconstitutional and void, as it deprives the citizen of the remedy by certiorari, guaranteed by the organic law."

By the 10th section of the sixth article of the Constitution, [Tennessee] it is provided that: "The judges or justices of inferior courts of law and equity shall have power in all civil cases to issue writs of certiorari, to remove any

cause, or the transcript of the record thereof, from any inferior jurisdiction into such court of law, on sufficient cause, supported by oath or affirmation."

The court held the act valid as not being in conflict with these provisions of the State constitution.

In *Eddy vs. The Township of Lee* (73 Mich., 123), the complainants sought to enjoin the collection of certain taxes for the year 1886. The defendants, in support of their demurrer, insisted that the remedy by injunction had been taken away by section 107 of the Act of 1885, which section reads as follows: "No injunction shall issue to stay proceedings for the assessment or collection of taxes under this Act"

It was claimed by the complainants that the above quoted provisions of the Act of 1885 were unconstitutional and void as being in conflict with article 6, sec. 8, of the Constitution, which provides that: "The circuit courts shall have original jurisdiction in all matters, civil-and criminal, not excepted in this Constitution, and not prohibited by law. * * * They shall also have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and other writs necessary to carry into effect their orders, judgments, and decrees."

Mr. Justice Champlin, speaking for the court, said: "I have no doubt that the Legislature has the constitutional authority, where it has provided a plain, adequate, and complete remedy at law to recover back taxes illegally assessed and collected, to take away the remedy by injunction to restrain their collection."

Section 9 of the Philippine Bill reads in part as follows: "That the Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by the Government of said Islands, subject to the power of said Government to change the practice and method of procedure."

It will be seen that this section has not taken away from the Philippine Government the power to change the practice and method of procedure. If sections 139 and 140, considered together, and this must always be done, are nothing more than a mode of procedure, then it would seem that the Legislature did not exceed its constitutional authority in enacting them. Conceding for the moment that the duly authorized procedure for the determination of the validity of any tax, impost, or assessment was by injunction suits and that this method was available to aggrieved taxpayers prior to the passage of Act No. 2339, may the Legislature change this method of procedure? That the Legislature has the power to do this, there can be no doubt, provided some other adequate remedy is substituted in lieu thereof. In speaking of the modes of enforcing rights created by contracts, the Supreme Court of the United States, in *Tennessee vs. Sneed*, supra, paid: "The rule seems to be that in modes of proceeding and of forms to enforce the contract the Legislature has the control, and may enlarge, limit or alter them, provided that it does not deny a remedy, or so embarrass it with conditions and restrictions as seriously to impair the value of the right."

In that case the petitioner urged that the Acts of 1873 were laws impairing the obligation of the contract contained in the charter of the Bank of Tennessee, which contract was entered into with the State in 1838. It was claimed that this was done by placing such impediments and obstructions in the way of its enforcement, thereby so impairing the remedies as practically to render the obligation of no value. In disposing of this contention, the court said: "If we assume that prior to 1873 the relator had authority to prosecute his claim against the State by mandamns, and that by the statutes of that year the further use of that form was prohibited to him, the question remains, whether an effectual remedy was left to him or provided for him. We think the regulation of the statute gave him an abundant means of enforcing such right as he possessed. It provided that he might pay his claim to the collector under protest, giving notice thereof to the Comptroller of the Treasury; that at any time within thirty days thereafter he might sue the officer, making the collection; that the case should be tried by any court having jurisdiction and, if found in favor of the plaintiff on the merits, the court should certify that the same was

wrongfully paid and ought to be refunded and the Comptroller should thereupon issue his warrant therefor, which should be paid in preference to other claims on the Treasury."

But great stress is laid upon the fact that the plaintiffs in the case under consideration are unable to pay the taxes assessed against them and that if the law is enforced, they will be compelled to suspend business. This point may be best answered by quoting from the case of *Youngblood vs. Sexton* (32 Mich., 406), wherein Judge Cooley, speaking for the court, said: "But if this consideration is sufficient to justify the transfer of a controversy from a court of law to a court of equity, then every controversy where money is demanded may be made the subject of equitable cognizance. To enforce against a dealer a promissory note may in some cases as effectually break up his business as to collect from him a tax of equal amount. This is not what is known to the law as irreparable injury. The courts, have never recognized the consequences of the mere enforcement of a money demand as falling within that category."

Certain specified sections of Act No. 2339 were amended by Act No. 2432, enacted December 23, 1914, effective January 1, 1915, by imposing increased and additional taxes. Act No. 2432 was amended by Act No. 2445. Taxes imposed by Act No. 2432, as amended, were ratified by the Congress of the United States on March 4, 1915. The opposition manifested against the taxes imposed by Acts Nos. 2339 and 2432 is a matter of local history. A great many business men thought the taxes thus imposed were too high. If the collection of the new taxes on signs, signboards, and billboards may be restrained, we see no well-founded reason why injunctions cannot be granted restraining the collection of all or at least a number of the other increased taxes. The fact that this may be done, shows the wisdom of the Legislature in denying the use of the writ of injunction to restrain the collection of any tax imposed by the Acts. When this was done, an equitable remedy was made available to all dissatisfied taxpayers.

The question now arises whether, the case being one of which the court below had no jurisdiction, this court, on appeal, shall proceed to express an opinion upon the validity of provisions of subsection (6) of section 100 of Act No. 2339, imposing the taxes complained of. As a general rule, an opinion on the merits of a controversy ought to be declined when the court is powerless to give the relief demanded. But it is claimed that this case is, in many particulars, exceptional. It is true that it has been argued on the merits, and there is no reason for any suggestion or suspicion that it is not a bona fide controversy. The legal points involved in the merits have been presented with force, clearness, and great ability by the learned counsel of both sides. If the law assailed were still in force, we would feel that an opinion on its validity would be justifiable, but, as the amendment became effective on January 1, 1915, we think it advisable to proceed no further with this branch of the case.

The next question arises in connection with the supplementary complaint, the object of which is to enjoin the Collector of Internal Revenue from removing certain billboards, the property of the plaintiffs located upon private lands in the Province of Rizal. The plaintiffs allege that the billboards here in question "in no sense constitute a nuisance and are not deleterious to the health, morals; or general welfare of the community, or of any persons." The defendant denies these allegations in his answer and claims that after due investigation made upon the complaints of the British and German Consuls, he "decided that the billboard complained of was and still is offensive to the sight, and is otherwise a nuisance." The plaintiffs proved by Mr. Churchill that the "billboards were quite a distance from the road and that they were strongly built, not dangerous to the safety of the people, and contained no advertising matter which is filthy, indecent, or deleterious to the morals of the community." The defendant presented no testimony upon this point. In the agreed statement of facts submitted by the parties, the plaintiffs "admit that the billboards mentioned were and still are offensive to the sight."

The pertinent provisions of subsection (6) of section 100 of Act No. 2339 read: "If after due investigation the Collector of Internal Revenue shall decide that any sign, signboard, or billboard displayed or exposed to public

view is offensive to the sight or is otherwise a nuisance, he may by summary order direct the removal of such sign, signboard, or billboard, and if same is not removed within ten days after he has issued such order he may himself cause its removal, and the sign, signboard, or billboard shall thereupon be forfeited to the Government, and the owner thereof charged with the expenses of the removal so effected. When the sign, signboard, or billboard ordered to be removed as herein provided shall not comply with the provisions of the general regulations of the Collector of Internal Revenue, no rebate or refund shall be allowed for any portion of a year for which the taxes may have been paid. Otherwise, the Collector of Internal Revenue may in his discretion make a proportionate refund of the tax for the portion of the year remaining for which the taxes were paid. An appeal may be had from the order of the Collector of Internal Revenue to the Secretary of Finance and Justice whose decision thereon shall be final."

The Attorney-General, on behalf of the defendant, says: "The question which the case presents under this head for determination, resolves itself into this inquiry: Is the suppression of advertising signs displayed or exposed to public view, which are admittedly offensive to the sight, conducive to the public interest?"

And counsel for the plaintiffs states the question thus: "We contend that that portion of section 100 of Act No. 2339, empowering the Collector of Internal Revenue to remove billboards as nuisances, if objectionable to the sight, is unconstitutional, as constituting a deprivation of property without due process of law."

From the position taken by counsel for both sides, it is clear that our inquiry is limited to the question whether the enactment assailed by the plaintiffs was a legitimate exercise of the police power of the Government; for all property is held subject to that power.

As a consequence of the foregoing, all discussion and authorities cited, which go to the power of the state to authorize administrative officers to find, as a fact, that legitimate trades, callings, and businesses are, under certain circumstances, statutory nuisances, and whether the procedure prescribed for this purpose is due process of law, are foreign to the issue here presented.

There can be no doubt that the exercise of the police power of the Philippine Government belongs to the Legislature and that this power is limited only by the Acts of Congress and those fundamental principles which lie at the foundation of all republican forms of government. An Act of the Legislature which is obviously and undoubtedly foreign to any of the purposes of the police power and interferes with the ordinary enjoyment of property would, without doubt, be held to be invalid. But where the Act is reasonably within a proper consideration of and care for the public health, safety, or comfort, it should not be disturbed by the courts. The courts cannot substitute their own views for what is proper in the premises for those of the Legislature. In *Munn vs. Illinois* (94 U. S., 113), the United States Supreme Court states the rule thus: "If no state of circumstances could exist to justify such statute, then we may declare this one void because in excess of the legislative power of this state; but if it could, we must presume it did. Of the propriety of legislative interference, within the scope of the legislative power, a legislature is the exclusive judge."

This rule is very fully discussed and declared in *Powell vs. Pennsylvania* (127 U. S., 678)—the "oleo-margarine" case. (See also *Crowley vs. Christensen*, 137 U. S., 86, 87; *Camfield vs. U. S.*, 167 U. S., 618.) While the state may interfere wherever the public interests demand it, and in this particular a 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; yet, its determination in these matters is not final or conclusive, but is subject to the supervision of the courts. (*Lawton vs. Steele*, 152 U. S., 133.) Can it be said judicially that signs, signboards, and billboards, which are admittedly offensive to the sight, are not with the category of things which interfere with the public safety, welfare, and comfort, and therefore beyond the reach of the police power of the

Philippine Government?

The numerous attempts which have been made to limit by definition the scope of the police power are only interesting as illustrating its rapid extension within comparatively recent years to points heretofore deemed entirely within the field of private liberty and property rights. Blackstone's definition of the police power was as follows: "The due regulation and domestic order of the kingdom, whereby the individuals of the state, like members of a well governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood, and good manners, to be decent, industrious, and inoffensive in their respective stations." (Commentaries, vol. 4, p. 162.)

Chancellor Kent considered the police power the authority of the state "to regulate unwholesome trades, slaughter houses, operations offensive to the senses." Chief Justice Shaw of Massachusetts defined it as follows: "The power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same." (Com. vs. Alger, 7 Cush., 53.) In the case of Butchers' Union Slaughter-house, etc. Co. vs. Crescent City Live Stock Landing, etc. Co. (Ill U. S., 746), it was suggested that the public health and public morals are matters of legislative concern of which the legislature cannot divest itself. (See State vs. Mountain Timber Co. [1913], 75 Wash., 581, where these definitions are collated.)

In Champer vs. Greencastle (138 Ind., 339), it was said: "The police power of the State, so far, has not received a full and complete definition. It may be said, however, to be the right of the State, or state functionary, to prescribe regulations for the good order, peace, health, protection, comfort, convenience and morals of the community, which do not * - - violate any of the provisions of the organic law." (Quoted with approval in Hopkins vs. Richmond [Va., 1915], 86 S. E., 139.)

In Com. vs. Plymouth Coal Co. ([1911] 232 Pa., 141), it was said: "The police power of the state is difficult of definition, but it has been held by the courts to be the right to prescribe regulations for the good order, peace, health, protection, comfort, convenience and morals of the community, which does not encroach on a like power vested in congress or state legislatures by the federal constitution, or does not violate the provisions of the organic law; and it has been expressly held that the fourteenth amendment to the federal constitution' was not designed to interfere with the exercise of that power by the state."

In People vs. Brazee ([Mich., 1914], 149 N. W., 1053), it was said: "It [the police power] has for its object the improvement of social and economic conditions affecting the community at large and collectively with a view to bring about 'the greatest good of the greatest number/ Courts have consistently and wisely declined to set any fixed limitations upon subjects calling for the exercise of this power. It is elastic and is exercised from time to time as varying social conditions demand correction."

In 8 Cyc, 863, it is said: "Police power is the name given to that inherent sovereignty which it is the right and duty of the government or its agents to exercise whenever public policy, in a broad sense, demands, for the benefit of society at large, regulations to guard its morals, safety, health, order or to insure in any respect such economic conditions as an advancing civilization of a high complex character requires." (As quoted with approval in Stettler vs. O'Hara [1914], 69 Ore, 519.)

Finally, the Supreme Court of the United States has said in Noble State Bank vs. Haskell (219 U. S. [1911], 675) : "It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."

This statement, recent as it is, has been quoted with approval by several courts. (Cunningham vs. Northwestern Imp. Co. [1911], 44 Mont, 180; State' vs. Mounfain Timber Co. [1913], 75 Wash., 681; McDavid vs. Bank of Bay Minette [Ala., 1915], 69 Sob., 452; Hopkins vs. City of Richmond [Va., 1915], 86 S. E., 139; State vs. Philipps [Miss. 1915], 67 Sou., 651.)

It was said in Com. vs. Alger (7 Cush., 53, 86), per Shaw, C. J., that: "It is much easier to perceive and realize the existence and sources of this police power than to mark its boundaries, or to prescribe limits to its exercise." In Stone vs. Mississippi (101 U. S., 814), it was said: "Many attempts have been made in this court and elsewhere to define the police power, but never with entire success. It is always easier to determine whether a particular case comes within the general scope of the power, than to give an abstract definition of the power itself, which will be in all respects accurate."

Other courts have held the same view of efforts to evolve a satisfactory definition of the police power. Manifestly, definitions which fail to anticipate cases properly within the scope of the police power are deficient. It is necessary, therefore, to confine our discussion to the principle involved and determine whether the cases as they come up are within that principle. The basic idea of civil polity in the United States is that government should interfere with individual effort only to the extent necessary to preserve a healthy social and economic condition of the country. State interference with the use of private property may be exercised in three ways. First, through the power of taxation, second, through the power of eminent domain, and third, through the police power. By the first method it is assumed that the individual receives the equivalent of the tax in the form of protection and benefit he receives from the government as such. By the second method he receives the market value of the property taken from him. But under the third method the benefits he derives are only such as may arise from the maintenance of a healthy economic standard of society and is often referred to as *damnum absque injuria*. (Com. vs. Plymouth Coal Co. 232 Pa., 141; Bemis vs. Guirl Drainage Co., 182 Ind., 36.) There was a time when state interference with the use of private property under the guise of the police power was practically confined to the suppression of common nuisances. At the present day, however, industry is organized along lines which make it possible for large combinations of capital to profit at the expense of the socio-economic progress of the nation by controlling prices and dictating to industrial workers wages and conditions of labor. Not only this but the universal use of mechanical contrivances by producers and common carriers has enormously increased the toll of human life and limb in the production and distribution of consumption goods. To the extent that these businesses affect not only the public health, safety, and morals, but also the general social and economic life of the nation, it has been and will continue to be necessary for the state to interfere by regulation. By so doing, it is true that the enjoyment of private property is interfered with in no small degree and in ways that would have been considered entirely unnecessary in years gone by. The regulation of rates charged by common carriers, for instance, or the limitation of hours of work in industrial establishments have only a Very indirect bearing upon the public health, safety, and morals, but do bear directly upon social and economic conditions. To permit each individual unit of society to feel that his industry will bring a fair return; to see that his work shall be done under conditions tltat will not either immediately or eventually ruin his health; to prevent the artificial inflation of prices of the things which are necessary for his physical well being are matters which the individual is no longer capable of attending to himself. It is within the province of the police power to render assistance to the people to the extent that may be necessary to safeguard these rights. Hence, laws providing for the regulation of wages and hours of labor of coal miners (Rail & River Coal Co. vs. Ohio Industrial Commission, 236 U. S., 338) ; prohibiting the payment of wages in company store orders (Keokee Coke Co. vs. Taylor, 234 U. S., 224); requiring payment of employees of railroads and other industrial concerns in legal tender and requiring salaries to be paid semimonthly (Erie R. R. Co. vs. Williams, 233 U. S., 685); providing a maximum number of hours of labor for women (Miller vs. Wilson, U. S. Sup. Ct. [Feb. 23,1915], Adv. Opns., p. 342); prohibiting child labor (Sturges & Burn vs. Beauchamp, 231 U. S.,

320); restricting the hours of labor in public laundries {In re Wong Wing, 167 Cal., 109); limiting hours of labor in industrial establishment generally (State vs. Bunting, 71 Ore., 259); Sunday Closing Lawg (State vs. Nicholls [Ore., 1915], 151 Pac., 473; People vs. C. Klinck Packing Co. [N. Y., 1915], 108 N. E., 278; Hiller vs. State [Md., 1914], 92 At!., 842; State vs. Penny, 42 Mont, 118; City of Springfield vs. Richter, 257 111., 578, 580; State vs. Hondros [S. C, 1915], 84 S. E., 781); have all been upheld as a valid exercise of the police power. Again, workmen's compensation laws have been quite generally upheld. These statutes discard the common law theory that employers are not liable for industrial accidents and make them responsible for all accidents resulting from trade risks, it being considered that such accidents area legitimate charge against production and that the employer by controlling the prices of his product may shift the burden to the community. Laws requiring state banks to join in establishing a depositors' guarantee fund have also been upheld by the Federal Supreme Court in Noble State Bank vs. Haskell (219 U. S., 104), and Assaria State Bank vs. Dolley (219 U. S., 121).

Offensive noises and smells have been for a long time considered susceptible of suppression in thickly populated districts. Barring livery stables from such locations was approved of in Reinman vs. Little Rock (U. S. Sup. Ct. [Apr. 5, 1915], U. S. Adv. Opns., p. 511). And a municipal ordinance was recently upheld (People vs. Ericsson, 263 111., 368), which prohibited the location of garages within two hundred feet of any hospital, church, or school, or in any block used exclusively for residential purposes, unless the consent of the majority of the property owners be obtained. Such statutes as these are usually upheld on the theory of safeguarding the public health. But we apprehend that in point of fact they have little bearing upon the health of the normal person, but a great deal to do with his physical comfort and convenience and not a little to do with his peace of mind. Without entering into the realm of psychology, we think it quite demonstrable that sight is as valuable to a human being as any of his other senses, and that the proper ministration to this sense conduces as much to his contentment as the care bestowed upon the senses of hearing or smell, and probably as much as both together. Objects may be offensive to the eye as well as to the nose or ear. Man's esthetic feelings are constantly being appealed to through his sense of sight. Large investments have been made in theaters and other forms of amusement, in paintings and spectacular displays, the success of which depends in great part upon the appeal made through the sense of sight. Moving picture shows could not be possible without the sense of sight. Governments have spent millions on parks and 'boulevards and other forms of civic beauty, the first aim of which is to appeal to the sense of sight. Why, then, should the Government not interpose to protect from annoyance this most Valuable of man's senses as readily as to protect him from offensive noises and smeifc?

The advertising industry is a legitimate one. It is at the same time a cause and an effect of the great industrial age through which the world is now passing. Millions are spent each year in this manner to guide the consumer to the articles which he needs. The sense of sight is the primary essential to advertising success. Billboard advertising, as it is now conducted, is a comparatively recent form of advertising. It is conducted out of doors and along the arteries of travel, and compels attention by the strategic locations of the boards, which obstruct the range of vision at points where travelers are most likely to direct their eyes. Beautiful landscapes are marred or may not be seen at all by the traveler because of the gaudy array of posters announcing a particular kind of breakfast food, or underwear, the coming of a circus, an incomparable soap, nostrums or medicines for the curing of all the ills to which the flesh is heir, etc, etc. It is quite natural for people to protest against this indiscriminate and wholesale use of the landscape by advertisers and the intrusion of tradesmen upon their hours of leisure and relaxation from work. Outdoor life must lose much of its charm and pleasure if this form of advertising is permitted to continue unhampered until it converts the streets and highways into veritable canyons through which the world must travel in going to work or in search of outdoor pleasure.

The success of billboard advertising depends not so much upon the use of private property as it does upon the use of the channels of travel used by the general public. Suppose that the owner of private property, who so

vigorously objects to the restriction of this form of advertising, should require the advertiser to paste his posters upon the billboards so that they would face the interior of the property instead of the exterior. Billboard advertising would die a natural death if this were done, and its real dependency not upon the unrestricted use of private property but upon the unrestricted use of the public highways is at once apparent. Ostensibly located on private property, the real and sole value of the billboard is its proximity to the public thoroughfares. Hence, we conceive that the regulation of billboards and their restriction is not so much a regulation of private property as it is a regulation of the use of the streets and other public thoroughfares.

We would not be understood as saying that billboard advertising is not a legitimate business any more than we would say that a livery stable or an automobile garage is not. Even a billboard is more sightly than piles of rubbish or an open sewer. But all these businesses are offensive to the senses under certain conditions.

It has been urged against ministering to the sense of sight that tastes are so diversified that there is no safe standard of legislation in this direction. We answer in the language of the Supreme Court in *Noble State Bank v. Haskell* (219 U. S., 104), and which has already been adopted by several state courts (see *supra*), that "the prevailing morality or strong and preponderating opinion" demands such legislation. The agitation against the unrestrained development of the billboard business has produced results in nearly all the countries of Europe. (Ency. Britannica, vol. 1, pp. 237-240.) Many drastic ordinances and state laws have been passed in the United States seeking to make the business amenable to regulation. But their regulation in the United States is hampered by what we conceive an unwarranted restriction upon the scope of the police power by the courts. If the police power may be exercised to encourage a healthy social and economic condition in the country, and if the comfort and convenience of the people are included within those subjects, everything which encroaches upon such territory is amenable to the police power. A source of annoyance and irritation to the public does not minister to the comfort and convenience of the public. And we are of the opinion that the prevailing sentiment is manifestly against the erection of billboards which are offensive to the sight.

We do not consider that we are in conflict with the decision in *Eubank vs. Richmond* (226 U. S., 137), where a municipal ordinance establishing a building line to which property owners must conform was held unconstitutional. As we have pointed out, billboard advertising is not so much a use of private property as it is a use of the public thoroughfares. It derives its value to the owner solely because the posters are exposed to the public gaze. It may well be that the state may not require private property owners to conform to a building line, but may prescribe the conditions under which they shall make use of the adjoining streets and highways. Nor is the law in question to be held invalid as denying equal protection of the laws. In *Keokee Coke Co. vs. Taylor* (234 U. S., 224), it was said: "It is more pressed that the act discriminates unconstitutionally against certain classes. But while there are differences of opinion as to the degree and kind of discrimination permitted by the Fourteenth Amendment, it is established by repeated decisions that a statute aimed at what is deemed an evil, and hitting it presumably where experience shows it to be most felt, is not to be upset by thinking up and enumerating other instances to which it might have been applied equally well, so far as the court can see. That is for the legislature to judge unless the case is very clear."

But we have not overlooked the fact that we are not in harmony with the highest courts of a number of the states in the American Union upon this point. Those courts being of the opinion that statutes which are prompted and inspired by esthetic considerations merely, having for their sole purpose the promotion and gratification of the esthetic sense, and not the promotion or protection of the public safety, the public peace and good order of society, must be held invalid and contrary to constitutional provisions holding inviolate the rights of private property. Or, in other words, the police power cannot interfere with private property rights for purely esthetic purposes. The courts, taking this view, rest their decisions upon the proposition that the esthetic sense is

disassociated entirely from any relation to the public health, morals, comfort, or general welfare and is, therefore, beyond the police power of the state. But we are of the opinion, as above indicated, that unsightly advertisements or signs, signboards, or billboards which are offensive to the sight, are not disassociated from the general welfare of the public. This is not establishing a new principle, but carrying a well recognized principle to further application. (Fruend on Police Power, p. 166.)

For the foregoing reasons the judgment appealed from is hereby reversed and the action dismissed upon the merits, with costs. So ordered.

Arellano, C.J., Torres, Carson, and Araullo, JJ., concur.

Judgment reversed; case dismissed.

DECISION ON THE MOTION FOR A REHEARING, JANUARY 24, 1916.

TRENT, J.:

Counsel for the plaintiffs call our attention to the case of *Ex parte Young* (209 U. S., 123) ; and say that they are of the opinion that this case "is the absolutely determinative of the question of jurisdiction in injunctions of this kind." We did not refer to this case in our former opinion because we were satisfied that the reasoning of the case is not applicable to sections 100(6), 139 and 140 of Act No. 2339. The principles announced in the *Young* case are stated as follows: "It may therefore be said that when the penalties for disobedience are by fines so enormous and imprisonment so severe as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation, the result is the same as if the law in terms prohibited the company from seeking judicial construction of laws which deeply affect its rights.

"It is urged that there is no principle upon which to base the claim that a person is entitled to disobey a statute at least once, for the purpose of testing its validity without subjecting himself to the penalties for disobedience provided by the statute in case it is valid. This is not an accurate statement of the case. Ordinarily a law creating offenses in the nature of misdemeanors or felonies relates to a subject over which the jurisdiction of the legislature is complete in any event. In the case, however, of the establishment of certain rates without any hearing, the validity of such rates necessarily depends upon whether they are high enough to permit at least some return upon the investment (how much it is not now necessary to state), and an inquiry as to that fact is a proper subject of judicial investigation. If it turns out that the rates are too low for that purpose, then they are illegal. Now, to impose upon a party interested the burden of obtaining a judicial decision of such a question (no prior hearing having ever been given) only upon the condition that, if unsuccessful, he must suffer imprisonment and pay fines as provided in these acts, is, in effect, to close up all approaches to the courts, and thus prevent any hearing upon the question whether the rates as provided by the acts are not too low, and therefore invalid. The distinction is obvious between a case where the validity of the act depends upon the existence of a fact which can be determined only after investigation of a very complicated and technical character, and the ordinary case of a statute upon a subject requiring no such investigation and over which the jurisdiction of the legislature is complete in any event."

An examination of the sections of our Internal Revenue Law and of the circumstances under which and the purposes for which they were enacted, will show that, unlike the statutes under consideration in the above cited case, their enactment involved no attempt on the part of the Legislature to prevent dissatisfied taxpayers "from resorting to the courts to test the validity of the legislation;" no effort to prevent any inquiry as to their validity. While section 139 does prevent the testing of the validity of subsection (b) of section 100 in injunction suits instituted for the purpose of restraining the collection of internal revenue taxes, section 140 provides a complete remedy for that purpose. And furthermore, the validity of subsection (o) does not depend upon "the existence of a

fact which can be determined only after investigation of a very complicated and technical character," but the jurisdiction of the Legislature over the subject with which the subsection deals "is complete in any event." The judgment of the court in the Young case rests upon the proposition that the aggrieved parties had no adequate remedy at law.

Neither did we overlook the case of General Oil Co. vs. Crain (209 U. S., 211), decided the same day and citing Ex parte Young, supra. In that case the plaintiff was a Tennessee corporation, with its principal place of business in Memphis, Tennessee. It was engaged in the manufacture and sale of coal oil, etc. Its wells and plant were located in Pennsylvania and Ohio. Memphis was not only its place of business, at which place it sold oil to the residents of Tennessee, but also a distributing point to which oils were shipped from Pennsylvania and Ohio and unloaded into various tanks for the purpose of being forwarded to the Arkansas, Louisiana, and Mississippi customers. Notwithstanding the fact that the company separated its oils, which were designated to meet the requirements of, the orders from those States, from the oils for sale in Tennessee, the defendant insisted that he had a right, under the Act of the Tennessee Legislature, approved April 21, 1899, to inspect all the oils unloaded in Memphis, whether for sale in that State or not, and charge and collect for such inspection a regular fee of twenty-five cents per barrel. The company, being advised that the defendant had no such right, instituted this action in the inferior State court for the purpose of enjoining the defendant, upon the grounds stated in the bill, from inspecting or attempting to inspect its oils. Upon trial, the preliminary injunction which had been granted at the commencement of the action, was continued in force. Upon appeal, the supreme court of the State of Tennessee decided that the suit was one against the State and reversed the judgment of the Chancellor. In the Supreme Court of the United States, where the case was reviewed upon a writ of error, the contentions of the parties were stated by the court as follows: "It is contended by defendant in error that this court is without jurisdiction because no matter sought to be litigated by plaintiff in error was determined by the Supreme Court of Tennessee. The court simply held, it is said, that, under the laws of the State, it had no jurisdiction to entertain the suit for any purpose. And it is insisted 'that this holding involved no Federal question, but only the powers and jurisdiction of the courts of the State of Tennessee, in respect to which the Supreme Court of Tennessee is the final arbiter.'

"Opposing these contentions, plaintiff in error urges that whether a suit is one against a State cannot depend upon the declaration of a statute, but depends upon the essential nature of the suit, and that the Supreme Court recognized that the statute 'added nothing to the axiomatic principle that the State, as a sovereign, is not subject to suit save by its own consent And it is hence insisted that the court by dismissing the bill gave effect to the law which was attacked. It is further insisted that the bill undoubtedly present rights under the Constitution of the United States and conditions which entitle plaintiff in error to an injunction for the protection of such rights, and that a statute of the State which operates to deny such rights, or such relief, 'is itself in conflict with the Constitution of the United States,'

That statute of Tennessee, which the supreme court of that State construed and held to be prohibitory of the suit, was an act passed February 28, 1873, which provides: "That no court in the State of Tennessee has, nor shall hereafter have, any power, jurisdiction, or authority to entertain any suit against the State, or any officer acting by the authority of the State, with a view to reach the State, its treasury, funds or property; and all such suits now pending, or hereafter brought, shall be dismissed as to the State, or such officer, on motion, plea or demurrer of the law officer of the State, or counsel employed by the State."

The Supreme Court of the United States, after reviewing many cases, said: "Necessarily, to give adequate protection to constitutional rights a distinction must be made between valid and invalid state laws, as determining the character of the suit against state officers. And the suit at bar illustrates the necessity. If a suit against state officers is precluded in the national courts by the Eleventh Amendment to the Constitution, and may be forbidden

by a State to its courts, as it is contended in the case at bar that it may be, without power of review by this court, it must be evident that an easy way is open to prevent the enforcement of many provisions of the Constitution; and the Fourteenth Amendment, which is directed at state action, could be nullified as to much of its operation. * * * It being then the right of a party to be protected against a law which violates a constitutional right, whether by its terms or the manner of its enforcement, it is manifest that a decision which denies such protection gives effect to the law, and the decision is reviewable by this court."

The court then proceeded to consider whether the law of 1899 would, if administered against the oils in question, violate any constitutional right of the plaintiff and after finding and adjudging that the oils were not in movement through the States, that they had reached the destination of their first shipment, and were held there, not in necessary delay of means of transportation but for the business purposes and profit of the company, and resting its judgment upon the taxing power of the State, affirmed the decree of the supreme court of the State of Tennessee.

From the foregoing it will be seen that the Supreme Court of Tennessee dismissed the case for want of jurisdiction because the suit was one against the State, which was prohibited by the Tennessee Legislature. The Supreme Court of the United States took jurisdiction of the controversy for the reasons above quoted and sustained the Act of 1899 as a revenue law.

The case of *Tennessee vs. Sneed* (96 U. S., 69), and *dhelton vs. Platt* (139 U. S., 591), relied upon in our former opinion, were not cited in *General Oil Co. vs. Cram*, supra, because the questions presented and the statutes under consideration were entirely different. The Act approved March 31, 1873, expressly prohibits the courts from restraining the collection of any tax, leaving the dissatisfied taxpayer to his exclusive remedy—payment under protest and suit to recover—while the Act approved February 28, 1873, prohibits suits against the State.

In upholding the statute which authorizes the removal of signboards or billboards upon the sole ground that they are offensive to the sight, we recognized the fact that we are not in harmony with various state courts in the American Union. We have just examined the decision of the Supreme Court of the State of Illinois in the recent case (October [December], 1914) of *The Thomas Cusack Co. vs. City of Chicago* (267 111., 344), wherein the court upheld the validity of a municipal ordinance, which reads as follows: "707. Frontage consents required. It shall be unlawful for any person, firm or corporation to erect or construct any bill-board or sign-board in &nf block on any public street in which one-half of the buildings on both sides of the street are used exclusively for residence purposes, without first obtaining the consent, in writing, of the owners or duly authorized agents of said owners owning a majority of the frontage of the property, on both sides of the street, in the block in which such bill-board or signboard is to be erected, constructed or located. Such written consent shall be filed with the commissioner of buildings before a permit shall be issued for the erection, construction or location of such bill-board or sign-board."

The evidence which the Illinois court relied upon was the danger of fires, the fact that billboards promote the commission of various immoral and filthy acts by disorderly persons, and the inadequate police protection furnished to residential districts. The last objection has no virtue unless one or the other of the other objections are valid. If the billboard industry does, in fact, promote such municipal evils to a noticeable extent, it seems a curious inconsistency that a majority of the property owners on a given block may legalize the business. However, the decision is undoubtedly a considerable advance over the views taken by other high courts in the United States and distinguishes several Illinois decisions. It is an advance because it permits the suppression of billboards where they are undesirable. The ordinance which the court approved will no doubt cause the virtual suppression of the business in the residential districts. Hence, it is recognized that under certain circumstances billboards may be suppressed as an unlawful use of private property. Logically, it would seem that the premise of fact relied upon is not very solid. Objections to the billboard upon police, sanitary, and moral grounds have been, as pointed out by

counsel for Churchill and Tait, duly considered by numerous high courts in the United States, and, with one exception, have been rejected as without foundation. The exception is the Supreme Court of Missouri, which advances practically the same line of reasoning as has the Illinois court in this recent case. (St. Louis Gunning Advt. Co. vs. City of St. Louis, 137 S. W., 929.) In fact, the Illinois court, in Haller Sign Works vs. Physical Culture Training School (249 111., 436), "distinguished" in the recent case, said; "There is nothing inherently dangerous to the health or safety of the public in structures that are properly erected for advertising purposes."

If a billboard is so constructed as to offer no room for objections on sanitary or moral grounds, it would seem that the ordinance above quoted would have to be sustained upon the very grounds which we have advanced in sustaining our own statute.

It might be well to note that billboard legislation in the United States is attempting to eradicate a business which has already been firmly established. This business was allowed to expand unchecked until its very extent called attention to its objectionable features. In the Philippine Islands such legislation has almost anticipated the business, which is not yet of such proportions that it can be said to be fairly established. It may be that the courts in the United States have committed themselves to a course of decisions with respect to billboard advertising, the full consequences of which were not perceived for the reason that the development of the business has been so recent that the objectionable features of it did not present themselves clearly to the courts nor to the people. We, in this country, have the benefit of the experience of the people of the United States and may make our legislation preventive rather than corrective. There are in this country, moreover, on every hand in those districts where Spanish civilization has held sway for so many centuries, examples of architecture now belonging to a past age, and which are attractive not only to the residents of the country but to visitors. If the billboard industry is permitted without constraint or control to hide these historic sites from the passerby, the country will be less attractive to the tourist and the people will suffer a distinct economic loss.

The motion for a rehearing is therefore denied.

Arellano, C.J., Torres, and Carson, JJ., concur.

Motion denied.

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