

**K. S. YOUNG ET AL., PLAINTIFFS AND APPELLEES, VS. JAMBS J. RAFFERTY. COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.**

*G.R. No. 10951. February 14, 1916*

Ponente: TRENT, J.

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**TRENT, J.:**

On December 29, 1914, the lower court issued a preliminary injunction against the defendant, his agents, etc., "ordering them and every one of them absolutely to desist and refrain from in any manner whatsoever enforcing or attempting to enforce the provisions of the regulation contained in Internal Revenue Circular Letter No. 467, in so far as it refers to the language in which any day book shall be kept, and from arresting, procuring the arrest or prosecuting criminally or administratively any person who fails to make the entries required by said circular." After the termination of the trial of the case upon the merits, the preliminary injunction was made permanent. The defendant has appealed.

The circular letter above mentioned requires, among other things, every merchant and manufacturer, with certain specified exceptions, subject to the tax imposed by section 40 of Act No. 2339, to keep a record of their daily sales either in the English or the Spanish language, and provides that any violation of or failure to comply with the provisions of the circular will subject the guilty person to prosecution under the provisions of section 185 of Act No. 2339. Whether the regulation is authorized by the Internal Revenue Law (Act No. 2339) and whether this is a proper case for injunction, are the questions submitted to us for determination. These questions will be considered in their order.

1. Under section 40 of Act No. 2339, "merchants" are subject to a percentage tax on the gross proceeds of sales. Section 5 of the Act provides:

"The Collector of Internal Revenue shall have the power, and it shall be his duty, to make regulations, not inconsistent with law, necessary to carry this Act into full effect and to secure an harmonious and efficient administration of his branch of the service. Such regulations may be either general or local in application and shall become effective as law when approved by the department head and published."

Section 6 (j) provides:

"The Regulations of the Bureau of Internal Revenue shall, among other things, contain provisions specifying, prescribing, or defining:

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"(j) The manner in which revenue shall be collected and paid, the instrument, document, or object to which revenue stamps shall be affixed, the mode of cancellation of the same, the manner in which the proper books, records, invoices, and other papers shall be kept and entries therein made by the person subject to the tax, as well as the manner in which licenses and stamps shall be gathered up and returned after serving their purpose."

Under these provisions of law we do not doubt the authority of the Collector to require the keeping of a daily record of sales. No one could say with any certainty what the amount of the tax would be without such data. Moreover, section 6 (j), above quoted recognizes the necessity that persons subject to the taxes imposed by the Act keep "books, records, invoices, and other papers." This section is general in its character and cannot be said to apply to any particular tax more than to another. It does not prescribe the kind of records that must be kept in each instance. It merely requires the proper records to be kept; and, of course, what is proper must be left, in the first place, to the discretion of the Internal Revenue authorities. It need hardly be said that the record which merchants are required to keep of their daily sales under the provisions of the circular letter of the Collector set out in the complaint is simplicity itself, and that it will, if honestly and faithfully kept, enable the Government to collect the percentage tax exactly due it. The requirement that the record must be kept in the form of a book of numbered pages certified to by the revenue agents is, of course, only an additional security against uncertainty and possible loss or disorder of parts of the record which might result if the record were kept on loose sheets of paper. Thus far, therefore, it is clear that the circular letter in question is in furtherance of section 6 (j) of the Act,, wherein persons subject to the taxes imposed are required to keep the proper books, etc

The important question is whether the act justifies the requirement of the circular letter that this book be kept in either the English or the Spanish language. Section 6 (j) authorizes the revenue authorities to specify the manner in which the proper books, etc., shall be kept We have seen that the Collector is authorized to determine that persons subject to the percentage tax shall keep their sales record in a bound book of numbered pages, and that this record shall be spread upon the book in the tabulated form specified in the circular. But is it necessary that any particular language shall be used in order that these requisites may be observed? We apprehend that no one will deny that sales could be recorded in a bound volume such as is specified, using the tabulated form desired by the Collector, in any modern language. In other words, all the information could be recorded in the designated book in the required form in Chinese or in a local dialect or in some other language as accurately as it could be recorded in English or Spanish.

The Collector of Internal Revenue has prepared a statement which has been accepted by the plaintiff showing by nationalities the total number of wholesale and retail merchants and their total sales, and the amount of capital, etc., employed in manufacturing industries, all of whom are taxed under the Internal Revenue Law on a percentage basis, and who are, therefore, affected by the regulation complained of. It appears from this statement that there are altogether about 85,000 merchants in the Philippine Islands. Of this number about 71,000 are Filipinos. There is no common vernacular in the Philippine Islands, but it is a matter of common knowledge that a goodly portion of Filipino business men have a practical command of either English or Spanish. Of the remainder of the 85,000, about 1,500 are of either American or Spanish or British nationality, and, hence, the regulation does not impose any burden upon them at all. Of the remaining 12,500, nearly 12,000 are Chinese. The aggregate sales of this latter number amount to more than sixty per cent of the total business done by merchants in the Philippine Islands. A witness for the defendant testified that about two-thirds of the Chinese business men can comply with the regulation. This, of course, is nothing but an estimate and how near it is to accuracy we cannot determine. But however this may be, the figures discussed show that the regulation does affect a large and important class of business men, not only Chinese but Filipinos as well, although it may be that the burden falls most heavily upon the Chinese. To require this number of business men to engage someone familiar with English or Spanish to keep a record for them which will comply with the regulation would in many instances impose a greater burden upon them than the entire amount of taxes which they have to pay.

The difficulties which beset any attempt to hasten the adoption of a common language is well illustrated by the history of section 12 of the Code of Civil Procedure, which prescribes the official language of the courts. The original section, enacted in 1901, provided that the official language of the courts should be Spanish until January

1, 1906, after which date it should be English. Even then it was recognized that some concessions should be made to the use of Spanish after that date, as is evident by the provisos to the original section. In April, 1904, section 12 was amended making further concessions in favor of the use of Spanish.

(Act No. 1123, sec. 1.) In December, 1905, section 12 was again amended, postponing the substitution of English for Spanish as the official language of the courts until January 1, 1911. (Act No. 1427, sec. 1.) In May, 1909, the time for the change was set forward to January 1, 1913. (Act No. 1946, sec. 1.) Finally, in February, 1913, section 12 was again amended so that both English and Spanish are recognized as official languages of the courts until January 1, 1920. (Act No. 2239, sec. 1.) Thus it appears that the desired substitution of English for Spanish in one important branch of governmental activity has been deferred from time to time and that the substitution is one which involves very serious questions of public policy. Ever since the organization of the courts, they have been doing business in both English and Spanish, as well as furnishing interpreters of the Philippine dialects and Chinese.

Counsel for the appellant argues that the Collector of Internal Revenue is as much entitled to prescribe English or Spanish as the language in which records of the daily sales must be kept as are the customs authorities of the United States to require that manifests of ships coming from foreign ports shall either be in English or, if in a foreign language, that an English translation thereof be furnished. We are of the opinion, however, that the analogy fails in important particulars. Such a requirement in a customs regulation affects but few of the business men of that English speaking country, and then only when they are transacting business with that department of the government, while that part of the regulation in question in the case under consideration reaches a great number of business men in this country, where we have no common language, and directly affects every one of them in his private transactions.

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

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

2. As to whether this is a proper case for injunction the Attorney-General, on behalf of the defendant, says:

"As authority for the contention of the defendant that the allegations made by the plaintiffs that they are in danger of being prosecuted under the penal provisions of the Internal Revenue Law (Act No. 2339) do not entitle them to the relief of injunction, the attention of the court is invited to the following, appearing on pages 1030 and 1031 of volume 6 of Encyclopedia of United States Supreme Court Reports and to the cases cited thereunder:

" 'A court of equity has no general power to enjoin or stay criminal proceedings, unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there, or to prohibit the invasion of the rights of property by the enforcement of an unconstitutional law.'

"The validity of section 185 of the Internal Revenue Law is not raised by the pleadings and evidence in this case; nor in accordance with the above cited authorities can it be raised in injunction proceedings except in connection with a criminal proceeding actually pending in the courts."

From the foregoing it will be seen that it is not contended that section 139 of Act No. 2339, wherein it is provided that "No court shall have authority to grant an injunction to restrain the collection of any internal revenue tax," is applicable to the case under consideration. Forbidding the enforcement of that part of the circular letter complained of is not the restraining of the collection of a tax. Consequently, the principle laid down in the case of *Churchill and Tait vs. Rafferty* (32 Phil. Rep., 580), just decided, to the effect that "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," does not govern the question now being considered. That principle, when applied to the collection of taxes, rests upon the broadest grounds of public policy. It is upon the prompt collection of revenue that the very existence of the Government depends. The Collector's circular letter, requiring all merchants to keep records of their daily sales either in the English or the Spanish language, has, as we have pointed out, no legitimate connection under the law with the collection of the taxes. That part of the circular amounts to no more than an unauthorized attempt to impose an uncalled for burden upon a large number of the business community. The result is that the solution of the second question must be governed by those principles relating to the power of courts of equity to enjoin the enforcement of an invalid law, municipal ordinance, or regulation, which has for its object the penalizing of certain acts of omission or commission under section 185 of Act No. 2339, which section reads as follows:

"A person who violates any provision of this Act or any lawful regulation of the Bureau of Internal Revenue made in conformity with the same, for which delinquency no specific penalty is provided by law, shall be punished by a fine of not more than three hundred pesos or by imprisonment for not more than six months, or both, in the discretion of the court."

There is some argument upon the point whether a disregard of the regulation in question would bring into operation the provisions of this section. We will assume, for the purposes of this case, that a non-compliance with the language requirement of the circular would amount to a criminal offense under the provisions of that section.

That 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; that a court of equity has no jurisdiction over the prosecution or the punishment of crimes and misdemeanors ; and that in ordinary criminal cases injunctions will not issue to restrain criminal prosecutions even under a void law or municipal ordinance, are principles too well settled to require discussion. Generally, the defense of nullity, under which the prosecution is brought, can be interposed as a defense' to a prosecution as readily and efficiently as in any other manner. (*Fitts vs. McGhee*, 172 U. S., 516.) In proceeding by indictment to enforce a valid criminal statute, the state can only act through its officers, and to enjoin the latter is to enjoin the state, and this cannot be done without the state's consent. But if the act to be enforced is unconstitutional, the use of the name of the state to enforce it to the injury of an accused person is a proceeding without authority of and one which does not affect the state in its sovereign or governmental capacity. (*Ex parte Young*, 209 U. S., 123, 159.) Suits against state officers to restrain them from enforcing a state statute which violates a person's constitutional rights, either by its terms or by the manner of its enforcement, are not suits against the state. (*General Oil Co. vs. Crain*, 209 U. S., 211, and cases cited.) It therefore follows that courts of equity may enjoin the enforcement of an invalid law or municipal ordinance where irreparable injury to property rights would result or where persons would be subject to a multiplicity of suits incurred by reason of the penalty attached to a

recurring act or omission. (Ex parte Young, *supra*; Adams Express Co. vs. N. Y. City, 232 U. S., 14.)

When a multiplicity of suits is made probable by reason of the fact that a large number of persons are adversely affected by a void law to which penal provisions are attached to aid in its enforcement, injunction is the proper remedy if all the persons concerned have identically the same interest, and their rights will be determined by a decision respecting the validity of the law or ordinance. Such was the holding in *Wilkie vs. Chicago* (188 111., 444; 80 Am. St. \*Rep., 182), where the enforcement of a void ordinance requiring master plumbers to take out a license was enjoined; and in *Spaulding vs. McNary* (64 Ore., 491), where it was attempted to apply to persons engaged in interstate commerce the provisions of a state law requiring hawkers or peddlers to take out a license. Nor does it matter that penalties for the nonobservance of a law or ordinance have not yet been created or that officers of the law have not yet attempted to enforce penal provisions already existing. So long as the law or ordinance remains undisturbed on the statute books, it acts in *terrorem* and practically accomplishes a prohibition against the act or omission which the law intends to prevent. And so long as it has not been annulled by judicial decision or repealed, the persons affected are in duty bound to obey it, even though the danger of criminal prosecution be not imminent. (*City of Dallas vs. Dallas Consol. Elec. St. Ry. Co.*, 159 S. W., 76.)

In the case at bar thousands of persons are admittedly interested in the decision whether the regulation of the Collector is valid. If it is, they are all bound to obey it. If it is not, none of them are liable. The rights of all will be determined by passing upon the validity of the regulation. Under the principles which distinguish cases in law from those in equity, our courts, sitting in equity, can render a comprehensive judgment, which has been done in this case, covering the whole ground and thus avoid a multiplicity of suits that would inevitably arise under the regulation. There are, as we have said, thousands of merchants whose interests in the question here involved are identical and each of whom is liable to prosecution for every daily omission to comply with the language provisions of the void circular. This great number of merchants have been notified to keep their daily sales' records in English or Spanish and threatened with arrest and prosecution under section 186, *supra*, if they do not. If they continue to record their daily sales in the same manner that they have been doing, the defendant will put his threat into execution and they will be arrested for each violation. Each prosecution will involve the same question. These prosecutions will be so numerous that the interference of equity can well be justified upon the ground that the judgment appealed from avoids a multiplicity of suits and gives a remedy more certain and efficacious than could be given in prosecutions against the various merchants affected by the circular. The noncompliance with the regulation for a single day would swamp the criminal courts of Manila; for those (law) courts could only deal with each case separately. Only a court sitting in equity is competent to meet such an emergency and to determine once and for all questions such as the one under consideration.

For the foregoing reasons the judgment appealed from is affirmed, with costs. So ordered.

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

Moreland, J., concurs in the result.

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## CONCURRING

### CARSON,

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

languages.

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

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