

**FRANCIS A. CHURCHILL AND STEWART TAIT ET AL., PLAINTIFFS
AND APPELLANTS, VS. VENANCIO CONCEPCION, AS ACTING
COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.**

G.R. No. 11572. September 22, 1916

Ponente: TRENT, J.

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TRENT, J.:

Section 100 of Act No. 2339, passed February 27, 1914, effective July 1, 1914, imposed an annual tax of P4 per square meter upon "electric signs, billboards, and spaces used for posting or displaying temporary signs, and all signs displayed on premises not occupied by buildings." This section was subsequently amended by Act No. 2432, effective January 1, 1915, by reducing the tax on such signs, billboards, etc., to P2 per square meter or fraction thereof. Section 26 of Act No. 2432 was in turn amended by Act No. 2445, but this amendment does not in any way affect the questions involved in the case under consideration. The taxes imposed by Act No. 2432, as amended, were ratified by the Congress of the United States on March 4, 1915. The ratifying clause reads as follows:

"The internal-revenue taxes imposed by the Philippic Legislature under the law enacted by that body on December twenty-third, nineteen hundred and fourteen (Act No. 2432), as amended by the law enacted by it on January sixteenth, nineteen hundred and fifteen (Act No. 2445), are hereby legalized and ratified, and the collection of all such taxes heretofore or hereafter is hereby legalized, ratified and confirmed as fully to all intents and purposes as if the same had by prior Act of Congress been specifically authorized and directed."

Francis A. Churchill and Stewart Tait, copartners doing business under the firm name and style of the Mercantile Advertising Agency, owners of a sign or billboard containing an area of 52 square meters constructed on private property in the city of Manila and exposed to public view, were taxed thereon P104. The tax was paid under protest and the plaintiffs having exhausted all their administrative remedies instituted the present action under section 140 of Act No. 2339 against the Collector of Internal Revenue to recover back the amount thus paid. From a judgment dismissing the complaint upon the merits, with costs, the plaintiffs appealed.

It is now urged that the trial court erred:

"(1) In not holding that the tax as imposed by virtue of Act No. 2339, as amended by Act No. 2432, as amended by Act No. 2445, constitutes deprivation of property without compensation or due process of law, because it is confiscatory and unjustly discriminatory and (2) in not holding that the said tax is void for lack of uniformity, because it is not graded according to value; because the classification on which it is based is mere arbitrary selection and not based on any reasonable ground; and furthermore, because it constitutes double taxation."

We will first inquire whether the tax in question is confiscatory as to the business of the plaintiff. Upon this point the lower court, in accepting the testimony of the plaintiff, Churchill, to the effect that "the billboard in question cost P300 to construct, that its annual gross earning power is P268, and that the annual tax is P104," found "that

for a five years' period the gross income from the billboard would be P1,340, and that the expenditures for original construction and taxes would amount to P820, leaving a balance of P520," held that "unless the tax equals or exceeds the gross income, the court would hardly be justified in declaring the tax confiscatory." These findings of fact and conclusions of law are attacked upon the ground that the court failed to take into consideration the pertinent facts that the annual depreciation of the billboard is 20 per cent; that at the end of five years the capital of P300 would be completely lost; that the plaintiffs are entitled to receive a reasonable rate of interest on this capital; and that there should be charged against the billboard its proportion of the overhead charges such as labor, management, maintenance, rental of office premises, rental or purchase of ground space for board, repair, paints, oils, etc., resulting in an actual loss per year on the business, instead of an apparent profit of P520 for five years, or P44 for one year. If these contentions rested upon a sound basis it might be said that the tax is, in a sense, confiscatory; but they do not, as we will attempt to show from the evidence of record.

The plaintiff Churchill testified in part as follows:

"Q. In your opinion, Mr. Churchill, state what you would think of the rates that are charged by you for advertising purposes in connection with this board; could they be raised?—A. No.

"Q. Why?—A. The business wouldn't allow it; the business wouldn't afford it; and otherwise it would mean bankruptcy to try to increase it.

"Q. Who couldn't afford it? Explain it fully Mr. Churchill ?—A. The merchants couldn't afford to pay more.

On cross-examination: "Q. It is a fact, is it not, Mr. Churchill, that since the passage of Act No. 2339 you have never made any attempt to raise the advertising rates?—A. It would be impossible to raise them.

"Q. My question is: You have never made any attempt to raise them?—A. We have talked it over with the merchants and talked over the price on the event of a tax being put at a reasonable amount, about putting up some increase.

"Q. But you have never made an actual attempt to increase your rates?—A. I would consider that an actual attempt.

"Q. You have never fixed the rate higher than it is now?— A. No; no."

It was agreed that Tait, the other plaintiff, would testify to the same effect. The parties, plaintiffs and defendant, further agreed "that a number of persons have voluntarily and without protest paid the taxes imposed by section 100 of Act No. 2339, as amended by Act No. 2432, and in turn amended by Act No. 2445."

It will thus be seen that the contention that the rates charged for advertising cannot be raised is purely hypothetical, based entirely upon the opinion of the plaintiffs, unsupported by actual test, and that the plaintiffs themselves admit that a number of other persons have voluntarily and without protest paid the tax herein complained of. Under these circumstances, can it be held as a matter of fact that the tax is confiscatory or that, as a matter of law, the tax is unconstitutional ? Is the exercise of the taxing power of the Legislature dependent upon and restricted by the opinion of two interested witnesses? There can be but one answer to these questions, especially in view of the fact that others are paying the tax and presumably making a reasonable profit from their business.

In *Chicago and Grand Trunk Railway Co. vs. Wellman* (143 U. S., 339), a question similar to the one now under consideration was raised and decided by the Supreme Court of the United States. The principal contention made in that case was that an Act of the Legislature of Michigan fixing the amount per mile to be charged by railways for the transportation of a passenger was unconstitutional, on the ground that the rate so fixed was confiscatory. It was agreed in the pleadings that the total earnings and income of the company from all sources for a given year

were less than the expenses for the same period. In addition to this agreed statement of facts, two witnesses were called, one the traffic manager and the other the treasurer of the company. Their testimony was to the effect that in view of the competition prevailing at Chicago for through business, it was impossible to increase the freight rates then charged by the company because it would throw the volume of business into the hands of competing roads. In overruling the contention of the company that the act in question was unconstitutional on the ground that the rate fixed thereby was confiscatory, the court said:

"Surely, before the courts are called upon to adjudge an act of the legislature fixing the maximum passenger rates for railroad companies to be unconstitutional, on the ground that its enforcement would prevent the stockholders from receiving any dividends on their investments, or the bondholders any interest on their loans, they should be fully advised as to what is done with the receipts and earnings of the company; for if so advised, it might clearly appear that a prudent and honest management would, within the rates prescribed, secure to the bondholders their interest, and to the stockholders reasonable dividends. While the protection of vested rights of property is a supreme duty of the courts, it has not come to this, that the legislative power rests subservient to the discretion of any railroad corporation which may, by exorbitant and unreasonable salaries, or in some other improper way, transfer its earnings into what it is pleased to call 'operating expenses.' "

It is further alleged that the tax in question is unconstitutional because "the law herein complained of was enacted for the sole purpose of destroying billboards and advertising business depending on the use of signs or billboards." If it be conceded that the Legislature has the power to impose a tax upon signs, signboards, and billboards, then "the judicial cannot prescribe to the legislative department of the Government limitation upon the exercise of its acknowledged powers." (Veazie Bank vs. Fenno, 8 Wall., 533, 548.) That the Philippine Legislature has the power to impose such taxes, we think there can be no serious doubt, because "the power to impose taxes is one so unlimited in force and so searching in extent, that the courts scarcely venture to declare that it is subject to any restrictions whatever, except such as rest in the discretion of the authority which exercises it. It reaches to every trade or occupation; to every object of industry, use, or enjoyment; to every species of possession; and it imposes a burden which, in case of failure to discharge it, may be followed by seizure and sale or confiscation of property. No attribute of sovereignty is more pervading, and at no point does the power of the government affect more constantly and intimately all the relations of life than through the exactions made under it." (Cooley's Constitutional Limitations, 6th Edition, p. 587.)

In *McCray vs. U. S.* (195 U. S., 27), the court, in ruling adversely to the contention that a federal tax on oleomargarine artificially colored was void because the real purpose of Congress was not to raise revenue but to tax out of existence a substance not harmful of itself and one which might be lawfully manufactured and sold, said:

"Whilst, as a result of our written constitution, it is axiomatic that the judicial department of the government is charged with the solemn duty of enforcing the Constitution, and therefore, in cases properly presented, of determining whether a given manifestation of authority has exceeded the power conferred by that instrument, no instance is afforded from the foundation of the government where an act which was within a power conferred, was declared to be repugnant to the Constitution, because it appeared to the judicial mind that the particular exertion of constitutional power was either unwise or unjust. To announce such a principle would amount to declaring that, in our constitutional system, the judiciary was not only charged with the duty of upholding the Constitution, but also with the responsibility of correcting every possible abuse arising from the exercise by the other departments of their conceded authority. So to hold would be to overthrow the entire distinction between the legislative, judicial, and executive departments of the government, upon which our system is founded, and would be a mere act of judicial usurpation."

If a case were presented where the abuse of the taxing power of the local legislature was so extreme as to make it plain to the judicial mind that the power had been exercised for the sole purpose of destroying rights which could

not be rightfully destroyed consistently with the principles of freedom and justice upon which the Philippine Government rests, then it would be the duty of the courts to say that such an arbitrary act was not merely an abuse of the power, but was the exercise of an authority not conferred. (*McCray vs. U. S.*, supra.) But the instant case is not one of that character, for the reason that the tax herein complained of falls far short of being confiscatory. Consequently, it cannot be held that the Legislature has gone beyond the power conferred upon it by the Philippine Bill in so far as the amount of the tax is concerned.

Is the tax void for lack of uniformity or because it is not graded according to value or constitutes double taxation, or because the classification upon which it is based is mere arbitrary selection and not based on any reasonable grounds? The only limitation, in so far as these questions are concerned, placed upon the Philippine Legislature in the exercise of its taxing power is that found in section 5 of the Philippine Bill, wherein it is declared "that the rule of taxation in said Islands shall be uniform."

"Uniformity in taxation—says Black on Constitutional Law, page 292—means that all taxable articles or kinds of property, of the same class, shall be taxed at the same rate. It does not mean that lands, chattels, securities, incomes, occupations, franchises, privileges, necessities, and luxuries, shall all be assessed at the same rate. Different articles may be taxed at different amounts, provided the rate is uniform on the same class everywhere, with all people, and at all times."

A tax is uniform when it operates with the same force and effect in every place where the subject of it is found (*State Railroad Tax Cases*, 92 U. S., 575.) The words "uniform throughout the United States," as required of a tax by the Constitution, do not signify an intrinsic, but simply a geographical, uniformity, and such uniformity is therefore the only uniformity which is prescribed by the Constitution. (*Patton vs. Brady*, 184 U. S., 608; 46 L. Ed., 713.) A tax is uniform, within the constitutional requirement, when it operates with the same force and effect in every place where the subject of it is found. (*Edye vs. Robertson*, 112 U. S., 580; 28 L. Ed., 798.) "Uniformity," as applied to the constitutional provision that all taxes shall be uniform, means that all property belonging to the same class shall be taxed alike. (*Adams vs. Mississippi State Bank*, 23 South, 395, citing *Mississippi Mills vs. Cook*, 56 Miss., 40.) The statute under consideration imposes a tax of P2 per square meter or fraction thereof upon every electric sign, billboard, etc., wherever found in the Philippine Islands. Or in other words, "the rule of taxation" upon such signs is uniform throughout the Islands. The rule, which we have just quoted from the Philippine Bill, does not require taxes to be graded according to the value of the subject or subjects upon which they are imposed, especially those levied as privilege or occupation taxes. We can hardly see wherein the tax in question constitutes double taxation. The fact that the land upon which the billboards are located is taxed at so much per unit and the billboards at so much per square meter does not constitute "double taxation." Double taxation, within the true meaning of that expression, does not necessarily affect its validity. (1 *Cooley on Taxation*, 3d ed., 389.) And again, it is not for the judiciary to say that the classification upon which the tax is based "is mere arbitrary selection and not based upon any reasonable grounds." The Legislature selected signs and billboards as a subject for taxation and it must be presumed that it, in so doing, acted with a full knowledge of the situation.

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

Torres, Johnson, Carson, and Araullo, JJ., concur.

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