

THE NATIONAL CITY BANK OF NEW YORK, PLAINTIFF AND APPELLANT, VS. JUAN POSADAS, JR., COLLECTOR OF INTERNAL REVENUE OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLANT.

G. R. No. 41032. September 19, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

Under section 1499 of the Administrative Code, the defendant Collector of Internal Revenue of the Philippine Islands assessed against the National City Bank of New York as capital and deposit taxes for the first half of the year 1931 the sum of P77,324.11. On October 23, 1931, the bank paid said taxes under protest. The grounds of the protest were stated as follows:

"1. That the National City Bank of New York is a national banking association duly organized under the United States National Banking Act and is an agency of the United States created under its laws to promote the fiscal policies of the United States.

"2. That the National City Bank of New York has been duly authorized by the Federal Reserve Board to establish a branch in the Philippine Islands, and is now operating the same under the provisions of the United States Federal Reserve Act.

"3. That no state, territory or possession of the United States or any subdivision thereof has the power to tax national banks except as Congress expressly permits; that no such power has been granted to the Philippine Government.

"4. That under the provisions of the National Banking Act (sec. 548, Title 12, U. S. Code) each state may tax national banking associations in any one of four forms but the imposition of any one of such forms shall be in lieu of the others except that in the case of a tax upon net income, individuals may be taxed upon dividends from national banking associations if the law of the state provides for such a tax upon all business corporations and dividends therefrom.

"5. That the Philippine Islands imposes a tax upon net income and is therefore without power to impose any capital deposit, or other tax of any kind upon such national banking association."

On June 7, 1932, the bank filed its suit to recover the said taxes and alleges substantially the same grounds as those set out in the protest when the payment was made. Upon the hearing of the cause it was established by the evidence that the National City Bank of New York, duly organized under the Act of Congress of June 3, 1864, is located at No. 55 Wall Street in the City of New York with a present capital of \$110,000,000. On January 23, 1930, the Federal Reserve Board authorized said bank to establish branches in Manila and Cebu, Philippine Islands. These branches were in operation during the first half of the year 1931, the period covered by the taxes here in question.

On April 30, 1932, the plaintiff bank filed with the Bureau of Internal Revenue of the Philippine Islands a return of its net income from its branches in Manila and Cebu for the year 1931, a total of 9518,871.61, upon which, on June 3, 1932, it paid an income tax of P15,566.15 in accordance with the Internal Revenue laws of the Philippine Islands. This tax was paid without protest.

The trial court sustained the capital tax and ordered the deposit tax refunded to the plaintiff bank. Both parties have appealed to this court.

The Collector of Internal Revenue submits the following assignments of error:

"1. The trial court erred in holding that the branch of the National City Bank of New York in Manila, Philippine Islands, is an instrumentality of the United States Government.

"2. The trial court erred in holding that the branch of the National City Bank of New York in Manila, Philippine Islands, is only subject to the payment of taxes on its capital and not to the payment of taxes on its deposits also as provided for in section 1499 of Act No. 2711 (The Administrative Code), as amended.

"3. The trial court erred in ordering the defendant to return to the plaintiff the amount of P61,219.43, which represents the tax on its deposits for the first half of the year 1931, paid under protest by the said plaintiff to the defendant.

"4. The trial court erred in denying defendant's motion for a new trial."

At the outset it should be noted that the branches of the National City Bank of New York in Manila and Cebu are not separate legal entities. The Act of Congress of December 23, 1913 (U. S. C, Title 12, sec. 601) provides in part:

"SEC. 601. Authorization; conditions and regulations.— Any national banking association possessing a capital and surplus of \$1,000,000 or more may file application with the Federal Reserve Board for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, either or both of the following powers:

"First. To establish branches in foreign countries or dependencies or insular possessions of the United States for the furtherance of the foreign commerce of the United States, and to act if required to do so as fiscal agents of the United States."

* * * * *

It is shown by the evidence in this case that the local branches of the National City Bank of New York have no separate corporate franchise, no separate capital stock, and are operated directly by the bank through officers and managers appointed and controlled by the National City Bank of New York. The Act of Congress, *supra*, authorizing the establishment of branches clearly does not contemplate separate legal entities for it makes no provision for their form of organization or the amount of capital to be invested therein, as is done with reference to investments by a national bank in other banks or corporations engaged in banking in a dependency or insular possession of the United-States as set out in the second paragraph of U. S. C, Title 12, section 601, *supra*. In a word, a "branch" is simply an extension of the business of a national bank to foreign countries, dependencies or insular possessions of the United States. The branch of the National City Bank of New York in Manila is the National City Bank of New York doing business in Manila.

On March 19, 1930, this bank filed with the mercantile. register of the Bureau of Commerce of the Philippine Islands copies of its articles of incorporation, its by-laws, the power of attorney granted to its local manager and the order of the Federal Reserve Board granting permission to the National City Bank of New York to establish branches in Manila and Cebu. The very taxes here in question are assessed by the Government of the Philippine

Islands against the "National City Bank of New York" and the receipts therefore were issued to the "National City Bank of New York", and quite properly so, for the branch as such has neither assets nor liabilities. It is true that the bank filed with the Collector of Internal Revenue a statement (Exhibit J) in which it undertook by an arbitrary calculation to furnish the collector an estimated local capital of its Manila branch as a basis for the assessment of the capital tax. This was computed upon the following proportion: the capital, surplus and undivided profits of the bank (\$224,554,298.54) is to its local capital as the total profits of the bank \$10,690,303.41 is to the profits of the Philippine branch (\$151,851.11). This computation for the first half of the year 1931 resulted in a hypothetical local capital of P12,883,744.56. But this computation, submitted as it was under compulsion and solely for the purpose of estimating the tax which was paid under protest, does not in our judgment constitute any sort of an admission on the part of the bank, and cannot be invoked here to create a corporate entity which does not exist in fact.

In the light of the foregoing, the collector's first assignment of error must be held to relate to the National City Bank of New York. That a national bank is an instrumentality of the Government of the United States is a proposition supported both by actual facts and by so many decisions since the passage of the first National Banking Act, approved June 3, 1864, that it requires no citation of authorities and cannot be questioned now. It makes no difference in principle whether the bank functions as such instrumentality in its home office or in a branch office. The very act authorizing the establishment of branches provides that such branches may be established "for the furtherance of the foreign commerce of the United States, and to act if required to do so as fiscal agents of the United States." Since the appeal in the present case was lodged in this court, the branch in Manila of the National City Bank of New York has performed an important fiscal service to the United States Government as a depository of gold under the Gold Reserve Act of January 30, 1934. There is, therefore, no merit in the collector's first assignment of error.

We shall consider together the collector's second assignment of error which relates to the payment of the tax on deposits and the bank's assignment of error which relates to the capital tax.

Section 1499 of the Administrative Code provides:

"SEC. 1499.—Tax on capital, deposits, and circulation of banks.—Subject to the exemptions herein made there shall be collected from banks the following taxes on capital, deposits, and circulation:

"(a) Upon the capital employed by the bank, for each month, one twenty-fourth of one per centum.

"(b) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposit, or otherwise, whether payable on demand, or on some future day, for each month, one eighteenth of one per centum.

"(c) Upon the average amount of circulation issued by the bank, including as circulation all notes and other obligations calculated or intended to circulate or be used as money, but not including such as may be retained in the vault of the bank or redeemed and on deposit for said bank, for each month, one-twelfth of one per centum.

"(d) 'Bank' as herein used, includes every incorporated or other bank, and every person, association, or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale.

" 'Capital employed' does not include money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in such bank; and no tax shall be imposed on the capital employed by any person whose sole business is lending money on real-estate security."

Many attempts have been made by the several states and territories of the United States to levy taxes in one form or another upon national banks without the consent of Congress but they have uniformly failed. Chief Justice White, in the case of *Owensboro National Bank vs. Owensboro* (173 U. S., 664, 667; 43 Law. ed., 850, 852), which involved a franchise tax, stated the general principle thus:

"Early in the history of this government, in cases affecting the Bank of the United States, it was held that an agency, such as that bank was adjudged to be, created for carrying into effect national powers granted by the Constitution, was not in its capital, franchises, and operations subject to the taxing powers of a state. (*M'Culloch vs. Maryland*, 4 Wheat., 316 [4: 579]; *Osborn vs. Bank of the United States*, 9 Wheat., 738 [6:204]).

"The principles settled by the cases just referred to and subsequent decisions were thus stated by this court in *Davis vs. Elmira Savings Bank* (161 U. S., 283 [40: 701]):

"National banks are instrumentalities of the Federal Government, created for a public purpose, and as such necessarily[^] subject to the paramount authority of the United States. It follows that an attempt, by a state, to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal Government to discharge the duties for the performance of which they were created. These principles are axiomatic, and are sanctioned by the repeated adjudications of this court.'

"It follows then necessarily from these conclusions that the respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets, or franchises, were it not for the permissive legislation of Congress.

'The first act providing for the organization of national banks, passed February 25, 1863, chap. 58 (12 Stat. at L., 665), contained no grant of power to the states to tax national banks in any form whatever. Doubtless the far reaching consequence to arise from depriving the states of the source of revenue which would spring from the taxation of such banks, and the error of not conferring the power to tax, early impressed itself upon Congress; for the following year (13 Stat. at L., 99, chap. 106) power was granted to the states, not to tax the banks, their franchises or property, but to tax the shares of stock in the names of the shareholders. This provision subsequently was amended and supplemented in various particulars (15 Stat. at L., 34, chap. 7), and the result of this legislation is embodied in section 5219 of the Revised Statutes, * * * "

In the case of the *First National Bank vs. City of Hartford* (273 U. S., 548; 71 Law. ed., 767), the court held void a discriminatory tax on shares of the capital of the bank on the ground that any attempt to discriminate against the capital invested in national bank shares is intended to be forbidden by R. S. 5219, and the court again called attention to the principle involved:

" 'National banks are not merely private moneyed institutions, but agencies of the United States created under its laws to promote its fiscal-policies; and hence the banks, their property and their shares cannot be taxed under state authority except as Congress consents and then only in conformity with the restrictions attached to its consent. (*First Nat. Bank vs. Anderson*, supra, 347 [70 Law. ed., 302; 46 Sup. Ct. Rep., 135] ; *Des Moines Nat. Bank vs. Fairweather*, 263 U. S., 103, 106; 68 Law. ed., 191, 195; 44 Sup. Ct. Rep., 23.)"

(See also *First National Bank of Guthrie Center [Iowa] vs. Anderson, Auditor*, 269 U. S., 341; 70 Law. ed., 295.) However, it is contended by the Solicitor-General on behalf of the collector that the principle of exemption from taxation of the instrumentalities of the Federal Government applies only to the States of the American Union and arises from the peculiar relation between the Federal Government and the State Government, each being sovereign within its respective sphere. If a State Government should have the power to tax national banks without

the consent of Congress, it would be possessed of the power to cripple these national instrumentalities, if not entirely to destroy them. But it is argued that no such relation exists between the Federal Government and a dependency like the Philippine Islands, which is under the direct and plenary control of Congress. Attention is called to section 19 of the Act of Congress of August 29, 1916 (39 Stat, 551), which provides that "all laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same."

Whatever may be said, *ex hypothesi*, in support of the proposition that no such necessity for exemption from taxation of the Federal instrumentalities exists in the Philippines as in the several states, the contrary is definitely settled by the decisions of this court. We said in the case of the Standard Oil Company of New York vs. Posadas (55 Phil., 715, 717, 718):

"It would further appear perfectly clear that the principle which prohibits a State from taxing the instrumentalities of the Federal Government applies with equal force to the Philippine Islands. At least, that was our holding in the Post Exchange case. Nevertheless the Attorney-General persists in assuming a difference in tax powers between the relations of the Philippine Government to the National Government and of a State Government to the National Government. We are frank to say that we are unable to see eye to eye with the Attorney-General. It would be absurd to think that a derivative sovereignty like the Government of the Philippine Islands, could tax the instrumentalities of the very Government which brought it into existence. If a sovereign State of the American Union cannot abridge or restrict the activities of the United States Government, much less can a creature of that Government, as the Philippine Government is, do so."

In the recent case of Genato Commercial Corporation vs. Collector of Customs (59 Phil., 656, 661), this court said:

"Without congressional consent, no Federal agency or instrumentality can be taxed by the Government of the Philippine Islands." (See also *National City Bank of New York vs. Domenech*, Treasurer of Puerto Rico, 71 Fed. [2nd.], 13.)

This brings us to the question whether or not the Congress of the United States has given its consent that the National City Bank of New York should be subjected to the capital tax and the deposit tax here involved. The only statute in which Congress has consented that national banks may be subjected to local taxation is R. S. 5219 as amended by the Acts of March 4, 1923 (42 Stat, 1499 [U. S. C, title 12, section 548]), and the Act of March 25, 1926 (44 Stat. [Chap. 88], 223). This is in part as follows:

" 'SEC. 5219. The legislature of each state may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several states may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

" '1. (a) The imposition by any state of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.' "

* * * * *

The Solicitor-General on behalf of the collector contends that R. S. 5219 has never been extended to the Philippine Islands and is limited in its application to States of the American Union. The logical conclusion of his argument is that there are no express limitations or restrictions whatever upon the Government of the Philippine Islands as regards the Kind or amount of taxes it may levy upon national banks. It is not so stated but we assume the Solicitor-General would admit the implied limitation that no tax would be valid which would impair the

usefulness of such banks as instrumentalities of the Federal Government.

The National City Bank of New York, as appellant, contends that R. S. 5219 was in force in the Philippine Islands before the enactment of the Act of August 29, 1916 ([The Jones Law], 39 Stat., 547), and that it was continued in force under section 6 of said Act which provides:

"SEC. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States."

It is further intimated that the very Act of Congress authorizing the establishment of branches of national banking associations in the dependencies or insular possessions of the United States makes R. S. 5219 applicable to the Philippine Islands.

It is enough to say that except as provided in R. S. 5219 supra, Congress has not given its consent to the taxation of national banking associations as such. The language of that statute, as amended by the Act of March 25, 1926, is plain as to the four forms of taxation authorized. The omission of any reference to capital and deposit taxes in R. S. 5219 means simply that Congress has withheld its consent to these forms of taxation of national banks.

In the recent case of *National City Bank of New York vs. Domenech*, Treasurer of Puerto Rico (71 Fed. [2d], 13), decided on May 18, 1934, the Circuit Court of Appeals of the First Circuit held void a capital tax similar to the one here in question levied by the Government of Puerto Rico.

Insofar as the judgment of the court below orders the refund of the deposit taxes paid under protest by the National City Bank of New York for the first six months of the year 1931, the same is affirmed; and insofar as it sustains the capital tax levied for the same period as aforesaid, it is reversed and the defendant Collector of Internal Revenue is ordered to refund to the said bank the entire amount of £77,324.11 paid under protest as capital and deposit taxes, without interest (section 1579, Administrative Code) or costs.

Street, Malcolm, Villa-Real, Hull, Vichers, Imperial, Goddard, and Diaz, JJ., concur.

DISSENTING

ABAD SANTOS, J.,

Upon the authority of adjudicated cases, it must be regarded as settled that national banks are agencies of the United States and, as such, are subject to state taxation only as Congress expressly permits. The exemption of federal agencies from state taxation is grounded upon the most fundamental principles which lie at the basis of the dual system of government established in the United States. As stated by the Supreme Court of the United States in *South Carolina vs. United States* (199 U. S., 437, 448; 50 Law. ed., 261): "We have in this republic a dual system of government,—national and state,—each operating within the same territory and upon the same persons, and yet working without collision, because their functions are different." Again: "The general government and the states, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. (*United States vs. Railroad Co.*, 17 Wall., 322; 21 Law. ed., 597.)" Furthermore: "Within the limits of the powers granted to the federal government, it is supreme. Within the sphere allotted to them the coordinate branches of the general government revolve, unobstructed by any legitimate exercise of powers by the state governments. The powers expressly given to the

federal government are limitations upon the state authority. But with the exception of these limitations the states are supreme; and their sovereignty can be no more invaded by the action of the general government, than the action of the state government can arrest or obstruct the course of the national power. (*Worcester vs. Georgia*, 6 Pet., 515, 570; 8 Law. ed., 483.)"

In *South Carolina vs. United States*, supra, it was also said: "* * * the two governments—national and state— are each to exercise their powers so as not to interfere with the free and full exercise by the other of its powers. This proposition, so far as the nation is concerned, was affirmed at an early day in the great case of *M'Culloch vs. Maryland* (4 Wheat, 316; 4 Law. ed., 579), in which it was held that the state had no power to pass a law imposing a tax upon the operations of a national bank. The case is familiar and needs not to be quoted from. No answer has ever been made to the argument of Chief Justice Marshall, and the propositions there laid down have become fundamental in our constitutional jurisprudence. (*Osborn vs. Bank of United States*, 9 Wheat, 738; 6 Law. ed., 204; *Weston vs. Charleston*, 2 Pet, 449; 7 Law. ed., 481; *New York ex rel. Bank of Commerce vs. Tax Commissioners*, 2 Black, 620; 17 Law. ed., 451; *Bank Tax Case [New York ex rel. Bank of Commonwealth vs. Tax & A. Comrs.]*, 2 Wall., 200; 17 Law. ed., 793; *The Banks vs. New York [People ex rel Bank of N. Y. Nat. Bkg. Asso. vs. Connelly]*, 7 Wall., 16; 19 Law. ed., 57.)"

In their relation to the national or federal government, the Philippine Islands stand in a very different position from that held by one of the States of the Union. Their constitutional status is similar to that of a Territory, and the reason for the doctrine of exemption of federal agencies from state taxation, does not exist in the case of the Philippine Islands. Hence the doctrine should not apply here. This view finds support in the opinion of the Supreme Court of the United States in *Talbott vs. Silver Bow County Commissioners* (139 U. S., 438; 35 Law. ed., 210). Speaking for the court in that case, Justice Brewer said: "Upon what principle is the power of a State to tax a national bank, without the consent of Congress, denied? The answer to this question was fully given by Chief Justice Marshall in the cases of *M'Culloch vs. Maryland* and *Weston vs. Charleston*, supra. Briefly stated, the argument was this: Two distinct sovereignties, the State and the United States, exercise jurisdiction within the same territorial limits. Each has the power of taxation. This power is in its nature absolute and unlimited. Power to tax is power to destroy. Given to the State the power to tax any of the instrumentalities which the United States creates for the exercise of its jurisdiction, and the former may impede, if not wholly stop, the latter in the discharge of its duties as sovereign. Hence, by necessary implication, the absolute exemption from state taxation of any of the instrumentalities—and among them are national banks— which the United States creates for the exercise of its powers and the discharge of its duties. But the whole argument fails when applied to a Territory. It is not a distinct sovereignty. It has no independent powers. It is a political community organized by Congress, all whose powers are created by Congress, and all whose acts are subject to congressional supervision. Its attitude to the general government is no more independent than that of a city to the State in which it is situated, and which has given to it its municipal organization. Who would contend, in the absence of express legislative provision therefor, that a bank created by or under the laws of a State, and located and doing business in a city of that State, could claim exemption from municipal taxation upon its property? A bank is an institution organized for private business, and with a view to individual profit, although it may serve a public purpose and such public purpose justify its creation; and no such private corporation has any implied exemption from local taxation by a municipal or political organization in which it is situated. The only ground on which exemption from such taxation can be based, in the absence of express legislative provision, is that the tax proceeds from a distinct and independent sovereignty. As the reason for the rule of exemption of a national bank from state taxation fails in respect to a bank located in a Territory, the rule also fails."

It is well-settled that, unless restricted by the territorial act, the powers of a territorial legislature extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States. (*American*

Insurance Co. and Ocean Insurance Co. vs. Canter, 1 Pet., 511; 7 Law. ed., 243; Walker vs. New Mexico & S. P. R. Co., 165 U. S., 593; 41 Law. ed., 837.) In Severino vs. Governor-General and Provincial Board of Occidental Negros (16 Phil., 366, 383), this court has declared that "the legislative power which was delegated by the President to the Philippine Commission and which was later ratified by the Congress of the United States, was more comprehensive than the legislative powers now possessed by State governments." And in United States vs. Bull (15 Phil., 7, 29), this court said: "The legislative power of the Government of the Philippines is granted in general terms subject to specific limitations. The general grant is not alone of power to legislate on certain subjects, but to exercise the legislative power subject to the restrictions stated. It is true that the specific authority is conferred upon the Philippine Government relative to certain subjects of legislation, and that Congress has itself legislated upon certain other subjects. These, however, should be viewed simply as enactments on matters wherein Congress was fully informed and ready to act, and not as implying any restriction upon the local legislative authority in other matters. (See Opinion of Atty. Gen. of U. S., April 16, 1908.)"

In the light of the foregoing authorities, it is, I think, reasonable to conclude that national banks are exempt from local taxation only as Congress so provides either expressly or by necessary implication.

The Philippine Autonomy Act, otherwise known as the Jones Law, vests in the Philippine Legislature general legislative power, except as otherwise therein provided (sec. 8). It also contains a specific grant of power to impose taxes and assessments on property, and license fees for franchises and privileges, and internal taxes, direct or indirect, for the purposes of the Philippine Government and the provincial and municipal governments thereof (sec 11). There is no express provision either in the Philippine Autonomy Act or in any other Act of Congress which exempts national banks from taxation by the Philippine Government. Is there any such provision from which such exemption is necessarily implied? I believe the answer must be in the negative. The whole course of congressional legislation with respect to the Philippine Islands, has been characterized by a desire not to deprive the Philippine Government of any revenues to which it is entitled upon moral and equitable considerations. Congress has even provided for the payment to the Philippine Government of taxes collected in the United States on articles coming from the Philippines. In view of this liberal attitude of Congress, I can not persuade myself that it could have intended to exempt the plaintiff-appellant herein from the payment of taxes which are imposed on all banking institutions doing business in the Philippine Islands.

I am, therefore, of the opinion that, in so far as the judgment of the court below sustains the collection of the capital taxes here involved, it should be affirmed; and in so far as it orders the refund of the deposit taxes paid under protest by the appellant, the same should be reversed.

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