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Federal Courts -- Jurisdiction -- State Revenue Acts

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parison on any broad general market will relieve them of any liability under the Act. The dissenting opinion appears more logical in applying reasoning which excludes a comparison of cellophane with the whole flexible packaging market.[21] A manufacturer who utilizes cellophane for his product uses it because of the particular qualities which it, and no other material, possesses. The adoption of this expanded rule amounts to a judicial nullification of the Sherman Act in this type of proceeding. The Sherman Act was originally adopted to prevent anyone from using his size to unfair advantage, and this decision does not seem consistent with that spirit.

EDGAR LEWIS

FEDERAL COURTS—JURISDICTION—STATE REVENUE ACTS

Petitioner, a labor organizer, instituted an action in a federal district court to enjoin the enforcement of a municipal ordinance imposing an alleged exorbitant tax[1] on petitioner's activities. *Held*, the federal prohibition against interference with the tax-collecting procedure of a state[2] is removed when it is shown that there is no speedy and efficient remedy in the courts of that state, and there exists a threat of genuine and irretrievable loss. *Denton* v. *City of Carrollton*, 234 F.2d 581 (5th Cir. 1956).

The federal courts' recognition of the sovereign status of the several states has at all times been the motivation behind their reluctancy to interfere with the fiscal procedures of a state.[3]

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21. *Id.* at 423.
The majority opinion purports to reject the theory of "interindustry competition." Brick, steel, wood, cement and stone, it says, are "too different" to be placed in the same market. But cellophane, glassine, wax papers, sulphite papers, greaseproof and vegetable parchment papers, aluminum foil, cellulose acetate, pliofilm and other films are not "too different", the opinion concludes. The majority approach would apparently enable a monopolist of motion picture exhibition to avoid Sherman Act consequences by showing that motion pictures compete in substantial measure with legitimate theater, television, radio, sporting events and other forms of entertainment. Here, too, "shifts of business" undoubtedly accompany fluctuations in price and "there are market alternatives that buyers may readily use for their purposes.

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1. Municipal Ordinance, City of Carrollton, Georgia:
An ordinance providing for a business license tax and per diem license for any person conducting the business or occupation of labor union, union agent or labor union promoter or labor union organizer. . . .
. . . [T]he applicant shall pay a license tax in the amount of $1,000.00 and shall thereafter deposit at the beginning of each twenty four hour period of each day for each person engaged in any said activity the sum of $100.00 with the City Clerk for the continuance of said license during said twenty four hour period. There will be no proration of the initial license of $1,000.00.

2. 28 U.S.C. § 1341 (1952). "The district court shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under state law where a plain, speedy and efficient remedy may be had in the courts of such State."

3. Matthews v. Rogers, 284 U.S. 521 (1932).

For reasons of public policy,[4] federal courts have been slow to interfere with the collection of public revenues.[5] Except in a case that fell into one of the recognized headings of equity jurisdiction,[6] the federal courts did not enjoin the enforcement of state revenue statutes. Whenever the question was presented, the Supreme Court uniformly held, that the mere assertion of illegality or unconstitutionality of a state or municipal tax is not of itself grounds for equitable relief.[7] If the remedy at law was plain, adequate and complete, the aggrieved party was left to that remedy in the state courts.[8] However, if the legal remedy, even though provided by statute,[9] was inadequate, the district court took jurisdiction for the purpose of granting injunctive relief.[10] That rule as adopted by The Judiciary Act of 1789,[11] was but a declaration of the established principle in equity, forbidding recourse to the extraordinary remedies of equity where the right asserted

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4. Dows v. Chicago, 78 U.S. (11 Wall.) 108, 110 (1871):
> . . . It is upon taxation that the several states chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay . . . may delay the operations of government, and thereby cause serious detriment to the public.

5. Boise Artesiam Hot & Cold Water Co. v. Boise City, 213 U.S. 276, 282 (1909):
> . . . a proper reluctance [on the part of the federal courts] to interfere by prevention with the operation of the state governments has caused it to refrain from so doing in all cases where the Federal rights . . . could otherwise be preserved unimpaired.

6. *Inadequate remedy at law*: Stratton v. St. Louis Southwestern Ry., 284 U.S. 530 (1932); Matthews v. Rogers, 284 U.S. 521 (1932); Henrietta Mills v. Rutherford County, 281 U.S. 121 (1930); *Avoidance of multiplicity of suits*: Raymond v. Chicago Union Traction Co., 207 U.S. 20 (1907); *accord*, United States v. Osage County, 251 U.S. 128 (1919); *danger of irreparable injury*: Shelton v. Platt, 139 U.S. 591 (1891); *accord;* Beal v. Missouri Pac. Ry., 312 U.S. 45 (1941) (although not involving a tax statute or ordinance, the same general principle of equity was applied, denying an injunction where there was no clear showing that an injunction was necessary in order to prevent irreparable injury); American Federation of Labor v. Watson, 327 U.S. 582 (1946); Gibbs v. Buck, 307 U.S. 66 (1939).

7. Mathews v. Rogers, 284 U.S. 521 (1932); Boise Artesian Hot & Cold Water Co. v. Boise City, 213 U.S. 276 (1909); Shelton v. Platt, 139 U.S. 591 (1891); Dows v. Chicago, 78 U.S. (11 Wall.) 108 (1871). *Accord*: State Corp. Comm. v. Wichita Gas Co., 290 U.S. 561 (1933); Champlin Refining Co. v. Corporation Comm'r; 286 U.S. 210 (1932) (although not involving a tax regulation, these cases concluded that the mere unconstitutionality or invalidity of a state or municipal regulation was not a sufficient ground to invoke the aid of a federal court of equity).

8. Great Lakes Dredge & Dock Co. v. Hoffman, 319 U.S. 293, 297 (1943):
> Federal courts in the exercise of the sound discretion which guides them in granting or withholding extraordinary relief in equity will not ordinarily restrain state officers from collecting state taxes, where state law affords an adequate remedy to the taxpayer.

See also, Garr Scott & Co. v. Shannon, 223 U.S. 468 (1912); Atchison, T. & S. F. Ry. v. O'Connor, 223 U.S. 280 (1912).

9. City Bank Farmers Trust Co., v. Schnader, 291 U.S. 24 (1934); Stewart Dry Goods Co. v. Lewis, 287 U.S. 9 (1932); Chicago B. & G. Ry. v. Osborne, 265 U.S. 14 (1924); Atlantic Coast Line Ry. v. Daughton, 262 U.S. 413 (1923).

10. Fox v. Standard Oil Co., 294 U.S. 87 (1935); Lee v. Bickell, 292 U.S. 415 (1934).

11. 1 Stat. 82 § 16 (1789), 28 U.S.C. § 384 (1946), provided:
> . . . That suits in equity shall not be sustained in the Federal courts in any case where a plain, adequate and complete remedy may be had at law.

could be protected at law.[12] Congress gave further recognition and sanction to the practice of the federal equity courts by the Act of August 21, 1937.[13]

It is against this background that the federal courts applied Section 1341 of the present Judiciary Code.[14] Thus, it has been held, that where a state provides by statute for the recovery of a tax paid under protest, no injunction will issue.[15] However, the remedy at law has been held inadequate where there has been no provision made for payment of interest on the tax so refunded.[16] Mere inconvenience or expense to the taxpayer will not constitute sufficient grounds for the granting of an injunction.[17] Nevertheless, in order for the remedy in the state court to deprive the federal court of jurisdiction, there must not be any reasonable doubt as to the existence of form or such remedy.[18]

In this field the collision between two doctrines is apparent. On one hand, the desire of the Federal Government is to leave to the States the right to exercise their fiscal policies without interference. On the other hand, there is the necessity of securing to an individual protection of his constitutional rights in the face of arbitrary action on the part of a state or its political subdivisions. In the instant case, the court recognized the restraint imposed upon their jurisdiction.[19] However, they reasoned, because of the largeness of the tax imposed coupled with the doubt existing

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12. Deweese v. Reinhard, 165 U.S. 386, 389 (1897); New York Guaranty Co. v. Memphis Water Co., 107 U.S. 205, 214 (1883).

13. 50 Stat. 738 (1937), 28 U.S.C. 41(1) (1946);

> . . . [N]o district court shall have jurisdiction of any suit to enjoin, suspend or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any state where a plain, speedy and efficient remedy may be had at law or equity in the courts of such state.

14. 28 U.S.C. § 1341 (1952), "28 U.S.C. §1341 substantially carries forward the Act of 1937 curtailing the jurisdiction of the federal district courts to enjoin the assessment, levy or collection of state taxes." MOORE, COMMENTARY ON THE U.S. JUDICIAL CODE 164 (1949).

15. McCaw v. Fase, 216 F.2d 698 (9th Cir. 1954), *cert. denied*, 348 U.S. 927 (1955). For other cases indicating circumstances where a plain speedy and efficient remedy was available in the state courts see; George F. Alger Co. v. Peck, 119 F. Supp. 812 (D.C. Ohio 1950), *aff'd*, 347 U.S. 984 (1954); Kansas City Southern Ry. v. Morley, 88 F. Supp. 300 (D.C. Ark. 1950); *accord*: Diggs v. Pennsylvania Public Utility Comm'r. 180 F.2d 623 (3d Cir. 1950) (action by patrons of transportation system to restrain increase in fares).

16. Mutt v. Ellerbe, 56 F.2d 1058, (D.C. S.C. 1932); Hess v. Mullaney, 189 F.2d 417, (9th Cir. 1951) (dictum, *cert. denied*, 348 U.S. 836 (1954).

17. George F. Alger Co. v. Peck, 119 F. Supp. 812 (D.C. Ohio 1950), *aff'd*, 347 U.S. 984 (1954) (Congress by Sec. 1341 left the burden on the taxpayer to follow the required procedure rather than determine the federal issues primarily in the federal courts.).

18. George R.R. & Bkg. Co. v. Redwine, 346 U.S. 299 (1952) (where the remedy provided applied only to part of the taxes paid, and where the petitioner had previously been denied an injunction in the state court, and where an alternative procedure provided by the state requiring the filing of 300 affidavits in 14 counties, there was no adequate remedy available in the state courts); Spector Motor Serv., Inc. v. O'Conner, 340 U.S. 602 (1951); Hillsboro Township v. Cromwell, 326 U.S. 620 (1947); Spector Motor Serv., Inc. v. McLaughlin, 323 U.S. 101 (1944).

19. See note 2 *supra*.

under state law[20] as to the recoverability of any tax so paid, to require the prepayment of the tax as a requisite to testing any substantial questions involved, or to insist that the petitioner carry on his activities without the required license and face the risk of penal sanctions, would be to place too great a burden upon him. It was concluded that these considerations eliminated the statutory prohibition and established sufficient threat of irretrievable loss, so as to justify federal intervention. This decision is in conformity with the established rule which provides that even though there may be a remedy provided in the state, if it is inadequate, the petitioner may seek relief in the federal courts. It was apparent that the respondent attempted to restrict the growth of labor unions in its city. The petitioner had a right to engage in this activity. To insist that the peitioner seek the remedy provided would effectively deprive him of this right. By deciding that they had jurisdiction, the court arrived at the only just conclusion.

EDWARD S. JAFFRY

REAL PROPERTY—MECHANICS' LIENS—LIABILITY OF LESSOR FOR LESSEE'S IMPROVEMENTS

A lessee under a long term lease caused improvments to be made upon the leased premises. Subsequently, the lessee was evicted owing to a breach of conditions contained in the lease. Various mechanics' lienors sought to

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20. "There is no general statute in Georgia affording a taxpayer a remedy for the recovery of taxes illegally or erroneously assessed, except as herein before quoted [referring to GA. CODE § 20-1007 (4317) (1933)]." State Revenue Comm. v. Alexander, 54 Ga. App. 295, 187 S.E. 707, 709 (1936). The petitioner's right to recover depends completely on an interpretation and compliance with the Code of Georgia, *supra*, providing:

> Voluntary payments; recovery back-Payments of taxes or their claims, made through ignorance of the law, or where the facts are all known and there is no misplaced confidence and no artifice, deception or fraudulent practice used by the other party, are deemed voluntary, and cannot be recovered back, unless made under an urgent and immediate necessity therefor, or to release a person or property from detention, or to prevent an immediate seizure of person or property. Filing a protest at the time of payment does not change this rule.

Thus, in Strachman Shipping Co. v. Savannah, 168 Ga. 309, 147 S.E. 555 (1929), it was held that payment of taxes through *fear* of criminal prosecution, where no warrants had been issued and no prosecution commenced and there existed no *demands* or *threats* by persons with the authority to carry them out, are voluntary and not recoverable. See also Eibel v. Royal Indemnity Co., 50 Ga. App. 206, 177 S.E. 350 (1934) (where an officer, not authorized to issue a warrant, notified the taxpayer that if he did not make payment he would be arrested, and payment was made because of the threats, the payment was considered voluntary and not recoverable); Southern Stevedoring Co. v. Savannah, 36 Ga. 526, 137 S.E. 123 (1927) (wherein it was held that an allegation in taxpayer's petition that unless he paid the required occupation tax the city marshall would be notified and plaintiff prosecuted, alleged only a mere possibility of prosecution, and showed no immediate duress which would necessitate a payment in order to prevent immediate seizure of person or property); *accord*, Goodwin v. McNeil, 188 Ga. 182, 3 S.E.2d 675 (1939) (a fine paid to avoid imprisonment after a conviction which was later reversed, was held to be a voluntary payment and not recoverable).