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Penalties Under Revenue Statutes—Construction—Effect of Good Faith

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surface and of their house. The grantees were, of course, relying upon the Kohler Act while the Pennsylvania Coal Company was relying upon the reservation it had expressly made in the deed whereby it conveyed the land to H. Mahon *et al.* The Court of Common Pleas held that the Kohler Act, if applied to this case, would be unconstitutional. However, upon an appeal to the State Supreme Court it was held that while the Pennsylvania Coal Company had contract and property rights protected by the Constitution of the United States still the statute was a legitimate exercise of the police power of the State. The question arises—was this a proper exercise of the police power by the State or was it taking property without due process of law? It is well understood that certain values or rights which we enjoy are subject to implied limitations and must yield to the police power, but such limitations must have certain limits or the contract and due process clause are of no value. When the diminution reaches a certain magnitude it must be an exercise of eminent domain plus just compensation. Mr. Justice Holmes, who delivered the opinion of the Supreme Court of the United States, after the case had been taken to said court, said, "For practical purposes, the right to coal consists in the right to mine it." When you take away the right to mine it it has almost the same effect for constitutional purposes as appropriating or destroying it. This would be the result of the Kohler Act. While, as a general rule, property may be regulated to a certain extent, if it goes too far it will constitute a taking. Whenever there is such a taking it is presumed that it is wanted for a public use and even then it is not taken without compensation. The statute in this case did not contemplate the taking of property for a public use; neither did it contemplate giving compensation to the one whose rights would be impaired. It could scarcely be said to be a taking for public interest since the case involved only a single house—and, since only a single private house was liable to be damaged it could not be considered a public nuisance. It was upon such reasoning as shown above that the Supreme Court of the United States (Mr. Justice Brandeis dissenting) held the statute unconstitutional—a realization that the statute did not disclose a public interest sufficient to warrant so extensive a destruction of the defendants' constitutionally protected rights.

PENALTIES UNDER REVENUE STATUTES—CONSTRUCTION—EFFECT OF GOOD FAITH.

A proper understanding of the case subsequently cited makes necessary the setting out of certain revenue statutes. That is to say, Sec. 311 of the Munition Tax Act of Sept. 8, 1916 (39 Stat. 782), provides that: "All administrative, special and general provisions of law, relating to the assessment of taxes not specifically repealed, are hereby made to apply to this title so far as applicable and not inconsistent with its provisions." And Sec. 3176 R. S., as amended by Sec. 16 of the Revenue Act of 1916 (39 Stat. 773), reads in part as follows: "In case of any failure to make and file a return or list within the time prescribed by law or by the Collector, the Commissioner of Internal Revenue shall add to the tax fifty per cent of its amount, except that when a return is voluntarily and

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without notice from the creditor filed after such time and it is shown that the failure to file was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax."

A case which involved the construction of the above provisions was Dayton Bronze Bearing Co. v. Gilligan, 281 Fed. 709, decided June 6, 1922. The Dayton Bronze Bearing Company entered into a contract with the Recording and Computing Machines Company—by the terms of which the former company agreed to mold material furnished and owned by the latter company into certain rough and preliminary forms, in which forms it was to be returned to the Recording Company as castings. The castings were in turn used by the Recording Company in the manufacturing of time fuses to be attached to shrapnel shells manufactured by other corporations for the use of the Russian Government. The evidence showed that the Dayton Bronze Bearing Company did nothing except mold the material furnished it into rough castings for the Recording and Computing Machines Company and that it believed, in good faith, that it was not manufacturing munitions so as to make itself liable for the payment of a tax under the Munition Tax Act. The company also secured the advice of reputable counsel, which was to the effect that it was not liable for the payment of a Munitions Tax. As a result the company did not make or file the required list within the time prescribed by law. Finally, upon the advice of the Collector of Internal Revenue, the company filed a return under protest. After filing the return the Commissioner assessed a tax against the company together with the fifty per cent penalty as required by the statute set out above. The fifty per cent penalty was paid by the company under protest. This judgment of the District Court was taken to the Circuit Court of Appeals for review on writ of error, in which court, it was held that the company should recover the money it had paid as a penalty since the above law was not applicable in this case. The main argument of the Dayton Bronze Bearing Company was to the effect that it was acting in good faith and that its failure to comply with the above statutes was due to its ignorance—that it did not think its work would render it liable to be taxed under the above statute. The ruling of the Treasury Department seems to be that "Where the attendant and surrounding circumstances have a tendency to cast doubt and suspicion upon a taxpayer, a plea of mere ignorance is not sufficient to constitute a reasonable cause for failure to make and file a report within the time prescribed by law for the purpose of being relieved of the penalty." However, in the present case the surrounding and attendant circumstances have no tendency to cast a doubt or suspicion upon the taxpayer so that the above ruling of the Treasury Department would not apply. The fact that the company secured competent legal advice to determine the question of its liability shows that it was endeavoring to act honestly and fairly. Where there is a statute imposing a penalty for certain acts or omissions (as the statute above) Courts are reluctant to give force to such penalty unless there has been a substantial delinquency—unless the taxpayer has been willfully or intentionally negligent. Since, in the above case, the corporation took the fairest and best action within its knowledge, the ruling of the Circuit Court of Appeals in holding the penalty did not apply, seems to be just according to the circumstances of the case.

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