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Taxation—Federal Excise Taxes—Injunctive Relief

lows a fugitive from justice and apprehends him in another state, he is entitled to the reward. This Missouri case was cited in the Kentucky case, *Kentucky Bankers' Association v. Cassady.* It is established in Missouri that rewards offered may be recovered by sheriffs for doing what is just outside the strict limits of their official duties.[11]

By strictly contruing the duties of sheriffs, the courts enable them to recover rewards and extra fees for doing little more than their duties. Thus the acts of a sheriff outside the strict limits of his official duties are sufficient consideration to enforce a contract of reward or a contract for extra compensation.

A. T. S.

TAXATION—FEDERAL EXCISE TAXES—INJUNCTIVE RELIEF—[FEDERAL]*.—Plaintiff, a soap company, seeks to enjoin a Collector of Internal Revenue from collecting the tax imposed on the first domestic processing of coconut oil and palm oil by Section 602½ (a) of the Revenue Act of 1934,[1] on the alleged ground that the section is unconstitutional. *Held:* The allegation and showing of "ultimate financial ruin resulting from the continued payment of the tax" was not sufficient to prevent the application of Section 3224 of the Revised Statutes of the United States[2] which prohibits the maintenance of suits to restrain the collection of taxes. *Huston, etc., v. Iowa Soap Co.*[3]

Historically courts of equity have been reluctant to grant an injunction against the levy, assessment, or collection of a tax, since such action would interfere with governmental activities.[4] Where, however, a well recognized ground for equitable jurisdiction was present, equity did not hesitate to exercise its natural jurisdiction even in tax litigation.

In 1867 Congress passed an act which, in language at least, prohibited suits for the purpose of restraining the assessment or collection of any tax.[6] There followed a period in which decisions of the Supreme Court, interpreting that section, announced the retention of the court's equitable jurisdic-

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11. Smith v. Vernon County, 188 Mo. 501, 87 S. W. 949, 70 L. R. A. 59, 107 Am. St. Rep. 324 (1905); Cornwell v. St. Louis Transit Co., 100 Mo. App. 258, 73 S. W. 305 (1903).

* For a general survey of the question, see: Note, 21 ST. LOUIS LAW REVIEW 140 (1936); Note, 18 ST. LOUIS LAW REVIEW 311 (1933); Miller, Restraining the Collection of Federal Taxes (1923) 71 U. of Pa. L. Rev. 318.

1. 48 Stat. 602½ (a), 26 U. S. C. A. sec. 999 (a).
2. 14 Stat. 475, 26 U. S. C. A. sec. 1543 (1867).
3. 4 U. S. Law Week 85 (C. C. A. 8, 1936).
4. 4 Cooley, *Taxation* (4th ed. 1924) sec. 1640 et seq.; 4 Pomeroy, *Equity Jurisprudence* (3d ed.) sec. 1779; 1 High, *Injunctions* (4th ed. 1905) sec. 485.
5. Dows v. Chicago, 11 Wall. (U. S.) 108, 110, 20 L. ed. 65 (1870); State R. R. Tax Case 92 U. S. 575, 614, 23 L. ed. 663 (1875).
6. Supra, note 2.

tion in tax cases.[7] These cases dispelled any doubt as to the non-precluding effect of the statutory declaration.

This period was capped by the decision in 1932 in the case of *Miller v. Standard Nut Margarine Co.*[8] The majority there held that Revised Statute 3224[9] was a declaration of the then existing law; and when an injunction is sought, the established and accepted equitable rule will be applied.[10]. A minority thought that "this statute for more than sixty years has been consistently applied as precluding relief, whatever the equities alleged.[11] But in that sixty year period Revised Statute 3224 had become meaningless as far as changing the historical jurisdiction of equity courts was concerned, if the numerous exceptions to the statute are compared to the previously existing grounds for equitable interference in tax cases.[12]

In 1936, the courts of equity proclaimed even greater power in tax matters. When the National Industry Recovery Act was declared unconstitutional[13] an avalanche of suits were filed by millers and processors who sought to restrain the collection of the taxes levied in pursuance of the Agriculture Adjustment Act.[14] The result was a confusion and diversity of judicial interpretation which decidedly favored the processor.[15] In the *Rice Millers* decision,[16] the Supreme Court sustained an injunction on the sole basis of unconstitutionality. The decision was notable for the absence of language requiring "special and extraordinary circumstances," "multiplicity of suits," "inadequate remedy at law," and like phrases usually the basis of equitable jurisdiction in tax matters. This and other decisions of the same period presented the question, is the maxim of "Pay first, litigate later" no longer of any value.

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7. Dodge v. Osborne, 240 U. S. 118, 36 S. Ct. 275, 60 L. ed. 557 (1916); Bailey v. George, 259 U. S. 16, 42 S. Ct. 419, 66 L. ed. 816 (1922); Hill v. Wallace, 259 U. S. 44, 42 S. Ct. 453, 66 L. ed. 822 (1922).

8. 284 U. S. 498, 52 S. Ct. 260, 76 L. ed. 422 (1932).

9. Supra, note 2.

10. Note, 18 ST. LOUIS LAW REVIEW 311, 314 (1933).

11. 284 U. S. 498, 511, 52 S. Ct. 260, 76 L. ed. 422 (1932).

12. Note, 22 L. R. A. 699; cf., Wallace v. Hines, 253 U. S. 66, 40 S. Ct. 435, 64 L. ed. 782 (1920) (inadequate remedy at law); Rowley v. Chicago, etc. Ry., 68 F (2d) 527 (C. C. A. 10, 1934) (multiplicity of suits); Shaffer v. Carter, 252 U. S. 37, 40 S. Ct. 221, 64 L. ed. 445 (1920) (cloud upon title); Brabham v. Cooper, 9 F. Supp. 904 (D. C. E. D. S. C., 1935) (property about to be seized is not liable for the assessment); Hubbard Inv. Co. v. Brast, 59 F (2d) 709 (C. C. A. 4, 1932) (collector is selling property of non-taxpayer to satisfy demands made upon a taxpayer); Lipke v. Lederer, 259 U. S. 557 (1922) (injunction to restrain the collection of a penalty); Pollock v. Farmers Loan & Trust Co., 157 U. S. 429 (1895) (suit by stockholder to restrain corporation from voluntarily paying an alleged unconstitutional tax).

13. A. L. A. Schechter Poultry Corp. v. United States, 295 U. S. 495, 55 S. Ct. 837, 79 L. ed. 1570.

14. 48 Stat. 31 (1933), amended 1935, 49 Stat. 750, 7 U. S. C. A. sec. 601 et seq.

15. Note, 21 ST. LOUIS LAW REVIEW 140, 144 (1936).

16. Rickert Rice Mills, Inc., v. Fontenot, 297 U. S. 110, 56 S. Ct. 374, 80 L. ed. 355 (1936).

In the opinion of the instant case[17] the court denies that the decision in the *Rice Millers* case lessens the binding force of the ruling of the Supreme Court in *Bailey v. George,* the leading decision of the period of interpretation of Section 3224 referred to above.[18] It states: "No reason, however, is assigned for the action taken, and it may have resulted from a showing of exceptional circumstances not present in this case. * * * We are not authorized to depart from the rule laid down in *Bailey v. George,* supra, upon a mere conjecture as to what the Supreme Court may have had in mind in the absence of some expression upon that point."[19] And properly so; for the court, in the *Rice Millers* decision, did not either directly or indirectly, question the validity or propriety of congressional limitations upon suits relating to taxation.[20] Again the courts adds:[21] "Mere apprehension of 'ultimate' ruin to plaintiff's business on account of a tax is not sufficient to entitle one to injunctive relief in equity. It must appear that such ruin is so imminent that the remedy provided by law is not adequate. *Allegations of mere hardship or injustice of the tax are not a recognized foundation of equitable jurisdiction.*" (Italics supplied.)

It remains to be seen whether the Supreme Court, in view of its previous pronouncement, will accept the above limitation on the restraining power in tax cases.

J. R. G.

Editor's Note: The Department of Justice has filed a memorandum asking the Supreme Court of the United States to define with more exactness the jurisdiction of federal courts in federal tax injunction suits. The memorandum states that the decision in *Houston v. Iowa Soap Co.* was clearly right, but public interest will be promoted by a decision of the Supreme Court. In stating the need for clarification, the memorandum points to the inharmonious decisions commented upon above and to the *Rice Millers* cases. The memorandum concludes ". . . an early decision is of utmost importance to the orderly and uninterrupted collection of federal revenues." 4 U. S. Law Week 153 (Oct. 20, 1936).

TORTS — DAMAGES — RECOVERY FOR PHYSICAL INJURIES RESULTING FROM NERVOUS SHOCK OR FRIGHT—[Missouri].—The defendant, while arresting a drunken man, flourished a revolver and negligently fired a shot which struck plaintiff's husband in the head, killing him. His body, in falling to the ground, as the plaintiff later recollected, slightly brushed her person. The sight of this, however, caused the plaintiff great mental anguish and shock, and she later suffered such physical injuries as nervous convulsions, nervous indigestion, insomnia and general physical debility. *Held;* that no recovery

17. Huston, etc., v. Iowa Soap Co., 4 U. S. Law Week 85 (C. C. A. 8, 1936).

18. Supra, note 7.

19. 4 U. S. Law Week 85, 86 (C. C. A. 8, 1936).

20. Los Angeles Soap Co. v. Rogan, 14 F. Supp. 112 (D. C. S. D. Cal., 1936); Simonin's Sons, Inc., v. Rothensies, 13 F. Supp. 807 (D. C. E. D. Pa., 1936); Mellon v. Mertz, 82 F. (2d) 872 (D. C. App., 1936).

21. 4 U. S. Law Week 85, 85 (C. C. A. 8, 1936).