

**Sage Vs. United States**

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**Court :** US Supreme Court

**Decided On :** May-19-1919

**Appeal No. :** 250 U.S. 33

**Appellant :** Sage

**Respondent :** United States

**Judgement :**

Sage v. United States - 250 U.S. 33 (1919)

U.S. Supreme Court Sage v. United States, 250 U.S. 33 (1919)

**Sage v. United States**

**No. 344**

**Argued April 29, 1919**

**Decided May 19, 1919**

**250 U.S. 33**

*APPEAL FROM THE COURT OF CLAIMS*

**SYLLABUS**

A suit against a collector of internal revenue to recover money wrongfully collected as taxes is personal, notwithstanding the statutory provisions for preliminary appeal to the Commissioner, appearance by the district attorney, and payment by the United States in certain cases, and, since the United States is not privy to the judgment, a recovery of part in a suit for the whole against the collector, and satisfaction of the judgment by the United States, do not bar a suit against the United States for the remainder in the Court of Claims. P. [250 U. S. 36](#) .

Claims already presented to the Commissioner under the Act of June 27, 1902, c. 1160, 3, 32 Stat. 406, for taxes on contingent legacies erroneously collected under 29 of the War Revenue Act of June 13, 1898, and satisfied in part only through a suit against the collector, need not be presented anew in order to obtain, as to the residue, the benefit of the Refunding Act of July 27, 1912, c. 256, 37 Stat. 240. P. [250 U. S. 38](#) .

The Act of 1912, *supra*, created new rights; its only condition is that the claims shall have been presented not later than January 1, 1914, and the limitation on suit in the Court of Claims (Rev.Stats., 1069) does not begin before that date. P. [250 U. S. 38](#) .

So *held* where the claim had been presented under the Act of 1902, *supra*, rejected, and in part satisfied through suing the collector, and suit for the residue was begun in the Court of Claims January 23, 1917, application for repayment having been made September 7, 1916, and rejected October 30. *Id.*

53 Ct.Clms. 628 reversed.

The case is stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a claim under the Acts of June 27, 1902, c. 1160, 3, 32 Stat. 406, and of July 27, 1912, c. 256, 37 Stat. 240, to have refunded a tax collected under the Act

of June 13, 1898, c. 448, 29, 30 Stat. 448, 464, 465, upon legacies to the wife and children of the testator Dean Sage. The petition was dismissed by the Court of Claims on demurrer. The testator died domiciled in New York on June 23, 1902, so that the debts of the estate were not ascertained and, as decided in *McCoach v. Pratt*, [236 U. S. 562](#) , the legacies were not "absolutely vested in possession or enjoyment" before July 1, 1902, and therefore, by the terms of the Act of 1902, were not subject to the tax under the above-mentioned 29. A tax of \$63,940.88 was collected, however, in June, 1903. On August 24, 1903, an application to have it refunded on the ground that the legacies were not subject to taxation under 29 was made to the Commissioner of Internal Revenue, but was denied in the following month. Two years later, the petitioners sued the Collector, and in May, 1912, got judgment for \$30,275.49, with interest and costs, which was satisfied by the United States. *McCoach v. Pratt, supra*, and *United States v. Jones*, [236 U. S. 106](#) , had not been decided at that time, and it was held that some of the interests were vested in enjoyment. *Ward v. Sage*, 185 F. 7. This suit is for the unrepaid residue and was begun on January 23, 1917. The government contends that the judgment and also the Act of July 27, 1912, c. 256, 1, 37 Stat. 240, are bars to the present claim.

The former judgment is not a bar. It is true that the

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statutes modify the common law liability for money wrongfully collected by duress so far as to require a preliminary appeal to the Commissioner of Internal Revenue before bringing a suit. Rev.Stats. 3226. It is true also that it is the duty of the district attorney to appear for the collector in such suits, Rev.Stats. 771; that the judgment is to be paid by the United States, and the collector is exempted from execution if a certificate is granted by the Court that there was probable cause for his act, Rev.Stats. 989, and that there was a permanent appropriation for the refunding of taxes illegally collected. Rev.Stats. 3689 (17). No doubt too, if it appeared in a suit against a collector who had acted with probable cause and had turned over his money to the United States that a part of the tax properly was due to the United States, unnecessary formalities might be omitted and the sum

properly due might be retained. Of course, the United States in such a case could not require a second payment of that sum. *Crocker v. Malley*, [249 U. S. 223](#) . But no one could contend that technically a judgment of a district court in a suit against a collector was a judgment against or in favor of the United States. It is hard to say that the United States is privy to such a judgment or that it would be bound by it if a suit were brought in the Court of Claims. The suit is personal, and its incidents, such as the nature of the defenses open and the allowance of interest, are different. It does not concern property in which the United States asserts an interest on its own behalf or as trustee, as in *Minnesota v. Hitchcock*, [185 U. S. 373](#) , [185 U. S. 388](#) . At the time the judgment is entered, the United States is a stranger. Subsequently the discretionary action of officials may, or it may not, give the United States a practical interest in the amount of the judgment as determining the amount of a claim against it, but the claim would arise from the subsequent official act, not from the judgment itself. [United States v.](#)

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*Frerichs*, [124 U. S. 315](#) . But perhaps it would be enough to say that, if the judgment otherwise were a bar, the bar would be removed by the subsequent enactment of the Act of July 27, 1912, c. 256, 37 Stat. 240, upon which, as well as the Act of 1902, this claim is based.

The Act of July 27, 1912, after providing in 1 for the presentation of claims for taxes erroneously collected under the above-mentioned 29, as stated in the preceding case of *Coleman v. United States*, *ante*, [250 U. S. 30](#) , directs repayment in 2 to "such claimants as have presented or shall hereafter so present their claims" and establish them. The claimants had presented their claim, and so had complied with the letter of the Act. But it is said that they filed it simply as a prerequisite to their suit against the collector, and that its effect was extinguished by the judgment in that suit. This argument reads into the words of the statute what is not there, and reads what was there out of the claim. The claim was presented to the Commissioner of Internal Revenue to get the money. The suit was only the undesired alternative in case the Commissioner rejected the claim. It plays no part in the question that we now are considering. Suppose that no suit

had been brought; we can see no ground for denying that the claim would have been presented within the meaning of the Act. It did not have to be a claim under the act, as the statute in terms contemplated that it might have been presented before the statute was passed. But, if the presenting was sufficient before the suit was brought, it is sufficient now. The statute, of course, does not confine its act of justice to unrejected claims.

The Act of 1912 applied in terms to "all claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed and collected" under the above mentioned 29. The only condition was that it should have been presented not later than January 1, 1914. Until that time, no statute of limitations could begin to run.

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After the Act was passed, an application was made on September 7, 1916, to the Secretary of the Treasury for repayment of the residue of the erroneously collected tax. It was rejected on October 30, 1916, on the mistaken ground that the judgment against the collector finished the matter. This suit was brought on January 23, 1917, and so was within the six years allowed by Rev.Stats. 1069 for suits in the Court of Claims. The Act of 1912, like that of 1902, created rights where they had not existed before, *United States v. Hvoslef*, [237 U. S. 1](#) , [237 U. S. 12](#) -13, and the claimant's rights are not barred. See further *James v. Hicks*, [110 U. S. 272](#) .

*Judgment reversed.*