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Crocker Vs. Malley

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Decided On : Mar-17-1919

Appeal No. : 249 U.S. 223

Appellant : Crocker

Respondent : Malley

Judgement :

Crocker v. Malley - 249 U.S. 223 (1919)
U.S. Supreme Court Crocker v. Malley, 249 U.S. 223 (1919)

Crocker v. Malley

No. 649

Argued March 6, 1919

Decided March 17, 1919

249 U.S. 223

CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE FIRST CIRCUIT

A law should not be construed to tax the same income twice unless the intent to do so be clearly expressed. P. 249 U. S. 233 .

The shareholders of a milling company, preliminary to winding it up, caused its active property to be conveyed and its other realty to be leased to a new corporation, the shares of which were left with persons who also were granted the fee of the leased property upon a trust, designated by a name, in which the equitable interests were divided ratably among the original shareholders and evidenced by separable and transferable certificates. The trustees were to hold the trust property upon trust to convert it into money and distribute the proceeds at a time, left to their discretion, within 20 year after death of specified living persons, and in the meantime were to have the powers of an owner, distributing what they determined to be fairly distributable net income among the beneficiaries and applying

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funds to repairs or development of the property or the acquisition of new, pending conversion and distribution. Their compensation, beyond a stated percentage, was not to be increased, nor were vacancies to be filled or the trust terms modified, without the consent of a majority in interest of the beneficiaries acting separately, who, in other respects, had no control, and were declared to be "trust beneficiaries only, without partnership, associate, or any other relation whatever *inter sese.* " *Held* that neither the trustees nor the beneficiaries, nor all together, could be regarded as a joint stock association within the meaning of II, G.(a), of the Income Tax Law of October 3, 1913, and that dividends upon the stock left with the trustees were not subject to the extra tax imposed by that section. P. 249 U. S. 232 .

Semble that the purpose of the act in taxing corporations and joint stock companies, etc., upon dividends of corporations that themselves pay the tax was to discourage concentration of corporate power through holding companies and share ownership. P. 249 U. S. 234 .

Where a tax is sustained by the Commissioner of Internal Revenue and its invalidity under the statute is not clear, there is probable cause for its exaction by the collector, and, under Rev.Stats. 989, in an action against him, recovery will be from the United States. P. 249 U. S. 235 .

Where a collector, with probable cause, collects an excessive tax, the amount due the United States should be deducted from the recovery in an action against him, and such deduction will conclude the United States. *Id.*

250 F. 817 reversed.

The case is stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an action to recover taxes paid under protest to the Collector of Internal Revenue by the petitioners, the plaintiffs. The taxes were assessed to the plaintiffs as a joint-stock association within the meaning of the Income Tax Act of October 3, 1913, c. 16, Section II, G(a), 38 Stat. 114, 166, 172, and were levied in respect of dividends received from a corporation that itself was taxable upon its net income. The plaintiffs say that they were not an association, but simply trustees, and subject only to the duties imposed upon fiduciaries by Section II, D. The circuit court of appeals decided that the plaintiffs, together, it would seem, with those for whose benefit they held the property, were an association, and ordered judgment for the defendant, reversing the judgment of the district court. 250 F. 817.

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The facts are these: a Maine paper manufacturing corporation with eight shareholders had its mills on the Nashua River in Massachusetts and owned outlying land to protect the river from pollution. In 1912, a corporation was formed in Massachusetts. The Maine corporation conveyed to it seven mills and let to it an

eighth that was in process of construction, together with the outlying lands and tenements, on a long lease, receiving the stock of the Massachusetts corporation in return. The Maine corporation then transferred to the plaintiffs as trustees the fee of the property subject to lease, left the Massachusetts stock in their hands, and was dissolved. By the declaration of trust, the plaintiffs declared that they held the real estate and all other property at any time received by them thereunder, subject to the provisions thereof,

"for the benefit of the *cestui que trusts* (who shall be trust beneficiaries only, without partnership, associate or other relation whatever *inter sese*)"

upon trust to convert the same into money and distribute the net proceeds to the persons then holding the trustees' receipt certificates -- the time of distribution being left to the discretion of the trustees, but not to be postponed beyond the end of twenty years after the death of specified persons then living. In the meantime, the trustees were to have the powers of owners. They were to distribute what they determined to be fairly distributable net income according to the interests of the *cestui que trusts,* but could apply any funds in their hands for the repair or development of the property held by them or the acquisition of other property pending conversion and distribution. The trust was explained to be because of the determination of the Maine corporation to dissolve without waiting for the final cash sale of its real estate, and was declared to be for the benefit of the eight shareholders of the Maine Company who were to receive certificates subject to transfer and subdivision.

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Then followed a more detailed statement of the power of the trustees and provision for their compensation, not exceeding one percent of the gross income unless with the written consent of a majority in interest of the *cestui que trusts.* A similar consent was required for the filling of a vacancy among the trustees and for a modification of the terms of the trust. In no other matter had the beneficiaries any control. The title of the trust was fixed for convenience as The Massachusetts Realty Trust.

The declaration of trust, on its face, is an ordinary real estate trust of the kind familiar in Massachusetts unless in the particular that the trustees' receipt provides that the holder has no interest in any specific property, and that it purports only to declare the holder entitled to certain fraction of the net proceeds of the property when converted into cash, "and meantime to income." The only property expressly mentioned is the real estate not transferred to the Massachusetts corporation. Although the trustees in fact have held the stock of that corporation and have collected dividends upon it, their doing so is not contemplated in terms by the instrument. It does not appear very clearly that the eight Maine shareholders might not have demanded it had they been so minded. The function of the trustees is not to manage the mills, but simply to collect the rents and income of such property as may be in their hands, with a large discretion in the application of it, but with a recognition that the receipt holders are entitled to it subject to the exercise of the powers confided to the trustees. In fact, the whole income, less taxes and similar expenses, has been paid over in due proportion to the holders of the receipts.

There can be little doubt that, in Massachusetts, this arrangement would be held to create a trust, and nothing more.

"The certificate holders . . . are in no way associated together, nor is there any provision in the . . .

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[instrument] for any meeting to be held by them. The only act which (under the [declaration of] trust . . .) they can do is consent to an alteration . . . of the trust"

and to the other matters that we have mentioned. They are confined to giving or withholding assent, and the giving or withholding it "is not to be had in a meeting, but is to be given by them individually."

"The sole right of the *cestuis que trust* is to have the property administered in their interest by the trustees, who are the masters, to receive income while the trust lasts, and their share of the corpus when the trust comes to an end."

Williams v. Milton, 215 Mass. 1, 8, 10-11. The question is whether a different view is required by the terms of the present act. As by D. above referred to, trustees and associations acting in a fiduciary capacity have the exemption that individual stockholders have from taxation upon dividends of a corporation that itself pays an income tax, and as the plaintiffs undeniably are trustees, if they are to be subjected to a double liability, the language of the statute must make the intention clear. *Gould v. Gould,* 245 U. S. 151 , 245 U. S. 153 ; *United States v. Isham,* 17 Wall. 496, 84 U. S. 504 .

The requirement of G. (a) is that the normal tax thereinbefore imposed upon individuals shall be paid upon the entire net income accruing from all sources during the preceding year

"to every corporation, joint-stock company, or association, and every insurance company, organized in the United States, no matter how created or organized, not including partnerships."

The trust that has been described would not fall under any familiar conception of a joint-stock association, whether formed under a statute or not. *Smith v. Anderson,* 15 Ch.D. 247, 273-274, 277, 282; *Eliot v. Freeman,* 220 U. S. 178 , 220 U. S. 186 . If we assume that the words "no matter how created or organized" apply to "association" and not only to "insurance company," still it would be a wide departure

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from normal usage to call the beneficiaries here a joint-stock association when they are admitted not to be partners in any sense, and when they have no joint action or interest and no control over the fund. On the other hand, the trustees, by themselves, cannot be a joint-stock association within the meaning of the act unless all trustees with discretionary powers are such, and the special provision for trustees in D. is to be made meaningless. We perceive no ground for grouping the two-beneficiaries and trustees together in order to turn them into an association by uniting their contrasted functions and powers although they are in

no proper sense associated. It seems to be an unnatural perversion of a well known institution of the law.

We do not see either that the result is affected by any technical analysis of the individual receipt holder's rights in the income received by the trustees. The description most in accord with what has been the practice would be that, as the receipts declare, the holders, until distribution of the capital, were entitled to the income of the fund subject to an unexercised power in the trustees in their reasonable discretion to divert it to the improvement of the capital. But even if it were said that the receipt holders were not entitled to the income as such until they got it, we do not discern how that would turn them into a joint-stock company. Moreover, the receipt holders did get it, and the question is what portion it was the duty of the trustees to withhold.

We presume that the taxation of corporations and joint-stock companies upon dividends of corporations that themselves pay the income tax was for the purpose of discouraging combinations of the kind now in disfavor, by which a corporation holds controlling interests in other corporations which, in their turn, may control others, and so on, and in this way concentrates a power that is disapproved. There is nothing of that sort here. Upon the

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whole case, we are of opinion that the statute fails to show a clear intent to subject the dividends on the Massachusetts corporation's stock to the extra tax imposed by G. (a).

Our view upon the main question opens a second one upon which the circuit court of appeals did not have to pass. The district court, while it found for the plaintiffs, ruled that the defendant was entitled to retain out of the sum received by him the amount of the tax that they should have paid as trustees. To this plaintiffs took a cross-writ of error to the circuit court of appeals. There can be no question that, although the plaintiffs escape the larger liability, there was probable cause for the defendant's act. The Commissioner of Internal Revenue rejected the plaintiff's

claim, and the statute does not leave the matter clear. The recovery therefore will be from the United States. Rev.Stats. 989. The plaintiffs, as they themselves alleged in their claim, were the persons taxed, whether they were called an association or trustees. They were taxed too much. If the United States retains from the amount received by it the amount that it should have received, it cannot recover that sum in a subsequent suit.

Judgment of the circuit court of appeals reversed.

Judgment of the district court affirmed.

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