

**Bailey Vs. George**

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**Court :** US Supreme Court

**Decided On :** May-15-1922

**Appeal No. :** 259 U.S. 16

**Appellant :** Bailey

**Respondent :** George

**Judgement :**

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U.S. Supreme Court Bailey v. George, 259 U.S. 16 (1922)

**Bailey v. George**

**No. 590**

**Argued March 7, 8, 1922**

**Decided May 15, 1922**

**259 U.S. 16**

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES*

*FOR THE WESTERN DISTRICT OF NORTH CAROLINA*

## SYLLABUS

A bill to enjoin a levy and sale of property to satisfy a penalty prescribed as a tax by an unconstitutional act of Congress will not lie in face of the inhibition of Rev.Stats. 3224 when it sets up no extraordinary circumstances rendering that section inapplicable and exhibits no reason why the legal remedy of payment under protest and action to recover would not be adequate. P. [259 U. S. 19](#) .

274 F. 639 reversed.

Appeal from a decree of the district court permanently enjoining a collector and his deputy from collecting an assessment under the Federal Child Labor Tax Law. *See also Child Labor Tax case, post 20.*

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MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

The decree entered herein by the district court and appealed from, directly, to this Court, under 238 of the Judicial Code, recited that the complainants operated a manufacturing plant for the production of cotton goods in Gaston County, North Carolina; that the defendant was a federal collector of internal revenue; that, on the ground that complainants had employed children in their factory within the limits of ages prescribed in 1200, the act of Congress, known as the Child Labor Tax Law, approved February 24, 1919 (40 Stat. 1057), they were under its terms assessed the sum of \$2,098.06; that they filed a claim for abatement of the same, which was denied, that the collector was about to make the exaction by distraining complainants' property, levying on it and selling it, that the act of Congress purporting to authorize the assessment was invalid under the Constitution of the United States, and on these grounds permanently enjoined the collector from proceeding to collect the assessment.

An examination of the bill shows no other ground for equitable relief than as stated in the order. The bill does aver "that these your petitioners have exhausted all

legal remedies and it is necessary for them to be given

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equitable relief in the premises," but there are no specific facts set forth sustaining this mere legal conclusion. Section 3224, Rev.Stats., provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." The averment that a taxing statute is unconstitutional does not take this case out of the section. There must be some extraordinary and exceptional circumstance not here averred or shown to make the provisions of the section inapplicable. *Dodge v. Brady*, [240 U. S. 122](#) , [240 U. S. 126](#) . In spite of their averment, the complainants did not exhaust all their legal remedies. They might have paid the amount assessed under protest and then brought suit against the collector to recover the amount paid with interest. No fact is alleged which would prevent them from availing themselves of this form of remedy.

The decree of the district court is reversed, and the cause remanded with directions to dismiss the bill.

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