

**Smallwood Vs. Gallardo**

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**Court :** US Supreme Court

**Decided On :** Oct-24-1927

**Appeal No. :** 275 U.S. 56

**Appellant :** Smallwood

**Respondent :** Gallardo

**Judgement :**

Smallwood v. Gallardo - 275 U.S. 56 (1927)

U.S. Supreme Court Smallwood v. Gallardo, 275 U.S. 56 (1927)

**Smallwood v. Gallardo**

**Nos. 211, 212, 213, 214, 215, 216**

**Argued October 5, 1927**

**Decided October 24, 1927**

**275 U.S. 56**

*CERTIORARI TO THE CIRCUIT COURT OF APPEALS*

*FOR THE FIRST CIRCUIT*

## SYLLABUS

1. To "maintain" a suit is to uphold, continue on foot, and keep from collapse a suit already begun. P. [275 U. S. 61](#) .

2. There is no vested right to an injunction against illegal taxes, and bringing a bill does not create one. P. [275 U. S. 61](#) .

3. In the Act of March 4, 1927, amending the Act to provide a civil government for Porto Rico, the provision that no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico shall be maintained in the District Court of the United States for Porto Rico applies to suits which were decided in the district court and circuit court of appeals before the date of the Act and afterwards brought here by certiorari, and makes necessary that the decrees, which dismissed the bills on the merits, be reversed with directions to dismiss for want of jurisdiction. P. [275 U. S. 61](#) .

4. A court which has been deprived by statute of jurisdiction over a pending suit to enjoin a tax has no jurisdiction to dispose of money deposited in the registry by the plaintiff to secure the tax except to return it to the depositor. P. [275 U. S. 62](#) .

16 F.2d 545 reversed.

Certiorari, 274 U.S. 732, to review a decision of the Circuit Court of Appeals for the First Circuit which affirmed decrees of the United States District Court for

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Porto Rico dismissing the bills in suits to enjoin collection of taxes. The decision of the court below is reported *sub nom. Porto Rico Tax Appeals*, 16 F.2d 545.

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MR. JUSTICE HOLMES delivered the opinion of the court.

These are suits brought in the District Court of the United States for Porto Rico to restrain the collection of taxes imposed by the laws of Porto Rico. On January 7, 1927, the circuit court of appeals affirmed decrees of the district court dismissing the bills. On March 4, 1927, by c. 503, 7, of the Act of that year, Congress provided that 48 of the Act to provide a civil government for Porto Rico should be amended to read as follows:

"Sec. 48. That the Supreme and District Courts of Porto Rico and the respective judges thereof may grant writs of habeas

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corpus in all cases in which the same are grantable by the judges of the district courts of the United States, and the district courts may grant writs of mandamus in all proper cases."

"That no suit for the purpose of restraining the assessment of collection of any tax imposed by the laws of Porto Rico shall be maintained in the District Court of the United States for Porto Rico."

44 Stats. 1418, 1421.

Writs of certiorari were granted by this Court on May 16, 1927, but argument was ordered on the question whether the cases had not become moot by virtue of that Act.

Apart from a natural inclination to read them more narrowly, there would seem to be no doubt that the words of the statute covered these cases. To maintain a suit is to uphold, continue on foot and keep from collapse a suit already begun. And although the circuit court of appeals, in *Gallardo v. Porto Rico Ry., Light & Power Co.*, 18 F.2d 918, 923, with some color of authority, has held that the Act does not apply, we cannot accept that view. To apply the statute to present suits is not to give it retrospective effect, but to take it literally and to carry out the policy that it embodies of preventing the island from having its revenues held up by injunction, a policy no less applicable to these suits than to those begun at a later day, and a

general policy of our law. Rev.Stat. 3224. So interpreted the Act as little interferes with existing rights of the petitioners as it does with those of future litigants. There is no vested right to an injunction against collecting illegal taxes, and bringing these bills did not create one. *Hallowell v. Commons*, [239 U. S. 506](#) , [239 U. S. 509](#) . This statute is not like a provision that no action shall be brought upon a contract previously valid, which in substance would take away a vested right if held to govern contracts then in force. It does not even attempt to validate previously unlawful taxes. It simply makes it plain that these cases are not excepted from the well

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known general rule against injunctions. It does not leave the taxpayer without power to resist an unlawful tax, whatever the difficulties in the way of resisting it.

The sequence of the clause in the amendment after others giving authority to grant writs of habeas corpus and mandamus shows that it puts a limit to the power of the court. See *Dodge v. Osborn*, [240 U. S. 118](#) , [240 U. S. 119](#) . That is a question of construction and common sense. *Fauntleroy v. Lum*, [210 U. S. 230](#) , [210 U. S. 235](#) . Therefore, when the district court required a deposit in the registry of a sum to secure payment of the tax in dispute, the money should be returned, as there is no jurisdiction to dispose of it otherwise.

Of course, it does not matter that these cases had gone to a higher court. When the root is cut, the branches fall. [McNulty v. Batty](#), 10 How. 72.

As the bills were dismissed upon the merits (with partial injunction in *Valdes v. Gallardo* and *Finlay, Waymouth & Lee, Inc. v. Gallardo* ) the decrees should be reversed and the cases sent back with directions to dismiss for want of jurisdiction.

*Decrees reversed and bills ordered to be dismissed.*

*Money deposited in court for payment of taxes in case of adverse decision to be returned.*

MR. JUSTICE SUTHERLAND was absent.

