

In the Supreme Court of the Hawaiian Islands—In Chambers.

C. A. BROWN, COLLECTOR OF TAXES, vs. H. SMITH, GUARDIAN OF ANNIE WATSON, A MINOR.

Defendant's Appeal from the Police Court of Honolulu.

BEFORE DOLE, J. Decision.

This is a suit for taxes brought by the tax collector for the Island of Oahu, appointed in April, A.D., 1889, under the statute of 1888, amending and regulating "the law relating to the appointment and tenure of office of tax assessors and tax collectors and the assessment and collection of taxes."

He claims ten dollars for taxes assessed against the person and property of said defendant on the books of the assessor of taxes for the District of Honolulu, Island of Oahu, for the year 1888, and states in his testimony that "on the tax collector's book for 1888 for Honolulu, book 2, p. 853, twenty dollars is assessed to estate of Watson for lot on School street."

The defendant testifies that he made no return in 1888, because the land was leased, and the tenant covenanted to pay the taxes; and that his ward is tenant in common of one-half of the land.

The defendant claims that he is not liable for this tax but that the tenant is liable, both on account of his covenant to pay the taxes, and because he was in possession of the premises; also that he is not liable because the property was not assessed to him but to the estate of Watson, and thirdly, because the plaintiff has no authority to bring this action for taxes assessed previous to his appointment.

Upon the first point, it is clear to me that a landlord is liable for the taxes upon the value of the land. The statute of 1882 relating to internal taxes, Section 33, makes it incumbent upon the owner of real property to make a return thereof to the assessor. And Section 25 provides that "the interest of every person in any property shall be separately assessed, and every person shall be liable to taxation in respect of the full cash value of his interest in such property."

I am aware that there are other sections of the statute from which it may be reasonably argued, that tenants also are required to make return of real estate in their possession under leases, and are therefore liable for the taxes thereof. However this may be, there is no doubt in my mind that landlords are liable. The fact of the covenant of the tenant to pay the taxes does not affect the landlord's liability; such covenant is a private agreement and does not modify the methods of assessing and collecting taxes fixed by law.

As to the second ground of defense, i. e., that defendant is not liable because the property was not assessed to him but to the Watson estate; I find that the law provides in Section 21, that every executor, administrator or guardian shall be assessed separately in respect of each property or trust which he represents, and shall be chargeable with the tax payable in respect thereof in the same manner as if such property were his own, and he shall be assessed respectively in his name as representative of the property or trust he represents. This provision of the statute has been disregarded in every particular in this case. Not only is the property of the defendant's ward assessed to the Watson estate instead of to the defendant, but the interest of the ward is assessed in a lump sum with the interest of the other tenant in common instead of being assessed separately as required by the statute. I find that such an assessment is not binding upon the defendant. The case of Wood vs. Torrey, administrator, (97 Mass. 322) supports this conclusion, under a similar statute. The Court said, "The tax not having been lawfully assessed, and there being no provision of law which authorizes its collection from him, there must be judgment for the defendant."

Upon the third ground of defense that the plaintiff has no authority to bring this action, I also find for the defendant. By the Act of 1888 relating to the assessment and collection of taxes, the assessor created by such Act is required to perform the duties formerly required to be performed by the tax assessors and collectors under the old law. These collectors were appointed annually and it was among their duties to collect the annual taxes, that is the taxes assessed in the year of their incumbency, and their authority for such collection was the tax list prepared by the assessor for that year. There was nothing in the old statute that authorized the collector to collect taxes assessed in a former year, nor is he made responsible for neglect of making such collections; consequently, the present assessor, who both assesses and collects, and who has the same duties and responsibilities as the old assessors and collectors, has no authority to collect back assessments as is attempted in this case,

by the new statute, but I find no such authority. Moreover, if it should be claimed that the present assessor, holding office during good behavior, continues his authority to collect unpaid assessments in subsequent years of his tenure of office, such a contention, even if correct, could not apply to the present case in which the assessment in question was made by his predecessor, and he received upon his appointment no authority to collect back assessments. (Crapo vs. Stetson, 8 Metcalf 393, and Smith vs. Keniston, 100 Mass. 173).

Let judgment be entered for defendant. Creighton for plaintiff; defendant in person. Honolulu, Nov. 29, 1889.

Supreme Court of the Hawaiian Islands—In Chambers.

THE HAWAIIAN GOVERNMENT vs. BISHOP & COMPANY.

Bill in Equity for Discovery—Demurrer.

BEFORE MR. JUSTICE DOLE. Decision.

The bill recites substantially that C. A. Brown is the assessor for the first taxation division, which corresponds with the Island of Oahu, and that the defendants, as bankers, made in July last an incomplete, defective and insufficient return of property held in custody by them in the said taxation division.

The bill further recites that it is necessary for the proper performance of the duties of the said assessor and the due and proper assessment of property for taxation in said taxation division, and more especially the property of defendants within the same that the defendants shall furnish and disclose to the plaintiff a full, true and particular statement of the deposits in their bank, and the names of the depositors and the amounts of the several deposits standing to the credit of the depositors respectively on the first day of July last; and that such information was requested of the defendants and refused by them, and can be obtained by the plaintiff only through relief and discovery in a court of equity.

The bill prays that defendants may answer the interrogatories attached, which correspond with the recitals of the bill. The defendants demurred to the bill.

The plaintiff claims to be entitled to the discovery prayed for, for the sake of enabling the assessor to properly perform his general duties, to wit: the assessment of property on the Island of Oahu, and especially to properly assess the property of defendants.

The defendants contend that the statute gives the plaintiff no right to a discovery and that the allegations of the bill do not show any equitable right.

The statute calls upon every person to state in his return moneys belonging to him deposited with a bank. If on an appeal from an assessment, the question should arise as to the taxpayer's existing deposit in a bank—on the first day of July, the Government, if entitled to know, which is doubtful, would undoubtedly have the right to subpoena the banker to testify on this point. But to say that on general grounds and to facilitate the work of an assessor, the Government is entitled to the private information of a banker in regard to the confidential relations between him and his clients or customers, and this when there are no pending proceedings requiring such information, is probably going too far.

As to the right of the plaintiff to have the discovery prayed for, for the proper assessment of the defendants' property, I doubt whether any such right exists, certainly it is not conferred by the statute; but I feel that I need not go exhaustively into this question, because I am satisfied that if the information desired was obtained by the plaintiff it could not facilitate the assessment of the defendants' property, for these reasons: When ordinary deposits are made in a bank of deposit, the property in the money passes to the bank, which becomes the debtor of the depositor. (Downes vs. Phoenix Bank, 6 Hill 297, and Commercial Bank vs. Hughes, 17 Wend. 94. Newmark's Bank Deposits, S. 10). The banker is therefore liable for the taxes upon all that part of such deposits which is in his possession or control on the first day of July, but as he may have loaned or otherwise invested a portion of such deposits before the first day of July, any statement of his account with his depositors as of the first day of July, would be without significance as to the extent of his personal property upon that day liable to a property tax, and could not facilitate the assessment of the defendants' property; neither could such statement, upon the same principle of law, aid in the general assessment of property in the taxation division mentioned.

The demurrer will therefore be allowed and an order signed to that effect. W. A. Whiting for plaintiff; F. M. Hatch for respondent.

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