

## THE INVULNERABILITY OF JUDGES' SALARIES TO INCOME TAX—A RE-EXAMINATION

The maintenance of judicial independence is an aspect of our system of government which commands the zealous protection of our Constitution and deserves the serious concern of the people. On the integrity of our courts depend, to a great degree, the success or failure of our democratic process. It is due to an awareness of the fact that economic factors influence to a certain extent one's independence of action that the framers of our Constitution thought it wise to include Section 9, Article VIII which provides that

"The Members of the Supreme Court and all judges of inferior courts shall hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office. They shall receive such compensation as may be fixed by law which shall not be diminished during their continuance in office. \* \* \*"<sup>1</sup>

This clause has given rise to a controversy revolving around this question: Is an income tax collected on a judge's salary a diminution of his compensation which is prohibited by the constitution?

In the case of *Perfecto v. Meer*,<sup>2</sup> the Supreme Court of the Philippines, relying chiefly on the United States Supreme Court decision in *Evans v. Gore*,<sup>3</sup> held that an income tax imposed on the salary of a member of the judiciary amounts to a diminution of his compensation during his continuance in office and, therefore, is invalid under the constitution. This ruling was reiterated in the later case of *Endencia v. David*.<sup>4</sup>

After the promulgation of the decision in the *Perfecto* case but before the *Endencia* case arose, the Congress of the Philippines, perhaps dissatisfied by the ruling in the former, enacted a law<sup>5</sup> which provided:

"Sec. 13. No salary wherever received by any public officer of the Republic of the Philippines shall be considered as exempt from the income tax, payment of which is hereby declared not to be a diminution of his compensation fixed by the Constitution or by law."

Did this Act justify or legalize the collection income tax on the salaries of judges? The Supreme Court of the Philippines in the *Endencia* case answered in the negative, saying that the enactment was "a clear example of interpretation or ascertainment of the meaning of the

<sup>1</sup> I ARUECO, J., *THE FRAMING OF THE CONSTITUTION*, 486 (1936).

<sup>2</sup> G.R. No. L-2348, February 27, 1950.

<sup>3</sup> 253 U.S. 245 (1920).

<sup>4</sup> G.R. Nos. L-6355 & 6356, August 31, 1953.

<sup>5</sup> R. A. 590.

phrase 'which shall not be diminished during their continuance in office,' found in Section 9, Article VIII of the Constitution," and, therefore, was "an invasion of the well-defined and established province and jurisdiction of the judiciary."

Thus, the prevailing rule is that the government cannot collect income tax on the salaries of judicial officers without violating the judicial compensation clause.

It is difficult to accept the law as interpreted by the Supreme Court.

Three important decisions of the United States Supreme Court passed on the question of the untouchability or not of judges' salaries. The Philippine Supreme Court relied on the first two of these cases in the *Perfecto* case. It ignored the third and latest.

*Evans v. Gore*, the first of these cases, related to the Federal Income Tax of February 24, 1919 which expressly provided that taxable income shall include "the compensation of the judges of the Supreme Court and inferior courts in the United States." Under such Act, Walter Evans, United States judge since 1899, paid income tax on his salary.

The U.S. Supreme Court, in holding held that the tax was a diminution of the salary, gave the impression that it was so because it imposed upon the salary of a federal judge appointed prior to the passage of the taxing act. Such an act was invalid.

In the *Miles v. Graham*<sup>6</sup> case, Samuel J. Graham assumed office as judge of the U.S. Court of Claims on September 1, 1919 when the same income tax law of February 24, 1919 had already been in force.

Here, the Supreme Court went one step ahead of *Evans v. Gore* by ruling that "a judge must be paid the full salary which is named in the law appointing him or fixing his compensation, and this cannot be varied by subjecting it to an income tax, even though the tax was in existence at the time of his appointment."

The last case, *O'Malley v. Woodrough*,<sup>7</sup> however, repudiated the rulings in the past two cases.

Here, Judge O'Malley paid under protest the income tax levied on his salary as judge. The tax was imposed under a taxing statute which was existing at the time he was appointed to the judiciary. The Supreme Court of the United States denied the claim for recovery and held that Judge O'Malley was subject to the payment of income tax, saying:

"To suggest that a non-discriminatory income tax makes inroads upon the independence of judges who took office after Congress had thus charged them with the common duties of citizenship by making them bear their aliquot share of the cost of maintaining the government is to trivialize the great historic experience on which the framers based the safeguard of the constitutional provision concerned."

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<sup>6</sup> 268 U. S. 501 (1925).

<sup>7</sup> 307 U.S. 277.

The O'Malley case modified the Evans case and over ruled the case of Graham, in the sense that an income tax may now be collected on the salary of a judge appointed subsequent to the passage of a statute imposing income tax on his salary.

This state of the law was recognized in *Baker v. Commissioner of Internal Revenue*<sup>8</sup> where the Fourth Circuit Court of Appeals expressly declared: "Then came *O'Malley v. Woodrough* which expressly overruled *Miles v. Graham* and declared the income tax valid as to a judge appointed after the passage of the taxing statute."

Frank R. Strong, an author on American constitutional law, has commented: "The principal case (*O'Malley v. Woodrough*) overruled *Miles v. Graham* which had invalidated the application of the federal income tax to the salary of a federal judge appointed after the enactment of the Revenue Act of 1918 x x x"<sup>9</sup>

Notwithstanding these opinions, the majority of the Philippine Supreme Court, in the Perfecto case, refused to admit that and the dissent of Justice Ozaeta was as a voice lost in the wilderness of judicial stubbornness.

It is not the United States court alone that holds that the prohibition against the diminution of judges' salaries includes the prohibition against the imposition of income tax on such salaries.

The South African Appellate Division, in the case of *Krause v. Commissioner*,<sup>10</sup> upheld the susceptibility of judges' salaries to income tax.

In Australia, the case of *Cooper v. Commissioner* promulgated in 1907 is authority for a similar holding.<sup>11</sup>

In England, the Judicial Committee of the Privy Council has interpreted a similar prohibition in favor of the taxing power in the case of *The Judges v. Attorney General of Saskatchewan*<sup>12</sup> decided in 1937. The Committee was unanimous in the opinion that the tax did apply. "Neither the independence nor any other attribute of the judiciary," said the opinion, "can be affected by a general income tax which charges their official incomes on the same footing as the income of other citizens."

The rulings in the Gore and Graham cases do not even find general acceptance in the different states of the Union where similar facts involving the recovery of income taxes by judges who paid under protest were presented to the courts for decision.<sup>13</sup>

<sup>8</sup> 149 F (2d) 342 (C.C.A. 4th, 1945).

<sup>9</sup> Strong, *American Constitutional Law*, 1180.

<sup>10</sup> 46 So. Afr. L. J., 374.

<sup>11</sup> Chief Judge Bond, diss. in *Gordy v. Dennis*, 5 A. 2d 69, March 29, 1939, C.A. of Md.

<sup>12</sup> 53 Law T. Rep. 464 (1937).

<sup>13</sup> *Long v. Watts*, 183 N.C. 99, 110 SE 765 (1922); *State ex rel. Wickham v. Nygaard*, 150 NW 513 (1915); *Taylor v. Gehnen*, 45 SW 2d 59 (1931); *Poorman v. State Board*, 45 P 2d 307 (1935); *DuPont v. Green*, Del. 195 A. 273 (1937).

The opinion of legal scholars in the United States shows a strong opposition to the Gore and Graham decisions. Justice Frankfurter, who penned the decision in *O'Malley v. Woodrough*, cited a number of articles published in books and law school publications which revolted against the Gore and Graham doctrine.

It is only the Philippine court which persists in following this doctrine which had been discredited.

The court argued that the rule forbidding taxation of judges' salaries is aimed at fortifying the independence of the judiciary, at attracting good and competent men to the bench, and at promoting that "independence of action and judgment which is essential to the maintenance of the guaranties, limitations, and pervading principles of the Constitution, and to the administration of justice without respect to persons, and with equal concern for the poor and the rich."<sup>14</sup>

Could the mere payment of income tax which everybody else pays impair the independence of our judicial officers? Can their tax exemption insure or contribute to the acquisition of that coveted manner of unencumbered thinking? To these questions, Charles B. Lowndes answers: "To exempt a limited hierarchy of better paid officers from the financial burdens of citizenship outrages every sentiment of constitutional democracy."<sup>15</sup>

Justice Holmes, dissenting in the Gore case, said: "The exemption of salaries from diminution is intended to secure the independence of the judges, on the ground, as it was put by Hamilton in the Federalist (No. 79) that 'a power over a man's subsistence amounts to a power over his will.' That is a very good reason for preventing attempts to deal with a judge's salary as such, but seems to me no reason for exonerating him from the ordinary duties of a citizen, which he shares with all others. To require a man to pay the taxes that all other men have to pay cannot possibly be made an instrument to attack his independence as a judge."

Justice Montemayor tried to explain, in the *Endencia* case, that there really was an evident diminution of compensation if judges' salaries are subjected to income tax, that "under the present system of withholding the income tax at the source, x x x said official (the judge) actually does not receive his salary in full, because the income tax is deducted therefrom every pay, x x x".

However, there appears to be no difference if the income tax were collected at the source instead of after the whole amount of the salary

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<sup>14</sup> *Evans v. Gore, supra., note 3.*

had been placed in the officer's hands. It is futile to differentiate between an income tax collected at the source and one collected later on after the salary is received and mingled with other income.

It is hoped that our Supreme Court justices should, at the first opportunity, courageously admit their error in the Perfecto and Endencia cases and point out that they can pay their income taxes and still remain independent.

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