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Constitutional Law--The Guaranty Clause--Breach Thereof as Justification for Refusal to Pay Federal Taxes

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CONSTITUTIONAL LAW — THE GUARANTY CLAUSE — BREACH THEREOF AS JUSTIFICATION FOR REFUSAL TO PAY FEDERAL TAXES. — Plaintiff, a citizen of Illinois, failed to file his income tax report as required by the Revenue Act of 1928,[1] and, threatened with compulsion, sought relief in the federal courts. Appearing *pro se*, he asked for an injunction against the revenue collector on two grounds: (1) unconstitutionality of the Sixteenth Amendment,[2] and (2) failure of the National Government to enforce the guaranty clause of the Federal Constitution. *Keogh v. Neely*.[3]

After his first contention had been rendered untenable by a decision of the Supreme Court,[4] plaintiff shifted the emphasis of his argument to his second point, which, though perfunctorily waved aside by the Circuit Court without attempt at rationalization, is of such a nature as to be of particular interest. Because, plaintiff contended, the national government had not enforced section 6 of article 4 of the Illinois constitution, providing for decennial reapportionment of that state, it had violated section 4 of article 4 of the Federal Constitution, guaranteeing republican governments to the several states, and, as a result of that violation, had "ceased to have authority under the laws of the United States to levy and collect taxes within the state of Illinois from the citizens thereof".

For his first premise, plaintiff arbitrarily directed the attention of the court to the non-existence of a republican form of government in Illinois. The comparatively early Supreme Court decision of *Luther v. Borden*[5] placed the question whether the guaranty clause has been violated entirely in the hands of Congress, and subsequent holdings on the point have, without exception, declared the forms of state governments to be a political and not a judicial concern.[6] When the two houses of the national legisla-

[1] 26 U. S. C. A. (1926) § 2001 *et seq.*

[2] In U. S. v. Sprague, 44 F. (2d) 967 (D. C. N. J. 1930) the District Court held the Eighteenth Amendment invalid because of its ratification by state legislatures rather than by constitutional conventions. (Const., art 5 and Amendment 18). The Sixteenth Amendment, under which the Revenue Act of 1928 was passed, was also ratified by state legislatures.

[3] 50 F. (2d) 685 (C. C. A. 7th 1931).

[4] Between filing of briefs, in Keogh v. Neely, and presentation of argument, the District Court holding in U. S. v. Sprague *(supra* n. 2) was reversed by the Supreme Court. 282 U. S. 716, 51 S. Ct. 220 (1931).

[5] 7 How. 1, 12 L. Ed. 581 (1849).

[6] Texas v. White, 7 Wall. 700, 19 L. Ed. 130 (1868); Taylor v. Beckham, 178 U. S. 548, 20 S. Ct. 890 (1900); Marshall v. Dye, 231 U. S. 250, 34 S. Ct. 92 (1913); O'Neill v. Leamer, 239 U. S. 244, 36 S. Ct. 54 (1915); Mountain Timber Co. v. Washington, 239 U. S. 219, 37 S. Ct. 260 (1917). In Pacific States Telephone and Telegraph Co. v. Oregon, 223 U. S. 118, 32 S. Ct. 224 (1912), the Supreme Court, speaking through Mr. Chief Justice White, said of Luther v. Borden, "The fundamental principles . . . . thus announced

ture seated their members from Illinois,[7] they recognized the Illinois government as republican in form, and their decision was beyond even the attack of the Supreme Court.[8]

Conceding, however, the existence of a non-republican government in Illinois, plaintiff's state citizenship, whether it is defective, or even non-existent, is entirely irrelevant to his duties and liabilities to the national government. The doctrine of dual citizenship, first definitely phrased in the *Slaughterhouse Cases*,[9] is too familiar to admit of comment.[10] The Sixteenth Amendment authorizes the collection of the taxes in question here "without appropriation among the several states, and without regard to any census or enumeration". If plaintiff were a citizen of one of the possessions of the United States, and in no other way a citizen of the United States, or of any of the states, payment of the tax on his income, derived from sources within the United States, would be enforced against him.[11]

The essence of plaintiff's case was a contention that the Constitution should be interpreted as a contract, endowed with consideration and conditions precedent, and he has presented it by an ingenious manipulation of constitutional principles, representative of a type of case too often thrust upon the courts for consideration. Fortunately plaintiff did not pursue his Circuit Court argument to its logical conclusion, or he should have found himself in a tribunal deriving its very right of existence from the Congress[12] whose authority over him he denies. Legal ethics were perhaps saved from violation because the plaintiff was in court *pro se*. Nevertheless, hypothetically at least, plaintiff occupies two positions: (1) that of a plaintiff who had burdened the federal courts with a demand for the protection of absurd claims, and (2) that of an attorney who had accepted a futile case and demanded a relief which would, in effect, be a judicial recognition and enforcement of the right of secession.

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. . . . have never been questioned or doubted since, and have afforded the light guiding the orderly development of our constitutional system from that decision to the present time".

[7] The rights of the Representatives and Senators from Illinois to their seats in Congress had not been questioned.

[8] *Supra* n. 5 at 42.

[9] 16 Wall. 36, 21 L. Ed. 394 (1872).

[10] For a good discussion of this doctrine see the opinion in Hammerstein v. Lyne, 200 Fed. 165 (1912).

[11] 26 U. S. C. A. (1926) § 2252.

[12] Const., art. 3, § 2, cl. 1. Only the Supreme Court derives its authority from the Constitution itself. All inferior federal courts exist by authority of, and at the discretion of, Congress. 1 U. S. C. A. (1926) art. 3, § 2, cl. 1, and cases there cited.