

9FED.CAS.—44

Case No. 5,041.

FRANCIS v. SLACK.

[4 Cliff. 186; 16 Int. Rev. Rec. 134.]¹

Circuit Court, D. Massachusetts.

May Term, 1872.

LIMITATIONS—ACTIONS AGAINST COLLECTORS OF INTERNAL REVENUE.

Judgment for defendant was ordered in this case upon the ground that the claim of the plaintiff was barred by the act of July, 1862, as construed by the supreme court.

The case was submitted upon an agreed statement of fact, of which the following is the substance:

This is an action of contract to recover the amount of taxes assessed, under the internal revenue laws of the United States, upon the plaintiff's share in the undivided profits of two corporations, in each of which he was a stockholder, made during the years 1862 and 1863; and for the purpose of this trial it is agreed: That the defendant [Charles W. Slack] Was and is the United States collector of internal revenue for the Third congressional district in the commonwealth of Massachusetts; and that the plaintiff [Nathaniel Francis] was a resident of that district That the plaintiff, from the first day of January, 1862, till the commencement of this action, owned a certain number of shares in the capital stock of two corporations,—the Saxonville Mills and the Roxbury Carpet Company,—organized under the laws of the said commonwealth, and doing business therein. That, in each of the years from 1862 to 1869 inclusive, each of these corporations made certain profits from its business, which were not distributed in such year among its stockholders, but remained undivided in its treasury. That the plaintiff, through ignorance of the law, did not include his share of the said undivided profits in making the returns of his income for those years. That in March, 1870, an assistant assessor for the said district, by examining the returns of the said corporations to the said commonwealth, discovered that each had made profits which were not divided as aforesaid, and reported the facts to” the assessor of the district, who, on the 16th of that month, sent for the plaintiff, and told him that he should have returned his share in such profits as income in each year from 1862 to 1869 inclusive. That the plaintiff replied, that he desired to pay all that was justly due to the government; and that, if he ever owed the money, he owed it still, and wished to pay it. The assistant assessor then suggested that the plaintiff might make an amended return of income for each of said years, returning his share for such year in the said undivided profits; and offered to prepare them. To this the plaintiff assented, and, when they were prepared, signed them. Before he did so, the assessor advised him to consult counsel, but he replied, that he had confidence in the assessor, and was satisfied that he would not make any demand on him which the law did not justify. That the assessor assessed

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upon his share in such undivided profits, realized by the said corporations during the year 1862, taxes amounting to the sum of \$2,192.47; and, on his share in such profits realized during the year 1863, taxes amounting to the sum of \$1,796.20. That the defendant thereafter sent to the plaintiff notices in a printed form, a copy of which is hereto annexed, and marked "A;" upon and after the receipt of which, to wit, on the 30th of March, the plaintiff paid the said taxes to the defendant, who on the same day paid them over to the United States treasury. That on or before June 1, 1870, the plaintiff filed a claim, in the manner prescribed by law, for the refunding of said taxes, a copy of which is hereto annexed, and marked "B," which was rejected by the commissioner of internal revenue on the 13th of April, 1871. That this action was commenced Aug. 25, 1871.

If, upon this statement of facts, the plaintiff ought to recover, judgment is to be entered for him for the amount to which the court shall find that he is entitled, with interest and costs; otherwise, for the defendant

A.

February.

Third District Monthly List Massachusetts. United States Internal Revenue.

Boston, March 19, 1870, Office, 8 Bromfield Street.

To Nathaniel Francis.

Div. 8. Sir,—A duty or tax, under the excise act of the United States, has been assessed upon you as follows; and you are requested to pay the same at this office, No. 8 Bromfield street, between the hours of 9 A. M., and 2 P. M., on or before the last week-day of this month; and, unless paid within that time, it will become my duty to collect the same with a penalty of five per centum additional, and interest at one per centum per month.

Dol's, cts.

On Income, 1862, 2,192 47.

Charles W. Slack, Collector.

The collector has received renewed instructions (Sept 28, 1869), forbidding remission of penalty for delinquency. "The law is imperative, and leaves no discretion to either commissioner or collector in such cases."

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(A notice in this form was sent for each year, differing from the above only in the year inserted after "income," and the amount of the tax claimed.)

Moorfield Storey, C. W. Storey, and H. W. Paine, for plaintiff.

F. W. Hurd, Asst. U. S. Atty, for defendant.

CLIFFORD, Circuit Justice. The court direct that judgment be entered for the defendant, upon the ground that the claim of the plaintiff is barred by the act of congress on that behalf, as construed by the supreme court in the case of *Nichols v. U. S.* [7 Wall. (74 U. S.) 122]; and *Collector v. Hubbard*, 12 Wall. [79 U. S.] 14; *Brown v. Sauerwein*, 10 Wall. [77 U. S.] 218.

¹ [Reported by William Henry Clifford, Esq., and here reprinted by permission. 16 Int. Rev. Rec. 134, contains only a partial report]