paying any inheritance or other taxes, which might be properly chargeable against it, and for other administration charges and for distribution. There being no congressional legislation providing for the administration of such intestate property, the state law is ap-
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plicable, *and we think the administrator is a competent party to assert the right of the estate, whatever it may be, to rents or royalties derived from the land during Redeagle's lifetime. If Ewert has succeeded to the rights of the heirs, he will, of course, receive their distributive shares.

[9] It is alleged in the petition, and not denied, that Ewert incumbered the lands involved with a mortgage, and against this indemnification is prayed for, which should be granted if it continues a subsisting lien.

It results that the decree of the Circuit Court of Appeals must be reversed, and the cause remanded to the District Court, with directions to enter a decree canceling the deeds of Redeagle to Smith of March 10, 1909, of Smith to Ewert, dated April 23, 1910, and of Redeagle to Ewert, dated July 5, 1918, providing for an accounting for rents and profits and royalties, and for indemnification from any subsisting lien of any mortgage by Ewert upon the land, and for further proceedings in conformity with this opinion.

Reversed and remanded.

(259 U. S. 20)

BAILEY v. DREXEL FURNITURE CO.

CHILD LABOR TAX CASE.

(Argued March 8, 1922. Decided May 15, 1922.)

No. 657.

1. Internal revenue ⟸2—Child Labor Tax Law is manifestly regulatory and not taxing.

The Child Labor Tax Law (Act Feb. 24, 1919, tit. 12, § 1200 et seq. [Comp. St. Ann. Supp. 1919, §§ 6336⅞a to 6336⅞h]), imposing a tax of 10 per cent. of the net income on a person employing child labor, without distinction as to the amount of the tax between an employer who employs one child one day, and one who employs a large number for the entire year, and which exempts from the tax an employer who did not know the child was under age, and authorizes, not only the Commissioner of Internal Revenue, but also any person authorized by the Secretary of Labor, to make inspections and reports concerning the employment of such labor, was manifestly intended to regulate the employment of child labor, which is a matter reserved to the states, under Const. Amend. 10, and was not an act imposing a tax, under the power of taxation conferred by Const. art. 1, § 8.

2. Internal revenue ⟸2 — Child Labor Tax Law not valid exercise of taxing power and unconstitutional.

The Child Labor Tax Law, which was designed to regulate child labor and not to collect revenue, as is manifest from its provisions, cannot be sustained as a valid exercise of the taxing power under Const. art. 1, § 8, merely because what was in substance a penalty for violation of the regulations was designated as a tax, even though the court will sustain as a taxing measure an act which imposes a tax so exclusive as to prevent the act taxed.

Mr. Justice Clarke dissenting.

In Error to the District Court of the United States for the Western District of North Carolina.

Action by the Drexel Furniture Company against J. W. Bailey, individually and as Collector of Internal Revenue for the District of North Carolina, to recover the child labor tax paid under protest. Judgment for plaintiff (276 Fed. 452), and defendant brings error. Affirmed.

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*Mr. Solicitor General Beck, of Washing-
D. C., for plaintiff in error.

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*Mr. Wm. P. Bynum, of Greensboro, N. C., for defendant in error.

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*Mr. Chief Justice TAFT delivered the opinion of the Court.

This case presents the question of the constitutional validity of the Child Labor Tax Law. The plaintiff below, the Drexel Furniture Company, is engaged in the manufacture of furniture in the Western district of North Carolina. On September 20, 1921, it received a notice from Bailey, United States collector of internal revenue for the district, that it had been assessed $6,312.79 for having during the taxable year 1919 employed and permitted to work in its factory a boy under 14 years of age, thus incurring the tax of 10 per cent. on its net profits for that year. The company paid the tax under protest, and, after rejection of its claim for a refund, brought this suit. On demurrer to an amended complaint, judgment was entered for the company against the collector for the full amount, with interest. The writ of error is prosecuted by the collector direct from the District Court under section 238 of the Judicial Code (Comp. St. § 1215).

The Child Labor Tax Law is title No. XII of an act entitled "An act to provide revenue and for other purposes," approved February 24, 1919, 40 Stat. 1057, 1138 (Comp. St. Ann. Supp. 1919, §§ 6336⅞a to 6336⅞h). The heading of the title is "Tax on Employment of Child Labor." It begins with section 1200 and includes eight sections. Section 1200 is as follows:

"Sec. 1200. That every person (other than a bona fide boys' or girls' canning club recognized by the agricultural department of a state and of the United States) operating (a) any mine or quarry situated in the United States in which children under the age of sixteen years have been employed or permitted to work during any portion of the taxable year; or (b)

any mill, cannery, workshop, factory, or manufacturing establishment situated in the United States in which children under the age of fourteen years have been employed or permitted to

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*work, or children between the ages of fourteen and sixteen have been employed or permitted to work more than eight hours in any day or more than six days in any week, or after the hour of seven o'clock post meridian, or before the hour of six o'clock ante meridian, during any portion of the taxable year, shall pay for each taxable year, in addition to all other taxes imposed by law, an excise tax equivalent to 10 per centum of the entire net profits received or accrued for such year from the sale or disposition of the product of such mine, quarry, mill, cannery, workship, factory, or manufacturing establishment."

Section 1203 relieves from liability to the tax any one who employs a child, believing him to be of proper age relying on a certificate to this effect issued by persons prescribed by a board consisting of the Secretary of the Treasury, the Commissioner of Internal Revenue, and the Secretary of Labor, or issued by state authorities. The section also provides in paragraph (b) that—

"The tax imposed by this title shall not be imposed in the case of any person who proves to the satisfaction of the Secretary that the only employment or permission to work which but for this section would subject him to the tax, has been of a child employed or permitted to work under a mistake of fact as to the age of such child and without intention to evade the tax."

Section 1206 gives authority to the Commissioner of Internal Revenue, or any other person authorized by him "to enter and inspect at any time any mine, quarry, mill, cannery, workshop, factory or manufacturing establishment." The Secretary of Labor, or any person whom he authorizes, is given like authority in order to comply with a request of the Commissioner to make such inspection and report the same. Any person who refuses entry or obstructs inspection is made subject to fine or imprisonment or both.

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[1] *The law is attacked on the ground that it is a regulation of the employment of child labor in the states—an exclusively state function under the federal Constitution and within the reservations of the Tenth Amendment. It is defended on the ground that it is a mere excise tax levied by the Congress of the United States under its broad power of taxation conferred by section 8, article 1, of the federal Constitution. We must construe the law and interpret the intent and meaning of Congress from the language of the act. The words are to be given their ordinary meaning unless the context shows that they are differently used. Does this law impose a tax with only that incidental restraint and regulation which a tax must inevitably involve? Or does it regulate by the use of the so-called tax as a penalty? If a tax, it is clearly an excise. If it were an excise on a commodity or other thing of value, we might not be permitted under previous decisions of this court to infer solely from its heavy burden that the act intends a prohibition instead of a tax. But this act is more. It provides a heavy exaction for a departure from a detailed and specified course of conduct in business. That course of business is that employers shall employ in mines and quarries, children of an age greater than 16 years; in mills and factories, children of an age greater than 14 years, and shall prevent children of less than 16 years in mills and factories from working more than 8 hours a day or 6 days in the week. If an employer departs from this prescribed course of business, he is to pay to the government one-tenth of his entire net income in the business for a full year. The amount is not to be proportioned in any degree to the extent or frequency of the departures, but is to be paid by the employer in full measure whether he employs 500 children for a year, or employs only one for a day. Moreover, if he does not know the child is within the named age limit, he is not

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to pay; *that is to say, it is only where he knowingly departs from the prescribed course that payment is to be exacted. Scienters are associated with penalties, not with taxes. The employer's factory is to be subject to inspection at any time not only by the taxing officers of the Treasury, the Department normally charged with the collection of taxes, but also by the Secretary of Labor and his subordinates, whose normal function is the advancement and protection of the welfare of the workers. In the light of these features of the act, a court must be blind not to see that the so-called tax is imposed to stop the employment of children within the age limits prescribed. Its prohibitory and regulatory effect and purpose are palpable. All others can see and understand this. How can we properly shut our minds to it?

It is the high duty and function of this court in cases regularly brought to its bar to decline to recognize or enforce seeming laws of Congress, dealing with subjects not intrusted to Congress, but left or committed by the supreme law of the land to the control of the states. We cannot avoid the duty, even though it require us to refuse to give effect to legislation designed to promote the highest good. The good sought in unconstitutional legislation is an insidious feature, because it leads citizens and legislators of good purpose to promote it, without thought of the serious breach it will make in the ark of our covenant, or the harm which will come from breaking down recognized standards. In the maintenance of local self-government, on the one hand, and the national power, on the other, our country has been able to endure and prosper for near a century and a half.

[2] Out of a proper respect for the acts of a co-ordinate branch of the government, this

court has gone far to sustain taxing acts as such, even though there has been ground for suspecting, from the weight of the tax, it was intended to destroy its subject. But in

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the act before *us the presumption of validity cannot prevail, because the proof of the contrary is found on the very face of its provisions. Grant the validity of this law, and all that Congress would need to do, hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the states have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it. To give such magic to the word "tax" would be to break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignty of the states.

The difference between a tax and a penalty is sometimes difficult to define, and yet the consequences of the distinction in the required method of their collection often are important. Where the sovereign enacting the law has power to impose both tax and penalty, the difference between revenue production and mere regulation may be immaterial, but not so when one sovereign can impose a tax only, and the power of regulation rests in another. Taxes are occasionally imposed in the discretion of the Legislature on proper subjects with the primary motive of obtaining revenue from them and with the incidental motive of discouraging them by making their continuance onerous. They do not lose their character as taxes because of the incidental motive. But there comes a time in the extension of the penalizing features of the so-called tax when it loses its character as such and becomes a mere penalty, with the characteristics of regulation and punishment. Such is the case in the law before us. Although Congress does not invalidate the contract of employment or expressly declare that the employment within the mentioned ages is illegal, it does exhibit its intent practically to achieve the latter result by adopting the criteria of wrongdoing and imposing its principal consequence on those who transgress its standard.

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*The case before us cannot be distinguished from that of Hammer v. Dagenhart, 247 U. S. 251, 38 Sup. Ct. 529, 62 L. Ed. 1101, 3 A. L. R. A. 649, Ann. Cas. 1918 E, 724. Congress there enacted a law to prohibit transportation in interstate commerce of goods made at a factory in which there was employment of children within the same ages and for the same number of hours a day and days in a week as are penalized by the act in this case. This court held the law in that case to be void. It said:

"In our view the necessary effect of this act is, by means of a prohibition against the movement in interstate commerce of ordinary commercial commodities, to regulate the hours of labor of children in factories and mines within the states, a purely state authority."

In the case at the bar, Congress in the name of a tax which on the face of the act is a penalty seeks to do the same thing, and the effort must be equally futile.

The analogy of the Dagenhart Case is clear. The congressional power over interstate commerce is, within its proper scope, just as complete and unlimited as the congressional power to tax, and the legislative motive in its exercise is just as free from judicial suspicion and inquiry. Yet when Congress threatened to stop interstate commerce in ordinary and necessary commodities, unobjectionable as subjects of transportation, and to deny the same to the people of a state in order to coerce them into compliance with Congress' regulation of state concerns, the court said this was not in fact regulation of interstate commerce, but rather that of state concerns and was invalid. So here the so-called tax is a penalty to coerce people of a state to act as Congress wishes them to act in respect of a matter completely the business of the state government under the federal Constitution. This case requires as did the Dagenhart Case the application of the principle announced by Chief Justice Marshall in McCulloch v. Maryland, 4 Wheat. 316, 423 (4 L. Ed. 579), in a much-quoted passage:

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*"Should Congress, in the execution of its powers, adopt measures which are prohibited by the Constitution; or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the government; it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land."

But it is pressed upon us that this court has gone so far in sustaining taxing measures the effect and tendency of which was to accomplish purposes not directly within congressional power that we are bound by authority to maintain this law.

The first of these is Veazie Bank v. Fenno, 8 Wall. 533, 19 L. Ed. 482. In that case, the validity of a law which increased a tax on the circulating notes of persons and state banks from one per centum to 10 per centum was in question. The main question was whether this was a direct tax to be apportioned among the several states "according to their respective numbers." This was answered in the negative. The second objection was stated by the court:

"It is insisted, however, that the tax in the case before us is excessive, and so excessive as to indicate a purpose on the part of Congress to destroy the franchise of the bank, and is, therefore, beyond the constitutional power of Congress."

To this the court answered:

"The first answer to this is that the judicial cannot prescribe to the legislative departments of the government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the Legislature is not to the courts, but to the people by whom its members are elected. So if a particular tax bears heavily upon a corporation, or a class of corporations, it cannot, for that reason only, be pronounced contrary to the Constitution."

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*It will be observed that the sole objection to the tax here was its excessive character. Nothing else appeared on the face of the act. It was an increase of a tax admittedly legal to a higher rate and that was all. There were no elaborate specifications on the face of the act, as here, indicating the purpose to regulate matters of state concern and jurisdiction through an exaction so applied as to give it the qualities of a penalty for violation of law rather than a tax.

It should be noted, too, that the court, speaking of the extent of the taxing power, used these cautionary words (8 Wall. 541, 19 L. Ed. 482):

"There are, indeed, certain virtual limitations, arising from the principles of the Constitution itself. It would undoubtedly be an abuse of the power if so exercised as to impair the separate existence and independent self-government of the states, or if exercised for ends inconsistent with the limited grants of power in the Constitution."

But more than this, what was charged to be the object of the excessive tax was within the congressional authority, as appears from the second answer which the court gave to the objection. After having pointed out the legitimate means taken by Congress to secure a national medium or currency, the court said (8 Wall. 549, 19 L. Ed. 482):

"Having thus, in the exercise of undisputed constitutional powers, undertaken to provide a currency for the whole country, it cannot be questioned that Congress may, constitutionally, secure the benefit of it to the people by appropriate legislation. To this end, Congress has denied the quality of legal tender to foreign coins, and has provided by law against the imposition of counterfeit and base coin on the community. To the same end, Congress may restrain, by suitable enactments, the circulation as money of any notes not issued under its own authority. Without this power, indeed,

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its attempts to se*cure a sound and uniform currency for the country must be futile."

The next case is that of McCray v. United States, 195 U. S. 27, 24 Sup. Ct. 769, 49 L. Ed. 78, 1 Ann. Cas. 561. That, like the Veazie Bank Case, was the increase of an excise tax upon a subject properly taxable in which the taxpayers claimed that the tax had become invalid because the increase was excessive. It was a tax on oleomargarine, a substitute for butter. The tax on the white oleomargarine was one-quarter of a cent a pound, and on the yellow oleomargarine was first 2 cents and was then by the act in question increased to 10 cents per pound. This court held that the discretion of Congress in the exercise of its constitutional powers to levy excise taxes could not be controlled or limited by the courts because the latter might deem the incidence of the tax oppressive or even destructive. It was the same principle as that applied in the Veazie Bank Case. This was that Congress, in selecting its subjects for taxation, might impose the burden where and as it would, and that a motive disclosed in its selection to discourage sale or manufacture of an article by a higher tax than on some other did not invalidate the tax. In neither of these cases did the law objected to show on its face as does the law before us the detailed specifications of a regulation of a state concern and business with a heavy exaction to promote the efficacy of such regulation.

The third case is that of Flint v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L. Ed. 389, Ann. Cas. 1912B, 1312. It involved the validity of an excise tax levied on the doing of business by all corporations, joint-stock companies, associations organized for profit having a capital stock represented by shares, and insurance companies, and measured the excise by the net income of the corporations. There was not in that case the slightest doubt that the tax was a tax, and a tax for revenue, but it was attacked on the ground that such a tax could be made excessive and thus used

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by Congress to destroy the exist*ence of state corporations. To this, this court gave the same answer as in the Veazie Bank and McCray Cases. It is not so strong an authority for the government's contention as they are.

The fourth case is United States v. Doremus, 249 U. S. 86, 39 Sup. Ct. 214, 63 L. Ed. 493. That involved the validity of the Narcotic Drug Act (38 Stat. 785 [Comp. St. § 6287g et seq.]), which imposed a special tax on the manufacture, importation and sale or gift of opium or cocoa leaves or their compounds or derivatives. It required every person subject to the special tax, to register with the collector of internal revenue his name and place of business and forbade him to sell except upon the written order of the person to whom the sale was made on a form prescribed by the Commissioner of Internal Revenue. The vendor was required to keep the order for two years, and the purchaser to keep a duplicate for the same time and all were to be subject to official inspection. Similar requirements were made as to sales upon prescriptions of a physician and as to the dispensing of such drugs di-

rectly to a patient by a physician. The validity of a special tax in the nature of an excise tax on the manufacture, importation, and sale of such drugs was, of course, unquestioned. The provisions for subjecting the sale and distribution of the drugs to official supervision and inspection were held to have a reasonable relation to the enforcement of the tax and were therefore held valid.

The court said that the act could not be declared invalid just because another motive than taxation, not shown on the face of the act, might have contributed to its passage. This case does not militate against the conclusion we have reached in respect to the law now before us. The court, there, made manifest its view that the provisions of the so-called taxing act must be naturally and reasonably adapted to the collection of the tax and not solely to the achievement of some other purpose plainly within state power.

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*For the reasons given, we must hold the Child Labor Tax Law invalid and the judgment of the District Court is

Affirmed.

Mr. Justice CLARKE, dissents.

(259 U. S. 44)

HILL et al. v. WALLACE, Secretary of Agriculture et al.

(Argued Jan. 11, 1922. Decided May 15, 1922.)

No. 616.

1. **Exchanges ⟸5(1)—Members held entitled to compel directors to resist unconstitutional act.**

Members of a board of trade, whose directors had expressed an intention to comply with Future Trading Act Aug. 24, 1921, which would seriously injure the value of the board of trade to its members, and the money value of their memberships, are entitled to maintain a bill against the directors and the federal officers charged with the enforcement of that act, if the act is unconstitutional.

2. **Equity ⟸363—Motion to dismiss admits averments of bill.**

Averments of a bill in equity are admitted by defendants' motion to dismiss.

3. **Internal revenue ⟸28—Collection of tax on future sales of grain can be enjoined, if unconstitutional.**

Rev. St. § 3224 (Comp. St. § 5947), forbidding an injunction to restrain collection of taxes, does not prevent an injunction in a case apparently within its terms, in which some extraordinary and entirely exceptional circumstances make its provisions inapplicable, so that the enforcement of Grain Future Trading Act Aug. 24, 1921, can be enjoined, if that act is unconstitutional, since it would be impracticable for brokers to pay the tax thereby imposed on each separate sale of grain which occurs in the ordinary business of a member and then bring suit to recover the payment.

4. **Internal revenue ⟸2—Grain future tax was manifestly intended to regulate business of grain exchanges.**

Grain Future Trading Act Aug. 24, 1921, which was entitled as an act taxing contracts for the sale of grain for future delivery, and providing for the regulation of boards of trade, and which by section 4 imposed a tax of 20 cents per bushel on sales of grain for future delivery, with the exception of those made in contract, which are defined and regulated by sections 5 and 6, was manifestly intended to regulate boards of trade, and not to collect revenue since the tax imposed was prohibitive.

5. **Internal revenue ⟸2—Act manifestly intended as regulation cannot be sustained under taxing power.**

An act of Congress which was manifestly intended to regulate a business cannot be sustained as an exercise of taxing power conferred on Congress by Const. art. 1, § 8, merely because it sought to compel obedience thereto by imposing a prohibitory tax on those who violated the regulations.

6. **Commerce ⟸3—Regulation of grain exchanges held not regulation of interstate commerce within power of Congress.**

Grain Future Trading Act Aug. 24, 1921, which imposed regulations on grain boards of trade, and sought to enforce obedience thereto by imposing a tax on those not complying with the regulations, and which was not in any way limited to transactions in interstate commerce, or to transactions within the state which were essential to the free flow of interstate commerce, cannot be sustained as an exercise of the power to regulate interstate commerce.

7. **Statutes ⟸64(2)—Section of Grain Future Trading Act limiting effect of partial invalidity held not to save regulating sections not separate from invalid section without reframing act.**

Notwithstanding the provision of Grain Future Trading Act Aug. 24, 1921, § 11, that, if any provision therein is unconstitutional, the remainder of the act shall not be affected thereby, the invalid tax imposed by section 4 of the act is so interwoven with the regulations of boards of trade contained in sections 5 and 6 that they cannot be separated without reframing the act, which is legislative work beyond the power and function of the court, so that such interwoven regulating sections are invalid, though there are other sections, particularly sections 3 and 9, which may be saved by section 11.

Appeal from the District Court of the United States for the Northern District of Illinois.

Suit by John Hill, Jr., and others against Henry C. Wallace, as Secretary of Agriculture, and others. From a decree dismissing