

the lessee from which it is deducted, whereas the wear and tear of a house or shop in any given year may be only recognizable by theory and, as has happened in this case, may cost the lessee nothing while the premises are in his hands.

It does not matter that in Ohio, where the properties lie, these long leases are treated as in many respects like conveyances of the fee. The Act of Congress has its own criteria, irrespective of local law, that look to certain rather severe tests of liability and exemption and that do not allow the deductions demanded whatever the lessees may be called. We understand this to be the view taken by the Department for a long time and we are of opinion that it should not be disturbed.

*Judgment of Circuit Court of Appeals reversed.*  
*Judgment of District Court affirmed.*

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ROSCHEN *v.* WARD, ATTORNEY GENERAL OF  
NEW YORK, ET AL.

S. S. KRESGE COMPANY *v.* SAME.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

Nos. 667 and 668. Argued April 10, 1929.—Decided April 22, 1929.

1. A state statute making it unlawful to sell at retail in any store or established place of business any spectacles, eye glasses, or lenses for correction of vision, unless a physician or optometrist is in charge of the place of sale and in personal attendance at it, though not providing specifically for an examination by the specialist, is valid. P. 339.
2. A statute is not invalid under the Constitution because it might have gone farther than it did, or because it may not succeed in bringing about the result that it tends to produce. P. 339.
3. It being obvious that much good will be accomplished by a statute requiring the attendance of a physician or optometrist at any place

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where spectacles or eye glasses are sold at retail, the question of the expediency of such legislation is not for the courts, and no presumption will be indulged that the benefits are a pretence and a cloak for establishing a monopoly. P. 339.

29 F. (2d) 762, affirmed.

APPEALS from decrees of the District Court, three judges sitting, denying preliminary injunctions and dismissing the bills in suits to restrain state officers from enforcing a statute requiring the attendance of a physician or optometrist at places where spectacles, eye glasses, or lenses for the correction of vision are sold at retail. The opinion below was reported *sub nom. S. S. Kresge Co. v. Ottlinger.*

*Mr. Walter N. Seligsberg*, with whom *Mr. I. Maurice Wormser* was on the brief, for appellants.

*Messrs. Hamilton Ward*, Attorney General of New York, and *Henry S. Manley*, Assistant Attorney General, were on the brief for appellees.

MR. JUSTICE HOLMES delivered the opinion of the Court.

These are suits brought by dealers in eye glasses for an injunction prohibiting the enforcement of chapter 379 of the New York Laws of 1928, which amends the Education Law by inserting two sections, of which the material portion makes it unlawful to sell at retail in any store or established place of business 'any spectacles, eye glasses, or lenses for the correction of vision, unless a duly licensed physician or duly qualified optometrist, certified under this article, be in charge of and [in] personal attendance at the booth, counter or place, where such articles are sold in such store or established place of business.' The complainants moved for a preliminary injunction, a statutory court of three judges was convened and after a hearing the injunction was refused and the bills were dismissed on

the ground that no cause of action was shown. 29 F. (2d) 762.

The complainants sell only ordinary spectacles with convex spherical lenses, which merely magnify and which it is said can do no harm. The customers select for themselves without being examined and buy glasses for a relatively small sum. It is said that the cost of employing an optometrist would make the complainants' business impossible, and that in the common case of eyes only grown weaker by age the requirement is unreasonable. But the argument most pressed is that the statute does not provide for an examination by the optometrist in charge of the counter. This as it is presented seems to us a perversion of the Act. When the statute requires a physician or optometrist to be in charge of the place of sale and in personal attendance at it, obviously it means in charge of it by reason of and in the exercise of his professional capacity. If we assume that an examination of the eye is not required in every case, it plainly is the duty of the specialist to make up his mind whether one is necessary and, if he thinks it necessary, to make it. We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in construing laws as saying what they obviously mean. Moreover, as pointed out below, wherever the requirements of the Act stop, there can be no doubt that the presence and superintendence of the specialist tend to diminish an evil. A statute is not invalid under the Constitution because it might have gone farther than it did, or because it may not succeed in bringing about the result that it tends to produce.

Of course we cannot suppose the Act to have been passed for sinister motives. We will assume that there are strong reasons against interference with the business as now done—but it is obvious that much good would be ac-

complished if eyes were examined in a great many cases where hitherto they have not been, and the balancing of the considerations of advantage and disadvantage is for the legislature not for the Courts. We cannot say, as the complainants would have us say, that the supposed benefits are a cloak for establishing a monopoly and a pretence.

*Decree affirmed.*

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POSADOS, COLLECTOR OF INTERNAL REVENUE,  
*v.* WARNER, BARNES & COMPANY, LTD.

POSADOS, COLLECTOR OF INTERNAL REVENUE,  
*v.* MENZI.

CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

Nos. 251 and 252. Argued February 26, 1929.—Decided April 22, 1929.

1. The graduated tax rates on stock dividends imposed by Act 2833 of the Philippine Islands, as amended, apply only to individuals; and the objection that they infringe the rule of uniformity prescribed by the Organic Act is not available to a corporation which has been taxed only at the flat rate. P. 343.
2. Neither can this objection be maintained by an individual who fails to show the rate at which he was assessed or any facts to support the suggestion that the required uniformity was lacking. P. 346.
3. The provision of the Organic Act that no bill shall embrace more than one subject, which shall be expressed in the title, is not violated by including in a bill entitled as establishing an income tax, a tax on stock dividends, which is not strictly an income tax. P. 343.
4. A former decision of the Supreme Court of the Philippine Islands that stock dividends were not taxable as income under the Act here under consideration, *held* not binding in this case as a rule of property. P. 345.
5. The doctrine of *stare decisis* does not apply with full force prior to decision in the court of last resort, e. g., not to a decision of