

ance of a credit. Here the taxpayers filed an additional return, supplementing the original one by a statement of the additional taxes due; there the taxpayer stood upon the original return, and omitted to file another.

The conclusion is unaffected by any of these points of difference.

For reasons stated in our opinion in Nos. 37 to 39, the period of limitation began to run on the filing of the first return, and a return for additional taxes, even if filed afterwards, was an amendment or supplement which did not toll the statute.

The decrees should be

Reversed.

CLIFTON MANUFACTURING CO. v. UNITED STATES.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 146. Argued October 17, 1934.—Decided November 5, 1934.

The time for making deficiency assessment, prescribed by § 250 (d) of the Revenue Act of 1918, began to run in this case, not from the filing of an additional return covering taxes added retroactively by that Act, but from the filing of the original return under the prior law. On the authority of: *Zellerbach Paper Co. v. Helvering*, ante, p. 172; and *National Paper Products Co. v. Helvering*, ante, p. 183. P. 188.

70 F. (2d) 102, reversed.

CERTIORARI * to review the affirmance of a judgment against the Clifton Company in its action for money exacted of it as income and profits taxes.

Mr. Wm. A. Sutherland, with whom *Messrs. Joseph B. Brennan* and *Samuel Nesbitt Evins* were on the brief, for petitioner.

* See Table of Cases Reported in this volume.

Assistant to the Attorney General Stanley, with whom Solicitor General Biggs, Assistant Attorney General Wideman, and Messrs. James W. Morris and J. Louis Monarch were on the brief, for the United States.

MR. JUSTICE CARDOZO delivered the opinion of the Court.

A question of limitation, similar to the one considered in our opinions in Nos. 37 and 39, and in Nos. 35 and 36, comes up for decision here. [*Zellerbach Paper Co. v. Helvering, ante*, p. 172, and *National Paper Products Co. v. Helvering, ante*, p. 183.]

The petitioner filed a return on May 28, 1918 under the Revenue Act of 1917 for the fiscal year ending March 31, 1918. The Revenue Act of 1918 (40 Stat. 1057) became a law on February 24, 1919, with retroactive provisions as of January 1, 1918. Thereafter the petitioner filed an additional return in accordance with Treasury Decision 2797 (approved March 11, 1919 and quoted in our opinion in Nos. 37 to 39), showing an additional tax of \$50,638.75. The Act of 1918 provides (§ 250d) that except in the case of fraud, "the amount of tax due under any return shall be determined and assessed by the Commissioner within five years after the return was due or was made." See also § 250d, Revenue Act of 1921. A deficiency assessment was imposed in May, 1921, which is admitted to have been timely, and another on May 26, 1926, which is contested as too late. There is also a contest in respect of both deficiencies growing out of delay in the collection. True, written waivers were in existence, adequate in form, which extended the date for assessment and collection until December 31, 1926. The taxpayer asserts, however, that they were procured by misrepresentation and signed without authority, and must therefore be ignored.

In an action to recover the tax paid by the petitioner under the two assessments in controversy, the District Court held (1) that irrespective of any waiver the term of limitation ran from the date of the additional return, and (2) that the waivers were valid and binding. 3 F. Supp. 508. On the authority of decisions in the Ninth Circuit (*Zellerbach Paper Co.* and *National Paper Products Co. v. Commissioner*, 69 F. (2d) 852, 857), the Court of Appeals for the Fourth Circuit affirmed ruling No. 1 and did not pass upon the correctness of ruling No. 2. 70 F. (2d) 102.

For the reasons stated in our opinions in Nos. 37 to 39, and in Nos. 35 and 36, the first ruling is erroneous. The second ruling we do not consider, the question of the validity of the waivers being still open for determination in the court below.

The decree should be reversed, and the cause remanded to the Court of Appeals for the Fourth Circuit for further proceedings in accordance with this opinion.

Reversed.

ABRAMS ET AL. *v.* VAN SCHAICK, SUPERINTENDENT OF INSURANCE, ET AL.

APPEAL FROM THE SUPREME COURT OF NEW YORK.

No. 186. Argued November 12, 1934.—Decided November 19, 1934.

A judgment of a state court refusing to enjoin proceedings under a state statute alleged to be unconstitutional does not present a substantial federal question when the outcome of those proceedings, if pursued, and its effect upon the federal rights asserted by the complainant, are matters of conjecture.

Appeal from 264 N. Y. 475, dismissed.

APPEAL from a judgment, entered on remittitur, which reversed an injunction order of the Supreme Court of New York (150 Misc. 467) and denied the injunction.