

Nathan Vs. Louisiana

Nathan Vs. Louisiana

SooperKanoon Citation : sooperkanoon.com/80091

Court : US Supreme Court

Decided On : 1850

Appeal No. : 49 U.S. 73

Appellant : Nathan

Respondent : Louisiana

Judgement :

Nathan v. Louisiana - 49 U.S. 73 (1850)

U.S. Supreme Court Nathan v. Louisiana, 49 U.S. 8 How. 73 73 (1850)

Nathan v. Louisiana

49 U.S. (8 How.) 73

ERROR TO THE SUPREME COURT

OF THE STATE OF LOUISIANA

SYLLABUS

A tax imposed by a state upon all money or exchange brokers is not void for repugnance to the constitutional power of Congress to regulate commerce.

Foreign bills of exchange are instruments of commerce, it is true, but so also are the products of agriculture or manufactures, over which the taxing power of a state extends until they are separated from the general mass of property by becoming exports.

A state has a right to tax its own citizens for the prosecution of any particular business or profession within the state.

Banks deal in bills of exchange, and this Court has recognized the power of a state to tax banks, where there is no clause of exemption in their charters.

On 26 March, 1842, the State of Louisiana passed an act to increase the revenue of the state, the ninth section of which provided that "each and every money or exchange broker shall hereafter pay an annual tax of \$250 to the state in lieu of the tax heretofore imposed on them."

On 3 February, 1845, Isaac T. Preston, the Attorney General of the state, filed a petition in the District Court of the First Judicial District stating that A. M. Nathan was justly indebted to the petitioner in the sum of \$250, for pursuing or having lately pursued, within the year 1843, the business of a money and exchange broker. The petition then prayed that he might be cited to appear and answer and be condemned to pay; also that he might answer the following interrogatories under oath, *viz.:*

"Were you a broker, as above stated, in 1843?"

"Did you or not receive brokerage or commissions?"

"State clearly the nature of the same; whether received in money transactions."

The same process was pursued to collect the tax for 1844.

On 19 April, 1845, the two suits were consolidated and the defendant answered as follows:

"The defendant for answer denies generally all the allegations in the plaintiff's petition contained. And further answering, he says, that so much of such parts of 'an act to increase the revenue of the state,' under and by virtue of which this suit is brought to recover of this defendant the tax thereby imposed upon the business of a money and exchange broker, and especially the ninth section thereof, particularly referred to in the plaintiff's petition, so far as the said section and act impose a tax on that part of the business of a money and exchange

Page 49 U. S. 74

broker which consists in buying and selling exchange, the same is contrary to and in violation of so much and such parts of the Constitution of the United States as give to Congress the exclusive power to regulate commerce, and prohibit to the states all interference with the power so granted, and forbid them to impose, without consent of Congress, any duty on imposts or exports."

"And so far as the said section and act imposes a tax on that part of the business of a money and exchange broker which consists in buying and selling money or foreign coin, or other currency, the same is contrary to and in violation of so much and such parts of the Constitution of the United States as gives to Congress the exclusive power 'to coin money, regulate the value thereof, and of foreign coin.'"

"And so far as said section imposes a tax, not uniform in amount with other state taxes on occupations, respondent avers that the same is contrary to so much of the treaties, laws, and Constitution of the United States as reserve and guarantee to the inhabitants of Louisiana all the rights, advantages, and immunities of citizens of the United States, particularly that of uniform taxation, and to so much of said Constitution as reserves to the people of the several states all powers not delegated to the states respectively, or to the Union."

"Wherefore he prays, that the plaintiff's demand be dismissed with costs and for all other and general relief which his case may require."

"RICHARD HENRY WILDE, *Defendant's Attorney* "

"A. K. JOSEPHS"

"H. H. STRAWBRIDGE"

A. M. Nathan, defendant, for answer to the interrogatories to him propounded in the above entitled suit, says:

"I was a money and exchange broker in 1843 and 1844; I received a brokerage or commissions on money and bills of exchange sold by my agency."

"I will state clearly the nature of the same. My business, like that of money and exchange brokers in general, consists exclusively in negotiating and effecting for others the purchase and sale of exchange on other states or foreign countries. During the thirty years that I have been a money and exchange broker, I believe -- nay, I am certain -- that I have never, as such, sold a single bill drawn from one point of Louisiana on another. "

Page 49 U. S. 75

"I make myself acquainted with the current market value of exchanges. The purchasers and the sellers both resort to me for information on the state of the market of exchanges, and make me their common agent in the purchase and sale of bills, which are purchased for the purpose of making remittances to foreign parts, and usually so remitted immediately. On and out of the price of each bill I receive a percentage or commission, varying from one-fourth to one eighth of one percent, which is commonly paid on settlement. It is the same in money transactions."

"[Signed] A. M. NATHAN"

On 7 June, 1845, the district court decreed that the State of Louisiana should recover of the defendant, A. M. Nathan, the sum of five hundred dollars, and costs of suit.

An appeal was had to the Supreme Court of Louisiana, which, on 15 December, 1845, affirmed the judgment of the district court. The defendant sued out a writ of

error, and brought the case up to this Court.

Page 49 U. S. 79

MR. JUSTICE Mc LEAN delivered the opinion of the Court.

By an act of the Legislature of Louisiana of 26

Page 49 U. S. 80

March, 1842, entitled "An act relative to the revenue of the state," it is provided in the ninth section that "each and every money or exchange broker shall hereafter pay an annual tax of \$250 to the state, in lieu of the tax heretofore imposed on them." The defendant below having failed to pay the tax for two years, a suit was brought against him in the district court of the state, in which a judgment for five hundred dollars was rendered. That judgment, on an appeal to the supreme court of the state, was affirmed. The defense made was that the sole business of the defendant was buying and selling foreign bills of exchange, which are instruments of commerce, and that the tax is repugnant to the constitutional power of Congress "to regulate commerce with foreign nations and among the several states."

This is not a tax on bills of exchange. Under the law, every person is free to buy or sell bills of exchange, as may be necessary in his business transactions; but he is required to pay the tax if he engage in the business of a money or an exchange broker.

The right of a state to tax its own citizens for the prosecution of any particular business or profession within the state has not been doubted. And we find that in every state money or exchange brokers, venders of merchandise of our own or foreign manufacture, retailers of ardent spirits, tavern keepers, auctioneers, those who practice the learned professions, and every description of property not exempted by law are taxed.

As an exchange broker, the defendant had a right to deal in every description of paper and in every kind of money, but it seems his business was limited to foreign

bills of exchange. Money is admitted to be an instrument of commerce, and so is a bill of exchange, and upon this ground it is insisted that a tax upon an exchange broker is a tax upon the instruments of commerce.

What is there in the products of agriculture, of mechanical ingenuity, of manufactures which may not become the means of commerce? And is the vendor of these products exempted from state taxation because they may be thus used? Is a tax upon a ship, as property, which is admitted to be an instrument of commerce, prohibited to a state? May it not tax the business of shipbuilding the same as the exercise of any other mechanical art? and also the traffic of ship chandlers and others who furnish the cargo of the ship and the necessary supplies? There can be but one answer to these questions. No one can claim an exemption from a general tax on his

Page 49 U. S. 81

business within the state on the ground that the products sold may be used in commerce.

No state can tax an export or an import as such except under the limitations of the Constitution. But before the article becomes an export, or after it ceases to be an import by being mingled with other property in the state, it is a subject of taxation by the state. A cotton broker may be required to pay a tax upon his business or by way of license although he may buy and sell cotton for foreign exportation.

A bill of exchange is neither an export nor an import. It is not transmitted through the ordinary channels of commerce, but through the mail. It is a note merely ordering the payment of money, which may be negotiated by endorsement, and the liability of the names that are on it depends upon certain acts to be done by the holder, when it becomes payable.

The dealer in bills of exchange requires capital and credit. He generally draws the instrument, or it is drawn at his instance, when he is desirous of purchasing it. The bill is worth more or less as the rate of exchange shall be between the place where it is drawn and where it is made payable. This rate is principally regulated by the

expense of transporting the specie from the one place to the other, influenced somewhat by the demand and supply of specie. Now the individual who uses his money and credit in buying and selling bills of exchange, and who thereby realizes a profit, may be taxed by a state in proportion to his income, as other persons are taxed, or in the form of a license. He is not engaged in commerce, but in supplying an instrument of commerce. He is less connected with it than the shipbuilder, without whose labor foreign commerce could not be carried on.

In the case of [Briscoe v. Bank of the Commonwealth of Kentucky](#), 11 Pet. 257, this Court held that a state has power to incorporate a bank, and this power has been exercised by every state in the Union except where it has been prohibited by its Constitution. And the banks established, it is believed, have been, without exception, authorized to deal in foreign bills of exchange. And this Court held in [Providence Bank v. Billings and Pitman](#), 4 Pet. 514, that a state had power to tax a bank, there being no clause in the charter exempting it from taxation. In the case of [Bank of Augusta v. Earle](#), 13 Pet. 519, it was decided that the bank established in Georgia, having a right in its charter to deal in bills of exchange, could, through its agent and the comity of Alabama, buy and sell bills in that state.

If a tax on the business of an exchange broker, who buys

Page 49 U. S. 82

and sells foreign bills of exchange, be repugnant to the commercial power of the Union, all taxes on banks which deal in bills of exchange by a state must be equally repugnant.

The Constitution declares that no state shall impair the obligations of a contract, and there is no other limitation on state power in regard to contracts. In determining on the nature and effect of a contract, we look to the *lex loci* where it was made or where it was to be performed. And bills of exchange, foreign or domestic, constitute, it would seem, no exception to this rule. Some of the states have adopted the law merchant, others have not. The time within which a demand must be made on a bill, a protest entered, and notice given, and the damages to

be recovered, vary with the usages and legal enactments of the different states. These laws, in various forms and in numerous cases, have been sanctioned by this Court. Endorsers on a protested bill are held responsible for damages under the law of the state where the endorsement was made. Every endorsement on a bill is a new contract, governed by the local law. Story's Conflict of Laws 314.

For the purpose of revenue, the federal government has taxed bills of exchange, foreign and domestic, and promissory notes, whether issued by individuals or banks. Now the federal government can no more regulate the commerce of a state than a state can regulate the commerce of the federal government, and domestic bills or promissory notes are as necessary to the commerce of a state as foreign bills to the commerce of the Union. And if a tax on an exchange broker, who deals in foreign bills, be a regulation of foreign commerce, or commerce among the states, much more would a tax upon state paper, by Congress, be a tax on the commerce of a state.

The taxing power of a state is one of its attributes of sovereignty. And where there has been no compact with the federal government or cession of jurisdiction for the purposes specified in the Constitution, this power reaches all the property and business within the state, which are not properly denominated the means of the general government; and, as laid down by this Court, it may be exercised at the discretion of the state. The only restraint is found in the responsibility of the members of the legislature to their constituents.

If this power of taxation by a state within its jurisdiction may be restricted beyond the limitations stated on the ground that the tax may have some indirect bearing on foreign commerce, the resources of a state may be thereby essentially impaired. But state power does not rest on a basis so undefinable. Whatever exists within its territorial limits in the form

Page 49 U. S. 83

of property, real or personal, with the exceptions stated, is subject to its laws, and also the numberless enterprises in which its citizens may be engaged. These are

subjects of state regulation and state taxation, and there is no federal power under the Constitution which can impair this exercise of state sovereignty.

We think the law of Louisiana imposing the tax in question is not repugnant to any power of the federal government, and consequently the judgment of the supreme court of the state is

Affirmed.

ORDER

This cause came on to be heard on the transcript of the record from the Supreme Court of the State of Louisiana and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said supreme court in this cause be and the same is hereby affirmed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com