

Almy Vs. California

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Court : US Supreme Court

Decided On : 1860

Appeal No. : 65 U.S. 169

Appellant : Almy

Respondent : California

Judgement :

Almy v. California - 65 U.S. 169 (1860)

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Almy v. California

65 U.S. (24 How.) 169

ERROR FROM THE COURT OF SESSIONS FOR THE CITY

AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA

SYLLABUS

A stamp duty imposed by the Legislature of California upon bills of lading for gold or silver, transported from that state to any port or place out of the state, is a tax on exports, and the law of the state unconstitutional and void.

The case was a constitutional question entirely, and is stated in the opinion of the Court.

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

The only question in this case is upon the constitutionality of a law of California imposing a stamp tax upon bills of lading.

By an act passed by the legislature of that state to provide a revenue for the support of the government from a stamp tax on certain instruments of writing, among other instruments mentioned in the law, a stamp tax was imposed on bills of lading for the transportation from any point or place in that state to any point or place without the state of gold or silver coin, in whole or in part, gold dust or gold or silver in bars or other form, and the law requires that there shall be attached to the bill of lading or stamped thereon a stamp or stamps expressing in value the amount of such tax or duty.

By a previous law upon the same subject it was made a misdemeanor, punishable by fine, to use any paper without a stamp where the law required stamped paper to be used.

After the passage of these acts, Almy, the plaintiff in error, being the master of the ship *Ratler*, then lying in the port of San Francisco and bound to New York, received a quantity of gold dust for transportation to New York, for which he signed a bill of lading upon unstamped paper and without having any stamp attached to it. For this disobedience to the law of California he was indicted in the Court of Sessions for a misdemeanor, and at the trial the jury found a special verdict setting out particularly the facts, of which the above is a brief summary, and upon the return of the verdict, the counsel for the defendant moved for a judgment of acquittal

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upon the ground that the law of California was repugnant to the Constitution of the United States. But the court decided that the state law was not repugnant to the Constitution of the United States, and adjudged that Almy should pay a fine of \$100 for this offense. And the court of sessions being the highest court of the state which had jurisdiction of the matter in controversy, this writ of error is brought to revise that judgment.

We think this case cannot be distinguished from that of [*Brown v. Maryland*](#), reported in 12 Wheat. 419. That case was decided in 1827, and the decision has always been regarded and followed as the true construction of the clause of the Constitution now in question.

The case was this: The state of Maryland, in order to raise a revenue for state purposes, among other things required all importers of certain foreign articles and commodities enumerated in the law, or other persons selling the same by wholesale, before they were authorized to sell, to take out a license, for which they should pay \$50, and in case of refusal or neglect should forfeit the amount of the license tax and pay a fine of \$100, to be recovered by indictment.

Brown, who was an importing merchant, residing in Baltimore, refused to pay the tax, and was thereupon indicted in the state court, which sustained the validity of the state law and imposed the penalty therein prescribed. This judgment was removed to this Court by writ of error, and it will be seen by the report of the case that it was elaborately argued on both sides, and the opinion of the Court, delivered by Chief Justice Marshall, shows that it was carefully and fully considered by the Court. And the Court decided that this state law was a tax on imports, and that the mode of imposing it, by giving it the form of a tax on the occupation of importer, merely varied the form in which the tax was imposed without varying the substance.

So in the case before us. If the tax was laid on the gold or silver exported, everyone would see that it was repugnant to the Constitution of the United States, which in express terms declares that

"No state shall, without the consent of Congress,

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lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws."

But a tax or duty on a bill of lading, although differing in form from a duty on the article shipped, is in substance the same thing, for a bill of lading or some written instrument of the same import is necessarily always associated with every shipment of articles of commerce from the ports of one country to those of another. The necessities of commerce require it. And it is hardly less necessary to the existence of such commerce than casks to cover tobacco or bagging to cover cotton when such articles are exported to a foreign country, for no one would put his property in the hands of a shipmaster without taking written evidence of its receipt on board the vessel and the purposes for which it was placed in his hands. The merchant could not send an agent with every vessel to inform the consignee of the cargo what articles he had shipped and prove the contract of the master if he failed to deliver them in safety. A bill of lading, therefore, or some equivalent instrument of writing, is invariably associated with every cargo of merchandise exported to a foreign country, and consequently a duty upon that is in substance and effect a duty on the article exported. And if the law of California is constitutional, then every cargo of every description exported from the United States may be made to pay an export duty to the state, provided the tax is imposed in the form of a tax on the bill of lading, and this in direct opposition to the plain and express prohibition in the Constitution of the United States.

In the case now before the Court, the intention to tax the export of gold and silver in the form of a tax on the bill of lading is too plain to be mistaken. The duty is imposed only upon bills of lading of gold and silver, and not upon articles of any other description. And we think it is impossible to assign a reason for imposing the duty upon the one and not upon the other unless it was intended to lay a tax on the gold and silver exported while all other articles were exempted from the charge. If it was intended merely as a stamp duty on a particular description of

paper, the bill of lading of any

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other cargo is in the same form, and executed in the same manner and for the same purposes, as one for gold and silver, and so far as the instrument of writing was concerned, there could hardly be a reason for taxing one and not the other.

In the judgment of this Court, the state tax in question is a duty upon the export of gold and silver, and consequently repugnant to the clause in the Constitution hereinbefore referred to, and the judgment of the court of Sessions must therefore be

Reversed.

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