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Pervear Vs. the Commonwealth

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Court : US Supreme Court

Decided On : 1866

Appeal No. : 72 U.S. 475

Appellant : Pervear

Respondent : The Commonwealth

Judgement :

Pervear v. The Commonwealth - 72 U.S. 475 (1866)
U.S. Supreme Court Pervear v. The Commonwealth, 72 U.S. 5 Wall. 475 475 (1866)

Pervear v. The Commonwealth

72 U.S. (5 Wall.) 475

ERROR TO THE SUPREME COURT OF

THE COMMONWEALTH OF MASSACHUSETTS

SYLLABUS

1. A license from the federal government, under the internal revenue acts of Congress, is no bar to an indictment under a state law prohibiting the sale of

intoxicating liquors. *The License Tax Cases, supra,* p. <72 U.S. 462|>462, herein affirmed.

2. A law of a state taxing or prohibiting a business already taxed by Congress,

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as *ex. gr.,* the keeping and sale of intoxicating liquors, Congress having declared that its imposition of a tax should not be taken to abridge the power of the state to tax or prohibit the licensed business, is not unconstitutional.

3. The provision in the 8th article of the amendments to the Constitution, that "excessive fines" shall not be "imposed, nor cruel and unusual punishments inflicted" applies to national not to state legislation, the Court observing, however, that if this were otherwise, a fine of $50 and imprisonment at hard labor in the house of correction, during three months -- the punishment imposed by a state for violating one of its statutes forbidding the keeping and sale of intoxicating liquors -- cannot be regarded as excessive, cruel, or unusual.

Pervear, the plaintiff in error, was indicted in the state court for keeping and maintaining without license a tenement for the illegal sale and illegal keeping of intoxicating liquors.

In bar of this indictment he pleaded specially three matters of defense:

(1) That he had a license from the United States under the internal revenue acts of Congress to do all the acts for which he was indicted:

(2) That he had paid a tax or duty on the intoxicating liquors, for keeping and selling which the indictment was found, in the same packages, and in the same form and quantity in which he sold the same, and

(3) That the fine and punishment imposed and inflicted by the law of Massachusetts for the acts charged in the indictment were cruel, excessive, and unusual, and that the state law was therefore in conflict with the Constitution of the United States [the 8th article to the amendments of which, proposed in 1789,

declares that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted"].

This plea was overruled, and Pervear declining to plead further, a plea of not guilty was entered for him. He was then put on trial, and the court instructed the jury that the

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plea was no defense to the indictment, to which instruction exception was taken. A verdict of guilty was thereupon found, and Pervear was sentenced to pay a fine of fifty dollars and to be confined at hard labor in the house of correction for three months.

The writ of error brought this sentence under review, and the general question now was did the state court err in instructing the jury that the plea was no defense to the indictment?

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THE CHIEF JUSTICE, after stating the case as already given, delivered the opinion of the Court.

We have already decided at this term that the first proposition of the plea in this case is no bar to an indictment under a state law taxing or prohibiting the sale of intoxicating liquors.

The second proposition of the plea is nothing more than a different form of the first. Both are identical in substance.

The case of *Brown v. Maryland* was referred to in argument as an authority for the general proposition that the sale of goods in the same packages on which a duty had been paid to the United States cannot be prohibited by state legislation. But this case does not sustain the proposition in support of which it is cited.

The discussion in *Brown v. Maryland* related wholly to imports under national legislation concerning commerce with foreign nations. A law of Maryland required importers of foreign goods to take out and pay for a state license for the sale of such goods in that state, and under this law the members of a Baltimore firm were indicted for having sold certain goods in packages as imported without having taken out the required license. The defense was that the duty on the goods, imposed by the act of Congress, had been paid to the United States; that the license tax was, in

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effect, an additional import duty which could not be constitutionally imposed by state law.

This Court sustained the defense then set up. It held that, by the terms of the Constitution, the power to impose duties on imports was exclusive in Congress and that the law of Maryland was in conflict with the act of Congress on the same subject and was therefore void.

But the defense set up in the case before us is a very different one. It is not founded on any exclusive power of Congress nor any act of Congress in conflict with state law. It is founded on the general power to levy and collect taxes, admitted on all hands to be concurrent only with the same general power in the state governments, and upon an act of Congress imposing a tax in the form of duty on licenses, but expressly declaring that the imposing such a tax shall not be taken to abridge the power of the state to tax or prohibit the licensed business.

The defense rests, then, in this part on the simple proposition that a law of a state taxing or prohibiting business already taxed by Congress is unconstitutional. And that proposition is identical in substance and effect with the first proposition of the plea, and has been held in the *License Tax Cases* [Footnote 1] to be no bar to the indictment.

The circumstance that the state prohibition applies to merchandise in original packages is wholly immaterial. Even in the case of importation, that circumstance

is only available to the importer. Merchandise in original packages, once sold by the importer, is taxable as other property. But in the case before us there was no importation. So far as appears, the liquors were home-made, or, if not, were in second hands. And the sale of such liquors within a state is subject exclusively to state control. [Footnote 2]

The third proposition of the plea is that fines and penalties imposed and inflicted by the state law for offenses charged in the indictment are excessive, cruel, and unusual.

Of this proposition it is enough to say that the article of

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the Constitution relied upon in support of it does not apply to state, but to national, legislation. [Footnote 3]

But if this were otherwise, the defense could not avail the plaintiff in error. The offense charged was the keeping and maintaining, without license, a tenement for the illegal sale and illegal keeping of intoxicating liquors. The plea does not set out the statute imposing fines and penalties for the offense. But it appears from the record that the fine and punishment in the case before us was fifty dollars and imprisonment at hard labor in the house of correction for three months. We perceive nothing excessive or cruel or unusual in this. The object of the law was to protect the community against the manifold evils of intemperance. The mode adopted, of prohibiting under penalties the sale and keeping for sale of intoxicating liquors without license, is the usual mode adopted in many, perhaps all of the states. It is wholly within the discretion of state legislatures. We see nothing in the record, nor has anything been read to us from the statutes of the state which warrants us in saying that the laws of Massachusetts having application to this case are in conflict with the Constitution of the United States.

The judgment of the Supreme Court of the Commonwealth must be

Affirmed.

NOTE

The same order was made in four other cases, [Footnote 4] "presenting," as THE CHIEF JUSTICE said, "substantially the same facts and governed by the same principles."

At a later day of the term, to-wit, April 30, 1867, several other cases on this same subject, coming here in error to the Supreme Court of Iowa, [Footnote 5] were submitted to the court on the records

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and briefs of Mr. Riddle, for the plaintiffs in error, and Mr. Cooley *contra.*

On the following 7th of May, the CHIEF JUSTICE delivered the opinion of the Court that the cases resembled in all essential features cases already decided at this term which presented the question of the constitutionality of state laws prohibiting, restraining, or taxing the business of selling liquors under the internal revenue licenses of the United States; that the brief of the learned counsel for the plaintiff in error calling upon the court to review its decisions affirming the validity of those laws, the Court had done so, and was satisfied with the conclusions already announced.

The several judgments of the Supreme Court of the state of Iowa were therefore

Affirmed.

[Footnote 1]

Supra, last preceding case, p. <72 U.S. 462|>462.

[Footnote 2]

License Cases, 5 How. 504.

[Footnote 3]

Barron v. Baltimore, 7 Pet. 243.

[Footnote 4]

Lynde v. Commonwealth of Massachusetts; Salmon v. Same; Cass v. Same; Armstrong v. Same.

[Footnote 5]

Carney v. Iowa; Munzenmainer v. Same; Bachman v. Same; Bahlor v. Same; Newman v. Same; Stutz v. Same; Bennett v. Same.

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