

**Gardner Vs. the Collector**

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**Court :** US Supreme Court

**Decided On :** 1867

**Appeal No. :** 73 U.S. 499

**Appellant :** Gardner

**Respondent :** The Collector

**Judgement :**

Gardner v. The Collector - 73 U.S. 499 (1867)

U.S. Supreme Court Gardner v. The Collector, 73 U.S. 6 Wall. 499 499 (1867)

**Gardner v. The Collector**

**73 U.S. (6 Wall.) 499**

*ERROR TO THE CIRCUIT COURT FOR*

*THE SOUTHERN DISTRICT OF NEW YORK*

**SYLLABUS**

Whenever a question arises of the existence of a statute, or of the time when a statute takes effect, or of its precise terms, the judges who may be called upon to decide it may resort to any source of information which in its nature is capable of

conveying to the judicial mind a clear and satisfactory answer to such question, always resorting first to that which in its nature is most appropriate, unless the then positive law has enacted a different rule.

"Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that House in which it shall have originated. . . . If any bill shall not be returned by the President within ten days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it."

And an Act of September 15, 1789, creating the Department of State, provides that whenever a bill, order, resolution or vote of the Senate and House of Representatives, having been approved and signed by the President of the United States, or not having been returned by him with his objections, shall become a law or take effect, it shall forthwith thereafter be received by the said Secretary from the President, and he shall carefully preserve the originals, and cause them to be recorded in books provided for that purpose. An Act of July 7th, 1838, dispenses with this recording in a book.

With these provisions in force, Congress passed through both houses, in December, 1861, a bill which declared "that from and after the *date* of the passage of the act," the duties on tea should be twenty cents per pound. A previous statute

Page 73 U. S. 500

had fixed the duty at fifteen cents. The roll of the engrossed bill was taken to the President, and by him thus signed, *no year being indicated*:

*APPROVED December 24*

"ABRAHAM LINCOLN"

The record kept in the office of the Secretary of State showed, however, that this enrolled statute, with the President's approval on it, was filed in that office

December 26, 1861, and the journal of the House of Representatives, in Congress, showed that a message was received from the President January 6, 1862, stating that on the 24th day of the preceding month he had approved this bill.

In the volume of the statutes of the United States, published by authority in 1863, the act was presented with an approval thus indicated:

" *APPROVED December 24 [1861]*"

In this state of things, Gardner, in 1864, entered at the custom house in New York certain packages of tea, on which the collector of the customs there, assuming that there was a statute laying that duty, required him to pay twenty cents per pound. Gardner declined to pay twenty cents per pound on the ground that there was no statute fixing that duty, but offered to pay fifteen cents, the duty fixed by what he asserted to be the only act in the case. Being compelled to pay the twenty cents, and having paid it under protest, he brought suit in the court below to recover the excess. The court below gave judgment against him, and on error here the question was, whether the bill fixing the twenty cents had passed, or, in other words, whether it was a law on the 28th April, 1864, when the teas in question were entered.

Page 73 U. S. 504

MR. JUSTICE MILLER delivered the opinion of the Court.

The date of the President's approval of the bill is undoubtedly the date at which it became a law, if it ever did. In the volume of the statutes now before us, published in

Page 73 U. S. 505

1863, the approval is dated December 24 [1861], but the figures 1861 are in brackets, by which it is understood that no such figures are found in the original enrolled act on file in the Department of state. And it is conceded that on

inspection, the roll shows on the face of the bill no other date for the approval of the President than the day of the month already stated.

It is not denied that the President's signature to the bill is genuine, and that he did approve it. The volume of the United States Statutes at Large which contains this act, was published by authority the year before the entry was made of his tea by the plaintiff. The record kept in the office of the Secretary of State shows that this enrolled statute, with the President's approval on it, was filed in that office, December 26, 1861. The journal of the House of Representatives in Congress shows that a message was received from the President, January 6, 1862, stating that on the 24th day of the preceding month he had approved this bill. So that, if we can look to any of these sources of information, the court can have no doubt that the bill was in force as a statute at the time the duties on plaintiff's tea became chargeable.

The whole of the very able and ingenious argument of counsel for plaintiff rests on these two propositions, as stated in his own language:

"That the President alone can make the record which is to show the date of his approval; and that if the President's record is defective in respect to the year when it was made, no resort can be had to extrinsic evidence to supply that defect."

The first of these propositions assumes that no act of Congress can become a valid statute unless some official written statement is found in it of the precise date when the President approved it, and that it is a part of the duty of the President to make this statement; a duty so important that unless made by him, and by no one else, all the previous proceedings of the two Houses of Congress, and the approval of the President, and his signature attesting that approval, are all vain and nugatory.

Page 73 U. S. 506

We should reasonably expect to find a duty so very important as this, the neglect of which is followed by such serious consequences, prescribed by some positive

and express provision of the Constitution, or at least by some act of Congress.

The only duty required of the President by the Constitution in regard to a bill which he approves is, that he shall sign it. Nothing more. The simple signing his name at the appropriate place is the one act which the Constitution requires of him as the evidence of his approval, and upon his performance of this act the bill becomes a law.

"Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that House in which it shall have originated. . . . If any bill shall not be returned by the President within ten days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it."

Here are two courses of action by the President in reference to a bill presented to him, each of which results in the bill becoming a law. One of them is by signing the bill within ten days, and the other is by keeping it ten days, and refusing to sign it. Even in the event of his approving the bill, it is not required that he shall write on the bill the word "approved," nor that he shall date it.

If a date by the President is essential to the validity of the statute, it must be as essential when he retains the bill and fails to sign it as when he signs it. It is his action in retaining the bill for ten days which makes it a law as much as it is in signing it. Yet in the latter case no evidence is required of the President, either by the Constitution or in actual practice, to show that he had ever received or considered the bill.

It is not possible, therefore, to hold that the Constitution, either expressly or by just implication, imposes upon the President the duty of affixing a date to his signature to a bill.

Nor does any act of Congress require him to do this. The statutes of September 15, 1789 and of July 7, 1838, so far from requiring the President to affix a date to his act of signing bills, provide another means of ascertaining when a statute takes effect -- namely by finding it on file in the office of the Secretary of State -- for by this statute all such bills, orders, resolutions or votes of Congress as shall become laws or shall take effect are to be received from the President and filed in that office. The duty, then, of making such memorandums as shall show when they were received by this Department, in which the rolls are to remain permanently, and where alone they can be inspected, is much clearer than any such duty on the part of the President. As the only valuable purpose of having a date is to determine when the statute takes effect, it is reasonable that this should be made by the officer who receives it from the President forthwith and who is to be the future custodian of the statute -- who alone can give certified copies of it, and from whose office the legally authorized publisher receives the copy from which it is printed.

If neither the Constitution nor the statutes impose this duty upon the President, we are equally unable to find anything in the practice of the English Parliament to sustain this view. The custom there anciently was for the enrolled bill, on receiving the assent of the King, generally given by commission in Parliament, to be delivered, with the statement of this fact endorsed on it, to the clerk of Parliament. From thence transcripts were sent to the sheriffs of the counties, who were ordered to proclaim them in their county courts, where the transcripts were filed for reference. Since the art of printing, this latter custom has been abandoned. But an act of 33 George III, chap. 15, requires the clerk of Parliament to endorse the date of the King's approval upon the roll of each statute, which is to be the date from which it shall take effect. [ [Footnote 1](#) ] The enactment of such a statute shows that no rule had previously existed, that the date was affixed

Page 73 U. S. 508

by the King or by the commissioners who, in his name, gave his assent to the bill.

The second proposition, that "if the President's record is defective in respect to the year when it was made, no resort can be had to extrinsic evidence to supply that defect," is still more at variance with both principle and authority than the one we have just considered.

The statute under consideration is a public statute, as distinguished from a private statute. It is one of which the courts take judicial notice, without proof, and, therefore, the use of the words "extrinsic evidence" are inappropriate. Such statutes are not proved as issues of fact as private statutes are. But if we suppose the phrase to have been used to express the sources of information to which the court may resort, the proposition is still inadmissible.

In point of moral force in producing conviction in the mind that a bill was signed on a given day, there may be often found stronger evidence than the date accompanying the signature. It is general experience that mistakes are often made in such dates. So well is this understood that the general rule of law that parol evidence cannot be received to contradict a written contract, does not apply to the date, which, though forming a part of the written instrument, may be contradicted whenever it is material to the issue to do so. So also written contracts, or other instruments having no date on their face, may have the time of their execution proved by parol or other competent testimony. It is believed that this principle would be applicable to any instrument in writing offered to a jury on an issue of fact even if it were a private statute, always requiring, however, the best evidence of the date that exists. But the argument we are considering imposes upon the judges who are to take judicial notice of a statute, a more limited range of search for information than that which is open to a jury, when the rule of judicial notice, as we shall show hereafter, was adopted for the purpose of enlarging it.

The record of the Secretary of State of the time of filing such a paper, the journals of the two Houses of Congress,

the message of the President, and other circumstantial facts, may produce stronger conviction of the day and of the year in which the bill was signed, than the date affixed by the President. There is no reason, then, on sound principle, why the court should confine itself to the date made by the President, or, if he has made none, should reject all other sources of knowledge. The judicial notice of the court must extend, not only to the existence of the statute, but to the time at which it takes effect, and to its true construction.

This view of the subject is well supported by authority.

In the learned work of Mr. Dwarris on Statutes [ [Footnote 2](#) ] we are told that the principal reason of the rule that the courts should take judicial notice of public statutes, and should not permit them to be put in issue as private statutes are, was that many ancient statutes were no longer to be found, which yet were within the time of legal memory, and could not, therefore, be treated as common law. In order to prevent their existence being brought to the test of proof by record, the principle was adopted that the court should take notice of them and that the judges are to inform themselves in the best way they can.

This is confirmed by Sir Matthew Hale in his History of the Common Law. [ [Footnote 3](#) ] Alluding to these statutes, of which there are many that are no longer to be found among the rolls, he says:

"An act of Parliament, made within the time of memory, loses not its being so because not extant of record, especially if it be a general act of Parliament. For of general acts of Parliament the courts of common law are to take notice without pleading them. And such acts shall never be put to be tried by the record upon an issue of *nul tiel record*, but it shall be tried by the court, who, if there be any difficulty or uncertainty touching it, or the right of pleading it, are to use for their information ancient copies, transcripts, books, pleadings, and memorials to inform themselves, but not to admit the same to be put in issue by a plea of *nul tiel record*. For, as shall be shown

hereafter, there are many old statutes which are admitted, and obtain as such, though there be no record at this day extant thereof, nor yet any other written evidence of the same but which is in a manner only traditional, as namely, ancient and modern books of pleadings, and the common received opinion and reputation and approbation of the judges learned in the law. [ [Footnote 4](#) ]"

Lord Coke, [ [Footnote 5](#) ] giving an account of the manner in which the statutes were formerly published in the county courts, in regard to which he had made diligent search, observes that

"although proclamation be not made in the county, everyone is bound to take notice of that which is done in Parliament, for as soon as Parliament hath concluded anything, the law intends that every person hath notice thereof, for the Parliament represents the body of the whole realm, and therefore it is not requisite that any proclamation be made, seeing the statute took effect before."

If this proposition be sound, of which there seems to be no reason to doubt, how can it be held that the judges, upon whom is imposed the burden of deciding what the legislative body has done when it is in dispute, are debarred from resorting to the written record which that body makes of its proceedings in regard to any particular statute?

The courts of last resort in several of the states have expressly decided that this may be done. [ [Footnote 6](#) ]

In *The Prince's Case*, [ [Footnote 7](#) ] the rule on this subject is laid down by the court in the following language:

"As to the fourth point, it was resolved that against a general act of Parliament, or such whereof the judges *ex officio* ought to take notice, the other party cannot plead *nul tiel record*, for of such

Page 73 U. S. 511

acts the judges ought to take notice. But if it be misrecited, the party ought to demur in law upon it. And in that case, the law is grounded upon great reason, for

God forbid, if the record of such acts should be lost, or consumed by fire or other means, that it should be to the general prejudice of the commonwealth, but rather, although it be lost or consumed, the judges either by the printed copy, or by the record in which it was pleaded, or by other means, may inform themselves of it."

In this case, the Lord Chancellor was assisted by a judge from each of the common law courts, of whom Coke was one, and the decision as reported by him, and the reason on which it was founded, are entitled to the highest consideration.

We are of opinion, therefore, on principle as well as authority, that whenever a question arises in a court of law of the existence of a statute, or of the time when a statute took effect, or of the precise terms of a statute, the judges who are called upon to decide it have a right to resort to any source of information which in its nature is capable of conveying to the judicial mind a clear and satisfactory answer to such question, always seeking first for that which in its nature is most appropriate, unless the positive law has enacted a different rule.

*Judgment affirmed.*

[ [Footnote 1](#) ]

Bacon's Abridgment Statutes, letter C.

[ [Footnote 2](#) ]

Page 467.

[ [Footnote 3](#) ]

Pages 14, 16.

[ [Footnote 4](#) ]

See 1 Kent's Commentaries 460; Sedgwick on Statutes and Constitutional Law 34.

[ [Footnote 5](#) ]

4 Institutes 26.

[ [Footnote 6](#) ]

*Purdy v. People*, 4 Hill 384; *De Bow v. People*, 1 Denio 9; *Spangle v. Jacob*, 19 Ill. 283; *Young v. Thomson*, 14 *id.* 297; *Speer v. Plank Road*, 22 Pa.St. 376; *Matter of Welman*, 20 Vt. 656; *Supervisors v. Heenan*, 2 Minn. 330; *Fowler v. Pierce*, 2 Cal. 151.

[ [Footnote 7](#) ]

8 Reports 28.

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