United States Vs. Dewitt

United States Vs. Dewitt

SooperKanoon Citation : sooperkanoon.com/81744

Court : US Supreme Court

Decided On : 1869

Appeal No. : 76 U.S. 41

Appellant : United States

Respondent : Dewitt

Judgement :

United States v. Dewitt - 76 U.S. 41 (1869)
U.S. Supreme Court United States v. Dewitt, 76 U.S. 9 Wall. 41 41 (1869)

United States v. Dewitt

76 U.S. (9 Wall.) 41

ON CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES

OF THE CIRCUIT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

SYLLABUS

1. The 29th section of the Internal Revenue Act of March 2, 1867, 14 Stat. at Large 484, which makes it a misdemeanor, punishable by fine and imprisonment, to mix for sale naphtha and illuminating oils or to sell or offer such mixture for sale,

or to sell or offer for sale oil made of petroleum for illuminating purposes, inflammable at less temperature or fire test than 110 degrees Fahrenheit, is in fact a police regulation, relating exclusively to the internal trade of the states.

2. Accordingly, it can only have effect where the legislative authority of Congress excludes, territorially, all state legislation, as for example, in the District of Columbia. Within state limits, it can have no constitutional operation.

Page 76 U. S. 42

Section 29 of the act of March 2, 1867, [Footnote 1] declares,

"That no person shall mix for sale naphtha and illuminating oils, or shall knowingly sell or keep for sale, or offer for sale such mixture, or shall sell or offer for sale oil made from petroleum for illuminating purposes, inflammable at less temperature or fire test than 110 degrees Fahrenheit, and any person so doing shall be held to be guilty of a misdemeanor, and on conviction thereof by indictment or presentment in any court of the United States having competent jurisdiction, shall be punished by fine &c.;, and imprisonment,"

&c.;

Under this section, one Dewitt was indicted, the offense charged being the offering for sale, at Detroit, in Michigan, oil made of petroleum of the description specified. There was no allegation that the sale was in violation or evasion of any tax imposed on the property sold. It was alleged only that the sale was made contrary to law.

To this indictment there was a demurrer, and thereupon arose two questions on which the judges were opposed in opinion.

(1) Whether the facts charged in the indictment constituted any offense under any valid and constitutional law of the United States?

(2) Whether the aforesaid section 29 of the act of March 2d, 1867, was a valid and constitutional law of the United States?

Page 76 U. S. 43

THE CHIEF JUSTICE delivered the opinion of the Court.

The questions certified resolve themselves into this: has Congress power, under the Constitution, to prohibit trade within the limits of a state?

That Congress has power to regulate commerce with foreign nations and among the several states, and with the Indian tribes, the Constitution expressly declares. But this

Page 76 U. S. 44

express grant of power to regulate commerce among the states has always been understood as limited by its terms, and as a virtual denial of any power to interfere with the internal trade and business of the separate states, except, indeed, as a necessary and proper means for carrying into execution some other power expressly granted or vested.

It has been urged in argument that the provision under which this indictment was framed is within this exception; that the prohibition of the sale of the illuminating oil described in the indictment was in aid and support of the internal revenue tax imposed on other illuminating oils. And we have been referred to provisions, supposed to be analogous, regulating the business of distilling liquors, and the mode of packing various manufactured articles; but the analogy appears to fail at the essential point, for the regulations referred to are restricted to the very articles which are the subject of taxation, and are plainly adapted to secure the collection of the tax imposed; while, in the case before us, no tax is imposed on the oils the sale of which is prohibited. If the prohibition, therefore, has any relation to taxation at all, it is merely that of increasing the production and sale of other oils, and, consequently, the revenue derived from them, by excluding from the market the particular kind described.

This consequence is too remote and too uncertain to warrant us in saying that the prohibition is an appropriate and plainly adapted means for carrying into execution the power of laying and collecting taxes.

There is, indeed, no reason for saying that it was regarded by Congress as such a means, except that it is found in an act imposing internal duties. Standing by itself, it is plainly a regulation of police; and that it was so considered, if not by the Congress which enacted, it, certainly by the succeeding Congress, may be inferred from the circumstance, that while all special taxes on illuminating oils were repealed by the act of July 20, 1868, which subjected distillers and refiners to the tax on sales as manufacturers, this prohibition was left unrepealed.

Page 76 U. S. 45

As a police regulation, relating exclusively to the internal trade of the state, it can only have effect where the legislative authority of Congress excludes, territorially, all state legislation, as for example, in the District of Columbia. Within state limits, it can have no constitutional operation. This has been so frequently declared by this Court, results so obviously from the terms of the Constitution, and has been so fully explained and supported on former occasions, [Footnote 2] that we think it unnecessary to enter again upon the discussion.

The first question certified must, therefore, be answered in the negative.

The second question must also be answered in the negative, except so far as the section named operates within the United States, but without the limits of any state.

[Footnote 1]

14 Stat. at Large 484.

[Footnote 2]

License Cases, 5 How. 504; *Passenger Cases,* 7 How. 283; *License Tax Cases,* 5 Wall. 470, and the cases cited.