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Decided On : 1874

Appeal No. : 87 U.S. 577

Appellant : Cannon

Respondent : New Orleans

Judgement :

Cannon v. New Orleans - 87 U.S. 577 (1874)
U.S. Supreme Court Cannon v. New Orleans, 87 U.S. 20 Wall. 577 577 (1874)

Cannon v. New Orleans

87 U.S. (20 Wall.) 577

ERROR TO THE SUPREME

COURT OF LOUISIANA

SYLLABUS

1. An ordinance of the City of New Orleans which demands of all steamboats which shall moor or land in any part of the port of New Orleans a sum measured by the tonnage of the vessel is a tonnage tax within the meaning of the federal

Constitution, and therefore, void.

2. It is a tax for the privilege of stopping in the port of New Orleans, and cannot be justified under the plea that it is intended as a compensation for the use of wharves built by the city.

3. For the use of wharves, piers, and similar structures, whether owned by individuals or by the city or other corporation, a reasonable compensation may be charged to the vessel, to be regulated in the interest of the public by the state legislature or city council.

4. But in the exercise of this right, care must be taken that it is not made to cover a violation o the federal Constitution, which prohibits the states to lay any duty of tonnage.

5. Any duty or tax or burden imposed under the authority of the states which is in its essence a contribution claimed for the privilege of arriving and departing from a port of the United States and which is assessed on a vessel according to its carrying capacity is a violation of that provision unless the consent of Congress be obtained.

The Constitution of the United States ordains as follows: [Footnote 1]

"Congress shall have power to regulate commerce with foreign nations and *among the several states* and with the Indian tribes. No state shall, without the consent of Congress, lay any duty of tonnage. "

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With these provisions in force as fundamental law, the City of New Orleans made an ordinance as follows:

"From and after the 1st day of January, 1853, the levee dues on all steam boats *which shall moor or land in any part of the port of New Orleans* shall be fixed as follows; ten cents per ton if in port not exceeding five days, and five dollars per day after said five days shall have expired, provided that boats arriving and departing

more than once in each week shall pay only seven cents per ton each trip."

This ordinance was subsequently amended by the substitution of the words "levee and wharfage dues" for the words "levee dues," and by providing further that "boats making three trips per week shall pay five cents per ton each trip."

The length of both shores of the Mississippi embraced by the port of New Orleans is at least twenty-two miles. The entire portion of the shore on which wharves had been built, was at most two miles; less than one-tenth of the wharved space.

In this state of things and under the ordinance above-mentioned, the city had claimed and collected of one Cannon for several years a tax on his steamboat, the *R. E. Lee,* and claiming it again Cannon filed a petition to enjoin such further collection, and also to recover back the money already paid. The ground of his petition was, that under each of the above-quoted clauses of the Constitution the ordinances were void. The supreme court of the state held the ordinance valid, and dismissed the petition. Its view was thus-expressed:

"The same points that are made in this case, supported by the same line of argument as here, were presented in the case of *First Municipality v. Pease,* [Footnote 2] and were decided adversely to the position taken by the plaintiff in this case."

"We think the views there expressed correct."

"The 'levee dues,' under consideration, are not a 'duty on tonnage,' nor a regulation of or burden on commerce, nor a duty upon vessels plying between the states, within the contemplation of the Constitution of the United States, but charges

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as compensation for commercial facilities furnished by the city, and for which, by the common consent of mankind, compensation is paid. [Footnote 3] The question of the right to impose such charges, whether under the name of wharfage or levee dues, being judicially determined, the manner and extent of its exercise

are left to those to whom the management of the municipal affairs are entrusted, under their responsibility to those whom they represent. The aggregate of charges may possibly be largely in excess of the actual necessary expenses during one year, and the very next be insufficient to meet. This will result from the nature of the river banks, the action of the river current, the quality and nature of materials used, the fluctuations of commerce; and many other causes unforeseen and irregular in their operation, and all which show the impossibility of judicial control and regulation of the subject."

From the decree of dismissal, Cannon brought the case here.

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MR. JUSTICE MILLER delivered the opinion of the Court.

This writ of error is based upon the proposition that the city ordinance is in conflict with two clauses of the Constitution of the United States -- namely that which grants to Congress the right to regulate commerce with foreign nations, among the states, and with the Indian tribes, and that which forbids the states to levy any duty of tonnage without the consent of Congress.

We shall only consider the question raised by the latter clause.

It is argued in support of the validity of the ordinance that the money collect under it is only a compensation for the use of the wharves which are owned by the city, and which have been built and are kept in repair by the city corporation.

Under the evidence in this case of the condition of the levee and banks of the Mississippi River within the limits of the city, to which the language of the ordinance must be applied, this contention cannot be sustained. It is in proof that of the twenty miles and more of the levee and banks of the Mississippi within the city, not more than one-tenth has any wharf, and that vessels land at various places where no such accommodations exist. The language of the ordinance covers landing anywhere within the city limits. The tax is, therefore, collectible for vessels which land at any point on the banks of the river, without regard to the

existence of the wharves. The tax is also the same for a vessel which is moored in any part of the port of New Orleans, whether she ties up to a wharf or not, or is located at the shore or in the middle of the river. A tax which is, by its terms, due from all vessels arriving and stopping in a port, without regard to the place where they may stop, whether it be in the channel of the stream, or out in a bay, or landed at a natural river bank, cannot be treated as a compensation for the use of a wharf. This view is additionally enforced if, as stated by counsel for the plaintiff, in their argument, the supreme court of the state has decided that, under the Act of 1843

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of the Louisiana Legislature, no wharfage tax or duty can be levied or collected by the city.

We are of opinion that upon the face of the ordinance itself, as applied to the recognized condition of the river and its banks within the city, the dues here claimed cannot be supported as a compensation for the use of the city's wharves, but that it is a tax upon every vessel which stops, either by landing or mooring, in the waters of the Mississippi River within the City of New Orleans, for the privilege of so landing or mooring.

In this view of the subject, as the assessment of the tax is measured by the tonnage of the vessel, it falls directly within the prohibition of the Constitution, namely "that no state shall, without the consent of Congress, lay any duty of tonnage." Whatever more general or more limited view may be entertained of the true meaning of this clause, it is perfectly clear that a duty or tax or burden imposed under the authority of the state, which is, by the law imposing it, to be measured by the capacity of the vessel, and is in its essence a contribution claimed for the privilege of arriving and departing from a port of the United States, is within the prohibition.

There have been several cases before this Court involving the construction of this provision. The more recent and well considered of these are *Steamship Company*

v. Portwardens, [Footnote 4] *State Tonnage Tax Cases,* [Footnote 5] and *Peete v. Morgan.* [Footnote 6]

In the first of these cases, the late Chief Justice, who delivered the opinion, seemed inclined to guard against too narrow a construction of the clause, lest its spirit and purpose might be evaded. He says,

"that in the most obvious and general sense, it is true, the words describe a duty proportioned to the tonnage of the vessel; a certain rate on each ton. But it seems plain that in this restricted sense, the constitution provision would not fully accomplish its intent. The general prohibition against laying duties on

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imports or exports would have been ineffectual if it had not been extended to duties on the ships which serve as the vehicles of conveyance. This extension was doubtless intended by the prohibition of any duty on tonnage. It was not only a *pro rata* tax which was prohibited, but any duty on the ship, whether a fixed sum upon its whole tonnage, or a sum to be ascertained by comparing the amount of tonnage with the rate of duty."

The other two cases fully sustain the proposition as we have stated it.

In saying this we do not understand that this principle interposes any hindrance to the recovery from any vessel landing at a wharf or pier owned by an individual or by a municipal or other corporation, a just compensation for the use of such property. It is a doctrine too well settled, and a practice too common and too essential to the interests of commerce and navigation to admit of a doubt, that for the use of such structures, erected by individual enterprise, and recognized everywhere as private property, a reasonable compensation can be exacted. And it may be safely admitted also that it is within the power of the state to regulate this compensation, so as to prevent extortion, a power which is often very properly delegated to the local municipal authority.

Nor do we see any reason why, when a city or other municipality is the owner of such structures, built by its own money, to assist vessels landing within its limits in the pursuit of their business, the city should not be allowed to exact and receive this reasonable compensation as well as individuals. But in the exercise of this right care must be had that it is not made to cover a violation of the federal Constitution in the point under consideration

We are better satisfied with this construction of the Constitution from the fact that this is one of the few limitations of that instrument of the power of the states which is not absolute, but which may be removed wholly or modified by the consent of Congress.

The cases which have recently come before this Court in which the state by itself or by one of its municipalities has

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attempted to levy taxes of this character, clearly within the letter and the spirit of the constitutional prohibition, show the necessity of a rigid adherence to the demands of that instrument. If hardships arise in the enforcement of this principle, and the just necessities of a local commerce require a tax which is otherwise forbidden, it is presumed that Congress would not withhold its assent if properly informed and its consent requested.

This is a much wiser course, and Congress is a much safer depositary of the final exercise of this important power than the ill regulated and overtaxed towns and cities, which are not likely to look much beyond their own needs and their own interests.

We are of opinion that the ordinance under which the levee dues were assessed upon the plaintiff's vessel is unconstitutional and void.

Judgment reversed and the case remanded to the Supreme Court of Louisiana for further proceedings in conformity to this opinion.

[Footnote 1]

Article 1, 8, 10.

[Footnote 2]

2 Annual 540.

[Footnote 3]

Worsley v. Second Municipality, 9 Rob. 332; *Gibbons v. Ogden,* 9 Wheat. 235.

[Footnote 4]

73 U. S. 6 Wall. 31.

[Footnote 5]

79 U. S. 12 Wall. 212.

[Footnote 6]

86 U. S. 19 Wall. 581.

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