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Western Union Telegraph Co. Vs. Pendleton

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Decided On : May-27-1887

Appeal No. : 122 U.S. 347

Appellant : Western Union Telegraph Co.

Respondent : Pendleton

Judgement :

Western Union Telegraph Co. v. Pendleton - 122 U.S. 347 (1887)

U.S. Supreme Court Western Union Telegraph Co. v. Pendleton, 122 U.S. 347 (1887)

Western Union Telegraph Co. v. Pendleton

Argued April 27, 1887

Decided May 27, 1887

122 U.S. 347

ERROR TO THE SUPREME COURT

OF THE STATE OF INDIANA

SYLLABUS

The statutes of the State of Indiana, 4176, 4178, Rev.Stat. Ind. 1881, which require telegraph companies to deliver dispatches by messenger to the persons to whom the same are addressed or to their agents provided they reside within one mile of the telegraphic station or within the city or town in which such station is are in conflict with the clause of the Constitution of the United States which vests in Congress the power to regulate commerce among the states insofar as they attempt to regulate the delivery of such dispatches at places situated in other states.

The authority of Congress over the subject of commerce by telegraph with foreign countries or among the states being supreme, no state can impose an impediment to its freedom by attempting to regulate the delivery in other states of messages received within its own borders.

The reserved police power of a state under the Constitution, although difficult to define, does not extend to the regulation of the delivery at

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points without the state of telegraphic messages received within the state; but the state may, within the reservation that it does not encroach upon the free exercise of the powers vested in Congress, make all necessary provisions in respect of the buildings, poles, and wires of telegraph companies within its jurisdiction which the comfort and convenience of the community may require.

The statute of Indiana declares that

"Every electric telegraph company, with a line of wires wholly or partly in this state and engaged in telegraphing for the public shall, during the usual office hours, receive dispatches, whether from other telegraphing lines or from individuals, and on payment or tender of the usual charge, according to the regulations of such company, shall transmit the same with impartiality and good faith, and in the order of time in which they are received, under penalty, in case of failure to transmit or if

postponed out of such order, of one hundred dollars, to be recovered by the person whose dispatch is neglected or postponed, *provided however* that arrangements may be made with the publishers of newspapers for the transmission of intelligence of general and public interest out of its order, and that communications for and from officers of justice shall take precedence of all others."

4176, Rev.Stat.Ind. 1881, and that

"Such companies shall deliver all dispatches, by messenger, to the persons to whom the same are addressed or to their agents on the payment of any charges due for the same, *provided* such persons or agents reside within one mile of the telegraphic station or within the city or town in which such station is."

4178 *ibid.*

The present action is brought by William Pendleton, the plaintiff below, to recover of the Western Union Telegraph Company the penalty of \$100 prescribed by the above statute for failing to deliver at Ottumwa, in Iowa, a message received by it in Indiana for transmission to that place. The complaint, as finally amended, alleges that the defendant below, the Western Union Telegraph Company, is a corporation organized and subsisting under the laws of Indiana, with a line of wires from Shelbyville, in that state, to Ottumwa, in Iowa; that on the 14th of April, 1883, at

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35 minutes past 5 o'clock in the afternoon, at which time the company was engaged in telegraphing for the public, the plaintiff delivered to its agent at its office in Shelbyville the following telegram for transmission to its office in Ottumwa, *viz.*,

"April 14, 1883"

"To Rosa Pendleton, care James Harker, near City grave-Yard, Ottumwa, Iowa:"

"Have you shipped things? If not, don't ship. Answer quick."

"WM. PENDLETON"

"That, upon its delivery, the plaintiff paid the agent sixty cents, being the amount of the charge required for its transmission from Shelbyville to Ottumwa; that, without any fault or interference on his part, the company, after transmitting the message to Ottumwa, where it was received at half past seven in the afternoon of that day, failed to deliver it either to Rosa Pendleton or to James Harker, whereby the plaintiff sustained damage and the defendant became liable for \$100 under the statute of Indiana, for which sum plaintiff demands judgment."

To this complaint the company answered, admitting the receipt of the telegram as alleged and setting up that it transmitted the message with impartiality and good faith, in the order of time in which it was received, and without delay, to its office in Ottumwa, Iowa, where it was received, as alleged at half past seven of that day; that James Harker, to whose care the message was directed, lived more than one mile from the telegraph station at Ottumwa; that, in accordance with the usual custom of the office, the message was without delay placed in the post office of that town, with proper stamp thereon, and duly addressed, and that the telegram was received by the person to whom it was addressed on the following morning, April 15, 1883 at about 9 o'clock.

The answer further set forth that the duties and liabilities of telegraph companies in Iowa, and the transmission and delivery of the telegrams within the state, are regulated by a

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special statute of that state, which is as follows, *viz.:*

"Any person employed in transmitting messages by telegraph must do so without unreasonable delay, and anyone who willfully fails thus to transmit them, or who intentionally transmits a message erroneously, or makes known the contents of any message sent or received to any person except him to whom it is addressed or to his agent or attorney, is guilty of a misdemeanor. The proprietor of a telegraph is liable for all mistakes in transmitting messages made by any person in

his employment and for all damages resulting from a failure to perform any other duties required by law."

That by that statute, the defendant was not required to deliver telegrams by messenger to the persons to whom they were addressed. That in the City of Ottumwa it had established a certain district within which it delivered telegrams by messenger, and that, on the receipt of the telegram in question at Ottumwa, it was ascertained that Harker, to whose care it was addressed, did not reside within the delivery district, but outside of it, and more than one mile from the defendant's office, and that, in accordance with the custom and usage of the office and in order to facilitate the delivery of the message, a copy of the telegram was promptly placed in the post office at Ottumwa, with proper address, and delivered as stated above.

To this answer the plaintiff demurred, the circuit court of the state sustained the demurrer, and, the defendant electing to stand upon its answer, judgment was rendered for the plaintiff for \$100, which, on appeal to the supreme court of the state, was affirmed, and the company brings the case here for review.

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MR. JUSTICE FIELD, after stating the case as above, delivered the opinion of the Court as follows:

The contention of the Western Union Telegraph Company is that the law of Indiana is in conflict with the clause of the Constitution vesting in Congress the power to regulate commerce among the states.

In *Telegraph Co. v. Texas*, [105 U. S. 460](#) , it was decided by this Court that intercourse by the telegraph between the states is interstate commerce. Its language was:

"A telegraph company occupies the same relation to commerce, as a carrier of messages, that a railroad company does as a carrier of goods. Both companies are instruments of commerce, and their business is commerce itself. They do their

transportation in different ways, and their liabilities are, in some respects, different, but they are both indispensable to those engaged to any considerable extent in commercial pursuits."

Although intercourse by telegraphic messages between the states is thus held to be interstate commerce, it differs in material particulars from that portion of commerce with foreign countries and between the states which consists in the carriage of persons and the transportation and exchange of commodities, upon which we have been so often called to pass. It differs not only in the subjects which it transmits, but in the means of transmission. Other commerce deals only with persons or with visible and tangible things. But the telegraph transports nothing visible and tangible; it carries only ideas, wishes, orders, and intelligence. Other commerce requires the constant attention and supervision of the carrier for the safety of the persons and property carried. The message of the telegraph passes at once beyond the control of the sender, and reaches the office to which it is sent instantaneously. It is plain from these essentially different characteristics that

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the regulations suitable for one of these kinds of commerce would be entirely inapplicable to the other.

In the consideration of numerous cases in which questions have arisen relating to ordinary commerce with foreign countries and between the states, this Court has reached certain conclusions as to what subjects of commerce the regulation of Congress is exclusive, and indicated on what subjects the states may exercise a concurrent authority until Congress intervenes and assumes control. [Cooley v. Board of Wardens of the Port of Philadelphia](#), 12 How. 299; [Gilman v. Philadelphia](#), 3 Wall. 713; [Crandall v. Nevada](#), 6 Wall. 35; *Welton v. Missouri*, [91 U. S. 275](#) ; *Henderson v. Mayor of New York*, [92 U. S. 259](#) ; *Inman Steamship Co. v. Tinker*, [94 U. S. 238](#) ; *Hall v. De Cuir*, [95 U. S. 485](#) ; *County of Mobile v. Kimball*, [102 U. S. 691](#) ; *Transportation Co. v. Parkersburgh*, [107 U. S. 691](#) ; *Gloucester Ferry Co. v. Pennsylvania*, [114 U. S. 196](#) ; *Wabash, St.*

Louis & Pacific Railway Co. v. Illinois, [118 U. S. 557](#) , and *Robbins v. Shelby Taxing District*, [120 U. S. 489](#) , [120 U. S. 493](#) . But with reference to the new species of commerce consisting of intercourse by telegraphic messages, this Court has only in two cases been called upon to inquire into the power of Congress and of the state over the subject. In *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, [96 U. S. 1](#) , this Court had before it the Act of Congress of July 24, 1866, 14 Stat. 221, "to aid in the construction of telegraph lines, and to secure the use of the same for postal, military, and other purposes," and it held that the act was constitutional so far as it declared that the erection of telegraph wires should, as against state interference, be free to all who accepted its terms and conditions, and that a telegraph company of one state accepting them could not be excluded by another state from prosecuting its business within her jurisdiction. In *Telegraph Company v. Texas*, [105 U. S. 460](#) , from the opinion in which we have quoted above, it was held that a statute of Texas imposing a tax upon every message transmitted by a telegraph company doing business within its limits, so far as it operated on messages sent out of the state, was a regulation of foreign and interstate commerce, and therefore beyond the power of the state.

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In these cases, the supreme authority of Congress over the subject of commerce by the telegraph with foreign countries or among the states is affirmed whenever that body chooses to exert its power, and it is also held that the states can impose no impediments to the freedom of that commerce. In conformity with these views, the attempted regulation by Indiana of the mode in which messages sent by telegraphic companies doing business within her limits shall be delivered in other states cannot be upheld. It is an impediment to the freedom of that form of interstate commerce, which is as much beyond the power of Indiana to interpose as the imposition of a tax by the State of Texas upon every message transmitted by a telegraph company within her limits to other states was beyond her power. Whatever authority the state may possess over the transmission and delivery of messages by telegraph companies within her limits, it does not extend to the

delivery of messages in other states.

The object of vesting the power to regulate commerce in Congress was to secure with reference to its subjects uniform regulations, where such uniformity is practicable, against conflicting state legislation. Such conflicting legislation would inevitably follow with reference to telegraphic communications between citizens of different states if each state was vested with power to control them beyond its own limits. The manner and order of the delivery of telegrams as well as of their transmission would vary according to the judgment of each state. Indiana, as seen by its law given above, has provided that communications for or from officers of justice shall take precedence, and that arrangements may be made with publishers of newspapers for the transmission of intelligence of general and public interest out of its order, but that all other messages shall be transmitted in the order in which they are received, and punishes as an offense a disregard of this rule. Her attempt by penal statutes to enforce a delivery of such messages in other states in conformity with this rule could hardly fail to lead to collision with their statutes. Other states might well direct that telegrams on many other subjects should have precedence in delivery within their limits over

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some of these, such as telegrams for the attendance of physicians and surgeons in case of sudden sickness or accident, telegrams calling for aid in case of fire or other calamity, and telegrams respecting the sickness or death of relatives.

Indiana also requires telegrams to be delivered by messengers to the person to whom they are addressed if they reside within one mile of the telegraph station or within the city and town in which such station is, and the requirement applies, according to the decision of its supreme court in this case, when the delivery is to be made in another state. Other states might conclude that the delivery by messenger to a person living in a town or city being many miles in extent was an unwise burden, and require the duty within less limits, but if the law of one state can prescribe the order and manner of delivery in another state, the receiver of the message would often find himself incurring a penalty because of conflicting laws,

both of which he could not obey. Conflict and confusion would only follow the attempted exercise of such a power. We are clear that it does not exist in any state.

The Supreme Court of Indiana placed its decision in support of the statute principally upon the ground that it was the exercise of the police power of the state. Undoubtedly, under the reserved powers of the state which are designated under that somewhat ambiguous term of "police powers," regulations may be prescribed by the state for the good order, peace, and protection of the community. The subjects upon which the state may act are almost infinite, yet in its regulations with respect to all of them there is this necessary limitation: that the state does not thereby encroach upon the free exercise of the power vested in Congress by the Constitution. Within that limitation, it may undoubtedly make all necessary provisions with respect to the buildings, poles, and wires of telegraph companies in its jurisdiction which the comfort and convenience of the community may require.

It follows from the views expressed that

The judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion, and it is so ordered.

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