United States Vs. Barnes

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Appellant : United States

Respondent : Barnes

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United States v. Barnes

No. 565

Argued October 24, 1911

Decided January 9, 1912

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ERROR TO THE DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF KENTUCKY

SYLLABUS

The maxim *expressio unius est exclusio alterius* is a rule of construction, and not of substantive law, and serves only as an aid in discovering legislative intent when not otherwise manifest.

The mention in the Oleomargarine Act of August 2, 1886, c. 840, 24 Stat. 209, 3, of certain specified sections of the Revised Statutes, which relate to special taxes, as applicable to the special taxes imposed by 3, may exclude other sections relating to special taxes but does not exclude as inapplicable to the collection of the taxes imposed by, and enforcement of, the Oleomargarine Act, 3177, Rev.Stat., which is general in its terms, and relates to all articles and objects subject to internal revenue tax.

In view of the custom of embodying national legislation in codes and systematic collections of general rules, it is the settled rule of decision of this Court that subsequent legislation upon a subject covered by a previous codification carries the implication that general rules are not superseded by such subsequent legislation except where it clearly appears.

Where there is a codification of revenue laws to prevent fraud, the inference is that subsequent legislation is auxiliary to the earlier, and only in case of manifest repugnancy will it be construed as an abrogation thereof. *Wood v. United States,* 16 Pet. 342, 41 U. S. 363 .

The facts, which involve the construction of the Oleomargarine Act of 1886, and the applicability of 3177, Rev.Stat., are stated in the opinion.

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MR. JUSTICE VAN DEVANTER delivered the opinion of the Court.

The sole question presented for decision by this writ of error is whether Rev.Stat. 3177, is applicable to the collection

or enforcement of the specific tax imposed on oleomargarin by the Act of August 2, 1886, c. 840, 24 Stat. 209. In the district court, a negative answer to the question was given, and an indictment drawn and returned upon the contrary view was held bad upon demurrer. To a right appreciation of the question, it is essential that a brief outline be given of the internal revenue laws, of which 3177 is a part, and of the later Oleomargarin Act.

Title XXXV of the Revised Statutes is a codification and consolidation, according to an orderly arrangement, of all the then-existing laws relating to internal revenue. It is subdivided into chapters, each embracing cognate sections bearing upon a particular branch of the general subject. The first two chapters, one dealing with the officers of internal revenue and the other with assessments and collections, are, with minor exceptions, general in their terms and application. The third chapter deals with "special taxes" exacted of those who engage in designated classes of business, such as rectifying or selling distilled spirits and manufacturing or selling cigars; other chapters deal separately with specific taxes imposed upon particular articles or objects, such as distilled spirits and cigars, and the final chapter comprises provisions common to several objects of taxation. Section 3177 is a part of the second chapter, dealing with assessments and collections, and reads:

"Any collector, deputy collector, or inspector may enter, in the daytime, any building or place where any articles or objects subject to tax are made, produced, or kept, within his district, so far as it may be necessary, for the purpose of examining said articles or objects. And any owner of such building or place, or person having the agency or superintendence of the same, who refuses to admit such officer, or to suffer him to examine such article or articles, shall, for every such refusal, forfeit five hundred dollars. And when such premises are open at night, such officers

may enter them while so open, in the performance of their official duties. And if any person shall forcibly obstruct or hinder any collector, deputy collector, or inspector in the execution of any power and authority vested in him by law, or shall forcibly rescue or cause to be rescued any property, articles, or objects after the same shall have been seized by him, or shall attempt or endeavor so to do, the person so offending, excepting in cases otherwise provided for, shall, for every such offense, forfeit and pay the sum of five hundred dollars, or double the value of the property so rescued, or be imprisoned for a term not exceeding two years at the discretion of the court."

It will be perceived that the section is comprehensive in its terms and evidently designed to promote the enforcement of the revenue laws as to "any articles or objects subject to tax."

The Act of August 2, 1886, is a revenue law of the same class as those embodied in Title XXXV of the Revised Statutes. It imposes a specific tax on oleomargarin and "special taxes" on those who engage in its manufacture or sale, and contains several administrative and penal provisions. But it does not purport to be independent of other legislation or complete in itself. On the contrary, it plainly contemplates the existence of an established system of revenue laws to which resort shall be had in carrying it into effect. Section 3, which imposes the special taxes, declares that 3232 to 3241, and 3243 of the Revised Statutes "are, so far as applicable, made to extend to . . . the special taxes imposed by this section and to the persons upon whom they are imposed."

It is the express extension of those sections to the special taxes imposed by the Oleomargarin Act which gives rise to the question before stated. The position taken by the defendants in error, and sustained by the district court is that that extension of particular sections is an implied exclusion of all others. *Expressio unius est exclusio alterius.*

We are unable to assent to that position. The maxim invoked expresses a rule of construction, not of substantive law, and serves only as an aid in discovering the legislative intent when that is not otherwise manifest. In such instances, it is of deciding importance; in others, not. In the instance now before us, too much is claimed for it. The sections named in 3 of the Oleomargarin Act are a part of chapter 3 of Title XXXV of the Revised Statutes. They relate exclusively to special taxes, and are so restricted in their terms that it is at least doubtful that they could be applied to any special taxes not imposed by that chapter unless expressly extended to them. To illustrate, 3232, which precedes the others and is more or less a key to their meaning, declares:

"No person shall be engaged in or carry on any trade or business *hereinafter mentioned* until he has paid a special tax therefor in the manner *hereinafter provided.* "

On the other hand, the sections in chapters 1 and 2 are, with minor exceptions, so general in their terms as to leave no doubt of their applicability to taxes imposed by subsequent legislation containing no provision to the contrary. In other words, the difference between the sections named and those in chapters 1 and 2 discloses an occasion for affirmatively extending the operation of the former, and no occasion for mentioning the latter. It also is apparent that the Oleomargarin Act will measurably fail of its purpose if the general provisions of chapters 1 and 2 are not applicable to the taxes which it imposes, for, as before indicated, it does not, in itself, provide a complete or effective scheme for their enforcement. Neither does it contain any provision for the redress of those from whom such taxes are erroneously or illegally exacted, although the settled policy of the government long has been to afford relief from all such exactions, as is shown by sections 3220, 3226, 3227, and 3228 in chapter 2. These omissions are cogent evidence that it is intended that recourse shall be had to the

general provisions of chapters 1 and 2 save as, in the Oleomargarin Act, it may be provided otherwise.

Much of our national legislation is embodied in codes, or systematic collections of general rules, each dealing in a comprehensive way with some general subject, such as the customs internal revenue, public lands, Indians, and patents for inventions, and it is the settled rule of decision in this Court that, where there is subsequent legislation upon such a subject, it carries with it an implication that the general rules are not superseded, but are to be applied in its enforcement, save as the contrary clearly appears. Thus, in *Wood v. United States,* 16 Pet. 342, 41 U. S. 363 , where a question arose as to what effect should be given a general provision of an early customs law in view of a later enactment upon that subject, it was said:

"And it may be added that, in the interpretation of all laws for the collection of revenue, whose provisions are often very complicated and numerous to guard against frauds by importers, it would be a strong ground to assert that the main provisions of any such laws sedulously introduced to meet the case of a palpable fraud should be deemed repealed merely because, in subsequent laws, other powers and authorities are given to the customhouse officers, and other modes of proceeding are allowed to be had by them before the goods have passed from their custody, in order to ascertain whether there has been any fraud attempted upon the government. The more natural, if not the necessary, inference in all such cases is that the legislature intend the new laws to be auxiliary to and in aid of the purposes of the old law, even when some of the cases provided for may equally be within the reach of each. There certainly, under such circumstances, ought to be a manifest and total repugnancy in the provisions to lead to the conclusion that the latter laws abrogated, and were designated to abrogate, the former."

In *Saxonville Mills v. Russell,* 116 U. S. 13 , 116 U. S. 21 , it was said, in disposing of a like

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question:

"It would be an unsound and unsafe rule of construction which would separate from the tariff revenue system, consisting of numerous and diverse enactments, each new act altering it, in any of its details, or prescribing new duties in lieu of existing ones on particular articles. The whole system must be regarded in each alteration, and no disturbance allowed of existing legislative rules of general application beyond the clear intention of Congress."

And in *Catholic Bishop of Nesqually v. Gibbon,* 158 U. S. 155 , 158 U. S. 166 - 167, where the question was whether general statutes defining the powers of the officers of the Land Department were applicable to a grant of public lands by a subsequent act of Congress, it was said:

"While there may be no specific reference in the act of 1848 of questions arising under this grant to the Land Department, yet its administration comes within the scope of the general powers vested in that Department. . . . It may be laid down as a general rule that, in the absence of some specific provision to the contrary in respect to any particular grant of public land, its administration falls wholly and absolutely within the jurisdiction of the Commissioner of the General Land Office, under the supervision of the Secretary of the Interior. It is not necessary that with each grant there shall go a direction that its administration shall be under the authority of the Land Department. It falls there unless there is express direction to the contrary."

We conclude that, while the express extension of particular sections in chapter 3, dealing with special taxes, to the like taxes imposed by 3 of the Oleomargarin Act, may operate as an implied exclusion of the other sections in that chapter, it does not in any wise restrict or affect the operation of any of the general sections in chapters 1 and 2. And as 3177 is a part of chapter 2, is general in its terms, and does not appear to be repugnant to any provision in the Oleomargarin Act, we think the question

first above stated must be answered in the affirmative.

The cases of *Craft v. Schafer,* 154 F. 1002; *Tucker v. Grier,* 160 F. 611, and *Hastings v. Herold,* 184 F. 759, although not involving 3177, disclose some contrariety of opinion in the lower federal courts upon the matter principally discussed herein, and we deem it appropriate to observe that our conclusion has been reached only after a careful consideration of those cases.

Reversed.