**Mcdermott Vs. Wisconsin**

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**Appeal No.** : 228 U.S. 115

**Appellant** : Mcdermott

**Respondent** : Wisconsin

**Judgement** :

McDermott v. Wisconsin - 228 U.S. 115 (1913)
U.S. Supreme Court McDermott v. Wisconsin, 228 U.S. 115 (1913)

**McDermott v. Wisconsin**

**Nos. 112, 113**

**Argued January 17, 20, 1913**

**Decided April 7, 1913**

**228 U.S. 115**

*ERROR TO THE SUPREME COURT*

*OF THE STATE OF WISCONSIN*

## SYLLABUS

State legislation in regard to labeling articles in interstate commerce which are required to be branded under the federal Pure Food and Drugs Act is void so far as it interferes with the provisions of such act and imposes a burden on interstate commerce, and so *held* as to certain provisions of the Wisconsin statute.

Congress not only has the right to pas laws regulating legitimate commerce among the states and with foreign nations, but also has full power to bar from the channels of such commerce illicit and harmful articles.

Congress may itself determine the means appropriate to this purpose; and, so long as they do no violence to the other provisions of the Constitution, Congress is itself the judge of the means to be employed in exercising the powers conferred on it in this respect.

The Pure Food and Drugs Act must be construed in the light of the purpose and power of Congress to exclude poisonous and adulterated food from interstate commerce. *Hipolite Egg Co. v. United States,* 220 U. S. 45 .

Articles the shipment or delivery of which in interstate commerce is prohibited by 2 of the Food and Drugs Act are those which are adulterated or misbranded within the meaning of the act in the light of those provisions of the act wherein adulteration and misbranding are defined.

"Package" or its equivalent, as used in 7 of the Food and Drugs Act, refers to the immediate container of the article which is intended for consumption by the public. To limit the requirements of the act to the outside box which is not seen by the purchasing public would render nugatory one of the principal provisions of the act.

*Quaere,* and not necessary to decide in this case, what is the exact meaning of the terms "original unbroken package" and "broken package" as used in 2, 3 and 10 of the Food and Drugs Act.

While the enactment by Congress of the Food and Drugs Act does not prevent the state from making regulations not in conflict therewith to protect its people against fraud or imposition by impure food and drugs, *Savage v. Jones,* 225 U. S. 501 , the state may not, under the guise of exercising its police power, impose burdens upon interstate commerce or enact legislation in conflict with the Act of Congress on the subject.

A state law on a subject within the domain of Congress must yield to the superior power of Congress; to the extent that it interferes with or frustrates the operation of the Act of Congress, a state statute is void.

Whether articles in interstate commerce have been branded in accordance with the terms of the Food and Drugs Act is not for the state to determine, but for the federal courts in the manner indicated by Congress.

As the federal Food and Drugs Act requires articles in interstate commerce to be properly labeled, a state cannot require a label when properly affixed under that statute to be removed and other labels authorized by its own statute to be affixed to the package containing the article so long as it remains unsold by the importer, whether it be in the original case or not.

The doctrine of original packages was not intended to limit the right of Congress, when it chose to assert it, as it has done in the Food and Drugs Act, to keep the channels of interstate commerce free from the carriage of injurious or fraudulently branded articles and to choose appropriate means to that end.

State legislation cannot impair legislative means provided by Congress in a federal statute for the enforcement thereof.

The statute of Wisconsin of 1907 prescribing a label for corn syrup and prohibiting all others is invalid so far as it relates to articles properly branded on the immediate container thereof under the federal Food and Drugs Act and brought into the state in interstate commerce, so long as they remain unsold by the importer, whether in the original outside package or not.

143 Wis. 18 reversed.

The facts, which involve the constitutionality of the Wisconsin Syrup Law and the construction of the federal Pure Food and Drug Law, are stated in the opinion.

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MR. JUSTICE DAY delivered the opinion of the Court.

The plaintiffs in error, George McDermott and T. H. Grady, were severally convicted in the Circuit Court of Dane County, in the State of Wisconsin, upon complaints made against them by an Assistant Dairy and Food

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Commissioner of that state, for the violation of a statute of Wisconsin relating to the sale of certain articles and for the protection of the public health. The convictions were affirmed by the decision of the Supreme Court of Wisconsin. 143 Wis. 18.

The complaint against McDermott charged that, on March 2, 1908, at Oregon, in Dane County, he

"did unlawfully have in his possession with intent to sell, and did offer and expose for sale and did sell, a certain article, product, compound, and mixture composed of more than seventy-five percent glucose and less than twenty-five percent of cane syrup, said cane syrup being then and there mixed with said glucose, and that the can containing said compound and mixture was then and there unlawfully branded and labeled 'Karo Corn Syrup,' and was then and there further unlawfully branded and labeled, '10% Cane Syrup, 90% Corn Syrup,' contrary to the statute in such case made and provided."

As to Grady, the complaint was similar to that against McDermott, except that the label designated the mixture as "Karo Corn Syrup with Cane Flavor," and added "Corn Syrup, 85%." The statute of Wisconsin for the violation of which plaintiffs in error were convicted is found in Laws of Wisconsin for 1907 at 646, being chapter 557, and the pertinent parts of it are as follows:

"Section 1. . . . No person, . . . by himself . . . or agent . . . shall sell, offer, or expose for sale, or have in his possession with intent to sell, any syrup, maple syrup, sugar-cane syrup, sugar syrup, refiners' syrup, sorghum syrup, or molasses, mixed with glucose, unless the barrel, cask, keg, can, pail, or other original container, containing the same, be distinctly branded or labeled so as to plainly show the true name of each and all of the ingredients composing such mixture, as follows:"

"  * * * *"

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"Third. In case such mixture shall contain glucose in a proportion exceeding 75 percent by weight, it shall be labeled and sold as 'Glucose flavored with Maple Syrup,' 'Glucose flavored with Sugar-cane Syrup,' . . . 'Glucose flavored with Refiners' Syrup,' . . . as the case may be. The address of the manufacturer or dealer. address of the manufacturer or dealer. . . . In all mixtures in which glucose is used in the proportion of more than 75 percent by weight, the name of the syrup or molasses which is mixed with the glucose for flavoring purposes, and the words showing that said syrup or molasses is used as a flavoring, as provided in this section, shall be printed on the label of each container of such mixture. . . . The mixture or syrups designated in this section shall have no other designation or brand than herein required that represents or is the name of any article which contains a saccharin substance, . . . nor shall any of the aforesaid glucose, syrups, molasses, or mixtures contain any substance injurious to health, nor any other article or substance otherwise prohibited by law in articles of food."

The facts are that the plaintiffs in error were retail merchants in Oregon, Dane County, Wisconsin; that, before the filing of the complaints against them, each had bought for himself for resale as such merchant from wholesale grocers in Chicago, and had received by rail from that city, twelve half-gallon tin cans or pails of the articles designated in the complaints, each shipment being made in wooden boxes containing the cans, and that, when the goods were received at their stores, the respective plaintiffs in error took the cans from the boxes, placed them on the shelves for sale at retail, and destroyed the boxes in which the goods were shipped to them, as was customary in such cases. From their nature, the articles thus canned and offered to be sold, instead of being labeled as they were, if labeled in accordance with

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the state law, should have been branded with the words "Glucose flavored with Refiners' Syrup," and, as the statute provides that the mixtures or syrups offered for sale shall have upon them no designation or brand which represents or contains the name of a saccharin substance other than that required by the state law, the labels upon the cans must be removed if the state authority is recognized.

Plaintiffs in error contend that the cans were labeled in accordance with the Food and Drugs Act passed by Congress, June 30, 1906, 34 Stat. 768, c. 3915, and that that fact is evidenced by the decision of the Secretaries of the Treasury, Agriculture, and Commerce and Labor, made under the claimed authority of that act, which is as follows:

"Washington, D.C. February 13, 1908"

"We have each given careful consideration to the labeling, under the Pure Food Law, of the thick, viscous syrup obtained by the incomplete hydrolysis of the starch of corn, and composed essentially of dextrose, maltose, and dextrim. In our opinion, it is lawful to label this syrup as corn syrup, and if to the corn syrup there is added a small percentage of refiner's syrup, a product of cane, the mixture in our judgment is not misbranded if labeled 'corn syrup with cane flavor.'"

"George B. Cortelyou, Secretary of the Treasury"

"James Wilson, Secretary of Agriculture"

"Oscar H. Strauss, Secretary of Commerce and Labor"

And it is insisted that the federal Food and Drugs Act, passed under the authority of the Constitution, has taken possession of this field or regulation, and that the state act is a wrongful interference with the exclusive power of Congress over interstate commerce, in which, it appears, the goods in question were shipped. The case presents,



among other questions, the constitutional question whether the state act, in permitting the sale of this article only when labeled according to the state law, is open to the objection just indicated.

That Congress has ample power in this connection is no longer open to question. That body has the right not only to pass laws which shall regulate legitimate commerce among the states and with foreign nations, but has full power to keep the channels of such commerce free from the transportation of illicit or harmful articles, to make such as are injurious to the public health outlaws of such commerce, and to bar them from the facilities and privileges thereof. Congress may itself determine the means appropriate to this purpose, and, so long as they do no violence to other provisions of the Constitution, it is itself the judge of the means to be employed in exercising the powers conferred upon it in this respect. *M'Culloch v. Maryland,* 4 Wheat. 316, 17 U. S. 421 ; *Lottery Case,* 188 U. S. 321 , 188 U. S. 355 ; *Hipolite Egg Co. v. United States,* 220 U. S. 45 ; *Hoke v. United States,* 227 U. S. 308 .

The Food and Drugs Act was passed by Congress under its authority to exclude from interstate commerce impure and adulterated food and drugs and to prevent the facilities of such commerce being used to enable such articles to be transported throughout the country from their place of manufacture to the people who consume and use them, and it is in the light of the purpose and of the power exerted in its passage by Congress that this act must be considered and construed. *Hipolite Egg Co. v. United States, supra.*

Section 2 of the act provides that

"the introduction into any state or territory or the District of Columbia from any other state or territory or the District of Columbia . . . of any article of food or drugs which is adulterated or misbranded, within the meaning of this act, is hereby prohibited, and any person who shall

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ship or deliver for shipment from any state or territory or the District of Columbia to any other state or territory or the District of Columbia . . . any such article so adulterated or misbranded within the meaning of this act, . . . shall be guilty of a misdemeanor, and for such offense be fined,"

etc. The article of food or drugs the shipment or delivery for shipment in interstate commerce of which is prohibited and punished is such as is adulterated or misbranded within the meaning of the act. What it is to adulterate or misbrand food or drugs within the meaning of the act requires a consideration of its other provisions, wherein such adulteration or misbranding is defined.

According to the terms of 7, drugs are "adulterated" where, if they are sold under a name recognized in the United States Pharmacopoeia, and differ from the standard of strength therein laid down, the standard of strength, etc., is not plainly stated upon the bottle, box, or other container, and food is "adulterated" where it contains an added poisonous or other added deleterious ingredient which may render it injurious; except that, where directions are printed on the covering or the package for the necessary removal of such preservative, the provisions of the act shall apply only when the food is ready for consumption. Turning to 8, we find that the term "misbranded," as used in the statute, shall apply to all drugs or articles of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein, which is false or misleading in any particular, and to any food or drug product which is falsely branded as to the state, etc., in which it was manufactured, and in the case of drugs it is provided that, if the contents of the package as originally put up shall have been removed in whole or in part, and other contents placed in such package, or, if the package fail to bear a statement on the label as required, the drugs



shall be deemed misbranded, and as to food, if it shall be labeled or branded so as to deceive or mislead a purchaser, or purport to be a foreign product when not so, or, if the contents of the package as originally put up shall have been removed in whole or in part and other contents placed in such package; or, if the package fail to bear a statement on the label as required, or, if in package form and the contents are stated in terms of weight or measure, and they are not plainly and correctly stated on the outside of the package; or, if the package containing it or its label contain any design or device regarding the ingredients or the substances contained therein which are false or misleading in character, the food shall be deemed misbranded. That the word "package," or its equivalent expression, as used by Congress in 7 and 8 in defining what shall constitute adulteration and what shall constitute misbranding within the meaning of the act, clearly refers to the immediate container of the article which is intended for consumption by the public, there can be no question. And it is sufficient, for the decision of these cases that we consider the extent of the word "package" as thus used only, and we therefore have no occasion, and do not attempt, to decide what Congress included in the terms "original unbroken package," as used in the second and tenth sections, and "unbroken package" in the third section. Within the limitations of its right to regulate interstate commerce, Congress manifestly is aiming at the contents of the package as it shall reach the consumer, for whose protection the act was primarily passed, and it is the branding upon the package which contains the article intended for consumption itself which is the subject matter of regulation. Limiting the requirements of the act as to adulteration and misbranding simply to the outside wrapping or box containing the packages intended to be purchased by the consumer, so that the importer, by removing and destroying such covering, could prevent the operation of the law on the imported article yet unsold, would render the act nugatory and its provisions wholly inadequate to accomplish the purposes for which it was passed.

The object of the statute is to prevent the misuse of the facilities of interstate commerce in conveying to and placing before the consumer misbranded and adulterated articles of medicine or food, and in order that its protection may be afforded to those who are intended to receive its benefits, the brands regulated must be upon the packages intended to reach the purchaser. This is the only practical or sensible construction of the act, and, for the reasons we have stated, we think the requirements of the act as so construed clearly within the powers of Congress over the facilities of interstate commerce, and such has been the construction generally placed upon the act by the federal courts. *In re Wilson,* 168 F. 566; *Nave-McCord Mercantile Co. v. United States,* 182 F. 46; *United States v. American Druggists' Syndicate,* 186 F. 387; *United States v. Ten Barrels of Vinegar,* 186 F. 400; *Van Bremen v. United States,* 192 F. 904; *United States v. Seventy-five Boxes of Alleged Pepper,* 198 F. 934.

While these regulations are within the power of Congress, it by no means follows that the state is not permitted to make regulations with a view to the protection of its people against fraud or imposition by impure food or drugs. This subject was fully considered by this Court in *Savage v. Jones,* 225 U. S. 501, in which the power of the state to make regulations concerning the same subject matter, reasonable in their terms and not in conflict with the Acts of Congress, was recognized and stated, and certain regulations of the State of Indiana were held not to be inconsistent with the Food and Drugs Act of Congress. While this is true, it is equally well settled that the state



may not, under the guise of exercising its police power or otherwise, impose burdens upon or discriminate against interstate commerce, nor may it enact legislation in conflict with the statutes of Congress passed for the regulation of the subject, and if it does, to the extent that the state law interferes with or frustrates the operation of the Acts of Congress, its provisions must yield to the superior federal power given to Congress by the Constitution. *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.,* 204 U. S. 426 ; *Northern Pacific Ry. Co. v. Washington,* 222 U. S. 370 ; *Southern Ry. Co. v. Reid,* 222 U. S. 424 ; *Second Employers' Liability Cases,* 223 U. S. 1 ; *Savage v. Jones, supra,* 225 U. S. 533 .

Having in view the interpretation we have given the Food and Drugs Act, and applying the doctrine just stated to the instant cases, how does the matter stand? When delivered for shipment and when received through the channels of interstate commerce, the cans in question bore brands or labels which were supposed to comply with the requirements of the Act of Congress. Whether the Secretaries had the power, under the Food and Drugs Act, to make the regulation set out above is not now before us. It is enough for the present purpose to say that, so far as this record discloses, it was undertaken in good faith to label the articles in compliance with the Act of Congress, and, if they were not so labeled, by 2 provision is made for the enforcement of the act by criminal prosecution, and by 10 by proceedings *in rem.* Whether the labels complied with the federal law was not for the state to determine. This was a matter provided for by the Act of Congress, and to be determined as therein indicated by proper proceedings in the federal courts.

The label upon the unsold article is, in the one case, the evidence of the shipper that he has complied with the Act of Congress, while, in the other, by its misleading and false character, it furnishes the proof upon which the federal

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authorities depend to reach and punish the shipper and to condemn the goods. If truly labeled within the meaning of the act, his goods are immune from seizure by federal authority; if the label is false or misleading within the terms of the law, the goods may be seized and condemned. In other words, the label is the means of vindication or the basis of punishment in determining the character of the interstate shipment dealt with by Congress. While in this situation, the goods being unsold, as a condition of their legitimate sale within the state, and also of their being in the possession of the importer for the purpose of sale and of being exposed and offered for sale by him, the Wisconsin statute provides that they shall bear the label required by the state law and none other (which represents a saccharin substance, as do the labels in these cases). In others words, it is essential to a legal exercise of possession of and traffic in such goods under the state law that labels which presumably meet with the requirements of the federal law, and for the determination of the correctness of which Congress has provided efficient means, shall be removed from the packages before the first sale by the importer. In this connection, it might be noted that, as a practical matter, at least, the first time the opportunity of inspection by the federal authorities arises in cases like the present is when the goods, after having been manufactured, put up in package form and boxed in one state, and having been transported in interstate commerce, arrive at their destination, are delivered to the consignee, unboxed, and placed by him upon the shelves of his store for sale. Conceding to the state the authority to make regulations consistent with the federal law for the further protection of its citizens against impure and misbranded food and drugs, we think to permit such regulation as is embodied in this statute is to permit a state to discredit and burden legitimate federal regulations of interstate commerce, to destroy rights arising out of the federal

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statute which have accrued both to the government and the shipper, and to impair the effect of a federal law which has been enacted under the Constitutional power of Congress over the subject.

To require the removal or destruction before the goods are sold of the evidence which Congress has by the Food and Drugs Act, as we shall see, provided may be examined to determine the compliance or noncompliance with the regulations of the federal law, is beyond the power of the state. The Wisconsin act which permits the sale of articles subject to the regulations of interstate commerce only upon condition that they contain the exclusive labels required by the statute is an act in excess of its legitimate power.

It is insisted, however, that, since at the time when the state act undertook to regulate the branding of these goods, namely, when in the possession of the plaintiffs in error, and held upon their shelves for sale, the cans had been removed from the boxes in which they were shipped in interstate commerce, they had therefore passed beyond the jurisdiction of Congress, and their regulation was exclusively a matter for state legislation. This assertion is based upon the original-package doctrine as it is said to have been laid down in the former decisions in this Court. The term "original package" had its origin in *Brown v. Maryland,* 12 Wheat. 419, in which this Court had to consider the extent of the protection given under federal authority to articles imported into this country from abroad for sale, and it was there held that (p. 25 U. S. 441 ):

"When the importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the state; but while remaining the property of the importer, in his warehouse, in the original form or package in which it

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was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the Constitution."

That doctrine has been many times applied in the decisions of this Court in defining the line of demarcation which shall separate the federal from the state authority where the sovereign power of the nation or state is involved in dealing with property. And where it has been found necessary to decide the boundary of federal authority, it has been generally held that, where goods prepared and packed for shipment in interstate commerce are transported in such commerce, and delivered to the consignee, and the package by him separated into its component parts, the power of federal regulation has ceased and that of the state may be asserted. Some of the cases in which this doctrine has been considered will be found in the margin. * In the view, however, which we take of this case, it is unnecessary to enter upon any extended consideration of the nature and scope of the principles involved in determining what is an original package. For, as we have said, keeping within its Constitutional limitations of authority, Congress may determine for itself the character of the means necessary to make its purpose effectual, in preventing the shipment in interstate commerce of articles of a harmful character, and to this end may provide the means of inspection, examination, and seizure necessary to enforce the prohibitions of the act, and when 2 has been violated, the federal authority, in enforcing either 2 or 10, may follow the adulterated or misbranded article at least to the shelf of the importer.

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Congress, having made adulterated and misbranded articles contraband of interstate commerce in the manner we have already pointed out, provides in 10 of the act that such articles may be proceeded against and seized for confiscation and condemnation while being transported from one state, territory, district, or insular possession to another for sale, or, having been transported, remaining "unloaded, unsold, or in original unbroken packages," and the subsequent provisions of the section regulate the disposition of the articles seized. To make the provisions of the act effectual, Congress has provided not only for the seizure of the goods while being actually transported in interstate commerce, but has also provided for such seizure after such transportation and while the goods remain "unloaded, unsold, or in original unbroken packages." The opportunity for inspection en route may be very inadequate. The real opportunity of government inspection may only arise when, as in the present case, the goods as packed have been removed from the outside box in which they were shipped, and remain, as the act provides, "unsold." It is enough, by the terms of the act, if the articles are *unsold,* whether, in original packages or not. Bearing in mind the authority of Congress to make efficient regulations to keep impure or misbranded articles out of the channels of interstate commerce, we think the provisions of 10 are clearly within its power. Indeed, it seems evident that they are measures essential to the accomplishment of the purpose for which the act was intended.

The doctrine of original package had its origin in the opinion of Chief Justice Marshall in *Brown v. Maryland,* already referred to. It was intended to protect the importer in the right to sell the imported goods which was the real object and purpose of importation. To determine the time when an article passes out of the interstate into state jurisdiction for the purpose of taxation is entirely

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different from deciding when an article which has violated a federal prohibition becomes immune. The doctrine was not intended to limit the right of Congress, now asserted, to keep the channels of interstate commerce free from the carriage of injurious or fraudulently branded articles, and to choose appropriate means to that end. The legislative means provided in the federal law for its own enforcement may not be thwarted by state legislation having a direct effect to impair the efficient exercise of such means.

For the reasons stated, the statute of Wisconsin, in forbidding all labels other than the one it prescribed, is invalid, and it follows that the judgments of the state court affirming the convictions of the plaintiffs in error for selling the articles in question without the exclusive brand required by the state must be reversed, and the cases are remanded to the state court for further proceedings not inconsistent with this opinion.

* *Leisy v. Hardin,* 135 U. S. 100 ; *Rhodes v. Iowa,* 170 U. S. 412 , 170 U. S. 424 ; *Schollenberger v. Pennsylvania,* 171 U. S. 1 , 171 U. S. 19 *et seq.; May v. New Orleans,* 178 U. S. 496 ; *Austin v. Tennessee,* 179 U. S. 343 ; *American Steel & Wire Co. v. Speed,* 192 U. S. 500 , 192 U. S. 519 , *et seq.; Cook v. Marshall County,* 196 U. S. 261 ; *Heyman v. Southern Ry. Co.,* 203 U. S. 270 , 203 U. S. 276 ; *Savage v. Jones,* 225 U. S. 501 , 225 U. S. 520 ; *Purity Extract & Tonic Co. v. Lynch,* 226 U. S. 192 , 226 U. S. 200 .