State of Missouri v Doan, George P. 1858 St. Louis 394/3

593/21

57
M58

State - resp atty: Mauro, charles G
King, wyllys & King, Charles E

selling merchandise w/out license
cloth
no disposition on record
criminal case

Page 1.—

State of Missouri
County of St. Louis } ss.

At a term of the Saint Louis Criminal Court begun and held at the City of Saint Louis within and for the County of Saint Louis on the first Monday in May, the same being the fourth day of said month, in the year of our Lord, One thousand eight hundred and fifty seven, were present the Honorable James R Lackland, Judge.- Charles G. Mann Esq. Circuit Attorney.- James H. Vail, Assistant Circuit Attorney. William C. Smith, Marshal, and Frederick Kretchmar Clerk of said Court.—

Tuesday, May 5th 1857.—

The marshal returns here in Court the Special Venire to him directed with a panel of Grand-Jurors endorsed thereon, who being called come as follows to-wit:- Hiram Shaw, who is by the Court appointed foreman- James Wright, John Casey, Henry D. Gillsdorf, Charles Bobb, Amadee Valle,- George B. Brua, Isaac L. Garrisson,- Joshua Houston,- George N. Bushey, Ellis Leeds,- P. F. Mc Shery, Francis Jones, Thomas West and Carlos Greely, fifteen good and lawful men who being duly elected, empannelled, charged and sworn, retire to consider of their presentments.—

Grand-Jury 3

Monday, May 25th 1857.—

The Grand Jurors return to the bar and deliver the following indictment as a true bill to-wit;—

Indictment 3

State of Missouri
County of St. Louis } ss. St. Louis Criminal Court, May Term, 1857.—

The Grand Jurors of the State of Missouri within and for the body of the County of Saint Louis, now here in Court duly empannelled sworn and charged upon their oath present that G. P. Doan Wyllys King.- Wm. A. Doan, Charles E. King, they being a copartnership under the name and style of Doan, King & Co. late of Saint Louis in Saint Louis County, on the first day of July A. D. Eighteen hundred and fifty Six, and on divers other days and times between that day and the day of the finding of this indictment at Saint Louis in Saint Louis County aforesaid, unlawfully did deal as a merchant in the selling of goods, wares and merchandize, not the growth manufacture or produce of this State, and not unmanufactured articles, the growth or produce of other States, by then and on said other days and times, there selling as a merchant aforesaid fifty yards of cloth, fifty yards of domestic cotton, fifty yards of cassimere, fifty yards of sattinet, fifty yards of Calico, fifty yards of Muslin, fifty yards of linen, fifty yards of silk, fifty yards of prints, the same being goods wares and merchandize at a place then and on said other days and times occupied by said G. P. Doan, Wyllys King, Wm. A. Doan, and Charles E. King, under the name and style aforesaid of Doan, King & Co. for that purpose, to divers persons to the Grand Jurors aforesaid unknown, for the sum and price of fifty cents for each and every yard of cloth domestic cotton, cassimere, sattinett, calico, muslin, linen,

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Silk, and Prints sold as aforesaid, without then and on said other days and times having a license therefor continuing in force against the Statute in that case made and provided against the peace and dignity of the State. —

And the Grand Jurors aforesaid upon their oath aforesaid do further present, That G. P. Doan Wyllys Knig, Wm. A. Doan, and Charles E. Knig, under the firm and Style of Doan, Knig and Company late of Saint Louis in Saint Louis County on the first day of July, A. D. Eighteen hundred and fifty six and on divers other days and times between that day and the day of finding of this indictment in Saint Louis in St. Louis County aforesaid, unlawfully did deal as a merchant in the selling of goods, wares and merchandize which had been before that time imported into this State, not the growth produce or manufacture of this State, and not unmanufactured articles the growth or produce of other States, by then and on said other days and times there selling in the original imported packages as a merchant as aforesaid, fifty yards of cloth, fifty yards of domestic cotton, fifty yards of linen, fifty yards of muslin, fifty yards of Calico, fifty yards of velvet, fifty yards of Silk, fifty yards of merino, - fifty yards of muslin delanie, fifty yards of flannel, being goods wares and merchandize, the growth produce and manufacture of England in Great Britain, a Sovereignty, and upon which said goods wares and merchandize, duty had been paid at said County under the laws of the United States by the said G. P. Doan, Wyllys Knig, Wm A. Doan, Charles E. Knig, they being a copartnership under the name and Style aforesaid to certain persons to the Grand Jurors aforesaid as yet unknown at the time and price of fifty Cents for each and every yard of Cloth, domestic cotton, linen, Cassimere, Sattinett, muslin, Calico, velvet, Silk Merino, muslin-de-laine and flannel, so sold as aforesaid, without then and on said other days and times there having a license therefor continuing in force, against the peace and dignity of the State. —

And the Grand Jurors aforesaid upon their oath aforesaid do further present, That G. P. Doan Wyllys Knig, Wm A. Doan, Charles E. Knig, a copartnership under the name and Style of Doan, Knig, & Co, late of Saint Louis in Saint Louis County, on the first day of July A. D. Eighteen hundred and fifty six, and on divers other days and times between that day and the day of the finding of this indictment at Saint Louis in Saint Louis County aforesaid unlawfully did deal as merchants in the selling of goods wares and merchandize not the growth manufacture or produce of this State, and not unmanufactured articles the growth or produce of other States and which said goods wares & merchandize were imported into this State from the State of Massachusetts, by then and on divers other days and times selling the goods wares and merchandize imported as aforesaid in the Original imported packages and in broken packages as merchants as aforesaid, fifty yards of Cloth, fifty yards of domestic cotton, fifty yards muslin, fifty yards Calico, fifty yards velvet, fifty yards of barege, fifty yards of brown holland, fifty yards of merino, fifty yards Alpacca, at a place then and on said other days and times there occupied by said G. P. Doan, Wyllys Knig, Wm A. Doan, & Charles E. Knig, forming a Copartnership under the name and Style of Doan, Knig and Company for that purpose, to divers persons to the Grand Jurors aforesaid unknown, for the sum and price of fifty cents for each and every yard of said Cloth, domestic

Cotton, calico, muslin. linen, sattinet, cassimere, Berege, brown holland, Merino, Alpacca, sold as aforesaid, the same being the growth produce and manufactures of the State of Massachusetts, Ohio, and New-York, without then and on said other days and times there having a license therefor continuing in force against the peace and dignity of the State.-

And the Grand Jurors aforesaid upon their oath aforesaid do further present.- That D.P. Doan Wyllys King, Wm A. Doan & Charles E. King, being a copartnership under the name & style of Doan, King & Co. late of Saint Louis in Saint Louis County, on the first day of July A.D. Eighteen hundred and fifty six and on divers other days and times between that day and the day of the finding of this indictment at St. Louis in St. Louis County aforesaid, unlawfully did deal as merchants in the selling of goods wares and merchandize imported as aforesaid, not being the growth produce or manufacture of this State and not being unmanufactured articles the growth or produce of other States, by then & on said other days and times there selling as merchants aforesaid, fifty yards of cloth, fifty yards of domestic cotton, fifty yards of velvet, fifty yards of delaine, fifty yards of silk, fifty yards Alpacca, fifty yards Jaconet, fifty yards cassimere, fifty yards calico, fifty yards of linen fifty yards of lawn, the same being the growth produce and manufacture of the States of Ohio, Massachusetts Vermont, New York and Pennsylvania, and imported into this State as aforesaid, and were then and on said other days and times sold as aforesaid, at wholesale, in the original unbroken packages, at a place occupied by the said D. P. Doan, Wyllys King, Wm A. Doan, and Charles E. King, forming a Copartnership under the name & style of Doan, King & Company, for that purpose, to divers persons to the Grand Jurors aforesaid unknown, for the sum and price of fifty cents a yard for each and every yard of the goods wares and merchandize sold as aforesaid without license therefor then and on said other days and times there continuing in force, against the peace and dignity of the State.-

James H. Vail, Assist Circt Atty.-

Endorsed: A true bill.- Hiram Shaw. Foreman.- Filed May 25th 1857. Fred. Kretschmar. Clerk.-

Whereupon the following Capiases were issued, to wit:- Capias for D. P. Doan.-

Capias for D. P. Doan.-

County of St. Louis, ss

The State of Missouri, to the Marshal of St. Louis County, Greeting;-

We command you to take D. P. Doan if he be found in your bailiwick and safely keep, so that you have his body before the Honorable Judge of the St. Louis Criminal Court, now in session at the City of Saint Louis, within and for the County of Saint Louis, forthwith, to answer an indictment found against him by the Grand Inquest of the State of Missouri for the body of the County of Saint Louis for selling merchandize without a license, contrary to the form of the Statute in such case made and provided and against the peace and dignity of the State, and have you then there this writ, with your return thereon how you execute the same.-

(Seal) Witness Frederick Kretschmar, Clerk of our said Court, with the seal thereof hereto affixed at office in the City of St. Louis, this 25th day of May in the year of our Lord, Eighteen hundred and fifty seven.-

Fred. Kretschmar, Clerk

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Marshals return 33

The within named defendant not found in my Cmnty. May 28th 1857.—
Wm C. Smith. Marshal.

Capias for Wyllys King.—

Capias for Wyllys King. 33

County of St. Louis, ss.

The State of Missmi. to the Marshal of St. Louis Cmnty.—Greeting:—

We command you to take Wyllys King if he be found in your bailiwick and safely Keep, so that you have his body before the Honorable Judge of the St. Louis Criminal Court now in session at the City of Saint Louis within and for the County of Saint Louis. forthwith. to answer an indictment found against him by the Grand Inquest of the State of Missmi. for the body of the County of Saint Louis. for selling merchandize without a license. contrary to the form of the Statute in such case made and provided and against the peace and dignity of the State:— and have you then there this writ with your return thereon how you execute the same.—

Witness. Frederick Kretschmar. Clerk of our said Court with the seal thereof hereto affixed at office in the City of Saint Louis this 25th day of May. in the year of our Lord, eighteenhundred and fifty seven.

Seal

Fred Kretschmar Clerk

Marshal's Return. 33

The within named defendant not found in my County. St. Louis May 28th 57.—
Wm C. Smith. Marshal.—

Capias for Charles E. King.—

Capias for Chas. E. King 33

County of Saint Louis, ss.

The State of Missmi to the marshal of St. Louis County, Greeting:—

We command you to take Charles E. King if he be found in your bailiwick and safely Keep so that you have his body before the Honorable Judge of the St. Louis Criminal Court now in session at the City of Saint Louis within and for the County of Saint Louis. forthwith. to answer an indictment found against him by the Grand Inquest of the State of Missmi. for the body of the County of St. Louis for selling merchandize without a license. contrary to the form of the Statute in such case made and provided and against the peace and dignity of the State; and have you then there this writ with your return thereon how you execute the same.—

Witness. Frederick Kretschmar. Clerk of our said Court with the seal thereof hereto affixed at office in the City of Saint Louis this 25th day of May. in the year of our Lord Eighteen hundred and fifty seven.—

Seal

Fred Kretschmar. Clerk —

Marshal's Return. 33

The within named defendant not found in my county. St. Louis May 28th 57.—
Wm C. Smith. Marshal.—

and on the 9th day of June AD. 1857. the following Alias Capiases were issued, to wit:—

5)

Alias Capias for G. P. Doan.

Alias Capias for G. P. Doan.

County of St. Louis, ss.

The State of Missouri, to the Marshal of the County of St. Louis, Greeting:

We command you as before to take G. P. Doan if he be found in your bailiwick and him safely keep so that you have his body before the Honorable Judge of the Saint Louis Criminal Court, on the first day of the next term thereof, to be begun and held at the City of Saint Louis, within and for the County of Saint Louis on the first Monday of July next, then and there to answer an indictment found against him by the Grand Inquest of the State of Missouri, for the body of the County of Saint Louis, for selling merchandize without a license contrary to the form of the Statute in such case made and provided and against the peace and dignity of the State; - and have you then there this Writ, with your return thereon how you execute the same.

(Seal) Witness, Frederick Kretschmar Clerk of our said Court, with the seal thereof hereto affixed at office in the City of Saint Louis this 4th day of June in the year of our Lord, Eighteen hundred and fifty-seven.

Fred. Kretschmar, Clerk.

Marshal's Return.

Executed this writ by arresting the within named defendant, and taking the accompanying bond, Saint Louis County, June 4th 1857.

Wm. C. Smith, Marshal.

which bond is in the words and figures following to wit:

Bond of G. P. Doan.

State of Missouri
County of St. Louis } ss. Be it remembered that on the fourth day of June, in the year eighteen hundred and fifty seven, personally came before Wm. C. Smith, Marshal of the County aforesaid, George P. Doan as principal, and Wyllys King as his security and acknowledge themselves to owe to the State of Missouri the sum of One thousand Dollars, to be levied of their respective goods and chattels, lands and tenements; yet upon condition that if the said George P. Doan shall personally appear before the St. Louis Criminal Court on the first day of the next term thereof, to be holden for the County of St. Louis on the first Monday in July eighteen hundred and fifty seven, and from day to day during said term, and on the first day of any future term to which this cause may be continued, then and there to answer an indictment preferred by the Grand Jurors of said County against said George P. Doan for selling merchandize without a license, and shall not depart the said Court without leave thereof, then this recognizance to be void else to remain in force.

George P. Doan (Seal) Wyllys King (Seal).

Taken and certified the day and year aforesaid. Wm. C. Smith, Marshal.

Alias Capias for Wyllys King.

Alias Capias for Wyllys King. County of St. Louis, ss.

The State of Missouri, to the Marshal of the County of St. Louis Greeting:

We command you as before to take Wyllys King if he be found in your bailiwick, and him

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safely Keep. so that you have his body before the Honorable Judge of the Saint Louis Criminal Court, on the first day of the next term thereof to be begun and held at the City of Saint Louis, within and for the County of Saint Louis, on the first Monday of July next, then and there to answer an indictment found against him by the Grand Inquest of the State of Missouri for the body of the County of Saint Louis for selling merchandize without a license, contrary to the form of the Statute in such case made and provided and against the peace and dignity of the State:— and have you then there this writ with your return thereon how you execute the same.— Witness, Frederick Kretschmar, Clerk of our said Court, with the seal thereof (Seal) hereto affixed at office in the City of Saint Louis this 4th day of June, in the year of our Lord eighteen hundred and fifty-seven.— Fred. Kretschmar, Clerk.—

Marshal's Return. 3

Executed this writ by arresting the within named defendant and taking the accompaning bond, Saint Louis County, June 4th 1857.— Wm. C. Smith, Marshal.—

Which bond is in the words and figures following to wit:—

Bond of Wyllys King. 3

State of Missouri
County of St. Louis } ss Be it remembered that on the fourth day of June, in the year eighteen hundred and fifty seven personally came before Wm. C. Smith, Marshal of the County aforesaid, Wyllys King as principal and George P. Doan as his security and acknowledge themselves to owe to the State of Missouri the sum of One thousand dollars to be levied of their respective goods and chattels lands and tenements; yet upon condition that if the said Wyllys King shall personally appear before the St. Louis Criminal Court on the first Monday in July, Eighteen hundred and fifty seven, and from day to day to day during said term, and on the first day of any future term to which this cause may be continued then and there to answer an indictment preferred by the Grand Jurors of said County against said Wyllys King for selling merchandize without a license, and shall not depart the said Court without leave thereof, then this recognizance to be void, Else to remain in force.—

Wyllys King (Seal) George P. Doan. (Seal).

Taken and certified the day and year aforesaid.— Wm. C. Smith, Marshal.—

Alias Capias for Charles E. King.—

Alias Capias for Chas. E. King. 3

County of St. Louis, ss.

The State of Missouri to the Marshal of the County of St. Louis, Greeting:—

We command you as before to take Charles E. King, if he be found in your bailiwick and him safely keep, so that you have his body before the Honorable Judge of the Saint Louis Criminal Court, on the first day of the next term thereof to be begun and held at the City of Saint Louis, within and for—

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the County of Saint Louis, on the first Monday of July next, then and there to answer an indictment found against him by the Grand Inquest of the State of Missouri for the body of the County of Saint Louis for selling merchandize without a license contrary to the form of the Statute in such case made and provided and against the peace and dignity of the State; and have you then there this Writ, with your return thereon how you execute the same;—

Seal Witness Frederick Kretschmar, Clerk of our said Court with the seal thereof hereto affixed at office in the City of St. Louis this 4th day of June, in the year of our Lord, Eighteen hundred and fifty-seven.—

Fred Kretschmar, Clerk.—

Marshal's Return } Executed this writ by arresting the within named defendant and taking the accompanying bond:—
Saint Louis County, June 13th /57.— Wm C. Smith Marshal

which bond is in the words and figures following to wit:—

Bond of Chas. E. King } State of Missouri
County of St. Louis } ss. Be it remembered that on the 13th day of June, in the year eighteen hundred and fifty seven personally came before William C. Smith, Marshal of the County aforesaid, Charles E. King as principal and Wyllys King as his security and acknowledged themselves to owe to the State of Missouri the sum of One thousand dollars to be levied of their respective goods and chattels lands and tenements; yet upon condition that if the said Charles E. King shall personally appear before the St. Louis Criminal Court, on the first day of the next term thereof to be holden for the County of St. Louis on the first Monday in July eighteen hundred and fifty seven, and from day to day during said Term and on the first day of any future term to which this cause may be continued then and there to answer an indictment preferred by the Grand Jurors of said County against said Charles E. King, for selling merchandize without a license, and shall not depart the said Court without leave thereof, then this recognizance to be void Else to remain in force.—

Chas. E. King (Seal) Wyllys King (Seal)

Taken and certified the day and year aforesaid.— Wm C. Smith, Marshal.—

Monday, July 6th 1857.—

The State of Missouri.

vs } Selling merchandize without a license.—

George F. Dean, Wyllys King & Charles E. King. } Now at this day come as well the Circuit Attorney who prosecutes for the State, as said defendants by their attorney, and files a Demmurer to said indictment, and said demmurer being by said parties argued and submitted to the Court, therefore it is considered that said demmurer be overruled.—

Demmurer filed & overruled

Tuesday, July 4th 1857.—

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The State of Missouri

vs

George P. Dean, Wyllys King, Charles King. } Selling merchandize without a license.—

Now at this day come as well the Circuit Attorney, who prosecutes for the State as each of said defendants by his Attorney, and having had hearing of said indictment, says he is not guilty of selling merchandize as thereinchanged, and for trial said parties waive a Jury, and elect to have the issue joined tried by the Court and the Court here having heard the evidence in the cause, finds each of said defendants guilty of selling merchandize without a license, as charged, and assess the fine at fifty dollars against each of said defendants on each Count of said indictment, therefore it is considered by the Court that each of said defendants for his offence of selling merchandize without a license, and in pursuance of said verdict pay the State of Missouri for the use of Saint Louis County said fine of fifty dollars, on each Count of said indictment, that they pay the costs of this prosecution and Execution is ordered to issue for said fines and costs;— thereupon said defendants file a motion for a new trial herein, and the Court here having had hearing of said motion therefore it is considered by the Court that said motion be overruled;— thereupon defendants file their Bill of Exceptions, and pray an Appeal to the Supreme Court, and the Court here believing there is probable cause for said Appeal grants the same, and ordes that the same operate as a stay of proceedings herein,— thereupon parties file an agreed Statement of facts:—

Trial

Verdict

Judgment

Mo for new trial filed. overruled.

Bill of Exceptions

Agreed Statement Facts filed.

Recognizance

And said George P. Dean, Wyllys King, and Charles King as principals, and William P. Scott, as their securities here in Court, each acknowledge themselves to owe the State of Missouri the sum of Two Hundred dollars, to be levied of their respective goods and chatels lands and tenements; Yet upon condition that if said Dean Wyllys King and Charles King shall appear before the Supreme Court of this State at the next term thereof to be begun and held at the City of Saint Louis on the third Monday in October next to receive judgment in his said appeal, and from day to day during said term and on the first day of any future term to which this cause may be continued, and not depart said Court without leave thereof and shall also appear in this Court at such time and place as said Supreme Court may direct, and that he shall undershimself in Execution, and shall obey every order and judgment that shall be made in the premises, then this recognizance to be void else of full force.—

Bill of Exceptions.—

Bill of Exceptions.

State of Missouri

vs

George P. Dean and others } In the St. Louis Criminal Court. July Term. 1857.—

Be it remembered that at the present term of the Court. the defendants filed the following Demurrer to the indictment:—

Demurrer.

The State of Missouri.

against

George P. Dean, Wyllys King, William A. Dean, Charles E. King. } In the Saint Louis Criminal Court.—

And now come the said defendants.

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George P. Doan, Wyllys King, William A. Doan & Charles E. King, and having heard the said indictment read say that said indictment & the matters & things therein contained in manner & form as the same are set forth are not sufficient in law & that the said defendants are not bound in law to answer the same and for causes of demurrer say. The law of the State of Missouri under which said indictment is found is in violation of the eighth section of the first Article of the Constitution of the United States of America:—
And is also in violation of the nineteenth section of the declaration of rights in the Constitution of the State of Missouri;— That the law of the State of Missouri under which said indictment is found is in violation of the Constitution of the United States and the Constitution of the State of Missouri;— That by law the defendants are not bound to take out any license for the sale of merchandize imported by them from foreign countries into this State & on which they had paid duties sold by defendants in the original unbroken packages.— That by law the defendants were not bound to take out any license for the sale of merchandize brought into this State by them from & the produce growth & manufacture of other States of this Union and sold by them in the Original unbroken packages in which they were imported into this State.— and. That by law the defendants were not bound to take out any license for the sale of any merchandize brought into this State by them from & the growth produce and manufacture of other States of this Union & sold by the said defendants in this State.— And this they are ready to verify,— wherefore for want of an indictment sufficient in law in this behalf the said respondents pray judgment & that they be here discharged from the premises in this Indictment specified.—

Gamble, Hannegan & Shepley, altys for defts.—

which demurrer was overruled by the Court. And the defendants at the time excepted to the decisions of the Court in overruling said demurrer.— Whereupon the defendants filed a general plea of not guilty to said indictment, & on the trial of said issue, which was tried by the Court setting as a Jury, with the consent of State & defendants, the following facts were admitted by the State and by the defendants:—

Agreed facts } State
vs
King, Et al. } Before the Court sitting to try the cause as a Jury by the consent of both parties:— It is admitted by the defendants that during the time covered by this indictment, they were copartners doing business as merchants and that they did deal in the selling of goods wares and merchandize at a store occupied by them for that purpose at the County aforesaid without a license therefor and that in their dealing as merchants aforesaid they did buy and sell goods imported from, & which were the growth produce & manufacture foreign countries in unbroken packages.— And goods which were the manufactures articles of sister States of this Union in broken & unbroken packages, which were the growth produce and manufactures of the sister States.— And which said goods wares and merchandize were of the kind and description and sold as alleged in the various counts of the indictment.—

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and the defendants offered to prove the following facts:—

Evidence offered by defendants.

The defendants offered to prove that the defendants applied to the collector of St. Louis County to issue a license to them before selling any said goods in accordance with the provisions of the act of the General Assembly of Missouri, entitled "An act to license & tax merchants approved Decbr 11th 1855.— and offered to execute to the State of Missouri a bond required by § 4 of said act and to pay all the fees required by said act, but the Collector of the County of St. Louis required of said defendants to make an affidavit of the actual capital the said defts had invested in the City & County of St. Louis for the purpose of carrying out the provisions of the § 31 of the act of the General assembly of said State entitled - An act to authorize of rail road associations & regulate the same, - Approved Decr 13th 1855.— which affidavit defts refused to make & said collector thereupon refused to issue to them a license though satisfied with the bond offered by defts.—

To which the State objected on the grounds that the same is irrelevant. - And the Court sustained the objection & ruled out the evidence offered as above set out to which decisions the defendants then & there excepted.—

To the admission of which the Counsel for the State objected, which objection the Court sustained & rejected said evidence to which defendants then and there excepted.—

This was all the evidence in the case, and thereupon the defendants by their counsel asked the following instructions:—

Instructions refused.

The Court is asked to declare the law to be as follows:—

1st That if the defendants neither received for sale nor sold at their Store in St. Louis any other goods except such as were imported into this State from other States of the Union, - then the defendants are not guilty & the Court will so find, in the first count or third count.—

2d That if the defendants neither received for sale nor sold at their Store in St. Louis any other goods except such as were imported into this State from other States of this Union by defendants & sold by them in the Original unbroken packages as imported then the defendants are not guilty, and so the Court sitting as a Jury will find under the 4th Count.—

3d That if the defendants neither received for sale nor sold at their Store in St. Louis any other goods except such as were by defendants imported into the United States from foreign Countries, and which were the growth produce and manufactures of such foreign Countries & on which defendants paid duties & which were sold by them in the Original unbroken packages, as imported, then the defendants are not guilty & the Court will so find as they are charged in the 2nd Count.—

which were refused by the Court to which refusal defendants excepted at the time.—

The Court declared the law to be as follows:—

11)

Instructions 3
Given. 3

The Act of the General assembly of Missouri entitled "an act to tax and license Merchants," Approved Dec' 11th 1855 under which these proceedings are had is designed to impose a tax upon the avocation of merchant as a business.—

And if the defendants were copartners in business and did at St. Louis County during the time covered by the indictment deal in the selling of goods wares and merchandise, not the growth produce and manu-factures of this State and not the unmanufactured articles of the other sister States of this Union without a license authorizing them they are guilty as charged in the indictment.—

That it is a violation of the act aforesaid for any one without a license to deal in the selling of goods wares and merchandize the growth produce or manufactures of any foreign country either in broken or unbroken packages, at a Store occupied for that purpose.—

And that it is also a violation of said act for any one without a license to deal in the selling of goods wares and merchandise which are the manufactured articles, the growth or produce of, and imported from any of the States of this Union in broken or unbroken packages at a store occupied for that purpose.—

So far as it effects this case it is immaterial whether the defendants were the importers of the goods wares and merchandize in which they dealt or not.—

The Cause was then by consent of the State and defendants submitted to the Court sitting as a Jury, & the Court found the defendants guilty.— After the verdict & on the same day it was rendered, the said defendants filed the following motion & reasons for a new trial:—

Motion for new trial. 3

The State of Missouri
vs
George P. Dean, Wyllys King & } In the St. Louis Criminal Court.—

The said defendants by their Attorney now come & move the Court to set aside the verdict & judgment in the above entitled cause and grant them a new trial for the following reasons:

1st Because the Court refused the instructions to the jury, asked by defendant.—

2nd Because the Court rejected legal & competent evidence offered in the part of defendants.—

3rd Because the verdict & judgment on the facts & law ought to have been for the defendants.—

Gamble, Wamegan, & Shepley, Defts Attys.—

but the Court overruled the motion to which decision the defendants excepted at the time and pray the Court to sign & seal this their Bill of Exceptions, which is accordingly done.—

J. R. Lackland Seal.

State of Missouri
County of St. Louis } ss. I, Frederick Kretschmar, Clerk of the Saint Louis Criminal Court certify the foregoing to be a true and correct copy of the Record and proceedings in the above entitled

cause of the State of Missouri versus George P. Doan, Wylley Knig & Charles E. Knig, as the same now remain in my office.—

Witness my hand and the seal of said Court hereto affixed at office in the City of St. Louis, this 15th day of August A.D. 1857.—

Fred. Bretchmar
Clerk

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(21)

March. T. 1858

The State of Missouri

resps.

vs: Transcript.

George P. Doan, —

Wyllys King & Charles E. King. —

apts.

Appeal from St. Louis Criminal Court —

Charles G. Mauro for State (respondent)

Gamble, Hannegan & Shepley for Deft (appellants)

Filed Aug. 26, 1857.

W S Glanville

Ck

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Paid by Mr Shepley

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4. for Moneys for state 1.80/ do for Shepley $100/ defts. brief of Hannegan/

apts. Stat/ res brief/ org 4 days/

Rev. v defts. discharged 25 Dec. 1858/

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State of Missouri
vs.
George P. Doan
& others.

In the Supreme
Court

The defendants appellants
come and say that there is divers error
in said judgment & proceedings & assign
for Error the following Reasons
First Because the Court refused to give
to the Jury the instructions asked by
defts & gave her own instructions or declaration
of law
Second Because the Court rejected legal &
competent evidence offered by defen-
dants
Third Because the verdict & judgment are
the facts & law ought to have been for defendants
Fourth Because the Court refused to set
aside judgment & grant a
new trial.

Samuels Hannegan &
Shepley. atty

~~161~~. 75

Supreme Court

State

v

Doan & als

Assignment of Error

Gamble Shipley & Harrington

Atty for Defts.

Filed 31 Oct. 1857

Wm S Glanville

Cl

Doan, King &c. Appellants

vs } Appeal from St. Louis Crim. Court

The State of Missouri Respondent

E. A Hamegan one of the Counsel for appellants presents the following points in this & the other similar case involving the action of the Court of the act concerning Revenue.

1. By the 18th & 19th sec's, Rev. Stat p. 1329 all persons are required to give a Statement of all taxable property owned by them on the 1st day of February in each year Merchandise excepted

By the 6th sec of the act Concerning Merchants 2 Rev. Stat. p. 1074 every person who deals as a Merchant must on the 1st of Nov. in each year file in the office of the Clerk of the County Court, where his license is obtained a Statement of all taxable goods wares & merchandise, received for sale by him within the year then ending.

These sections present two different systems for the taxation of personal property, the effect of which is wholly unequal, & Contrary to the 15th sec. of the Declaration of Rights, which requires all property subject to taxation to be taxed in proportion to its value.

2. The 2d sec. of the Act Concerning "Merchants" requires that no person or Co-partnership of persons shall deal as a Merchant, without first obtaining a license; & the 3d sec. imposes upon all Merchants without reservation an ad valorem tax equal to that which is levied on real estate, on all

goods, wares & Merchandize purchased by them except such as may be the growth, Produce or Manufactures of this State & except such unmanufactured articles as may be the growth or Produce of other States.

This law is thought to be in Conflict with the decision of the Sup. Court of the U.S. in the Case of Brown vs Maryland 7 Curtis Des. Sup. Ct. U.S. p. 262. and which decision has been repeatedly sanctioned by subsequent action of the same tribunal & its different members See "License Cases" Judge Catron's opinion 16 Curtis p. 547 & Judge McLean's opinion p. 529. Judge Taney's opinion p. 576
And the judgment in Brown vs Maryland is sanctioned & adopted by every member of the same Court in the famous "Passenger Cases" where the members of the Court gave separate opinions. See 17 Curtis Des. S. Ct. U.S. 122. & especially the opinion of Judge Wayne at p. 142.

The case of Brown vs Maryland was decided in express reference to the 2d clause of the 10th sec. of the 1st Article of the Constitution of the U.S. with which as well as the 3d clause of the 8th sec. of the same Article the law of Missouri is regarded as in Conflict.

This opinion is sustained not only by the above authorities but in the more recent case of Nathan vs Louisiana 17 Curtis 507.

The elementary writers express the views here contended for in the most decided terms. "The power to Congress them being exclusive no State is at liberty to pass any laws imposing a tax upon importers, importing goods from foreign Countries or from other States. It is wholly immaterial whether the tax be laid on the goods imported, or on the person of the importer. In each case it is a restriction of the right of Commerce not Conceded to the States &c."

2 Story on the Const. p. 10 § 1072. and see Smith's Com. on Const. Cons. from p 335 to 341 § 205. & also the very high authority of Chancellor Kent. 1 Kent's Com. p. 438 & note A. on p. 439.

Upon examination it will be found that the cases referred to in note A. above mentioned do not in any way Conflict with the doctrine established by the authorities I have referred to. The first is that of Cumming vs Savannah p. 26 R. Mc. Charlton was a proceeding against the defendant as a Commission merchant, in this Capacity he is an auctioneer. It was at any rate decided before the Case of Brown vs Maryland. The next case is that of Green vs Savannah. R Mc. Charlton p. 368 in the year 1832 & was for a violation of the inspection laws of Savannah. The Court in this case rests its decision under the authority of Brown vs Maryland, which is recognised as authoritative & binding. The other Case referred to is that of Biddle vs The Commonwealth 13 Serg. & R. p. 405 occurring in the year 1825 two

years before the Case of Brown vs Maryland. In this Case the Counsel for the State & the Court both say that the Act under which the Proceeding arose was directed in terms against retailers only.

In support of the position assumed the case of Gibbons vs Ogden 9 Wheat. p. 1 is also referred to showing an unbroken current of authorities

The opinion of Chief Justice Taney in the License Cases contains it is conceived a clear elucidation of the question here presented. Speaking of the power of a State to collect revenue in any shape by a tax on imports he says "Such a power in a State would defeat one of the principal objects in adopting & forming the Constitution. It cannot be done directly in the shape of a duty on imports, for that is expressly prohibited. And as it cannot be done directly, it could hardly be a just & sound Construction of the Constitution, which would enable a State to accomplish precisely the same thing under another name and in a different form.

License Cases 5 How. p. 576.

An additional point has arisen during the pendency of these appeals, by the repeal of the law upon which the prosecutions are based & that without any saving clause to protect

these indictments. It is submitted that such repeal arrests these prosecutions. The law is referred to in Smith's Com. on Const. Construction 892 to 896 & the notes. 1 Bacon's Inst. 44 Taylor vs State 7 Blackf. R. 93.

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Doan King & Co

vs

The State

Brief of

E. A. Hannegan

Filed 27 March 1858
Wm S Glanville
Clk

State
vs
George P Doan
& others.

In the Supreme Court of
the State of Mississippi

Statement of the case by defendants
appellants.

The defendants were indicted for dealing as
merchants without having a license

The indictment contained four counts.
The first count charged them as dealing as merchants
in selling goods generally not the growth manufac-
ture or produce of this State & not manufactured the
growth or produce of other States without having a
license therefor.
The second count charged them with dealing as merchant
in the selling of goods wares & merchandize (not the growth
manufacture or produce of this State & not unmanufactured arti-
cles the growth or produce of other States) ~~in the before that time~~
imported into this State & then selling them in their original
imported packages. which packages had been imported by
defendants from foreign countries into the United States
& duties & the United States thereon had been paid by
defendants.
The third count charged them with dealing as
merchants in the selling of goods imported by
them from other States of the Union & sold by
them in the original packages, & in broken packages.
The fourth count charged them with dealing as
merchants in the selling of goods imported by them
from other states of the Union & sold by them at
wholesale in their original unbroken packages as imported.

To the indictment a Demurrer was filed setting forth that the law of this State under which the indictment is formed is a violation of the 8th Section of the 1st Article of the constitution

That it is in violation of the 19th Section of the declaration of rights of this State. & That the law is in violation of the constitution of the State & the United States.

That the defendants are not bound to take any license for the sale of merchandize imported by themselves on which they have paid duties & sold by them in the original packages & that the defendants are not bound to take out any license for goods & the produce growth & manufacture of the other States of the Union & sold by them in the original packages.

That they are not bound to take out any license for the sale of merchandize the growth produce & manufacture of other States of the Union & sold by them in this State.

The Demurrer was overruled & a general plea of not guilty was filed

The following facts were agreed on at the trial by the State & defendants

The State of Missouri
v.
Doan King & Co. } Agreed Facts.

It is admitted by the defendant that during the time covered by this indictment they were copartners doing business as merchants and that they did deal in the selling of goods wares and merchandize at a store occupied by them for that purpose at the County aforesaid without a license therefor and that in their dealing as merchants aforesaid they did buy and sell goods imported from & which were the growth produce and manufacture of foreign countries in unbroken packages — and goods which were the manufactures articles of sister States of this Union in broken & unbroken packages, which were the growth produce and manufactures of sister states — And which said goods wares and merchandize were of the kind and description ~~of~~ and sold as alleged in the various counts of the indictment, and the defendant offered to prove the following facts: —

The defendants offered to prove that the defendants applied to the Collector of St Louis County to issue a license to them before selling any said goods in accordance with the provisions of the act of the General Assembly of Missouri, entitled "An Act to license and tax merchants approved Dec. 11th 1855, and offered to execute to the State of Missouri a bond required by §4 of said act and to pay all the fees required by said act, but the Collector of the County of St. Louis required by said defendants to make an affidavit of the actual capital the said defendants had invested in the City & County of St. Louis for the purpose of carrying out the provisions of the §31 of the Act of the General Assembly of said State entitled An Act to authorise ~~n~~ of said ~~road~~ railroad associations and regulate the same — Approved Dec. 13th 1855, which affidavit defendant refused to make and said Collector thereupon refused to issue to them a license though satisfied with the bond offered by defendants.

To which the State objected on the ground that the same is irrelevant, and the Court sustained the objection and ruled out the evidence offered as above set out to which decision the defts. then and there excepted.

To the admission of which the counsel for the State objected, which objection the Court sustained & rejected said evidence to which defendants then and there excepted.

This was all the evidence in the case and thereupon the defendants by their counsel asked the following

Instructions.

Instruct. for Defendts. Refused

1. That if the defendants neither received for sale nor sold at their store in St. Louis any other goods except such as were imported into this State from other States of the Union then the defendants are not guilty and the Court will so find in the first count or third Count.

2. That if the defendants neither received for sale nor sold at their store in St. Louis any other goods except such as were imported into this States from other states of this Union by defendants and sold by them in the original unbroken packages as imported then the defendants are not guilty and so the Court sitting as a jury will find under the 4th Count.

3rd That if the defendants neither received for sale nor sold at their store in St. Louis any other goods except such as were by defendants imported into the United States from foreign countries and which were the growth produce and manufactures of such foreign countries and which were the growth produce and manufactures of such foreign countries and on which defendants paid duties & which were sold by them in the original unbroken packages as imported then the defendants are not guilty and the Court will so find as they are charged in the second Count.

Which were refused by the Court to which refusal defendants excepted at the time.

Law as declared by Court

The Court declared the law to be as follows: The Act of the General Assembly of Missouri entitled "An Act to tax and license Merchants", approved Dec. 11th 1855 under which these proceedings are had is designed to impose a tax upon the avocation of merchants as a business.

And if the defendants were copartners in business and did at St. Louis County during the time covered by the indictment deal in the selling of goods wares and merchandize, not the growth produce and manufacture of this State and not the unmanufactured articles of the other sister States of this Union without a license authorizing them they are guilty as charged in the indictment.

That it is a violation of the act aforesaid for any one without a license to deal in the selling of goods wares and merchandize the growth produce ~~and~~ or manufactures of any foreign country either in broken or unbroken packages at a store occupied for that purpose.

And that it is also a violation of said Act for any one without a license to deal in the selling of goods wares and merchandize which are the manufactured articles, the growth or produce of and imported from any of the States of ~~this~~ Union in broken or unbroken packages at a store occupied for that purpose.

So far as it effects this case it is immaterial whether the defendants were the importers of the goods wares and merchandize in which they dealt or not. to the giving of which defendants excepted.

The Court sitting as a Jury found a verdict against said defendants

The defendants thereupon moved for a new trial which was overruled & thereupon they filed their Bill of Exceptions & bring the case by leave by appeal.

Gamble Hannegan &
Shepley Atty's for
Defts

In the Supreme Court 75

The State of Missouri
v.
Doan King & Co.

Statement of the Case

Filed 30 March 1858,
Wm S Glanville
Ck.

Shepley

Windsor

The State
vs
George P Doan et als

In the Supreme Court
of the State of
Missouri

The State
vs
Shaplugh et al

The State
vs
North et al

The defendants appellants submit
in the above cases the following points &
authorities.
And first as to the case vs Doan et al

II. The defendants having offered to make
the affidavit required by the act to license
& tax merchants & give the bond & undertaking
& have their license without complying with
the illegal requirement to make an affidavit
of the cash capital employed in their business

The act to license & tax merchants approved
Dec 11. 1855 do when requires any such affi-
davit to be made. The affidavit to be made
under that law is in relation to the amount
of sales made by them of merchandize of
certain descriptions = When then has arisen
that any person or firm dealing as merchants
should pay in the form of a license a tax on
their cash & capital and make a similar affidavit

in relation to the cash capital employed in their business as they are supposed to do in regard to their ~~sales~~ amount of merchandize received by them for sale

This has arisen from an entire misconception of the law by which a tax upon the actual capital invested in business is supposed to be imposed

The law when it is supposed such right is found in the law relating to Rail Road corporations (1st Vol Rev Laws page 427-8.

The 31st section of that act at page 427 provides that in certain cases there may be levied by the City or County (as the case may be " a special tax upon all property and " taxables made taxable by law for State and " county purposes and upon the actual capital " that all merchants and grocers may have " invested in business" according to the reading of the statute as it now stands printed in the Statute book. This is to be levied in order to pay installments for rail road subscriptions that may be made by such City or county & the 34th Section provides that when a City or County has already subscribed that they may levy the tax.

The effort here was to make the merchants pay, by way of adding to the amount which he had to pay upon merchandize received by him for sale, an additional amount for rail roads to collect in by way of license. To this there are a number of objections.

1st The taxation as provided by the 31st section of the Rail road corporation act has no reference to the act to license & tax merchants & does not propose to employ the machinery of that act for the purpose

It is simply a tax assessed upon the cash capital like a tax upon a persons furniture or his horse & to be collected in precisely the same way. If a firm own drays & horses or stocks ~~on board & notes~~ they are taxed and pay as they do on their individual property. There is no more impropriety in making the firm make an affidavit of the amount of their cash capital before granting a license than there is of making them make affidavit of other personal property of which the firm may be owner.

If then the tax upon the cash capital is legal, it is to be collected as taxes on other personal property & at the time when those taxes are payable

2ly Even if the the tax upon the cash capital was legal and was collectable through the machinery of Merchants' License act, yet neither that act, nor the act concerning Rail road corporations make it incumbent on the merchant to swear to the amount of his cash capital in connection with the license act he cannot be compelled to & do. nor be

subjected to penalties for not doing it.

3d. The law relating to Rail Road corporations does not impose any tax upon each capital employed in business

The 31st Section in its text it is true does include it. but the law itself as stated does not contain any such provision

The act was drawn as a whole & was designed to be harmonious in its provisions While on its passage some legislator, not satisfied to have it apply only to property taxable by the general "Revenue Law desired to have the amount employed by merchants in their business as capital share in the burden He therefore moved an amendment that the words "and upon the actual capital that all merchants and grocers may have invested in business" be added = that the 31st Section be amended by "adding" those words

As I understand the force of language unless it is specifically stated that the addition is to be made at a particular place in a section

it must be placed at the end. It is to be added to the section - tacked on to the end, not interposed between parts of the section. If I speak of adding to a sentence of written discourse, every one understands that I continue on what has been already written

Not the slightest question would be raised in this case as to the propriety of so placing it or of rather that the law was so enacted, except that the addition as made is senseless. But that is no reason for making the change. Perhaps it may be in this particular instance known enough when the never intended his amendment to come but the placing of it is purely an arbitrary act on the part of the revisor! He had just as much authority to place it in the beginning of the section as where he did. It was a matter of pure discretion & judgment on the part of the revisor - I grant that it is ambiguous when it should be placed (though such an expression has never before thought to be so) yet what right has the revisor to make a law by enacting when the floating sentence should be inserted

If then this clause must have its place at the conclusion of the 31st Section, then as it is in that connexion senseless, there is no tax imposed by this law upon the "actual capital invested in business"

4th The enrolled act authenticated in the mode provided by the constitution & the laws of the state and no interpolation of words or transposition of clauses in the published act can give it any other or different effect from that it has as deposited in the archives of the State.

The other questions arising upon the record of the State in Doan & al can be more satisfactorily treated in the other cases when the questions are separately presented.

The case against Shapleigh & al presents the case of an indictment found against an importer importing goods from foreign countries to the State paying himself the duties to the United States & keeping & selling the goods only in their original unbroken packages as imported. & the judgment in that case be sustained. We say not, for

II The act of the Legislature of the State to license & tax merchants approved Dec 11 1855 is in design and effect a tax upon property & not a license to pursue a particular avocation or calling

Sec 2. 2nd Rev Statutes page 1072

1st If it is a license to carry on a particular calling. Then it should be an equal tax upon all & a specific sum to be paid by each one carrying on that business. But to make a person pay according to the amount of property he has, is to tax this property under the very flimsy veil of licensing a calling

In the older states the calling of a "gentleman" is still recognized & persons are so denominated in writs as distinctive of the calling by persons. Now if the Legislature should say that such persons should be licensed & pay therefor a tax upon all the property they possessed, would any one doubt that it would be a tax on property

2d. Which must be upon the avails of a persons labor or the employment of capital as in the case of a lawyer or physician or a broker or banker.

The case of Neilson vs the State of Louisiana 8. Howard 73. is frequently cited as holding ~~in the last~~ that licensing a broker was only taxing an occupation and it is in the only sense in which such a principle can be maintained. In that case the State of Louisiana had laid a tax of $250 upon all bankers or brokers. Here was a legitimate tax upon occupation. All engaged in that calling paid an equal tax. regardless of the amount or kind of business transacted. A man that transacted a business of millions was obliged to pay the same tax as one that transacted only thousands in extent.

There was no attempt to tax a species property under the guise of licensing an occupation

3d It That it not a tax upon occupation or business is evident when we consider That persons who carry on the same business, but have not during that period received for sale only a certain kind of property are exempt

It professes in order to avoid constitutional objections to tax all merchants, but in reality imposes the tax for the license only upon those merchants who deal in foreign commodities & in manufactured articles the products of other States. Now the State may or may not have the right to make the discrimination between these different products. but they attempt conclusively shows that it is no tax upon occupation as such That is imposed. Suppose a law should be passed That every dram shop keeper should take out a license for which he should pay according to the amount of lager bier he should retail for sale would there not be in effect a tax on lager bier

4th The object designed to be attained by the law shows that it is a tax upon property.

The law makers designed that merchants should pay a tax upon certain kind of property of theirs or sale of other persons, but from the nature of the case it became exceedingly difficult to collect it in the ordinary method of tax sales

Even if it had been assessed upon the amount of sales there might be argued with some show of reason That it was a tax upon occupations, but here it is

imposed on the amount purchased. It is a tax on property of a particular kind that the mean possesses

It is not a fixed amount to be paid by all in that business it is not to be paid by all men in that kind of business: it is not to be estimated on the amount of profits: nor by the amount of sales: but is simply amount imposed upon a portion of that kind of property according to its value -

II II If the Legislature is prohibited from laying a direct tax upon any species of property it cannot effect the same object by ~~taxing~~ requiring the person selling the article to pay a tax proportionate to the amount he receives or sells of the article by way of license

Now the argument is that it is only a tax upon occupation. and does not contravene any provision of the constitution of the United States. because it relates to a different subject,

If the principle is good you ~~make~~ may, make the prohibition as strong as you please against tax ation, still the right of the Legislature to license occupations of those who deal alone in that article is unaffected. Suppose the constitution had said all dye woods imported from foreign countries shall be forever free from all duties charges or impositions whatsoever within the United States Is it competent for the Legislature to say that upon any person shall pursue the business of selling imported dye woods, he shall take out a license for which he shall pay five per cent upon the value of all he shall receive for sale?

In Brown v Maryland 12 Wheaton 419 the court say "The distinction between a tax on "the thing imported & on the person of the importer "can have no influence on the point of the subject

"It is too obvious for controversy that they interfere
"equally with the power to regulate commerce
"It is impossible to conceal from ourselves that
"this is varying the form without varying the substance
"It is treating a prohibition in general as if it were
"confined to a particular mode of doing the for-
"bidden thing. All must perceive that a tax
"on the sale of an article imported only for sale, is a
"tax on the article itself.
See observations of Grier & Catron at page 458 in the Passenger cases. So also the observations of C. J. Taney at page 575-6 in the License cases. Catron at page 603 License case
II II. A a person importing goods into their State from foreign countries paying to the United States duties thereon & holding & selling them only in the original unbroken packages is protected by the constitution of the United States from being compelled to pay a tax thereon or take out a license from the selling of the same

The constitution declares.
First that Congress shall have power to lay & collect taxes duties imposts and excises, to pay the debts & to provide for the common defence & general welfare of the United States: but all duties imposts & excises shall be uniform throughout the United States Art 1. Sec 8
Second To regulate commerce with foreign nations among the several states & with the Indian tribes — Sec 9.
No state shall without the consent of congress lay any imposts or duties on imports or exports except what may be absolutely necessary for executing

its inspection laws. Sect. 10

It is admitted on all hands that the Supreme Court of the United States in Brown vs Maryland 12 Wheat 419 has decided that the original importer is not obliged to while the merchandize remains in its original state to pay any impost to the State either by way of direct tax or indirectly by way of license & that any State law which undertakes to impose any such tax or to compel such importer to take out a license for the selling the same is unconstitutional

This is decisive unless it shall be found that the same Court has in some way modified or overruled the decision thus made

But it is said that there are principles held by individual judges of that court that are antagonist to that maintained by the Court in Brown vs Maryland

To this we say

1st That it is not more proper to disregard the binding force of the principle decided in that case than it would be for any Circuit Court in this State to disregard the opinion of the Supreme Court from a notion that a majority of the judges ~~had~~ in some other case, ~~where~~ presenting a different question had advanced opinions, in the view of the Circuit Court, antagonist to those upon which the decision in the other case rested.

In Brown vs Maryland. Chief Justice Marshall states the case thus "the cause depends entirely "on the question whether the legislature of a State "can constitutionally require the importer to take out a "license from the State before he shall be permitted to "sell a bale or package so imported"

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Was granted

It exceedingly dangerous in any case to undertake to say that a decision made has been overruled by subsequent one when the precise principle is not involved, even if that one is the unanimous opinion of the Court.

But here is an attempt to set aside the decision of the Supreme Court binding upon us which received the nearly unanimous approval of the Judges then upon the bench, on account of the supposed opinions of a supposed majority of the Court as constituted at another time and this too not on account of a dissent as to the case itself or the principles involved in the decision but on account of a supposed antagonism between the reasoning of some of the judges & the principles involved in that case.

2d But one of the Judges (Justice Daniel) has in any opinion expressed any dissent to the doctrine as laid down in Brown vs Maryland, so far as it related to goods imported from foreign countries.

question as to clause to imports does not arise in license or passenger cases

That he does in terms dissent from that case must be admitted, but when you come to consider the grounds of his dissent it is based entirely upon his disapproval of the reasoning of the Court upon the clause of the constitution relating to commerce but he never once adverts to its construction of the clause relating to the prohibition to lay imposts. That question ~~was not~~ had no connection with the license question & he seems only to be anxious to express his dissent from the construction of the case relating to commerce

& all his reasoning is upon that —

3d The majority of the judges have expressly approved of the principles maintained in & decided by that case to that extent;

C. J. Taney says (5 Howard 575 License cases) "speaking of Brown v Maryland says." and certainly at that time persuaded myself that I was right and thought the decision of the Court restricted the powers of the States more than a sound construction of the constitution of the United States would warrant. But further & more mature reflection has convinced me that the rule laid down by the Supreme Court is a just & safe one & perhaps the best that could have been adopted" &c and in the Passenger cases 7. Howard 490 he says that Brown v Maryland has no application to the case & puts it altogether upon the right of the State to enforce laws for preservation of health & police regulations.

Mr Justice McLean in the License cases 5. Howard 589 says "Under the decision in Brown v Maryland it is admitted that the license acts cannot operate upon the right of an importer to sell and in the Passenger cases at page 400 he expresses his approval of that case as far as it related to foreign commerce

Mr Justice Catron in the License cases at page 610 says "That under the power to regulate foreign commerce Congress can protect every article belonging to foreign commerce as long as it does belong to it from the operation of a tax or a license imposed by a State Law that obstructs or hinders the commerce & quotes approvingly Brown vs Maryland see 610.

Mr Justice Nelson in the License cases concurred with the opinions of the Chief Justice & Justice Catron. & in the Passenger cases concurs with the Chief Justice, as they both affirm Brown vs Maryland: he cannot be considered as dissenting from it.

Mr Justice Grier in the License cases concurs with Justice McLean who as we have seen goes to the fullest extent in his approval as far as it relates to foreign commerce.

Mr Justice Wayne was of the majority in the License cases but gave no opinion but in the Passenger cases at page 433 he says that he wished to disabuse the public mind "from the misapprehension" that it was ever intended in "the case of New York vs Milne to reverse "or modify in any way or in the slightest "particular what has been the judgments & opinions expressed by this Court in the cases

" of Gibbons v Ogden & Brown v Maryland "

Mr Justice McKinley delivered no opinion in the License cases, ~~after saying~~, but in the Passenger cases after stating that he concurred in the whole reasoning of Mr Lean & Taney goes on & comments on a particular branch of the subject & in the course of it says " A similar " question arose in the case of Brown v the " State of Maryland 12 Wheat 419 in which " the Court carried out the power of Congress to " regulate commerce with foreign nations upon " the subject then under consideration to the " line which separates it from the reserved powers " of the States over the same subject matter beyond " that line "

Mr Justice Woodbury in the License cases ~~question~~ at page 620 seems to question the correctness of the decision in Brown v Maryland so far as it was based on the construction of the clause concerning commerce, but does seem to assume that it was correctly decided upon the other ground that it was an attempt of the State to lay a duty on imports
In the passenger cases, at page 534, he goes on to consider whether it can be considered a " tax on imports as it was in the case of " Brown v Maryland when laid on foreign " goods. If so considered it is conceded that " that the tax has been expressly forbidden to be " imposed by a State unless with the consent " of Congress or to aid in enforcing the inspection

"laws of the State"

So with the exception of Mr Justice Daniel (somewhat doubtful as it is) we have all the Judges approving of the decision of Brown vs Maryland

4th With the exception of Justice Daniel none of the other judges have maintained views antagonist to the principles decided in that case so far as it related to foreign commerce.

5th. On principle the taxing of the import while it remains in its original State as an article of commerce is repugnant to both the clause of the constitution relating to commerce & that which declares that ~~Congress~~ the States shall not lay imposts or duties on imports or exports.

As to the clause relating to commerce.

It is not denied by any one that here Congress is supreme. There is no question of whether the power is exclusive. for here from the nature of thing it must be exclusive & Congress has acted & legislated upon the subject so that the only question is when does the power of Congress over the import cease. Is it the moment that the import leaves the custom house or is it protected by paying the duties to the U S. from any further tax or imposition until it has served the purpose of its institution

5th. On principle the taxing of the import while it remains in its original State as an article of commerce is repugnant to the both the clause of the constitution relating to commerce & that which declares that the States shall not lay imposts or ~~imports~~ exports

The case of the State vs North & Scott is when a indictment was found and judgment rendered against persons selling only goods imported by them from other States in the Union & sold in the unbroken packages as brought in to the State. It say

1 V That a person in selling goods into the State from other States of the Union & only selling and holding them in their original unbroken packages is protected by the Constitution of the United States from being compelled to take out a license for the selling the same or pay any Tax thereon

1st The decision in Brown vs Maryland though the case was only related to foreign importations went to the full extent of holding that the traffic between States was equally protected.

Not one of the Judges expressed any dissent from the reasoning or conclusion of the Chief Justice on the points, except Justice Thompson

See also the construction given by Judge Story
in 2d Story on Constitution 512 & 516

2d The power of Congress over the subject
is exclusive.

So it was said in Brown vs Maryland
& in Gibbons vs Ogden
& so it has been affirmed in other cases
when the question has arisen.
In the passenger cases it was held
that the tax on passengers from foreign
countries was a regulation of commerce
with foreign nations & the tax on passen-
gers coming from sister states was a
regulation of commerce between the States

Justice Wayne says at page 410.
Howard says that he agrees with Justices
McLean Catron, McKinley & Grier &
"that they do not differ ~~upon~~ in the grounds
"upon which our judgment has been
"formed except in one particular in no
"way at variance with our united conclu-
"sions & that is that a majority of us do
"not think it necessary in these cases to
"dissent with our brother McLean when
"this Court has long since decided that
"the constitutional power to regulate
"commerce & with foreign nations &
among the several States & with the Indian

"Tribes" is exclusively vested in Congress and
"that no part of it can be exercised by a
"State

Though most of them did not think it necessa-
-rily involved to it's fullest extent in that case
yet the affirmation of the exclusiveness
of the power is emphatic

It was said in the presence of all. Mr Justice
Catron who is by some supposed to hold
a different opinion in the License cases does
not intimate but that they expresses his views

In the License cases it is supposed that
he does ~~not hold~~ hold that as to commerce
among the States, the States may exercise
the power until congress shall regulate but
taken in connexion with the subject he has un-
-der consideration & which he calls others admitted
was a Police regulation, it is clear ~~that~~ that
he only meant to say that the States might
make some regulations. for on page 608. he
expressly says "thus the States may regulate
so they do not tax"

So Mr Justice McLean in the Passenger
cases at page 400 affirmed even as to
the commerce between the States in the
strongest manner the exclusiveness of
the power in Congress, which some expressions
in the License case might be supposed to
be questioned by him -

We do not advert to the other decisions made by the Supreme Court between the case of Brown in Maryland & the License cases because they turn all consider in those cases & whether they had any relation so that connexion with the questions involved in those cases was fully considered

5.° If ~~not~~ exclusive only when Congress has acted upon the subject. then Congress has acted by willing that inter-state commerce should be free.

It must be admitted that ~~as to~~ Congress would as well have acted upon any particular article of foreign commerce by omitting to tax it as by taxing it. So as the power is conferred on Congress to regulate the trade between the States it is in the power of Congress to obtain a revenue by imposing imports

on commerce between the States: as they do not impose any such imposts they have willed that it shall be free
See Justice Grier's opinion in the Passenger cases 464 in which J. Catron concurs
Is it competent for Missouri to undertake to lay an impost on hemp or tobacco grown in any other state & brought into this State or to demand ~~a license~~ every dealer shall before he sells any tobacco or hemp take out a license, for which he shall pay according to the amount of hemp or tobacco received by him for sale from other States
So in Gibbons vs Ogden 9 Wheat 509 C J Marshall quotes approvingly "It has been contended by the counsel for the appellant that as the word to regulate implies in its nature full power over the thing to be regulated, it excludes necessarily the action of all others which would perform the same operation on the same thing &c. It produces an uniform whole which is as much disturbed & deranged by changing what the regulating power designs to leave untouched as that on which it has operated –
4th Congress has in various ways regulated in reference to inter-state commerce.

It has done many things which have relation only to domestic commerce
It has passed laws in relation to the transfer enrollment licensing & inspection of boats: the removal of obstructions in river that do not have any outlet to tide waters; In the erection of light houses on Lake Michigan; improvement of inland harbors on the rivers & upon lake Michigan

V. The Revenue law is unconstitutional in that it conflicts with that provision of the Constitution of the United States which provides "that" all duties imposts & excises shall be uniform throughout the United States"

In the passenger cases 7 Howard 405. Mr Justice McLean in commenting upon this clause says "how it is impossible to see how thirteen or more "independent states could lay imposts under "these provisions of the constitution. The tax "must be uniform throughout the Union "consequently the exercise of the power in "any one state would be unconstitutional "as it would destroy the uniformity of "the tax. To secure this uniformity "was one of the motives which led to the "adoption of the constitution. The want of "it produced collisions in the commercial "regulations of the States. But it is as it "contends. These provisions of the Constitution operate only on the Federal "government. The States are free to "regulate commerce by laying it operations in all cases when they are "not expressly prohibited. The constitution "has failed to accomplish the great object "of those who adopted it"

IV The law is repugnant to the constitution of the United States in that it is an attempt to regulate foreign & domestic commerce by making a discrimination in favor of home productions & against products of other states & imported goods with a view of raising a revenue from the latter.

In the License cases page 620 Mr Justice Woodbury quotes with approval the views of Chief Justice Parker in the State v Peace 13 N. Hamp. page . Chief Justice Parker seems to think that after the goods had left the control of the U.S. they were subject to a state tax. yet with such views he says at page 578 that under the guise of police or other state regulation, they cannot "give "a preference in the market to articles produ "ced within their respective limits".

and at page 582. he says "Should an "attempt be made by a state to prohibit the sale of imported "iron or salt or sugar or cotton goods within its limits, or to tax "articles the produce of another state, beyond the rate of "similar articles produced within its borders, it would very "readily be seen that such legislation was not [a regulation] of internal "police merely but that its design & effect [if admitted] [commerce] "must be the regulation of foreign commerce or [among] the "states also"

In Brown v Maryland the Court say that they do not mean to give any opinion on a tax discriminating upon foreign & domestic articles, in declaring them very strongly that a serious question on it would arise when presented. The object or one of the principal objects in adopting the constitution was to prevent the States from imposing a tax on the commerce of each other See Cohen 603. Woodbury 622. 3. & 6. & McLean 596. License cases.

VII This law is contrary to the constitution of the State of Missouri

It undertakes to raise a revenue from merchandize imported from foreign countries and from manufactured articles coming from sister states

Thus it exempts all of its own producers & manufacturers & the ~~produce~~ unmanufactured products of sister states. thus raising a large part of its revenue from this kind of property & allowing property large in amount & value to go entirely untaxed.

It may be answered that the merchandize manufactured & unmanufactured of this State may have been taxed as property in the hands of the producer. in & most of the products of the earth this would not be the case, as they usually be produced & pass from the hands of the producer into those of the merchant between the time & which property was assessed. and so it would be as to a large portion of manufactured articles.

But if it were so. yet all the unmanufactured articles the growth & produce of other states pay no tax. It is supposed to be for the advantage that raw products of other states should come in free

The result is that a large commerce and a large mass of property contribute nothing to the revenue

The Bill of Rights in the constitution of the State contains this provision "that all property subject to taxation in this State shall be

"taxed in proportion to its value"

At the first blush, it would seem that the signification of these words were clear: manifest beyond dispute.

But it is said that the object was to prevent the legislature from taxing one man's horse worth 50 dollars the same as another any danger of that ~~was that~~ It must have been inserted for the purpose of protecting the citizens of the state what a kind & character of taxation that it was feared might be resorted to: otherwise there was no reason for inserting it at all. Now there was no danger of that kind but there was a danger that the legislature might choose to exercise favoritism & select particular classes of property to bear the burden of the expenses of government

But even if this was the construction it does not save the law for its operation is to tax the barrel of flour manufactured in Illinois & leave untaxed that manufactured in Missouri.

But it operates under the guise of an advalorem tax on merchandize to impose a tax on that merchandize double or triple what is imposed on other kinds of merchandize

Other property cannot be taxed but once it is taxed in the manner & in the hands as it exists on the first day of February of each year

But the merchandize here taxed is taxed certainly twice & probably many more times. The wholesale merchants has it & sells it in the spring to the retail merchant. It thus is taxed twice. But if imported the importer may sell it the wholesale merchant or jobber. Or to the retail merchants & so going on from the large to the small dealers so that the same article of merchandize may be taxed many times.

J. H. R. Gamble
J. R. Shepley
Atty for Defts

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Supreme Court

State
v
Doan King & Co
& others

Brief

Gamble & Shepley

Filed 6 April 1858.
Wm S Glanville
Ch

State of Missouri
Respondent
vs
George P Doan et al
Appellants

This case is in all respects similar to the cases of State vs A F Shapleigh et al and the State vs North and Scott with this exception,

Upon the trial of this case the defendants offered to prove that they applied for a license in accordance with the provisions of an act entitled "An act "to tax and license Merchants", and tendered to the collector the bond required by said act to be by them executed, but that the collector refused to issue said license to them until said defendants had made an affidavit of the actual capital invested by them in their business, as required by the 31st Sec of an act entitled "An act "to authorize the formation of Railroad Associations, "and to regulate the same", which affidavit said defendants refused to make. (Rev Code 1855 page 427)

To this testimony objection was made by the State, and it was by the Court ruled out, to which action of the Court the defendants excepted.

The Court did not err in ruling out said testimony, because

1st It did not disprove or tend to disprove any of the allegations of the indictment.

2d Admitting that the collector did wrong and that there was no law in existence requiring the defendants to make such an affidavit, they are not therefore justified in violating the law by selling without a license,

3d The law requires the defts to take out a license as a condition precedent to selling as charged in the indictment. If the Collector wrongfully refused to issue a license, the proper legal measures should have been instituted to compel him to discharge his duty.

Austin vs State 10 Tex 591.

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State of Missouri
Respondent
vs
Doan King & Co
Appellants

Respondent's brief
C G Mauro
Atty.

Filed 6 April 1858
Wm S Glanville
Cl