Michigan Law Review

Volume 37 | Issue 6

1939

CONSTITUTIONAL LAW - INTOXICATING LIQUORS - POWER OF A STATE TO REGULATE AND TAX THE SALE AND IMPORT OF LIQUOR IN A NATIONAL PARK

Stanton J. Schuman
University of Michigan Law School

CONSTITUTIONAL LAW — INTOXICATING LIQUORS — POWER OF A STATE TO REGULATE AND TAX THE SALE AND IMPORT OF LIQUOR IN A NATIONAL PARK — California ceded to the United States the territory within the state borders known as Yosemite Park, reserving to the state the right to "tax persons and corporations, their franchises and property on the lands included in said parks." [1] California then laid excise and license taxes on the sale and importation of intoxicating liquors.[2] The tax act contained some regulatory measures and the license was granted only after certain regulations were satisfied. *T* was an operator of stores and tourists' camps in the park who protested payment of these taxes. *Held*, the tax provisions were enforceable; but the regulatory provisions were unenforceable. The license tax, being inseparable from the regulations, was invalid. *Collins v. Yosemite Park & Curry Co.*, 304 U. S. 518, 58 S. Ct. 1009 (1938).

Although the United States as a sovereign power usually has exclusive jurisdiction over its territories,[3] it has been settled that when lands are ceded to the United States by a state, the state can effectively save for itself the right to tax or to serve process within this territory.[4] (This, of course, is subject to the exception where lands are given for the purposes and by the method provided for in clause 17, section 8, article I of the Constitution.[5]) As to these and other matters, the state and the United States as sovereignties are in a position to adjust their jurisdictions. It is clear, however, that when a state cedes lands to the United States, the latter has the exclusive jurisdiction and control except for matters which are expressly reserved to the state.[6] In the principal case

[1] Cal. Stat. (1919), p. 74; 41 Stat. L. 731 (1920), 16 U. S. C. (1934), § 57.

[2] Cal. Stat. (1935), p. 1123, as amended, Cal. Stat. (1937), pp. 1934, 2126, Gen. Laws (Deering, 1937), Act 3796.

[3] See Yellowstone Park Transp. Co. v. Gallatin County, (C. C. A. 9th, 1929) 31 F. (2d) 644; Standard Oil Co. v. California, 291 U. S. 242, 54 S. Ct. 381 (1934); Arlington Hotel Co. v. Fant, 278 U. S. 439, 49 S. Ct. 227 (1929); United States v. Unzeuta, 281 U. S. 138, 50 S. Ct. 284 (1930); Surplus Trading Co. v. Cook, 281 U. S. 647, 50 S. Ct. 455 (1930); Western Union Tel. Co. v. Chiles, 214 U. S. 274, 29 S. Ct. 613 (1909); Fort Leavenworth R. R. v. Lowe, 114 U. S. 525, 5 S. Ct. 995 (1885).

[4] Fort Leavenworth R. R. v. Lowe, 114 U. S. 525, 5 S. Ct. 995 (1885); Ranier National Park Co. v. Martin, (D. C. Wash. 1937) 18 F. Supp. 481; Standard Oil v. Johnson, 10 Cal. (2d) 758, 76 P. (2d) 1184 (1938); Yosemite Park & Curry Co. v. Johnson, 10 Cal. (2d) 770, 76 P. (2d) 1191 (1938). The last two cases involved license taxes that were held valid.

[5] "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may . . . and to *exercise like Authority* over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings. . . ." (Italics added.) See Fort Leavenworth R. R. v. Lowe, 114 U. S. 525, 5 S. Ct. 995 (1885), for an interesting discussion on the construction of this clause.

[6] Ranier National Park Co. v. Martin, (D. C. Wash. 1937) 18 F. Supp. 481. "But, since self-preservation is the first law of nations and states . . . it will not be presumed, in the absence of clearly expressed intent, that the state has relinquished its sovereignty." Ryan v. State Tax Comm., 188 Wash. 115 at 130, 61 P. (2d) 1276

the right to tax was saved to the state, but from the interpretation of this type of legislation in other cases, it is clear that this was meant to apply to revenue taxes and not to act as a blind for regulations.[7] The Twenty-First Amendment is not enough in itself to give the state jurisdiction over United States territory within the state borders.[8] Although this amendment does give the state the power to regulate, tax, or prohibit imports or sales of intoxicating liquors, still it is unreasonable to say it operates to give the state jurisdiction over territory in which the state has no other power except that which is expressly reserved to it. The test used by the Court in the principal case is clearly the correct one, the only difficulty coming in deciding whether the particular tax is regulatory.[9]

Stanton J. Schuman

(1936). See on same point, Nikis v. Commonwealth, 144 Va. 618, 131 S. E. 236 (1926).

[7] In Yellowstone Park Transp. Co. v. Gallatin County, (C. C. A. 9th, 1929) 31 F. (2d) 644, the state tried to lay a revenue tax but it was held invalid because in the act of cession the state had failed to reserve the power to tax. California met the same trouble in Standard Oil Co. v. California, 291 U. S. 242, 54 S. Ct. 381 (1934). Under the same cession and under the same statute as was involved in the principal case, the state did lay invalid license taxes. See cases cited in note 4, supra. See also note 6, supra. However, the state can use necessary means for enforcement and collection of its taxes. Ranier National Park Co. v. Martin, (D. C. Wash. 1937) 18 F. Supp. 481.

[8] Section 2 of the Twenty-first Amendment reads, "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." State Board of Equalization v. Young's Market Co., 299 U. S. 59, 57 S. Ct. 77 (1936), held that under this amendment the state could make regulations that were "violations" of the commerce clause of the Constitution or of the Fourteenth Amendment, but the case did not imply that the state could extend its jurisdiction as to territory. See also State v. Arluno, 222 Iowa 1, 268 N. W. 179 (1936), and People v. Ryan, 248 App. Div. 236, 289 N. Y. S. 141 (1936), reversed on other grounds 274 N. Y. 149, 8 N. E. (2d) 313 (1937), for further decisions on section 2 of the Twenty-first Amendment.

[9] See Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U. S. 412, 57 S. Ct. 772 (1937). An interesting case along the same line but one which involves the question of regulations versus registration is Electric Bond & Share Co. v. Securities & Exchange Comm., 303 U. S. 419, 58 S. Ct. 678 (1938).